

Consultation on licence changes to support electricity transmission competition during RIIO-T1

Consultation

Publication date: 25 November 2016

Response deadline: 27 January 2017

Contact: Katie McFadden

Team: New Transmission Investment

Tel: 020 3236 2746

Email: NTIMailbox@ofgem.gov.uk

Overview:

In this document we are consulting on proposed modifications to electricity transmission licences to implement onshore electricity transmission competition policy in the RIIO-T1 price control period.

The policy decisions informing the proposed licence modifications are set out in a decision document published alongside this consultation, entitled "*Extending competition in electricity transmission: Decision on criteria, pre-tender and conflict mitigation arrangements*".

The proposed modifications cover the following areas: project identification (the process by which assets meeting the requisite tender criteria will be identified and assessed); tender commencement (the process by which a tender may be initiated); tender support (how licensees are to prepare for and support a tender); and conflict mitigation (how licensees are expected to mitigate potential conflicts of interest in connection with a tender).

Associated documents

Extending competition in electricity transmission: Decision on criteria, pre-tender and conflict mitigation arrangements, November 2016

<https://www.ofgem.gov.uk/publications-and-updates/extending-competition-electricity-transmission-criteria-pre-tender-and-conflict-mitigation-arrangements>

Extending competition in electricity transmission: criteria, pre-tender and conflict mitigation arrangements, May 2016

<https://www.ofgem.gov.uk/publications-and-updates/extending-competition-electricity-transmission-criteria-pre-tender-and-conflict-mitigation-arrangements>

Extending competition in electricity transmission: arrangements to introduce onshore tenders, October 2015

<https://www.ofgem.gov.uk/publications-and-updates/extending-competition-electricity-transmission-proposed-arrangements-introduce-onshore-tenders>

Integrated Transmission Planning and Regulation project: Final Conclusions, March 2015

<https://www.ofgem.gov.uk/publications-and-updates/integrated-transmission-planning-and-regulation-itpr-project-final-conclusions>

Contents

Executive Summary	4
Our proposed licence modifications	4
1. Introduction	6
Purpose of this consultation	6
Electricity transmission licence conditions	7
The proposed licence modifications	7
Our legal and regulatory framework	9
Next steps	11
2. Network Options Assessment / project identification	12
Introduction	12
Proposed licence modification	14
3. Pre-tender activities	19
Introduction	19
Proposed licence modifications	21
4. Conflict mitigation	25
Introduction	25
Proposed licence modifications	26
Appendices	32
Appendix 1 – Consultation Response and Questions	33
Appendix 2 – CATO Regime Framework	36
Appendix 3 – Proposed amendments to Standard Condition C27	37
Appendix 4 – Proposed amendments to Special Condition 6I	45
Text of the new condition	45
Appendix 5 – Proposed new condition 6M/6J	47
Text of the new condition	47
Appendix 6 – Proposed new condition 2P/20	53
Appendix 7 – Proposed amendments to Special Condition 1A	61
Appendix 8 – Feedback Questionnaire	62

Executive Summary

Our proposed licence modifications

This informal consultation is part of the implementation of our previous decision,¹ as set out through our Integrated Transmission Planning and Regulation (ITPR) project, to introduce competitive tendering for onshore electricity transmission assets that are new, separable and high value.

We are proposing modifications to electricity transmission licences to implement onshore competition policy for the RIIO-T1 price control period.² We consulted on this policy in May 2016³, in respect of which we have now published decisions in a document published alongside this consultation entitled, "*Extending competition in electricity transmission: Decision on criteria, pre-tender and conflict mitigation arrangements*".

The relevant areas of policy are as follows:

- **Project identification** – how assets that may be suitable for tender are to be identified and assessed.⁴
- **Tender commencement** – the process by which we decide to commence a tender for a RIIO-T1 Strategic Wider Works (SWW) project.
- **Pre-tender support** – how a transmission owner (TO) is expected to prepare for and support commencement of a tender.
- **Conflict mitigation** – how a TO is expected to mitigate potential conflicts of interest that may arise in connection with a tender.

We propose to modify the electricity licences of the system operator (SO) and the TOs as follows:

¹ Integrated Transmission Planning and Regulation (ITPR) project: Final Conclusions, March 2015: <https://www.ofgem.gov.uk/publications-and-updates/integrated-transmission-planning-and-regulation-itpr-project-final-conclusions>

² RIIO-T1 is the current price control period for the three electricity transmission owners (TOs) (and the system operator (SO)) in GB. The period runs from 1 April 2013 to 31 March 2021.

³ Consultation document, 'ECIT: criteria, pre-tender and conflict mitigation arrangements' published 27 May 2016: <https://www.ofgem.gov.uk/publications-and-updates/extending-competition-electricity-transmission-criteria-pre-tender-and-conflict-mitigation-arrangements>

⁴ Throughout this document, where we refer to "assets" and "projects" being tendered, it should be noted that the subject of a competitive tender is in fact the "relevant licence", to construct and operate assets which satisfy the new, separable and high value criteria. This equally applies to phrases concerning our assessment of assets or projects for competitive tender.

- **Amendments to Standard Condition C27** (The Network Options Assessment process and reporting requirement), to provide for the SO to assess options against the criteria for competitive tender.⁵
- **Amendments to Special Condition 6I** (Specification of Baseline Wider Works Outputs and Strategic Wider Works Outputs) to reflect that we will assess SWW projects to identify assets suitable for competitive tender.
- **A new Special Condition 6M/6J** setting out the obligations of a TO to support commencement of a competitive tender.
- **A new Special Condition 2P/2O** setting out the obligations of a TO to mitigate potential conflicts of interest in connection with a competitive tender.

Further proposals for licence modifications

In this document, we also invite views on potential modification of further SO licence conditions to support a competitive tender in the RIIO-T1 price control period.

We will also publish future consultations on the form of the licence to be granted to a Competitively Appointed Transmission Owner (CATO).

As set out in the Decision Document, we will also propose further modifications to SO and TO licences to support competition in RIIO-T2.

Next steps

This consultation will close on 27 January 2017. It is intended to ensure that all interested parties have the opportunity to respond to the proposed licence modifications ahead of a statutory consultation. We will consider responses to this consultation and seek further input from stakeholders if necessary. Subject to responses we receive from this informal consultation, we expect to undertake a statutory consultation in March, under section 11A (2) of the Electricity Act 1989.

Subject to responses to that consultation we intend to publish our final decision on any licence modifications in April, with these taking effect 56 days after publication, around July. However, the pre-tender and conflict mitigation licence obligations relate to individual projects, and would only trigger at the point that a project is being considered as potentially suitable for tender.

⁵ Throughout this document, where we refer to “criteria for competitive tender”, “the tender criteria” and “criteria for tendering”, in each case this means the new, separable and high value criteria which we expect to be set out in secondary legislation.

1. Introduction

Question box

Question 1: What are your views on our proposed approach to licence modifications, as outlined in this document, and whether they effectively implement the policy outcomes in our Decision Document?

Question 2: Do you think that anything is missing from our proposed approach to licence modifications to implement our policies?

Question 3: What role do you consider the SO could play to support a tender during the RIIO-T1 price control period in gathering and providing information? Do you think this activity should be implemented through modifying the SO's licence or by making provisions in tender documentation?

