

Jon-Paul Bignold  
C/O The Office of Gas and Electricity Markets  
10 South Colonnade  
Canary Wharf  
London  
E14 4PU

14 November 2025

Dear Jon-Paul,

National Grid Electricity Transmission (NGET) welcome Ofgem's initiative to publish supplemental guidance for determinations arising from the Gate 2 to Whole Queue (**G2tWQ**) exercise. Clear, proportionate and timely dispute processes are essential to the integrity and delivery confidence of the connections reform programme.

We broadly support Ofgem's intent to provide clarity on scope, process, and expected evidentiary standards. However, drawing on our role and experience as the onshore Transmission Owner in England & Wales, we have set out below our concerns and recommendations to ensure the guidance is workable in practice, consistent with the established arrangements under the industry codes, and capable of supporting a timely and orderly delivery of TMO4+ outcomes.

### **Executive Summary**

NGET supports Ofgem's objective to supplement the 2017 determinations guidance for the one-off G2tWQ exercise and to minimise unnecessary recourse to determinations. We also support the principle that escalation and other Alternative Dispute Resolution (**ADR**) processes should be used to resolve issues where possible and at the earliest possible stage. Notwithstanding, we are concerned that the guidance as drafted would require all parties to exhaust ADR including arbitration before any Ofgem determination can be sought. Arbitration can take many months and produce binding awards; if that sequencing is applied rigidly, Ofgem's determination function will, in practice, be largely unavailable, if available at all, for the G2tWQ exercise. Arbitration also risks delay, uncertainty, and significant additional administrative rework (especially in relation to agreements that have been entered into) for NESO, TOs, and DNOs.

We therefore invite Ofgem to clarify and, where necessary, amend the guidance to:

- Permit earlier Ofgem referral where disputes are materially adverse to system development and operation;

- Recognise the specific dispute routes and triggers under the System Operator Transmission Owner Code (**STC**); and
- Provide clarity on the pause position for acceptances of connection offers where an arbitration is used as the dispute mechanism (analogous to the explicit pause already provided for Ofgem referrals under the STC).

We also request further guidance on process interactions where arbitration is initiated or threatened, including circumstances in which Ofgem would accept a referral without the completion of ADR, in order to avoid fragmented or duplicative proceedings and to preserve the coherence of G2tWQ outcomes.

### **The case for a timely, regulator-led route in appropriate cases**

NGET agrees that front-end engagement and escalation should be the default approach. However, we note that arbitration timelines in other sectors are inherently uncertain and can extend well beyond the decision windows necessary to maintain programme momentum across the G2tWQ workstream.

Given the nature of likely disputes – most likely to arise in relation to TO and NESO compliance with new Reform methodologies such as the CNDM - arbitral rulings could take many months.<sup>1</sup> As these decisions may have wide-ranging impacts across multiple TO Construction Offers (**TOCO**) and could necessitate reopening TO Construction Agreements (**TOCA**) or amending TOCOs to align with the award – a significant administrative burden on all parties - NGET suggests the most suitable dispute resolution method would be the one that allows for the timeliest decision. Lengthy dispute processes would introduce systemic uncertainty, including for other, queue-adjacent customer projects – due to the potential for cross-TOCO impact of the decision and therefore a reluctance to advance these projects until the arbitration award is made. This would be at a time where certainty is needed and where volumes of TOCOs that could be affected will be high – NGET alone is expected to send out circa 1000+ TOCOs.

A regulator managed determination route, applied in clearly defined circumstances and sequenced to minimise disruption, offers a faster and more predictable mechanism to resolve issues with cross-TOCO implications. We therefore recommend Ofgem confirms a pathway for earlier referral - without requiring completion of arbitration - where a dispute is likely to have wide ranging queue, programme or delivery impacts, or where the subject matter would be more efficiently addressed once, centrally, to avoid inconsistent outcomes across customers and licensees. This would appear to align with our next point regarding the existing rights in the STC framework and “materially adverse” matters.

