

Proposal 1 - Business Plan Incentive: Joint Early Proposal (TANCI)

Section	Submission
<i>Licensee Name</i>	UK Power Networks Ltd. including three distribution licence holding companies: Eastern Power Networks plc (EPN), London Power Networks plc (LPN), and South Eastern Power Networks plc (SPN).
<i>Proposal Name</i>	Timely Addition of Network Capacity Indicator/Incentive (TANCI)
<i>Type of Proposal (confirm all that apply)</i>	<ul style="list-style-type: none"> • Delivery accountability mechanism • Stretching commitments
<i>Proposal Summary (max 200 words)</i>	<p>The joint work undertaken by UK Power Networks (UKPN) and Northern Powergrid (NPg) on TANCI represents a strong example of a proposal that meets the criteria for BPI rewards. This new delivery mechanism:</p> <ul style="list-style-type: none"> a) supports decarbonisation and the wider energy system transformation in the face of genuine uncertainty; b) holds DNOs to account for timely delivery of capacity; and c) protects customers from the risks of substantial non-delivery. <p>Our proposal assures delivery via a combination of guardrails and flexible ex-ante allowances that would enable companies to optimise output delivery, respond to real-world conditions and maintain cost efficiency as a central goal in the journey to Net Zero.</p> <p>DNOs submit plans to release capacity, Ofgem translates that into TANCI points (calibrated measure of net capacity released by an asset intervention), which are made consistent with final allowances. DNOs are held to deliver the aggregate TANCI target in period via:</p> <ul style="list-style-type: none"> a) Annual monitoring of TANCI points delivered. b) Clawback at close out for under-delivery outside of a deadband.¹ c) Rewards/ penalties for over/ under-delivery outside of a pre-defined deadband.
<i>Which ED3 outcomes does the proposal support? (confirm all that apply)</i>	<ul style="list-style-type: none"> • Investing for the energy transition
<i>Which Consumer Interest Pillars does the proposal support? (confirm all that apply)</i>	<ul style="list-style-type: none"> • Low cost transition
<i>Summary of key reason(s)/ driver(s) for the proposal (max 200 words)</i>	<p>The most pressing challenge for Ofgem and DNOs during ED3 will be securing the investment required to enable proactive decarbonisation and deliver the energy system transformation.</p> <p>TANCI recognises that there is genuine uncertainty of the location, scale, and timing requirement of additional capacity so far ahead of need and encourages companies to build the network out in a sensible way in response to natural developments driven by changes in customer and commercial needs.</p> <p>The resource burden is low, as TANCI does the leg work and DNOs can adapt in period as forecasts change, whilst still on the hook to deliver the expected level of capacity so customers benefit from efficient and timely grid expansion and an efficient pathway to Net Zero.</p>

¹ Clawback = (TANCI target for all interventions – actual TANCI as measured) x unit cost of TANCI, where the Unit cost of deliverable = Reinforcement allowances / TANCI target

	<p>The delivery assurance TANJI provides enables the use of fungible ex-ante allowances and allows flexibility across asset classes, enabling DNOs to adapt to customer needs and changes on the network, whilst promoting efficiency and encouraging synergies.</p>
<p><i>Summary of supporting evidence (examples could include references to sector specific intelligence, innovation projects, ISG engagement, wider consumer research, endorsement from third parties) (max 200 words)</i></p>	<p>The scale of the customer benefits associated with the transition have been highlighted by the National Infrastructure Commission (NIC; now NISTA), the UK Government, and Ofgem themselves.</p> <p>This mix of the delivery mechanism, incentive, and fungible allowances meets the NIC recommendation 8 to set sufficient allowances upfront to enable the lowest cost of investment over the longer term, with limited use of reopeners. It enables DNOs to adapt to network needs quickly without triggering adaptability mechanisms with every change in customer behaviour, invest in an efficient manner, and prioritise accordingly. Without TANJI, companies will be tied down to invest in areas that move down the priority list to avoid regulatory punishment, with the lengthy regulatory approval process blocking investment where it is needed sooner.</p> <p>TANJI also meets the NIC recommendation 7, for funding mechanisms and incentives to deliver Ofgem's Net Zero and growth duties. It gives companies the commercial and operational freedom to get things done, which will encourage the supply chain to expand to meet the investment level and allow business to connect to the network and enable growth and job creation. Volume drivers will not achieve this – as companies will only invest to the level where the marginal benefit equals the marginal cost.</p>
<p><i>Summary of potential benefits (max 200 words)</i></p>	<p>Delivery of capacity is assured and incentivised via the use of a capacity released measure that can be aligned to allowances, enabling Ofgem to monitor whether DNOs deliver the overall capacity that they are funded to provide in a timely and efficient manner.</p> <p>The measure is quantifiable and can be measured consistently, covering the majority of load² allowing tradability across solutions, and allows flexibility services to be appropriately valued in a way that equalises incentives across the decision to provide a flexibility solution or an enduring capacity-based solution, thus encouraging efficient choices.</p> <p>It works interactively with NARM so as to not double-count, and the fungible allowances across load and non-load incentivises companies to find synergies regardless of the investment driver.</p> <p>TANJI allows the use of asset normalisation and prioritisation factors³ to prevent companies from substituting costly work for cheaper work during delivery and ensures prioritisation of actual capacity requirements and alignment to tRESP forecast.</p>