Purpose of this consultation

1.1. We are proposing modifications to electricity transmission licences to implement onshore competition policy for the RIIO-T1 price control period. We consulted on this policy in May 2016⁶ (the "May Consultation") and have now published decisions in a document entitled "*Extending competition in electricity transmission: Decision on criteria, pre-tender and conflict mitigation arrangements*" (the "Decision Document"). This informal consultation specifically seeks your views on our proposed licence modifications to implement these decisions, and whether our modifications meet our policy aims.

1.2. The Decision Document is cross referenced throughout this consultation as we explain how the proposed licence modifications implement the policy decisions. Respondents are advised to familiarise themselves with the content of that document for the full detail and context of the policy decisions.

1.3. In summary, the relevant areas of policy to be implemented through the proposed licence modifications are:

- **Project identification** – how assets that may be suitable for tender are identified and assessed. The proposed licence modifications are dealt with in Chapter 2 (in connection with SO identification of projects) and Chapter 3 (in connection with identification of RIIO-T1 Strategic Wider Works (SWW) projects) of this document.
- **Tender commencement** – the process by which we decide to commence a tender in respect of a RIIO-T1 SWW project. The

proposed licence modifications are dealt with in Chapter 3 of this document.

- **Pre-tender support** – how the TO is expected to prepare for and support commencement of a tender. The proposed licence modifications are dealt with in Chapter 3 of this document.
- **Conflict mitigation** – how the TO is expected to mitigate potential conflicts of interest that may arise in connection with a tender. The proposed licence modifications are dealt with in Chapter 4 of this document.

1.4. In this document, for each proposed area of licence change, we set out:

- The questions that we would like respondents to this consultation to consider.
- The modification proposed.
- A brief outline of the policy decision behind the proposed modification.
- The practical effects we envisage are likely as a result of the proposed licence modification.

Electricity transmission licence conditions

1.5. An electricity transmission licence contains a number of different types of licence conditions.

- Standard licence conditions (SLCs) set out the duties and obligations applicable to holders of a particular type of licence. All electricity transmission licences contain SLCs. Some of these SLCs are very similar across the different licence types. SLCs are grouped into different sections that apply or don't, according to the activities carried out by the licence holder. For example, Section C applies to National Grid Electricity Transmission (NGET) as it has SO functions, Section D applies to the onshore transmission owners (TOs) (SP Transmission and SHE Transmission), and Section E to offshore transmission owners.
- Special Conditions (SpCs) apply to a particular licensee and form part of its licence alongside any applicable SLCs and/or amended SLCs. Some of these SpCs are very similar across licensees. For example, each of the three onshore TOs have SpCs setting out the revenue and outputs that were determined by the RIIO-T1 price control.
- Amended SLCs are similar to SpCs in that they are amended in a way that makes them specific to an individual licensee.

The proposed licence modifications

1.6. To implement the relevant policies, we propose to introduce two new SpCs, modify one SLC, and modify one SpC. The proposed licence modifications are set out in Appendices 3 to 6. An overview of the proposed modifications is set out below. Appendix 7 outlines the new defined terms that are common to both of the

new proposed SpCs. All new defined terms that are specific to the proposed conditions are included within the respective conditions.

Network Options Assessment (NOA) / Project identification

1.7. We propose to implement our policy on the project identification process, as outlined in Chapter 2 of the Decision Document, through a modification to SLC C27 of NGET's licence (The Network Options Assessment process and reporting requirement). The proposed modification of this condition will ensure it captures the required roles and obligations of the SO to support the competitive regime, by identifying projects in RIIO-T1 and RIIO-T2 through the NOA process.

Initial tender decision and pre-tender activities

1.8. We propose to implement our policy and process to commence a tender, with the support of the TO, through:

- Modifying SpC 6I.40, to reflect that we will review SWW projects to assess whether the proposed assets meet the criteria for competitive tendering. Where we make an initial tender decision in connection with those assets (in whole or in part), the new SpC 6M/6J⁷ will become effective. As part of this process the TO will consider the impact on the scope of the proposed SWW project and revise this accordingly.
- Introducing a new SpC 6M/6J, setting out the pre-tender obligations of a TO to support commencement of a Competitive Tender. This includes undertaking activity to produce "Tender Specification Outputs" that are fit for the purpose of a Competitive Tender, regularly updating us on the progress of those outputs, and supporting the Final Tender Checkpoint (FTC).

Conflict mitigation

1.9. We propose to implement our policy regarding conflict mitigation through the introduction of a new SpC 2P/2O.⁸ This relates to projects where the TO may intend to bid in a tender for a project it has developed, in its own transmission area.

1.10. The proposed modification will provide for:

- The submission of a conflict mitigation methodology.
- Business separation arrangements.
- A general obligation to mitigate the risk of the TO affording an unfair commercial advantage to its own Bidding Unit or other tender participants.

⁷ The new licence condition would be 6M in NGET's licence, and 6J in SPT and SHE-T.

⁸ The new licence condition would be 2P in NGET's licence, and 2O in SPT and SHE-T.

- Arrangements for compliance and scrutiny.

Potential role of the SO in RIIO-T1

1.11. We are considering what input we may require from the SO to inform various aspects of a competitive tender. For example, the existing SLC C25 provides for the SO to give us information and assistance in relation to offshore tenders. We welcome views on what information the SO may hold in respect of assets identified for tender (for example information which the TO does not hold and bidders would require, prior to tender commencement or during the tender process). We also welcome views on whether any such obligations would be best implemented through modification of the SO licence (mirroring relevant parts of SLC C25) or making provision in the tender documentation.

Our legal and regulatory framework

1.12. The licence modifications proposed in this document are part of the regulatory framework that we have been developing to support onshore competition. We have been developing the framework to support this regime on the basis of changes being made in the Electricity Act 1989, and have drafted this document within this legislative context. Appendix 2 sets out this indicative framework, comprising primary legislation, secondary legislation, the TO and SO licences, and the industry codes and standards.

1.13. As set out in the Decision Document we are continuing to work with the Department for Business, Energy and Industrial Strategy (BEIS) on arrangements to implement this policy and are continuing to progress the indicative CATO work programme accordingly. Our current timetable for this licence modification process envisages the modifications being effective around July 2017. However, the pre-tender and conflict mitigation licence obligations, which relate to individual projects, would only trigger upon amendments to the Act, the "criteria regulations" and the "tender regulations" coming into force.

Primary legislation and secondary regulations

1.14. Amendments to the Electricity Act would provide for us to tender a "relevant licence" in respect of assets which satisfy certain requirements ie the new, separable and high value criteria upon which we have consulted. Under our current approach, the criteria would be set out in criteria regulations that would be made by the Secretary of State and subject to Parliamentary scrutiny; as such, the detail of the criteria definitions would not be final until that process is complete.

1.15. Amendments to the Act would also provide for the Authority to make tender regulations, setting out the decision points and high level process for:

- Our determining whether assets meet the criteria.
- Our determining whether to commence a tender.
- The sequence of tender stages through to licence grant.

- The roles and responsibilities of tender participants (including the TO).

1.16. Further details of the tender process will also be set out in each of the “tender rules” sitting under the tender regulations, general guidance documents on particular aspects of the tender process (eg regarding the terms upon which preliminary works and physical assets are to be transferred), and tender documents governing each stage of the tender.

