

# Consultation

## Consultation on our assessment of IFA, BritNed and Nemo Link's pilot project and interim period cost recovery submissions under the Capacity Allocation and Congestion Management (CACM) Regulation

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**Response deadline:** 4 January 2021

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We are consulting on the amounts for recovery through Transmission Network Use of System ("TNUoS") charges following our assessment of IFA, BritNed and Nemo Link's submissions of pilot and interim period costs, under the CACM Regulation.

This document outlines the scope, purpose and questions of the consultation, as well as how you can get involved.

We welcome views from interested parties. Please respond by 4 January 2021.

Once the consultation is closed, we will consider all responses. We will publish the non-confidential responses we receive alongside a decision on next steps on our website at [Ofgem.gov.uk](https://www.ofgem.gov.uk). If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response.

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## Executive summary

### Overview of our assessment

In August 2019, we decided on the approach to cost sharing and cost recovery under the Commission Regulation (EU) 2015/1222 on Capacity Allocation and Congestion Management (the "CACM Regulation")<sup>1</sup>. Hereafter referred to as the "August Decision"<sup>2</sup>.

That decision allowed for the recovery of efficiently incurred, reasonable and proportionate development and operational costs through Transmission Network Use of System ("TNUoS") payments, for both the CACM pilot project period<sup>3</sup> and the interim period<sup>4</sup>.

We subsequently received submissions of pilot and interim period costs from IFA, BritNed and Nemo Link.

Based on our assessment, we are minded to allow for the following costs to be recovered through TNUoS:

**Table 1 - Overview of our minded to position on amounts to be recovered**

Interconnector	Provisional cost allowance (£m)
IFA	16.540
BritNed	4.081
Nemo Link	0.340

We have proposed some cost adjustments to the original submissions of IFA, BritNed and Nemo Link. These are reflected in the costs that we have presented in Table 1. Our adjustments are in relation to our view on the most efficient, reasonable and proportionate representation of the Time Value of Money (TVM) in relation to the claims made by IFA, BritNed and Nemo Link. We have also adjusted BritNed's cost submission based on our view on the most efficient, reasonable and proportionate representation of currency exchange rates.

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<sup>1</sup> [Link](#) to Commission Regulation (EU) 2015/1222 on capacity allocation and congestion management.

<sup>2</sup> [Link](#) to Ofgem's decision on the approach to cost sharing and cost recovery under the Capacity Allocation and Congestion Management (CACM) Regulation.

<sup>3</sup> CACM pilot project period refers to development and operational costs that were incurred before 14 February 2017 or that were contractually committed to before this date, for both pilot projects (the North West Europe ("NWE") price coupling and Cross Border Intraday ("XBID")).

<sup>4</sup> Interim period refers to the recovery of costs between 14 February 2017 and 30 August 2019.

## **Next steps**

After considering the responses to this consultation, we expect to make a final decision on the assessment of the costs in January 2021. This will allow IFA, BritNed and Nemo Link to recover the approved costs through the 2021 cycle of TNUoS charges.

## 1 Introduction

### Context

#### The CACM Regulation and Ofgem’s August Decision

- 1.1 The CACM Regulation came into force on 14 August 2015, and is a central component of the Internal Energy Market, as set out in the EU Third Energy Package and later in the Clean Energy Package<sup>5</sup>. It aims to maximise the efficient use of interconnection and facilitate greater cross-border electricity trade. It seeks to do this by introducing rules for market coupling and providing the legal framework for a single and more efficient capacity allocation and congestion management system in both the Single Day Ahead Coupling (“SDAC”) and Single Intraday Coupling (“SIDC”) timeframes. Market coupling should ensure that power is produced where it is most efficient and transported to areas of consumption where it is most valued.
- 1.2 On 30 August 2019, we published our decision on the approach to cost sharing and cost recovery under the CACM Regulation. Hereafter referred to as the “August Decision”. In summary, the August Decision sets out how costs in relation to the CACM Regulation should be shared between Transmission System Operators (TSOs) and Nominated Electricity Market Operators (NEMOs), and the appropriate mechanism for their recovery in GB. Our decision separated the costs into three different time periods, as presented in Figure 1.