² The scope of TANJI should include Primary reinforcement (CV1), Secondary reinforcement (CV2), Fault level reinforcement (CV3), Connections inside the price control (DUoS funded only, C2). It should exclude LV services, and large, discrete projects above £25m.

³ For example, TANJI Point = Net Capacity Released (MVA) x Asset Normalisation Factor x Prioritisation Factor.

<p><i>Where the proposal relates to a new or enhanced service or to stretching commitments, explain why the proposal is not already business as usual or incentivised either through the existing RIIO-ED2 framework or under ED3 proposals that we are consulting on (max 200 words)</i></p>	<p>There is currently no incentive on the timely delivery of capacity ahead of need; only funding arrangements that limit investment to LCT take up as it materialises.</p> <p>Our proposal is built on new method for measuring capacity released across all reinforcement, giving a multi-asset load measure that captures the customer benefit.</p> <p>TANCI introduces a new incentive to drive proactive investment, encouraging DNOs to create capacity as quickly and efficiently as possible. Calibration can be undertaken using a well-evidenced baseline level of delivery against which step changes can be assessed, with:</p> <ul style="list-style-type: none"> a) Annual targets that progressively build challenge, encouraging early delivery despite the greater difficulty for a company to step up delivery in earlier years of the period, compared to latter years. b) Rewards for over-performance above baseline, and penalties for significant under-performance, in addition to whole-period clawback of allowances for non-delivery. c) Penalties are given for particularly serious delays (including severe stop/start capex cycles), and/or serious under-delivery across the whole period below the achievable baseline. <p>The incentive could be calibrated to encourage DNOs to step up investment in the front end of the price control period, which is a greater challenge compared to a step up in the later years.</p>
<p><i>Where the proposal relates to a new or enhanced service, explain why DNOs are best placed to undertake the activity described under the proposal (max 200 words)</i></p>	<p>N/A.</p>

Appendix 1: Tanci clawback mechanism

Metric Definition

1. A Tanci “point” is a calibrated measure of the net capacity released by an asset intervention, as per the formula below.

$$\text{Tanci point} = \text{Net Capacity Released (MVA)}$$

2. The Tanci calibration allows the potential use of an asset normalisation factor and prioritisation factor. This is shown in the formula below and factors explained overleaf.

$$\text{Tanci point} = \text{Net Capacity Released (MVA)} \times \text{Asset Normalisation Factor} \times \text{Prioritisation Factor}$$

Methodology

3. At plan submission the DNOs will calculate the Tanci points from their planned interventions at each asset class and by delivery year. The DNOs will then be held to account to deliver these against their plan but have the fungibility to adjust their plans to deliver different asset interventions. But crucially still meeting their overall Tanci target at a licensee level.
4. The proposed approach would be similar to NARM:
 - a) An ex-ante allowance would be set and coupled with an aggregated target for Tanci (sum of the Tanci points).
 - b) Ongoing delivery would be measured through annual reporting, for comparison to Tanci target.
 - c) There could be clawback of allowances for under-delivery at the end of five years, if delivery strayed outside a deadband range.