Licence guidance

1.17. We consider that the level of detail ultimately required to guide the TO (and SO) through the processes contemplated by the proposed licence modifications goes beyond that which is appropriate for the licence. We therefore look to develop guidance over 2017 alongside the licence conditions.

The regulations and the TO licence

1.18. The framework in Appendix 2 reflects that the regulations and the licence (as modified) apply to various aspects of commencing and running a competitive tender. In summary, the regulations would apply as follows:

- **Project identification:** Provide for our assessing whether assets (identified through the RIIO-T1 SWW process) meet the criteria for tendering (which will be defined in the criteria regulations).
- **Tender decisions:** Provide for our making an initial decision to tender those assets and running an FTC process to make a final decision on whether (and when) to tender them. The modifications proposed to SpC 6I reflect that the initial tender decision will be made on the SWW needs case and will activate the TO’s pre-tender obligations under new SpC 6M/6J.
- **TO tender support obligations:** Upon a tender being commenced, the pre-tender obligations of the TO in SpC 6M/6J will end. From this point the tender regulations would provide for the TO to support a live tender, in much the same way as is required of a developer under the offshore tender regulations.⁹
- **TO tender participation obligations:** The Tender Obligations set out the rules of tender participation. In its role as developer of the project, the TO will be subject to provisions regarding anti-competitive behaviour, confidentiality and collusion, and if it chooses to bid will be subject to bidder conflict mitigation provisions. The tender regulations would overlap with the proposed licence modifications regarding TO

⁹ See Schedule 2 (Entry Conditions) of “The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015”:
https://www.ofgem.gov.uk/sites/default/files/docs/2015/07/annex_3_the_electricity_competitive_tenders_for_offshore_transmission_licences_regulations_2015_0.pdf

conduct, information restrictions, and business separation in this regard.

Next steps

1.19. This consultation is intended to ensure that all interested parties have the opportunity to respond to the proposed licence changes ahead of a statutory consultation. We have asked wider questions in Chapter 1 regarding the appropriateness and effectiveness of our proposals. The later chapters include more specific and focused questions.

1.20. This consultation will close on 26 January 2017. You can email your response to NTIMailbox@ofgem.gov.uk. There are more details on how to respond in Appendix 1. We anticipate that parties interested in this consultation will include TOs, parties who may be interested in participating in a competitive tender, and parties who may be impacted by a competitive tender, such as members of the supply chain.

1.21. We will consider responses to this consultation and seek further input from stakeholders if necessary. In March, subject to the responses we receive to this informal consultation, we intend to undertake a statutory consultation under section 11A (2) of the Electricity Act. Subject to responses to that consultation we will publish our final decision on any licence modifications in April, which will take effect 56 days after publication. This is likely to be around July. However, as the pre-tender and conflict mitigation licence obligations relate to individual projects, they would only trigger at the point that a project is being considered as potentially suitable for tender.

2. Network Options Assessment / project identification

Question box

Question 4: What are your views of our proposed amendment regarding generator connection offers and demand connections? Do you consider SLC 27 is the correct condition to implement this policy, or are there other conditions/reports where this assessment should be placed?

Question 5: Do you agree with our assessment that our proposed amendments to SLC will not require any subsequent amendments to either SLC B12 or NGET's SpC 20? If not, please specify what amendments you consider would be required to these licence conditions?

Question 6: What are your views on our proposed definition of SO-led Options as relating to options not identified by transmission licensees? Do you consider that this is wide enough, or do you think that this narrows the scope of what the SO should be considering?

Question 7: Do you consider that an update to industry codes would be required as a result of our proposed amendments to SLC C27? If so, please identify what amendments you consider would be required?

Introduction

2.1. In Chapter 2 of the Decision Document, we set out the details of our policy decisions on the identification of projects that may be suitable for competition. We have confirmed that, beyond RIIO-T1, projects that meet the criteria for competitive tender will principally be identified by the SO through the Network Options Assessment (NOA) process. These requirements expand upon the existing NOA process, introduced last year to deliver the goals identified in the ITPR final conclusions¹⁰ and further developed in our subsequent October 2015 and May consultations.

2.2. The obligations to be implemented through the proposed licence modification are:

- A requirement for the SO to assess options within the NOA against the criteria for competition and identify in the NOA report whether a project satisfies the criteria for competition.

¹⁰ 'Decision on licence modifications to enhance the role of the System Operator': <https://www.ofgem.gov.uk/publications-and-updates/decision-licence-modifications-enhance-role-system-operator>

- A requirement for the SO to identify “SO-led Options”¹¹ which could provide alternative solutions to meet system need and undertake early development works for these options.
- A requirement for the SO to identify transmission works included within generator connection offers or demand connections offers which would meet the criteria for competition and identify these in a report.

2.3. Beyond these high level requirements, we are currently proposing to incorporate more detail on the processes, including further consideration and assessment of project packaging and electrical separability within the NOA methodology.

2.4. We anticipate directing the licence modifications in April 2017. As these represent new processes for the SO, in order to implement our proposals, we are proposing to separate implementation into two phases.

2.4.1. The first phase of requirements contemplated by this modification has been incorporated in the updated NOA methodology and will be included in the second NOA report, which is due to be published in early 2017,¹² before this modification will take effect. In this first phase, the SO will undertake assessment of options to feed in to the next NOA report. Both we and the SO consider this an appropriate approach to give clarity to stakeholders (licensees and other interested parties) about the initial application of new processes and direction in which the NOA process will evolve. Accordingly, the NOA methodology has been developed by the SO with our input, informed by responses to our May consultation.

2.4.2. In the second phase, the remaining requirements will be incorporated in the third NOA report (or shortly thereafter). This includes obligations around SO-led Options, providing recommendations on option packaging and electrical separability, and identifying transmission works for generation connections and demand connections which meet the criteria.

2.5. To implement this policy we propose modification of SLC C27 (The Network Options Assessment process and reporting requirement). The proposed licence modification is intended to facilitate project identification and long-term market visibility of the potential project pipeline.

2.6. We have also proposed some minor housekeeping changes to the condition to improve the clarity of the drafting. The form of the proposed modification to SLC C27 is set out in Appendix 3.

¹¹ These are options identified by the SO which could provide alternative solutions to meet the system needs. This includes options which have not been identified by TOs and options previously recommended by the SO, which the TOs have not progressed. These are discussed further in paragraphs 2.15 to 2.18.

¹² <http://www2.nationalgrid.com/UK/Industry-information/Future-of-Energy/Network-Options-Assessment>

Proposed licence modification

Updates to the NOA methodology

2.7. The detail of the NOA process is set out in the NOA methodology which is produced and owned by the SO. Part A of condition C27 requires the SO to develop and update the NOA methodology annually, consult on this and submit the updated methodology to us for comments and approval. We consider that much of the detailed way in which the SO will implement the changes required by these licence amendments will be set out in the methodology. We have been working with the SO to provide input on the future development of the methodology to support competition in onshore transmission. These changes may include:

- Changes to enable the SO to request additional information about the options provided by the TO, and enable the SO's assessment of the option against the criteria for competitive tender.
- Changes to require the SO to consider, as part of the NOA process, the packaging of options.
- Changes to enable the SO to provide a recommendation on the potential need for increased electrical separability for an option which meets the criteria for competition, if there is a cost-benefit justification for its inclusion.