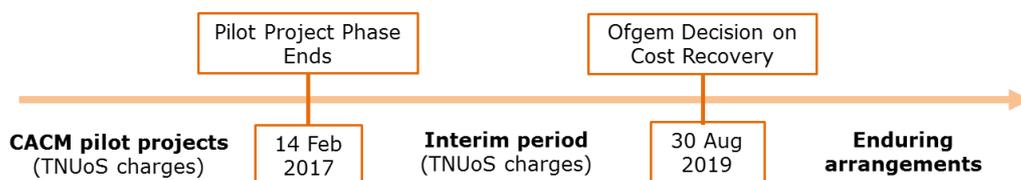


Figure 1 - Timeline of the three different time periods for cost recovery

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<sup>5</sup> The most relevant EU legal instruments in this regard are Directive 2009/72/EC (in the context of the Third Energy Package) as well as Regulation (EU) 2019/943 and Directive (EU) 2019/944 (in the context of the Clean Energy Package).

CACM pilot projects

1.3 We decided to allow the recovery of efficiently incurred, reasonable and proportionate development and operational costs that were incurred before 14 February 2017 or that were contractually committed to before this date, for both pilot projects (the North West Europe (“NWE”) price coupling and Cross Border Intraday (“XBID”)). These costs can be recovered from Transmission Network Use of System (“TNUoS”) charges.

Interim period

1.4 We decided to permit cost recovery for the short period between the end of the pilot project phase, i.e. 14 February 2017, and the date of the August Decision (the interim period). This means that efficiently incurred, reasonable and proportionate development and operational costs incurred during this period may also be recovered through TNUoS charges.

Enduring arrangements

1.5 Our decision with respect to enduring arrangements for cost sharing and cost recovery under the CACM regulation is presented in Table 2.

**Table 2 - Enduring arrangements overview**

Party	Development costs	Operational costs
TSOs	<ul style="list-style-type: none"> <li>To be borne by GB interconnector TSOs from their congestion income.</li> </ul>	<ul style="list-style-type: none"> <li>To be borne by GB interconnector TSOs from their congestion income.</li> </ul>
NEMOs	<ul style="list-style-type: none"> <li>Allowed to recover their share of efficiently incurred, reasonable and proportionate common, regional and national enduring development costs from the GB interconnector TSOs.</li> </ul>	<ul style="list-style-type: none"> <li>Costs (including clearing and settlement costs) are allowed to be recovered through fees charged by NEMOs to users of that service (e.g. traders); and</li> <li>Efficiently incurred, reasonable and proportionate costs, associated with the circumstances where a NEMO is providing a service to the TSO, are to be recovered by the relevant NEMO from the relevant TSO.</li> </ul>

## What are we consulting on?

- 1.6 This consultation sets out our minded to position on the amounts of efficiently incurred, reasonable and proportionate CACM pilot project and interim period costs that IFA, BritNed and Nemo Link can recover from TNUoS following our assessment. IFA and BritNed's submissions include costs which were incurred during both periods, whereas Nemo Link's submission covers costs incurred during the interim period<sup>6</sup>. We are seeking views on our minded to position ahead of reaching a final decision in January 2021. We expect IFA, BritNed and Nemo Link to recover these costs through the 2021 cycle of TNUoS charges.