Scope

5. The scope of Tanci should include the following, with reference to the existing BPDT tables:
 - a) Primary reinforcement (CV1).
 - b) Secondary reinforcement (CV2).
 - c) Fault level reinforcement (CV3).
 - d) Connections inside the price control (only DUoS funded part of C2).
6. The measure could also include capacity released from asset replacement activity (CV7).
7. Specific exclusions are:
 - a) Low voltage services. Propose to keep as a volume driver (part of CV2). Whilst the majority of LV mains reinforcement will sit under the general Tanci target, a small proportion may be associated with LV Services programmes, and as such would sit outside Tanci.
 - b) High value projects >£25m. Propose to be project specific PCDs (CV23-25).
 - c) Diversions (CV5-CV6).

Asset classes for Tanci

8. There is value in attributing the following asset classes against Tanci:
 - a) Pole and ground mounted distribution transformers.
 - b) EHV and 132kV transformers.
 - c) LV, HV, EHV and 132kV circuits (both UG and OHL).
 - d) LV boards.
 - e) HV, EHV and 132kV circuit breakers.
 - f) Voltage control apparatus.
 - g) Customer flexibility.
 - h) Innovative solutions.

Clawback for under-delivery

9. If a DNO falls short of its deliverable, a pre-set formula could be used for any clawback. Like NARM, this could be based on a notional unit cost for the Tanci target:

$$\text{Clawback} = (\text{Tanci target for all interventions} - \text{actual Tanci as measured}) \times \text{unit cost of Tanci}$$

Where:

$$\text{Unit cost of Tanci} = \frac{\text{LRE allowances}}{\text{Tanci target}}$$

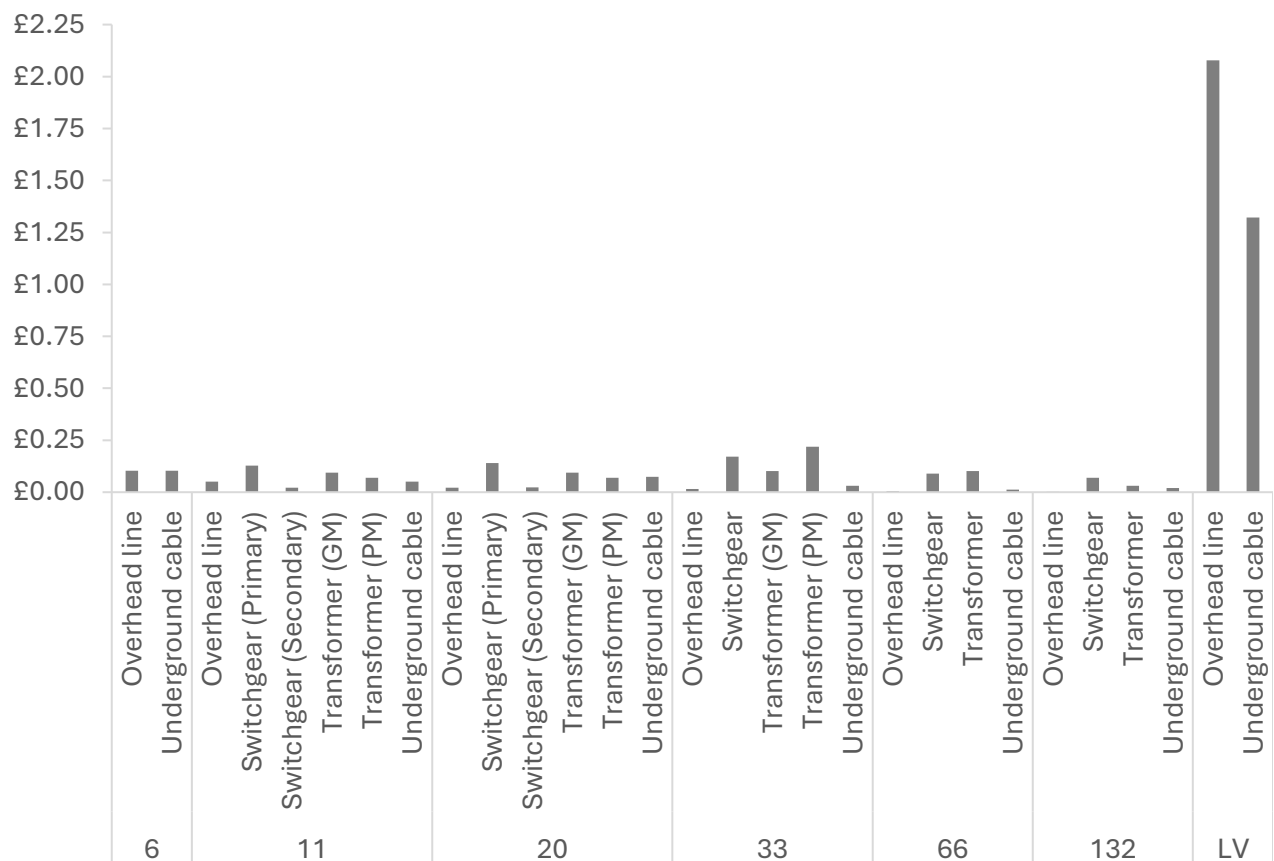
10. The Tanci target could also be set with a deadband, effectively defining a range for the licensee to target, rather than a fixed value, recognising the operational difficulty of hitting a very specific number through a programme with large numbers of asset interventions.