NOA project identification

2.8. The NOA process was introduced as a key conclusion of the ITPR project to provide a system-wide holistic assessment of options to meet the needs of the electricity transmission system. The ITPR final conclusions stated that the SO will undertake an assessment against the criteria for competitive tender of the options to meet system need through the NOA process. We are implementing this decision now that the definitions of the criteria for competition are sufficiently developed.

2.9. In the NOA report the SO will provide recommendations of those options it considers have met the criteria and may therefore be suitable for tendering. This recommendation should provide justification of how the SO came to its view on each option. We also expect the SO's recommendation will give consideration to the way in which options are packaged and, for those options which meet the criteria, consider if there is a need and cost benefit justification to an increased level of electrical separability.

2.10. As the NOA has a 10 year time horizon and the assessment of options to meet system need is undertaken on an annual basis, each recommendation will represent an annual 'snapshot' position. As options develop and information becomes more refined, this process will be iterated upon. It is possible that the recommendation regarding a particular option could change between different years. We would expect that the NOA report should make this possibility clear so that the information contained within it can be accurately understood by stakeholders.

2.11. The recommendations included within the NOA report, should be based on the SO's best view. These recommendations will be used by us to inform our wider consideration of a project. The decision on whether or not to tender a particular project and final decision regarding the packaging of a tendered project will always be made by us. Further detail on our policy decision regarding project identification can be found in paragraph 2.17 of the Decision Document.

2.12. To implement our policy we propose inserting a new provision into C27 Part A (8) to ensure the NOA methodology incorporates an assessment against the criteria for competitive tendering. This provision will need to refer to criteria for competitive tendering, before the criteria regulations are made. In our draft we refer to the primary clauses of the Electricity Act under which these regulations will be made; we have used the clauses as identified in the draft legislation published by Government in January 2016.¹³

2.13. We consider that the assessment should focus on the key options which the SO considers are the most appropriate to meet the specific system need, rather than assessing every possible option. This would not limit the assessment to just the preferred option, but should ensure it focuses on the options the SO considers most feasible to meet the system need. We consider this approach best manages the annual iteration of the NOA and the potential for preferred options to change year-on-year.

2.14. We also propose inserting a new provision into C27 Part B (15)(a) to require that the results of the assessment against the criteria and a description of how the SO has come to that view are reported within the NOA report. We consider this assessment and its inclusion within the NOA report are key requirements of the NOA process to support the competitive regime and develop a visible pipeline of possible projects for tender.

SO-led Options and early development works

2.15. A key conclusion of the ITPR project was that within the NOA process the SO should identify SO-led Options which could provide alternative solutions to meet the system needs. These are options which have not been identified by TOs and options previously recommended by the SO, which the TOs have not progressed. This may include cross-regional options, options the SO has previously recommended for further development but the TOs have not progressed and options for reduced build.

2.16. We do not consider that this should create an onerous requirement on the SO to identify all possible non-identified options, but require the SO to come to a best view on alternative options where it considers these could be appropriate to meet the required system needs.

2.17. The SO will also undertake early development works for these SO-led options, or where contributions from more than one TO are required, co-ordinate

¹³ <https://www.gov.uk/government/publications/draft-legislation-on-energy>

the early development works for that option. We expect this will largely relate to desktop analysis only. This will enable the SO-led Options to be compared with other options under the NOA process.

2.18. We noted in our May consultation that this related to the RIIO-T2 period – to clarify, we consider it is likely that early development works for such SO-led Options will largely relate to projects which will be constructed in the RIIO-T2 period. However, due to the 10 year horizon of the NOA process, some of these options may begin to be identified in the next few iterations, therefore these obligations will need to be applicable within the RIIO-T1 period. Further detail of our policy decisions on SO-led Options and the early development works the SO will undertake for these is set out in paragraphs 2.23 to 2.26 of the Decision Document.

2.19. To implement this policy we propose amending C27 Part B (15)(a), to ensure that these SO-led Options are included within the best view of options for major national electricity transmission system reinforcements. We also propose inserting a new provision into C27 Part D to implement our decision to require the SO to undertake or in the case where an option involves multiple TOs, co-ordinate the early development works required to enable SO-led options to be compared with other options in the NOA process.

2.20. We propose inserting a new definition of SO-led Options, which should sit within the condition. Our proposed definition refers to the options not identified by transmission licensees (including OFTOs, and in future CATOs); we welcome stakeholders' views on whether this is sufficiently wide enough or if this narrows the scope of what the SO should be considering. For example, should this refer to 'other relevant parties' instead, which could include distribution network operators or other parties.

Options beyond the current scope of the NOA

2.21. In our Decision Document, we highlighted that there are some transmission options/projects which may satisfy the criteria for competitive tender, but are not currently identified in the NOA, given the focus of the NOA on boundary-change. These may include options relating to generator or large demand user connections, non-load projects and other transmission projects.

2.22. In our Decision Document we note that we will consider how non-load projects and other works that may be suitable for competition as part of our assessment of RIIO-T2 business plans.

2.23. Where these relate to options to enable a generator or a large demand user to connect to the transmission system we have decided to require the SO to develop a methodology to assess these projects against the criteria and publish a report to identify those which satisfy the criteria for competitive tender. Further detail of our policy decision on this is set out in paragraphs 2.18 to 2.20 of our Decision Document.

2.24. We recognise that identifying transmission works included within generator connection offers or demand connections which meet the criteria for tendering may be beyond the original scope of the NOA. However, we consider that it would

be beneficial to combine this new requirement within the NOA process. We consider that this could allow the assessment to sit within or alongside the NOA methodology and ensure the results are published alongside the NOA report to create a single visible pipeline of projects which meet the criteria for competition. We have considered alternative approaches, such as one linked to the SO's update/maintenance of the Transmission Entry Capacity (TEC) register. Such an approach may benefit from a lighter touch methodology which may be appropriate given we expect volume of these projects to be small and this would allow the pipeline to be updated to a more responsive timeline, without altering the focus of the NOA process. We welcome stakeholders' views on the most appropriate place for this pipeline and where the requirement on the SO should sit.

2.25. To implement our decision to require the SO to identify generator and demand connections which meet the criteria for competition we propose modifying C27 by inserting the following new provisions into:

- C27 Part A (8) to require the SO to develop a methodology for the assessment of these options against the criteria for competition. We consider that by referring to "customers" as defined in the CUSC¹⁴ we will ensure both generator and demand connections are identified. We do not intend for this provision to capture offshore transmission connections and we welcome stakeholders' views on whether this intent has been achieved;
- C27 Part B (15)(a) to require the SO to develop an appropriate form of a report that will be published to make the potential pipeline of projects visible to stakeholders.

Impact on other licensees/licence conditions

2.26. Our intended licence modifications will apply to SLC C27, so therefore the obligations are only applicable to the SO. We also note that NGET's SpC 20 (Business separation requirements and compliance obligations) was introduced last year to place obligations on the conduct of the SO, the arrangements regarding relevant system planning information. However, we do not consider the changes proposed to the NOA condition will require changes to SpC 20.