## Related publications

- 1.7 [Decision on approach to cost sharing and cost recovery under the Capacity Allocation and Congestion Management \(CACM\) Regulation](#) Published: August 2019
- 1.8 [Decision on proposed modifications to the standard conditions of the electricity interconnector licence, the special conditions of the electricity interconnector licence held by NGIL and the electricity transmission licence held by NGESO](#) Published: October 2020<sup>7</sup>
- 1.9 [Decision on the cap and floor regime for the GB-Belgium interconnector project Nemo](#) Published: December 2014<sup>8</sup>

## How to respond

- 1.10 We want to hear from anyone interested in this consultation. Please send your response to [Mertcan.Agir@ofgem.gov.uk](mailto:Mertcan.Agir@ofgem.gov.uk).

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<sup>6</sup> Nemo Link is the first interconnector project to be developed under our cap and floor regime and commenced commercial operations on 31 January 2019.

<sup>7</sup> The proposed changes implement our decision on the approach to cost sharing and cost recovery under the CACM Regulation in the electricity interconnector licences including IFA, BritNed and Nemo Link.

<sup>8</sup> This decision is on the design of the cap and floor regulatory regime for NEMO Link. Cap and floor is developer-led approach which balances incentivising investment through a market-based approach, with appropriate risks and rewards for the project developers.

- 1.11 We have asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.
- 1.12 We will publish non-confidential responses on our website at: [www.ofgem.gov.uk/consultations](http://www.ofgem.gov.uk/consultations).

## **Your response, data and confidentiality**

- 1.13 You can ask us to keep your response, or parts of your response, confidential. We will respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.
- 1.14 If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you *do* wish to be kept confidential and those that you *do not* wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we will get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.
- 1.15 If the information you give in your response contains personal data under the General Data Protection Regulation 2016/379 (GDPR) and domestic legislation on data protection, the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 1.
- 1.16 If you wish to respond confidentially, we will keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We will not link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

## General feedback

1.17 We believe that consultation is at the heart of good policy development. We welcome any comments about how we have run this consultation. We'd also like to get your answers to these questions:

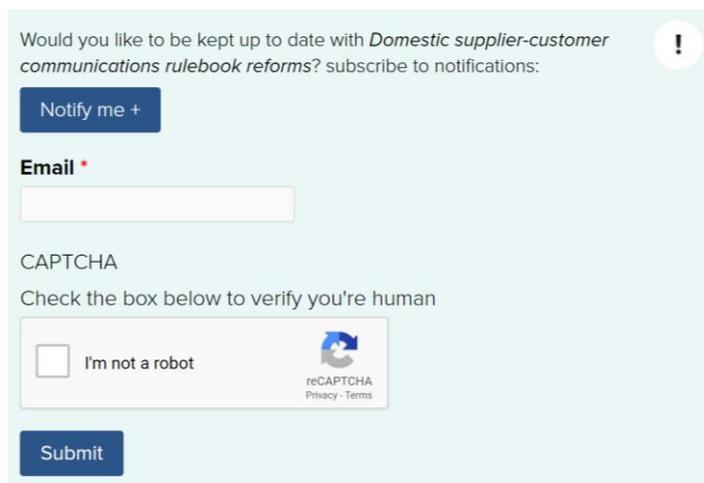
1. Do you have any comments about the overall process of this consultation?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Were its conclusions balanced?
5. Did it make reasoned recommendations for improvement?
6. Any further comments?

1.18 Please send any general feedback comments to [stakeholders@ofgem.gov.uk](mailto:stakeholders@ofgem.gov.uk).

## How to track the progress of the consultation

1.19 You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website. [Ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations).

### Notifications



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1.20 Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:



## 2 Our assessment of the CACM cost recovery claims

### Section summary

This section provides an overview of the cost assessment we have undertaken, including where we are minded to make adjustments.

### Questions

**Question 1:** Do you agree with how we have assessed costs as being efficient, proportionate and reasonably incurred?

**Question 2:** Do you agree with our proposed cost allowances, including our approach to use Retail Price Index + Cost of Debt (RPI + CoD approach) to adjust the historical costs submitted by IFA, BritNed and Nemo Link to reflect inflation and time value of money (TVM)?