Tanci point calculation factors

Asset Nominalisation Factor

11. There is a wide range of cost per unit of capacity released across the various voltages and asset classes, therefore the points are calibrated by unit costs to normalise the points and prevent companies from committing to more costly projects in plans but substituting cheaper work during delivery. Potential normalisation factors shown in Chart 1 and have been derived using recent BPDTs across all DNOs supplemented with NPg data.
12. This analysis shows that £1m investment releases just 0.48MVA for a LV OHL upgrade but this increases to 466MVA for 132kV re-stringing. Therefore, all other assets can be normalised using this as a baseline as shown in Figure A1 below.

Figure A1: The cost range across asset classes and voltages for realising capacity (£m/MVA)⁴.



⁴ This data set is a combination of all DNO BPDTs and NPg data.

Prioritisation Factor

13. TANCi also ensures prioritisation of actual capacity requirements and alignment with the tRESP forecast. In calibrating the TANCi points, Ofgem can incentivise sensible prioritisation of investment to ensure that both actual and forecast requirements are considered in delivery. For example, a tiered approach can be implemented with:
- a) Higher points for investment that is required in the period;
 - b) Medium points for investment needed in the next price control and/or included in the tRESP forecast; and
 - c) Lower points for investment projected in ED5 and beyond.

Technical rulebook

14. The calculation of net capacity released from replacing an existing transformer with a larger one is the benchmark for which other more complex interventions will be normalised to. This enables TANCi points to be calculated across a wider range of interventions. Any ratings calculation should be standard nameplate or datasheet values to British Standard or ENA environmental conditions.

Transformer replacement (benchmark)

New capacity released = New nameplate rating – Old nameplate rating

Circuit replacements

15. It is relatively straight forward to calculate the capacity released of a new circuit as the new conductor is known, however the replacement of an existing circuit is more difficult to model. This is especially true for secondary circuits as they are seldom a homogenous rating across their length, and their demand is usually distributed – this means that calculating the existing rating or utilisation of these assets is extremely difficult and rules out using LIs for this purpose.
16. As the TANCi metric will be used across thousands of asset interventions the existing rating of the circuit being replaced will regress to the mean. This means we can use a DNO's asset class circuit population's average rating as the basis for calculating the capacity released against the new replacement cable rating which is well known and usually a standard single value.
17. Having worked collaboratively with our partners in NPg, their entire existing secondary circuit population has been analysed and average ratings have been calculated against the modern equivalent. This is shown in table 1 below and could be used by other DNOs or alternatively a similar analysis conducted by each DNO.