2.27. SLC B12 (System Operator – Transmission Owner) which applies to all TOs, was updated last year to require the TOs to support the enhanced SO role, including in the provision of information. Therefore it is possible that further amendments to B12 may be required to ensure the changes required for the NOA process are accurately reflected.¹⁵ We have undertaken an initial review of this

¹⁴ <http://www2.nationalgrid.com/uk/industry-information/electricity-codes/cusc/the-cusc/>

¹⁵ Standard Condition B12 was updated in September 2015 as part of the changes to enable the Enhanced SO
https://www.ofgem.gov.uk/sites/default/files/docs/2015/09/b12_notice_signed_0.pdf

condition and not identified anything that indicates it needs updating to align with the proposed changes to the NOA condition.

2.28. It may be possible that following this licence amendment there may be further implications for the system operator-transmission owner code (STC) and other industry codes and standards.

2.29. We are interested in views on whether you consider there may be wider amendments required to the conditions and industry codes that we have not currently proposed.

3. Pre-tender activities

Question box

Question 8: Do you agree the proposed obligations on conduct effectively implement our policy on ensuring the quality of works?

Question 9: Is the TO providing an update every 2 months sufficiently frequent, or overly frequent, given the likelihood of information availability over that time?

Question 10: Do you have any additions or subtractions from Schedules 1 and 2 of the proposed new licence condition 6M/6J? Where suggested, please also provide an appropriate reasoning.

Question 11: Is the split of items across Schedules 1 and 2 correct?

Question 12: Do the items in Schedules 1 and 2 require further detail to be provided, or are the descriptions provided sufficient, in the context of application to specific projects?

Question 13: Is Chapter 6 the appropriate place for the proposed new condition M/J? Should the letter vary by licensee, or should we seek to align the letters across licensees?

Introduction

3.1. Chapters 2 and 3 of the Decision Document set out policy decisions and processes in connection with:

- The identification and assessment of assets for tender during the RIIO-T1 price control period.
- The process by which we will decide to commence a tender.
- The role and obligations of the TO to prepare for and support commencement of a tender.

3.2. This chapter sets out the proposed licence modifications through which we will implement these policies.

Decision-making process

3.3. In RIIO-T1, we will assess a project brought to us through the SWW process to determine whether the proposed assets meet the criteria for tendering, and whether to commence a tender in respect of those assets. We will undertake this assessment on the Initial Needs Case (INC), or the Final Needs Case (FNC) where projects are sufficiently advanced.

3.4. Where we make an initial tender decision that a project will be competitively tendered, the TO that has been developing the project will be responsible for undertaking the preliminary works for that project and producing information about the preliminary works in the form of "Tender Specification Outputs". The Tender Specification Outputs are:

- A Tender Specification Document, comprising prescribed project information, which will be used both by us to inform our final tender decision, and by bidders to inform bids.
- The Tender Specification Data, being relevant information in connection with the TO's preliminary works, underlying the Tender Specification Document. The Tender Specification Data will be uploaded to a project Data room to which bidders will obtain access during the tender.

3.5. Following an initial tender decision we will specify the date by which we expect to start the Final Tender Checkpoint (FTC), which we expect to take approximately six months. The FTC is our final opportunity to confirm the need and suitability of the project for tendering. In the interim, the TO will undertake the relevant preliminary works and prepare the Tender Specification Outputs for submission when the FTC starts. During the FTC we will assess the Tender Specification Outputs to inform our final decision regarding whether and when to commence a tender.

3.6. We propose to implement the above process and our policy regarding the TO's role in that process through:

- The modification of SpC 6I – to provide for our assessment of projects notified to us through the RIIO-T1 SWW process.
- The introduction of a new SpC to implement the TO's new role to support tender commencement. The SpC will be 6M in NGET's licence (in respect of its TO activities) and 6J in the transmission licence of each of SHE Transmission and SP Transmission.

3.7. The proposed modification to SpC 6I is set out in Appendix 4 and the form of the new SpC 6M is set out in Appendix 5. We have drafted the form of this condition in line with that which would be included in NGET's licence. We intend to replicate the condition for the Scottish TOs, with minor amendments needed to tailor the condition to the different licences. This would be set out clearly in our statutory consultation.

Proposed licence modifications

Amendments to the existing SWW Special Condition 6I

3.8. We propose to amend the existing SpC 6I to reflect that we will assess proposed SWW projects notified to us in RIIO-T1 for Competitive Tender. This is reflected in the modification of paragraph¹⁶ 6I.40.

3.9. The introduction of new paragraph 6I.41 reflects that, where we make an initial tender decision:

- We will notify the TO of the “Relevant Assets”, ie that part of the SWW project which we propose to tender.
- The new SpC setting out the TOs “pre-tender” obligations will become effective, obliging the TO to undertake tender support activities in the period from an initial decision to tender until tender commencement.
- The TO will need to consider what difference (if any) the Relevant Assets being tendered makes to the proposed SWW project, and notify us of any such difference by confirming, withdrawing or amending the needs case (whether INC or FNC).

3.10. Finally, the new paragraph 6I.42 modifies existing SpC 6I.40 to provide for the remainder of the SWW project to continue on the SWW pathway, where we proceed to commence a tender in connection with the Relevant Assets. It also provides for a project to continue on the SWW pathway in the scenario where, following an initial tender decision, we subsequently decide not to commence the tender. Where the remainder of a project no longer meets the SWW threshold the TO may withdraw the project from SWW, and it will be delivered either through other appropriate regulatory frameworks, or in RIIO-T2.

3.11. Although the proposed modification of SpC 6I is intended to apply to each of the three TOs’ licences, the above process will only be triggered where an SWW project is being assessed for Competitive Tender. Further details on this policy and the process by which the whole or part of an SWW project moves from the SWW pathway to that for Competitive Tender is set out in paragraph 2.36 of the Decision Document.

¹⁶ Where we refer to paragraphs in this chapter, we refer to paragraphs of the proposed licence condition as modified. We make clear any references where this is different.

New Special Condition 6M for NGET, 6J for SPT and SHET

Overview

3.12. We propose to add a new SpC to each of the TO licences to set out the obligations on the licensee to support commencement of a Competitive Tender. The SpC will be 6M in NGET's licence (in respect of its TO activities) and 6J in the transmission licence of each of SHE Transmission and SP Transmission.

3.13. The licensee's pre-tender role will start when we make our initial tender decision (on the basis of the INC/FNC), and end at the conclusion of FTC, when we would decide whether and when to commence a tender. The licensee's obligation to support a tender once it has commenced would be set out in the tender regulations, in much the same way as terms apply to a developer under the offshore tender regulations.¹⁷

3.14. The following section details each of the obligations under this proposed new condition. Where applicable, we have referenced the relevant paragraph in our Decision Document, where full details of our policy decisions can be found.

Obligations following the initial tender decision – Part A

3.15. Part A of the proposed new SpC implements the timing of the FTC, the role of the licensee in producing the Tender Specification Outputs, and the administrative role of the TO from an initial tender decision to the end of the FTC.

3.16. 6M.2 sets out our role in notifying the TO of the date by which the FTC will commence. This implements the policy set out in paragraph 2.40 of the Decision Document, that by setting a date we can ensure that the resulting tender is run at the right time to meet the required project delivery date.