**Question 3:** Do you agree with our proposed approach to use the value of GBP currency for the cost recovery claims, irrespective of the currency in which these costs were incurred, including our approach to adjust BritNed's costs based on the average annual currency exchange rates for each year of its claim?

### Description and scope of our cost assessment

- 2.1 Article 9(8) of the CACM Regulation provides that Ofgem, as the relevant Regulatory Authority (RA), is responsible for approving capacity allocation and congestion management costs in accordance with Articles 75 to 79 of the CACM Regulation. Costs have been assessed, in accordance with Article 75 of the CACM Regulation, as whether they are efficient, reasonable and proportionate.
- 2.2 IFA, BritNed and Nemo Link made their cost submissions on 16 December 2019, 6 March 2020, and 30 September 2020, respectively. Following our request, each interconnector also provided a report which gave an overview of the costs in the submissions, and further details of the activities, projects and parties related to the costs.

2.3 We undertook a supplementary questions (SQs) process with each interconnector. The SQ process enabled us to capture additional clarifications on the cost recovery claims submitted and ensure that we had a clear and complete basis for our assessment. We also engaged with the interconnectors through various meetings in order to further understand and clarify certain aspects of their submissions.

## Summary of our cost assessment

2.4 Table 3 summarises our proposed adjustments to IFA, BritNed and Nemo Link's submitted costs. We present further details on our cost assessment in the following sections.

**Table 3 - Summary of the proposed allowances**

Interconnector	Submitted cost (£m)	Provisional adjustment (£m)	Provisional allowance (£m)
IFA	19.751	-3.211	16.540
BritNed <sup>9</sup>	4.968	-0.887	4.081
Nemo Link	0.316	0.024	0.340

### Assessment of costs as efficient, reasonable and proportionate

2.5 Whilst reviewing the cost submissions and reports, our initial focus was to ensure that each interconnector had explained and justified the costs that it had submitted in relation to establishing, amending and operating SDAC and SDIC.

2.6 We ensured that costs submitted to and assessed by us from IFA, BritNed and Nemo Link were auditable through invoices, and included a clear justification and description of what aspects of establishing, amending and operating SDAC and SDIC they were in relation to. We also requested clear explanations through the SQ process, as to how they had ensured processes, such as tenders and decisions on the market design, were administered in such a way as to ensure efficient, reasonable and proportionate outcomes on costs. If costs could not be clearly described or did not have an invoice the

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<sup>9</sup> The provisional adjustment for BritNed includes a deduction of £0.5m in relation to our proposed TVM adjustment and £0.4m in relation to our proposed adjustment for currency exchange rates.

interconnector decided to remove it from their cost submission and instead provided us with an updated submission<sup>10</sup>.

- 2.7 We note that cross-clearing fees<sup>11</sup> is a subject that has been raised historically by NEMOs with the European Commission and Regulatory Authorities. Around the go-live of XBID<sup>12</sup>, during a meeting in April 2018, guidance was given that NEMOs, Central Counter Parties or Shipping Agents should not charge each other cross-clearing fees and should bear their own clearing and settlement costs. We are mindful of this guidance however, as this guidance was shared at a meeting towards the end of the period we are considering, we are proposing to allow for the recovery of these costs until the date of our decision on 30 August 2019. We propose to consider this issue separately for enduring costs.

### **Assessment of time value of money and inflation rates**

- 2.8 IFA and BritNed's original cost claims included inflation and time value of money (TVM) assumptions. Both interconnectors based their TVM adjustments on the Operational Discount Rate (ODR)<sup>13</sup> values that we had determined for Cap and Floor interconnectors within the period relevant to CACM cost recovery.
- 2.9 Nemo Link's original submission did not include any TVM adjustments.
- 2.10 Neither the comfort letters dated 22 June 2012 and 16 January 2014, provided by Ofgem and other RAs in relation to pilot project costs, or the CACM regulation set out an approach to calculating the TVM adjustment.