---

<sup>1</sup> While there is limited precedent for arbitrations relating to connection offers, according to the LCIA Annual Casework Report 2024, the median LCIA arbitration lasts a total of 20 months. Cases with claims under USD 1 million are decided in 12 months.

## **The STC framework and “materially adverse” referral pathway**

Whilst we support the use of ADR to seek to resolve disputes and minimise costs for all parties, we note the guidance indicates that ADR must be exhausted before Ofgem will consider a determination, and that ADR for Connection and Use of System Code (**CUSC**) parties includes escalation and, where unresolved, arbitration. In practice, arbitral decisions are ordinarily final and binding. If full ADR (including arbitration) is made a precondition to referral, very few (if any) disputes will ever reach Ofgem, notwithstanding Ofgem’s statutory and licence-based determination functions. That outcome would not be consistent with the policy intent of the determinations framework, and it could be counterproductive for a time limited, one-off reform programme.

The STC provides a more granular framework than the CUSC for categorising disputes and routing them either to arbitration or to Ofgem. In particular:

- The STC sets out specific dispute triggers, which in turn inform whether a dispute proceeds to arbitration or is referred to Ofgem.
- For TOCO (such as the Gate 2 Modification Offers) disputes not addressed under the NESO licence (via SLC E13) – where the decision is flowed through to the TOCO via an NGET licence condition - the starting position is arbitration unless the dispute is deemed of a type that should be referred to Ofgem.
- Crucially, the STC allows for an Ofgem referral where a dispute “materially adversely affect(s) that Dispute Party’s ability to develop and maintain an efficient, co-ordinated and economical system of electricity transmission in the National Electricity Transmission System Operator Area.”

In our view, the “materially adverse” threshold provides an appropriate valve for early regulator involvement. Where a dispute - by virtue of its scope, its remedy, or simply by reason of the breadth of arbitration’s practical effects - would be materially adverse in this sense, the referral route should be available without requiring completion of arbitration. This is particularly relevant where: (a) NESO and/or a TO consider that the breadth of the issues or their queue impact warrants central determination; or (b) a party initiates or threatens arbitration, but NESO and/or a TO conclude that the “materially adverse” threshold is met and a referral is justified to avoid inconsistent or fragmented resolution.

We would welcome Ofgem’s guidance on several practical process questions:

- Can Ofgem provide any guidance on the circumstances where the “materially adverse” test would, or would not, be met, particularly where the potential consequences extend to multi-TOCO realignments?
- How should parties manage escalation and communications to avoid inadvertent, unilateral commencement of arbitration that could prejudice an Ofgem referral pathway?

- How should the CUSC dispute process, which does not appear to have this “materially adverse” route, interact with the STC dispute process, which does have this route? We presume this would be via NESO’s E13 process.

We suggest Ofgem confirms that the “materially adverse” limb operates as an exception to the requirement to complete arbitration (though not to complete the parties’ obligation to escalate and see this through), thereby avoiding a procedural “dead end”.

We therefore ask Ofgem to refine the guidance to distinguish between:

- (i) mandatory escalation and senior level engagement steps that should be completed in all cases; and
- (ii) arbitration, which should not be a hard precondition to referral where the dispute is “materially adverse”.

Guidance should also be provided on what could be considered “materially adverse”, which we suggest should include where a determination is capable of materially affecting multiple customers, the integrity of the queue, or the co-ordinated and economical development and maintenance of the transmission system. This clarification would preserve the benefits of early ADR while recognising the practical limits of arbitration in the G2tWQ context.

### **Acceptance windows and the need for a clear pause mechanism**

Section D, paragraph 5.1A of the STC provides a clear and workable mechanism to pause acceptance of a TOCO where an application is made to the Authority under condition E13 of the ESO Licence. In those circumstances, the acceptance window remains open until 17 days after Ofgem’s determination or direction. We strongly support this approach for Authority referrals. By contrast, the position is unclear for arbitration. In the absence of an explicit pause mechanism, parties may be left to craft ad hoc arrangements, which is undesirable in a time critical, queue wide exercise.