3.17. In 6M.3(a), we set out the obligation on the TO to perform activities to produce the Tender Specification Outputs. This is the key decision from previous policy consultations on the TO's pre-tender role. To produce the Tender Specification Outputs the TO will be undertaking the relevant preliminary works, which are the development works required to progress a project during its early stages, for example high level design, consenting, and land rights acquisition.

3.18. The purpose of 6M.3(b) is to consolidate reporting requirements for projects that may be subject to Competitive Tender. We propose that the TO update us if there is a material change to the project, which would allow us to maintain oversight and assess as soon as possible if that material change has any impact on a tender. We also propose a backstop for us to request any other information we may require, at any point. We propose that the reporting is 'in a

¹⁷ See Schedule 2 (Entry Conditions) of "The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015":
https://www.ofgem.gov.uk/sites/default/files/docs/2015/07/annex_3_the_electricity_competitive_tenders_for_offshore_transmission_licences_regulations_2015_0.pdf

form to the Authority's satisfaction', which reflects our view that the TO is best placed to develop this format.

Obligations during the FTC – Part B

3.19. Part B of the proposed new condition relates to the TO's obligations to provide the Tender Specification Outputs, and its role within the FTC to respond to Authority questions.

3.20. 6M.4 sets out the obligation of the TO to provide the Tender Specification Outputs by the commencement of the FTC. There is a cross-reference to 6M.2 where the Authority has notified the TO of that date.

3.21. 6M.5 sets out the TO's obligation to respond to our clarification questions during the FTC. This implements the policy set out in our Decision Document at paragraph 2.46. This proposed condition would ensure that we can effectively scrutinise the submitted Tender Specification Outputs.

3.22. We also set out the requirement for the TO to place the Tender Specification Outputs into a Data room, which will be provided by us, as well as any other information the TO believes is relevant to aid project understanding, and the responses to our clarifications from 6M.5. We believe that the Data room is the appropriate route for the TO to share information with us, and means that work is not duplicated if we decide to proceed with a tender at the end of the FTC.

3.23. 6M.5 also gives the overarching obligations on the TO to provide accurate information to our questions during the FTC's clarification process. This is one part of the implementation of our policy on ensuring the quality of preliminary works, discussed in more detail in paragraph 3.7 of the Decision Document. Setting the right obligations on the TO with regards to response quality will ensure we are fully informed when making a final decision on tendering at the end of the FTC.

3.24. 6M.6 sets out the trigger for the conclusion of the TO's obligations under this part of the licence. At this stage, we would notify the TO whether we would or would not commence a Competitive Tender.

Tender Specification Outputs requirements – Part C

3.25. Part C of the proposed new condition contains the obligations relating to the content and format of the Tender Specification Outputs, and the TO's conduct in producing these outputs. For full details on our policy decision for the Tender Specification, please refer to paragraph 3.13 of the Decision Document.

3.26. Paragraphs 6M.7 and 6M.8 prescribe the form and scope of the Tender Specification Document and the Tender Specification Data respectively. As set out in the Decision Document, we consider it appropriate to prescribe the scope of these to differing degrees. Our view is that the overall Tender Specification Outputs should be as broad as possible to cover all types of potential project. Within this, we have made a distinction between the Tender Specification

Document, which would be fixed and applicable to all projects, and the Tender Specification Data, of which only a selection would be relevant per project. We have set out schedules which prescribe the contents of these outputs. For the Tender Specification Data, we intend this schedule to be wide-ranging but non-exhaustive. We would like stakeholders to continue to respond with their views on the contents of these schedules.

3.27. Paragraphs 6M.7(b) and 6M.8 also require the TO, when compiling the Tender Specification Document and Data respectively, to include any other information that it considers “appropriate” in connection with the project and the purpose of facilitating a Competitive Tender. We place responsibility for deciding what is appropriate on the TO, because they are best placed to make this judgement, as the party closest to the assets and the huge volume of project specific information. What is “appropriate” however should be considered in the context of the Tender Specification Outputs being used “for the purpose of supporting a Competitive Tender”. We will use the Tender Specification Outputs to inform our final tender decision. They will also be the primary source of standalone information about the project which bidders will use to inform their bids. The purpose of supporting a Competitive Tender therefore encompasses both supporting us in both commencing a tender and subsequently running it.

3.28. 6M.9 provides for the Tender Specification Outputs to be ‘in a form to the Authority’s satisfaction’. This reflects our view that the TO is best placed to develop the appropriate project-specific format. However, we will consider the form and scope of the Tender Specification Outputs in the context of whether or not they are fit for the purpose of running a Competitive Tender. In commencing a tender, we will consider whether the information provided is sufficiently accurate, complete and clear for the purpose. Paragraph 6M.9(b) therefore requires the TO to provide information which is “accurate, complete and not misleading”. This obligation is reasonably qualified however by the TO’s knowledge and belief, having made reasonable enquiries. This conduct obligation mirrors that placed on developers under the offshore tender regulations.

3.29. We have set out in paragraph 3.8 of the Decision Document the full range of measures we are using to ensure that the TO undertakes high quality preliminary works. The use of enforceable licence obligations is one of the ways we can ensure this. Paragraph 6M.10 tracks this by placing overarching conduct obligations on the TO when undertaking activity to produce the Tender Specification Outputs.

3.30. Paragraph 6M.10 requires for the TO to undertake activity to produce the Tender Specification Outputs in a “timely, economic and efficient manner”, having regard to the purpose of the Tender Specification Outputs being to support the Authority commencing and running a Competitive Tender.

3.31. Paragraph 6M.10 is also intended to implement our policy that the TO is expected to facilitate the transfer of all necessary property, rights and liabilities to the CATO. In practice, the obligation would entail the TO reviewing relevant contractual arrangements and property rights and liabilities in the pre-tender period, to identify any potential obstacles to transfer and how they might be overcome.

4. Conflict mitigation

Question box

Question 14: What are your views on our proposed modification to implement policy in connection with a TO's conduct prior to and during a tender?

Question 15: What are your views on our proposed modification to put in place timing requirements for when the TO must confirm its intention to bid and put in place conflict arrangements?

Question 16: What are your views on our proposed modification to restrict the transfer of TO employees between the Bidding Unit and the team undertaking the Tender Support Activities and pre-construction activity?

Question 17: Our current drafting allows for the independent compliance officer and single appointed director to fulfil their duties across multiple compliance roles (as set out in several conditions). Do you consider this would present any conflicts of interest or wider issues?

Question 18: Do you consider that our proposed location for the new SpC in both NGET's and Scottish licences is the best location? Specifically, is Chapter 2 an appropriate location; should we be seeking to fill unused SpCs instead of adding extra letters; should the letter vary by licensee, or should we seek to align the letters across licensees?

Introduction

4.1. Chapter 4 of the Decision Document sets out our policy decisions regarding the range of obligations with which a TO must comply to mitigate potential conflicts of interest in connection with its onshore competition activities in RIIO-T1. The obligations implemented through the proposed licence modifications are:

- The TO undertaking "Tender Support Activities", ie both the pre-tender obligations set out in the proposed new SpC 6M/6J, and the tender support activities required of the TO following tender commencement, in a way that gives neither itself nor any tender participant an unfair commercial advantage.
- The degree of business separation required between the TO and any "Bidding Unit", ie that part of the TO's group or business that intends to participate, or is participating, in a Competitive Tender as a bidder, where the TO has been responsible for completing pre-tender development works.
- Restrictions on the disclosure of information held by the TO relating to or deriving from its Tender Support Activities.