Table A1: Typical capacity released when replacing an existing circuit by type

Circuit type	Average network rating (NPg existing network analysis)	Typical new circuit rating (NPg standard conductor type)	Capacity released by replacing a typical circuit
LV UG	0.19MVA	0.3MVA (300mm ² Al Wf)	0.11MVA
LV OHL	0.14MVA	0.21MVA (120mm ² Al ABC)	0.07MVA
11kV UG	6.1MVA	8.8MVA (300mm ² Al Triplex)	2.7MVA
11kV OHL	4.3MVA	7.0MVA (3x100mm ² AAAC 65°C)	2.7MVA
20kV UG	10.4MVA	12.3MVA (185mm ² Al Triplex)	1.9MVA
20kV OHL	6.2MVA	12.7MVA (3x100mm ² AAAC 65°C)	6.5MVA
EHV & 132kV	Further analysis required.		

18. A separate factor also needs considering which is circuit length. We do not believe that the incentive should value the aggregate of many small length replacements differently to one long section. Therefore, we propose unitising capacity on kilometre sections (common with both manufacturing datasheets and Ofgem reporting).
19. It is recognised the existing average rating will slowly tend towards the standard replacement rating as the network is upgraded. However, as this is only <1% per year, we proposed the average existing values are revised for each price control period.

Voltage interventions

20. Whilst the total volume of interventions which release solely voltage headroom will be low compared with thermal headroom intervention they can still be considered within TANJI. This can be calculated using a derivation of the following: $S = (V_1^2 - V_2^2)/Z$ to find the equivalent thermal capacity released by implementing a voltage control intervention.

$$\text{Thermal capacity released } \Delta S = \frac{V_1^2 - V_2^2}{Z}$$

Where:

V = voltage

Z = impedance

Switchgear replacement

21. Switchgear will typically have two ratings, firstly its adiabatic short term fault current rating and secondly, its normal continuous rating. Whilst the two are intrinsically linked the use of fault rating unnecessarily skews the TANJI metric and is open to temporal variables. Therefore, to avoid this complexity and be consistent with other asset interventions the switchgear's nominal continuous should be used. This replacement should be by switchgear unit (i.e. by circuit breaker), where additional new circuit breakers added during a replacement are duly credited with TANJI points.

Customer flexibility

22. Customer flexibility can also be attributed with TANJI points. As customer flexibility is mainly used for the deferment of traditional interventions, it is proposed that this is the only use case whereby TANJI points are attributed by the pro-rata financial deferment value of the counterfactual reinforcement cost and net capacity released. This can be calculated using the CEM tool and net capacity released of the counterfactual reinforcement project.

Innovative solutions

23. Any innovative solutions would need their TANJI points calculating within the general engineering principles set out above but justified either within a standalone Engineering Justification Paper (EJP) as part of the price control submission, or as part of ED3 annual reporting requirements.

Appendix 2: Tanci Incentive Calibration

24. Alongside the calibration of Tanci points as set out in Appendix 1, we have also looked at the incentive arrangements that could be tied to Tanci, which would provide Ofgem with a unique regulatory innovation, which clearly sets out to customers, stakeholders and licensees, what is being delivered across the price control, with annualised rewards and penalties associated with over/under delivery.
25. UK Power Networks' current thinking is that the delivery of Tanci points is what should be incentivised, with a number of factors to be considered, namely:
- a) **Tanci points for the licensee** – our thinking is this should be aligned to the allowed intervention volumes associated with Ofgem's Final Determination, with Tanci points determined using the specified methodology;
 - b) **Annual target Tanci points** – aligned to:
 - a. Ofgem's Final Determination;
 - b. the intervention profile submitted by the DNO;
 - c. the DNO's deliverability plan;
 - d. Ofgem's assessment through its suite of benchmarking, policy and engineering assessments;
 - e. the independent NESO assessment of the DNO's use of the tRESP outputs and confirmation that the DNO has followed the required guidance or provided suitable justification for any material divergences.
 - c) **Incentivisation approach** – the £ per Tanci point value and whether this should be applied to differences in annual delivery vs target, the end of period position against the full ED3 target or a combination of the two;
 - d) **Size of the incentive** – noting Ofgem statements in the SSMC and at various working groups regarding underspends on capex, our current thinking is that the potential incentive strength should be equivalent to the current value of the Load Related Reopener mechanism threshold – i.e. the 20% deadband, where DNOs currently retain circa 50% of this.
26. The proposed package, if taken up as a whole, retains powerful efficiency incentives:
- a) Expressing the incentive in Tanci points will encourage companies to focus on efficient, necessary projects and avoids incentives to spend inefficiently simply to increase delivery volumes.
 - b) Fungible, ex ante allowances and tradability across all assets, supported by the asset normalisation and prioritisation factors, promote efficient investment decision based on real-world needs. Ringfencing allowances undermines this and risks inefficiency, higher costs for customers, and missed opportunities to deliver the right outputs for customers.
 - c) The existing totex efficiency incentive would continue to act strongly on minimisation of unit costs of delivery.
27. The incentive can be calibrated to reward stronger delivery capacity beyond that envisaged at the time of submitting the Business Plan and its subsequent assessment, bolstering the 'timeliness' element of Tanci. The incentive can be set to ensure that forecast increases in investment early in the price control period are delivered (i.e. "overpromises" would be penalised, whilst actual delivery above that funded in the price control would be rewarded). The target sets would be reflective of the actual profile of delivery forecast by the DNO and ultimately assessed and funded by Ofgem.