We propose the supplemental guidance confirms that, for G2tWQ disputes, where arbitration is initiated, the parties should promptly confer on acceptance window impacts and adopt a consistent pause approach - ideally, by reference to a standardised protocol agreed between Ofgem, NESO, TOs and DNOs.

### **Application of arbitration decisions**

The risk profile of G2tWQ disputes is different from business as usual. A single arbitral award affecting a common method, dataset or queuing rule could trigger multiple downstream amendments across TOCAs/TOCOs and necessitate rework within NESO’s G2 processes. This would be administratively intensive, extend delivery timescales and increase uncertainty for customers who are not party to the arbitration. Notwithstanding our comments above regarding the “materially adverse” exception, NGET suggests that Ofgem confirms in the guidance how multiple siloed arbitrations should be managed by, presumably, NESO, and how things like

inconsistent arbitration awards should be applied across the portfolio (for example, should these be applied retrospectively for agreements that have completed pre-award) to ensure the best outcome.

## **Our answers to Ofgem's consultation questions**

### **1. Does the G2tWQ Determinations Guidance clearly set out the Authority's determination processes for disputes arising from the Gate 2 to Whole Queue exercise and its expectations of disputing parties?**

The guidance is clear on Ofgem's general expectations, the requirement for ADR, the scope limits on what Ofgem will consider, and the procedural steps for submitting a determination request. It also helpfully acknowledges the practical constraints on remedies within a one-off, time limited programme. However, several areas require further clarity to make the guidance fully operable for G2tWQ:

- The interaction between ADR (particularly arbitration) and Ofgem's determination function requires refinement. As drafted, the requirement to complete arbitration will, in practice, foreclose Ofgem's role for most disputes because arbitral awards are binding and typically comprehensive in scope.
- The relationship between the guidance and the STC's dispute triggers and referral tests - particularly the "materially adverse" threshold - should be made explicit, with clear recognition that this constitutes a justified exception to the requirement to complete arbitration.
- The guidance should clarify treatment of parallel proceedings and sequencing where arbitration is initiated or threatened but a materially adverse referral is then sought, including how Ofgem will approach acceptance of such referrals and expectations on parties to pause or stay arbitration.
- The acceptance window mechanics are clear for Ofgem referrals under the STC but are not addressed for arbitration. This gap should be closed, at least via a standardised protocol.

### **2. Is there any additional clarity needed on the determinations procedures?**

We recommend Ofgem adds the following clarifications:

- Explicit exception pathway: Confirm that completion of arbitration is not required where an Ofgem referral is justified under the STC "materially adverse" test, and that "materially adverse" is clarified to include what it could include (e.g. cross-TOCO or systemic implications best resolved centrally).
- For Ofgem determinations, a clear timeline given the importance of timely decisions considering the wider G2tWQ (and subsequent gated processes) impacts.

- Parallel proceedings protocol: Provide expectations on how parties should notify Ofgem where arbitration has been initiated or threatened, the circumstances in which Ofgem would expect arbitration to be paused or stayed and preferred sequencing to avoid duplication or inconsistent outcomes.

## **Conclusion**

NGET supports Ofgem's initiative to provide supplemental guidance for G2tWQ determinations and agrees that early, proportionate ADR should be the default path. To safeguard the timely and orderly delivery of G2tWQ, we ask Ofgem to refine the guidance to permit earlier regulator referral - without requiring completion of arbitration - where disputes meet the STC's "materially adverse" threshold.

We also ask Ofgem to anchor acceptance window pauses to referrals, provide a consistent approach for arbitration, and clarify how Ofgem will manage referrals where arbitration has been initiated or threatened but a referral is determined to be the better course of action. These adjustments will reduce programme risk, avoid unnecessary rework, and ensure that the determinations process complements, rather than elongates, the G2tWQ exercise.

Your sincerely,

Richard Woodward

Connections Reform Senior Manager  
National Grid Electricity Transmission