- The arrangements and processes by which compliance with those obligations is approved and monitored.

4.2. We propose to implement the above obligations through the introduction of a new SpC in the transmission licence of each of SHE Transmission, SP Transmission and NGET. This will be SpC 2P in NGET's licence (in respect of its TO activities) and 2O in the transmission licence of each of SHE Transmission and SP Transmission.

4.3. The form of the proposed new SpC is set out in Appendix 6. We have drafted the form of this condition in line with that which would be included in NGET's licence, for example it references NGET SpCs. We intend to replicate the condition for the Scottish TOs, with minor amendments in order to tailor the condition to the different licences. This would be set out clearly in our statutory consultation.

4.4. We believe that any potential conflicts of interest arising from the SO's role in RIIO-T1 will be mitigated by the current arrangements put in place under the SO's obligations as a result of the conclusions of the Integrated Transmission Planning and Regulation project. As such we are not proposing additional measures in this consultation.

Proposed licence modifications

New Special Condition 2P for NGET, 2O for SP Transmission, SHE Transmission

Overview

4.5. The proposed condition is divided into five parts:

- Conduct of the TO in performing its Tender Support Activities (Part A).
- Separation of the licensee and any Bidding Unit (Part B).
- Restrictions on the disclosure of information relating to Tender Support Activities (Part C).
- The process for approval of conflict mitigation arrangements (Part D).
- The appointment of a compliance officer and compliance reporting (Part E).

Conduct – Part A

4.6. Part A provides for the TO to perform its Tender Support Activities in a transparent manner, affording neither itself, its Bidding Unit, nor any other tender participant an unfair commercial advantage in connection with the tender. This is

a reflection of the policy outlined in paragraphs 4.12 to 4.15 of the Decision Document.

4.7. “Transparent” in this case refers to the TO acting, and being seen to act, to mitigate the risk of bias. To afford an “unfair commercial advantage” in the context of this condition means acting in a way that distorts what should be a level playing field across bidders, affording particular tender participants an unfair advantage in the competition, or favouring their interests for reasons connected with the licensee’s transmission business. We note that an ‘unfair’ commercial advantage is not, in our view, simply an advantage the commercial entity possesses based on its structure, experience, financing, and so on, but relates to its role as project developer.

Business separation – Part B

4.8. Part B of the proposed condition sets out the minimum requirements for the TO in relation to the separation of the Bidding Unit from the rest of its licensed activities. This section seeks to ensure measures are in place that prevent the TO’s Bidding Unit being unfairly advantaged through direct or indirect contact with the team responsible for pre-tender development works. We set out each of the areas for separation below. Full details of our policy in this regard are set out in paragraphs 4.16 to 4.31 of the Decision Document.

4.9. The definition of “Bidding Unit” requires it to be either a separate company within the TO group (including an Associate, as defined in SLC A1), or a unit within the TO’s transmission business (or that of an Associate). Full legal separation of the Bidding Unit from the TO group is not required as a default, and it is for the TO to consider where the Bidding Unit should sit in the first instance. The TO will however need to set out clearly what arrangements it intends to put in place to sufficiently and appropriately mitigate potential conflicts of interest (see later section on ‘Conflicts methodology statement - Part D’). We will review and approve this document, as well as regularly monitor the TO’s compliance with these obligations.

Implementation and intention to bid

4.10. We propose that at the point of our initial tender decision, the TO has a window of opportunity to decide whether it intends to bid on the project. If it does so, it will need to implement relevant business separation measures.

4.11. The conflicts methodology statement (discussed in more detail in Part D) will set out the business separation arrangements that the TO would put in place should it choose to bid. We will require the timing for implementation of the business separation measures to be agreed as part of the methodology approval process. However, we will specifically require the employee separation arrangements to be finalised no later than six months ahead of the FTC.

4.12. Paragraph¹⁸ 9 provides that the TO must notify us of its intention to bid within eight weeks of our initial tender decision, or such longer period as we may allow, but no later than six months prior to commencement of the FTC. The tender regulations would provide that, if the TO does not inform us of its intention to bid by this date, it will be excluded from bidding. As outlined in Chapter 3 of this document, when we make an initial tender decision we will also specify the date by which we expect the FTC process (of approximately six months) to start. We consider that setting a final date for confirming an intention to bid will ensure that potential conflicts are mitigated during the pre-tender process as well as during the tender stages.

Managerial separation

4.13. Paragraph 5 requires the TO to implement managerial separation up to, but not necessarily including, parent board level. The TO will need a separate management structure for the Bidding Unit below this board level. This management, below board level, cannot be split part time in the bidding arm and part time in another part of the TO.

Financial separation

4.14. There should be no funding of any Bidding Unit using regulated revenue of any licensed activities. We propose not to include a specific provision on this in the proposed condition as we believe these obligations are sufficiently covered by SLCs B5, B6, and B9 which are cross-referenced in the condition.

Physical separation – premises

4.15. Paragraph 6 requires the licensee to have physical arrangements in place restricting the Bidding Unit's access to the rest of the premises in which the TO carries out its licensed activities. The Bidding Unit is to be kept physically separate from all parts of the premises occupied by the other parts of the TO. We propose that the same building may be shared, provided that robust access restrictions are put in place to uphold the physical separation requirements.

Information systems separation

4.16. Paragraph 7 restricts the Bidding Unit's access to information held by the TO relating to or derived from its Tender Support Activities, by requiring that the relevant information systems to which the TO has access cannot be accessed by the Bidding Unit. This does not necessarily require the use of a completely separate information system as long as sufficient separation is achieved, for example through suitably robust access restrictions and firewalls. As outlined in the Decision Document, the intended effect is that the Bidding Unit has access to the project Data room (and all other information relating to the Tender Support Activities) at the same time and in the same way as all other bidders.

¹⁸ Where we refer to paragraphs in this chapter, we refer to paragraphs of the proposed licence condition. We make clear any references where this is different.

Employee transfer restrictions

4.17. Paragraph 8 sets out restrictions on the transfer of employees between that part of the TO performing Tender Support Activities and the Bidding Unit.

4.18. Paragraph 8(a) provides that the Bidding Unit must not comprise any person who, from a specific final implementation date agreed in the TO's compliance methodology statement onwards (that may not be later than six months prior to the commencement of the FTC), is involved in Tender Support Activities or pre-construction activity in respect of the assets to be tendered. This means that the Bidding Unit can comprise personnel who have been involved in development of the project up to this agreed date but not beyond it. As set out in the Decision Document, we consider that this balances the need to mitigate the risk of the Bidding Unit having an unfair advantage over other bidders, whilst not disadvantaging the Bidding Unit relative to other bidders in terms of its ability to employ appropriate expertise. We also consider that there needs to be an appropriate amount of time allowed for such separation to be implemented, following our decision to tender the project and the agreed window for confirming intention to bid. We consider that this balances the need to have measures in place as early as possible whilst not requiring the TO to make retroactive decisions about employee transfers.