28. A number of worked examples are shown below to illustrate how this could work:

Uniform Tanci incentive rate, split equally across each year and the end of period assessment

Timely Addition of Network Capacity Incentive - Tanci

Example 1 - Overdelivery

		A - Annual Assessment					B - End of Period Assessment	C - Overall Outcome
	Units	Year 1	Year 2	Year 3	Year 4	Year 5	RIIO-ED3 Total	Overall RIIO-ED3 Incentive
Planned Addition of Network Capacity	Tanci Points	1000	1200	1400	1600	1800	7000	
Actual Addition of Network Capacity		1200	1400	1500	1700	1900	7700	
Delta		200	200	100	100	100	700	
Incentive Rate	£ per Tanci Point	£ 40,000	£ 40,000	£ 40,000	£ 40,000	£ 40,000	£ 40,000	
Weight		50%	50%	50%	50%	50%	50%	
Weighted Incentive Rate		£ 20,000	£ 20,000	£ 20,000	£ 20,000	£ 20,000	£ 20,000	
Incentive Value		£ 4,000,000	£ 4,000,000	£ 2,000,000	£ 2,000,000	£ 2,000,000	£ 14,000,000	£ 28,000,000

Timely Addition of Network Capacity Incentive - Tanci

Example 2 - Delivery

		A - Annual Assessment					B - End of Period Assessment	C - Overall Outcome
	Units	Year 1	Year 2	Year 3	Year 4	Year 5	RIIO-ED3 Total	Overall RIIO-ED3 Incentive
Planned Addition of Network Capacity	Tanci Points	1000	1200	1400	1600	1800	7000	
Actual Addition of Network Capacity		1200	1200	1400	1600	1600	7000	
Delta		200	0	0	0	-200	0	
Incentive Rate	£ per Tanci Point	£ 40,000	£ 40,000	£ 40,000	£ 40,000	£ 40,000	£ 40,000	
Weight		50%	50%	50%	50%	50%	50%	
Weighted Incentive Rate		£ 20,000	£ 20,000	£ 20,000	£ 20,000	£ 20,000	£ 20,000	
Incentive Value		£ 4,000,000	£ -	£ -	£ -	£ -4,000,000	£ -	£ -

Timely Addition of Network Capacity Incentive - Tanci

Example 3 - Underdelivery

		A - Annual Assessment					B - End of Period Assessment	C - Overall Outcome
	Units	Year 1	Year 2	Year 3	Year 4	Year 5	RIIO-ED3 Total	Overall RIIO-ED3 Incentive
Planned Addition of Network Capacity	Tanci Points	1000	1200	1400	1600	1800	7000	
Actual Addition of Network Capacity		950	1000	1200	1300	1400	5850	
Delta		-50	-200	-200	-300	-400	-1150	
Incentive Rate	£ per Tanci Point	£ 40,000	£ 40,000	£ 40,000	£ 40,000	£ 40,000	£ 40,000	
Weight		50%	50%	50%	50%	50%	50%	
Weighted Incentive Rate		£ 20,000	£ 20,000	£ 20,000	£ 20,000	£ 20,000	£ 20,000	
Incentive Value		£ -1,000,000	£ -4,000,000	£ -4,000,000	£ -6,000,000	£ -8,000,000	£ -23,000,000	£ -46,000,000