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<sup>10</sup> The amounts referred to in this consultation are from the updated submissions, which did not include costs which could not be clearly evidenced via invoices.

<sup>11</sup> Cross-clearing fees come about when trades have to be executed between two different Central Counter Parties (CCPs), which can be a NEMO, clearing house or a Shipping Agent. There are fees associated with needing to clear and settle trades between the two different CCPs.

<sup>12</sup> Cross-border continuous intraday trading project to create a single pan-European cross-zonal intraday market in Europe.

<sup>13</sup> In the Cap and Floor regime, the ODR is the discount rate used to perform revenue assessments on a Net Present Value (NPV-neutral) basis. Revenues earned by a Cap and Floor interconnector during each default 5-year assessment period are compared against cap and floor levels to determine whether a payment is due to or from consumers (depending, respectively, on whether revenue is above the cap or below the floor). To perform this assessment on an NPV-neutral basis, revenues as well as cap and floor values during the five years need to be brought to the same point in time, in this case to year 5. The ODR is a rate specific to the Cap and Floor regime and is not intended to be used outside of this context.

- 2.11 We consider that the most appropriate approach to adjust historical costs is the RPI<sup>14</sup> plus Cost of Debt approach<sup>15</sup>. This reflects the marginal cost of financing for a corporate entity. Based on our minded to position, we have made provisional adjustments, as shown in Table 3.
- 2.12 Our aim remains to ensure that IFA, BritNed and Nemo Link can recover the relevant costs they have incurred over the past years as well as to fulfil Ofgem's duties to protect consumers.
- 2.13 We considered the following three factors in relation to our minded position to use the RPI plus Cost of Debt approach:
- 2.13.1 *Allowance for recovery:* We consider that the costs associated with SDAC and SIDC are costs to comply with a regulatory requirement as opposed to more general licenced activities and that cost of debt is an appropriate measure of the efficient marginal cost of financing. We therefore consider it is appropriate to provide for the efficient marginal cost of financing<sup>16</sup>.
- 2.13.2 *Nature of the TVM adjustment:* given Ofgem did not agree to provide a specific allowance for the recovery of financing costs in addition to actual costs incurred, the proposed approach to TVM was not chosen with a view to provide investors with a remuneration in line with the returns earned or expected on their general licenced activities as a whole.
- 2.13.3 *Regulatory precedent:* In their submissions, IFA and BritNed both proposed the Cap and Floor Operational Discount Rate (ODR) as the most appropriate precedent as a proxy for the cost of financing, whilst noting that any precedent has comparability limitations. We consider that this decision is distinct from areas such as the Cap and Floor regime, and our current position on TVM is more relevant than our various

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<sup>14</sup> RPI is the rate used by Ofgem in its other regulatory regimes (RIIO-1, Cap and Floor, OFTO) during the period in which these costs were incurred, and therefore the rate used for consistency.

<sup>15</sup> Our proposed approach takes into consideration, for each interconnector, the relevant cost of debt allowances for the associated transmission system operators (TSOs) in the years in which CACM costs were incurred (e.g. in the case of BritNed, the annual time value of money rates were calculated as the average of the annual cost of debt allowances for National Grid Electricity Transmission and Tennet).

<sup>16</sup> Our proposed approach for marginal cost of financing seeks to determine an appropriate TVM adjustment for the recovery of costs that are marginal relative to the overall size of the business and its revenues and cash flows and therefore have a marginal impact on the overall financial position and financeability. Therefore, we are not seeking to determine an appropriate rate of return for the entire business as a whole.

precedent positions in other areas. We are not bound to use rates such as the Cap and Floor ODR, particularly as we had made no prior agreement on a specific TVM rate to be used for CACM cost recovery.