50% uplift to annual Tanci incentive rate, plus end of period assessment

Timely Addition of Network Capacity Incentive - Tanci

Example 1 - Overdelivery

		A - Annual Assessment					B - End of Period Assessment	C - Overall Outcome
	Units	Year 1	Year 2	Year 3	Year 4	Year 5	RIIO-ED3 Total	Overall RIIO-ED3 Incentive
Planned Addition of Network Capacity	Tanci Points	1000	1200	1400	1600	1800	7000	
Actual Addition of Network Capacity		1200	1400	1500	1700	1900	7700	
Delta		200	200	100	100	100	700	
Incentive Rate	£ per Tanci Point	£ 60,000	£ 60,000	£ 60,000	£ 60,000	£ 60,000	£ 40,000	
Weight		50%	50%	50%	50%	50%	50%	
Weighted Incentive Rate		£ 30,000	£ 30,000	£ 30,000	£ 30,000	£ 30,000	£ 20,000	
Incentive Value		£ 6,000,000	£ 6,000,000	£ 3,000,000	£ 3,000,000	£ 3,000,000	£ 14,000,000	£ 35,000,000

Timely Addition of Network Capacity Incentive - Tanci

Example 2 - Delivery

		A - Annual Assessment					B - End of Period Assessment	C - Overall Outcome
	Units	Year 1	Year 2	Year 3	Year 4	Year 5	RIIO-ED3 Total	Overall RIIO-ED3 Incentive
Planned Addition of Network Capacity	Tanci Points	1000	1200	1400	1600	1800	7000	
Actual Addition of Network Capacity		1200	1200	1400	1600	1600	7000	
Delta		200	0	0	0	-200	0	
Incentive Rate	£ per Tanci Point	£ 60,000	£ 60,000	£ 60,000	£ 60,000	£ 60,000	£ 40,000	
Weight		50%	50%	50%	50%	50%	50%	
Weighted Incentive Rate		£ 30,000	£ 30,000	£ 30,000	£ 30,000	£ 30,000	£ 20,000	
Incentive Value		£ 6,000,000	£ -	£ -	£ -	£ -6,000,000	£ -	£ -

Timely Addition of Network Capacity Incentive - Tanci

Example 3 - Underdelivery

		A - Annual Assessment					B - End of Period Assessment	C - Overall Outcome
	Units	Year 1	Year 2	Year 3	Year 4	Year 5	RIIO-ED3 Total	Overall RIIO-ED3 Incentive
Planned Addition of Network Capacity	Tanci Points	1000	1200	1400	1600	1800	7000	
Actual Addition of Network Capacity		950	1000	1200	1300	1400	5850	
Delta		-50	-200	-200	-300	-400	-1150	
Incentive Rate	£ per Tanci Point	£ 60,000	£ 60,000	£ 60,000	£ 60,000	£ 60,000	£ 40,000	
Weight		50%	50%	50%	50%	50%	50%	
Weighted Incentive Rate		£ 30,000	£ 30,000	£ 30,000	£ 30,000	£ 30,000	£ 20,000	
Incentive Value		£ -1,500,000	£ -6,000,000	£ -6,000,000	£ -9,000,000	£ -12,000,000	£ -23,000,000	£ -57,500,000

Overall value of the incentive

29. Taking the industry allowances for the relevant load categories in RIIO-ED2, there is circa £4.6bn associated with activities that we have suggested should come under TNCI in ED3. In RIIO-ED2, with the 20% LRE reopener threshold in place for the LRE Closeout, DNOs could, with an average sharing factor of 50%, keep circa £460m of an underspend up to this threshold. The introduction of TNCI affords the opportunity to place this level of financial upside to the incentive – with a clear view to delivery in the form of TNCI points. A delivery incentive would also be consistent with Ofgem's approach in the recent RIIO-T3 price control, where our understanding is that Ofgem have put sizeable rewards on the table for transmission companies, if they deliver their funded capex programmes on time.
30. In the examples above the suggested financial exposure could be calibrated to the actual load allowances each DNO has been allowed at Final Determinations, with caps and collars applied to ensure both customers and licensees are suitably protected.