- 2.14 The adjustments presented in Table 3 demonstrate the changes that we have made to each of the original cost submissions to reflect our minded to position on an appropriate TVM allowance. For both IFA and BritNed, this is presented as a decrease, because their original submissions included a TVM assumption, which we do not believe is appropriate in relation to this cost recovery claim. However, for Nemo Link, the adjustment is shown as an increase in costs, because its original submission did not include any TVM assumptions. The Nemo Link cost recovery allowance accounts for Nemo Link's original cost submission, as well as a TVM adjustment. The adjustment to BritNed's submission also incorporates our view in relation to an appropriate conversion of its submission, from Euros to GBP, as detailed below.

#### **Assessment of currency exchange rates**

- 2.15 Our view on the cost recovery claims for IFA, BritNed and Nemo Link is presented in this document in GBP, irrespective of the currency in which these costs were incurred. This is because our final assessment on the cost recovery claims, which we will present in our final decision in January 2021, will be used by IFA, BritNed and Nemo Link to inform National Grid Electricity System Operator (NGESO) of the costs that they will recover through the 2021 TNUoS cycle.
- 2.16 As these payments will be made to IFA, BritNed and Nemo Link via the British Electricity System Operator, NGESO, they will be made in GBP. We therefore aim to ensure consistency between our reporting of efficiently incurred, reasonable and proportionate costs and the payments that the parties will receive through the TNUoS 2021 cycle. We expect Licensees to have a robust process in place, in line with their overall risk management strategy, to manage any related foreign exchange rate risks.
- 2.17 We consider it is appropriate to convert any claims in Euros to GBP at the date of the invoice or as close to it as reasonably practicable.
- 2.18 IFA had converted invoices in Euros to GBP at the date of invoice. Through the SQ process with Nemo Link we asked them to convert their claim from Euros to GBP. Nemo Link used an average annual currency exchange rate which we consider is reasonably

practicable. Therefore, we do not propose to adjust their submissions in relation to this issue.

2.19 BritNed submitted its cost recovery claim using a Euro to GBP exchange rate taken from 21 October 2020. BritNed considered this rate was more appropriate because it uses Euros as the primary currency for reporting purposes.

2.20 Our minded to position is to convert BritNed's claim from Euros to GBP using average annual currency exchange rates for each year of BritNed's claim. This is because we consider it is not appropriate to pass the foreign exchange gains or losses onto consumers through TNUoS. As a result, we have made an adjustment as presented in Table 3.

## **Conclusion**

2.21 In summary, IFA, BritNed and Nemo Link have all made cost recovery claims in relation to the costs of establishing, amending and operating SDAC and SDIC.

2.22 Our minded to position is that the vast majority of these costs have been efficiently incurred, and are reasonable and proportionate. However, we have proposed adjustments to each of the submissions to reflect efficient and appropriate TVM assumptions, as well as an adjustment to BritNed's submission in relation to our assessment of appropriate currency exchange rates.

### 3 Next steps

- 3.1 Following consideration of the responses to this consultation, we intend to publish our final decision in January 2021. We then expect IFA, BritNed and Nemo Link to recover these costs through the 2021 TNUoS charges cycle.
- 3.2 IFA, BritNed and Nemo Link will need to inform NGESO of the final costs to be recovered through the 2021 TNUoS charges cycle before 25 January 2021. Our final decision will set out further details on this process.

## Appendices

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## Appendix 1 – Privacy notice on consultations

### Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

### 1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller, (for ease of reference, "Ofgem"). The Data Protection Officer can be contacted at [dpo@ofgem.gov.uk](mailto:dpo@ofgem.gov.uk).

### 2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

### 3. Our legal basis for processing your personal data

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

### 3. With whom we will be sharing your personal data

We will not be sharing your personal data with any other organisation

### 4. Your rights

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data

- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3<sup>rd</sup> parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

**5. Your personal data will not be used for any automated decision making**

**6. More information** For more information on how Ofgem processes your data, click on the link to our "[Ofgem privacy promise](#)".