4.19. Paragraph 8(b) prevents any Bidding Unit personnel from transferring back to the TO until the end of the Competitive Tender, ie when the CATO is appointed. This is intended to mitigate the risk of the Bidding Unit influencing the TO's approach to the tender.

Information use restrictions – Part C

4.20. Part C of the proposed licence conditions sets out the TO's obligations in relation to preventing the inappropriate disclosure of information relating to its Tender Support Activities. Information generated by the licensee relating to or derived from its Tender Support Activities, or which it comes into possession of in the course of a tender is to be treated as confidential. Apart from in the specific exempt circumstances outlined in paragraph 11, this information is not to be disclosed to the Bidding Unit, any other tender participant, or any of its employees, agents, contractors, consultants and advisers.

4.21. The intention is to protect information to which the TO has access in connection with both the project and bids (for example, the content of bids or information about various bidder strategies) which may not otherwise be captured by the information systems separation provisions of paragraph 7.

Conflicts methodology statement – submission, approval and implementation - Part D

4.22. Paragraphs 4.36 to 4.43 of the Decision Document describe our policy regarding the submission and approval of a compliance methodology statement (and associated compliance documents), setting out the detailed arrangements by which the TO will secure compliance with each conflict mitigation obligation. Part D of the proposed licence condition is intended to implement this policy and process.

4.23. We consider that conflict mitigation arrangements should be in place from the point of an initial tender decision being made (following consultation), allowing for some additional time for the TO to confirm its bid intentions. Paragraph 13 therefore provides for approval of the methodology by the time that we make an initial tender decision. If the proposals require further development at that point, we will direct appropriate revisions and set a timetable for their approval.

4.24. Paragraph 12 reflects that we will require submission of the conflicts methodology statement during our assessment of the initial needs case (which is provided for under our proposed modification of paragraph 6I.40)¹⁹, allowing an appropriate lead-in time to approval and implementation. There is a process of assessment and consultation prior to an initial tender decision being made, and we intend to work with the TO during this period to develop the appropriate project-specific conflict mitigation arrangements.

4.25. An approved methodology statement is required whether or not the TO intends to participate in the tender as a bidder. It will set out the business separation arrangements which the TO would put in place should it choose to bid, and the timetable by which it would implement those arrangements. Paragraph 15 provides for the TO to comply with the methodology statement once approved, and, where it notifies us of its intention to bid, implement and comply with the business separation requirements it has specified in that statement.

4.26. Paragraph 14 also provides for the TO to review and revise the conflicts methodology statement on an ongoing basis, particularly where we direct or circumstances change such that there is a risk of non-compliance or material inaccuracy. It is envisaged that the tender regulations would provide for the TO being excluded from bidding where there is a material breach of conflict mitigation obligations.

Compliance – Part E

Compliance Officer

4.27. As part of the scrutiny requirements outlined in the Decision Document, paragraph 16 provides for the TO to appoint an independent compliance officer to facilitate compliance. Paragraph 17 provides for the appointment of a single appointed director (SAD) of the managerial board to oversee the duties of the compliance officer. The drafting of this requirement is based on current obligations of the SO under SpC 20 of NGET's licence.

4.28. Under the proposed condition the independent compliance officer appointed may fulfil multiple compliance roles, where the officer is overseeing the compliance of the licensee or an Associate licensee under the Gas Act 1986. The SAD may undertake its role in overseeing and reporting on compliance for

¹⁹ Alternatively, this will be during the assessment of our final needs case where the project is sufficiently advanced.

multiple compliance obligations as well. We do not consider that oversight of compliance obligations across non-regulated businesses could create opportunities for conflicts of interest; however we welcome any views on this. Similarly we propose that the SAD may also sit on the same board that the managerial director of the Bidding Unit reports to – we consider this aligns with our proposals regarding managerial separation. However it is our proposal that one director could not fulfil both functions (ie SAD and Bidding Unit director).

Compliance reporting

4.29. Paragraph 22 onwards provides for the TO to report in relation to its compliance with the obligations set out in this condition. This includes producing a compliance report detailing its compliance with the conditions and its implementation of the agreed practices and arrangements approved through the compliance methodology statement.

4.30. We propose that the TO submits both the compliance report and its accompanying certificate to us by no later than 120 days following our initial direction to produce a report. Full details of our scrutiny requirements and likely timeframes for when we will direct a report to be submitted, can be found in paragraphs 4.44 to 4.46 of our Decision Document.

4.31. Paragraphs 25 to 27 provide for the potential role of an Independent Examiner. We will not specifically require an independent audit of the TO's arrangements as a matter of course. However, under these paragraphs we have the authority to direct that an Independent Examiner is appointed to review, assess and report on the TO's compliance where we see fit.

Appendices

Index

Appendix	Name of Appendix	Page Number
1	Consultation Response and Questions	33
2	CATO Regime Framework	36
3	Proposed amendments to Standard Condition C27	37
4	Proposed amendments to Special Condition 6I	45
5	Proposed new condition 6M/6J	47
6	Proposed new condition 2P/2O	53
7	Proposed amendments to Special Condition 1A	61
8	Feedback Questionnaire	62

Appendix 1 – Consultation Response and Questions

We would like to hear the views of interested parties in relation to any of the issues set out in this document.

We would especially welcome responses to the specific questions which we have set out at the beginning of each chapter heading and which are replicated below.

Responses should be received by on 27 January and should be sent to:

Katie McFadden
New Transmission Investment
9 Millbank, London SW1P 3GE
NTIMailbox@ofgem.gov.uk

Unless marked confidential, all responses will be published by placing them in our library and on our website www.ofgem.gov.uk. Respondents may request that their response is kept confidential. We shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

Respondents who wish to have their responses remain confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. It would be helpful if responses could be submitted both electronically and in writing. Respondents are asked to put any confidential material in the appendices to their responses.

CHAPTER: One

Question 1: What are your views on our proposed approach to licence modifications, as outlined in this document, and whether they effectively implement the policy outcomes in our Decision Document?

Question 2: Do you think that anything is missing from our proposed approach to licence modifications to implement our policies?

Question 3: What role do you consider the SO could play to support a tender during the RIIO-T1 price control period in gathering and providing information? Do you think this activity should be implemented through modifying the SO's licence or by making provisions in tender documentation?

CHAPTER: Two

Question 4: What are your views of our proposed amendment regarding generator connection offers and demand connections? Do you consider SLC 27 is the correct condition to implement this policy, or are there other conditions/reports where this assessment should be placed?

Question 5: Do you agree with our assessment that our proposed amendments to SLC will not require any subsequent amendments to either SLC B12 or NGET's SpC 20? If not, please specify what amendments you consider would be required to these licence conditions?

Question 6: What are your views on our proposed definition of SO-led Options as relating to options not identified by transmission licensees? Do you consider that this is wide enough, or do you think that this narrows the scope of what the SO should be considering?

Question 7: Do you consider that an update to industry codes would be required as a result of our proposed amendments to SLC C27? If so, please identify what amendments you consider would be required?

CHAPTER: Three

Question 8: Do you agree the proposed obligations on conduct effectively implement our policy on ensuring the quality of works?

Question 9: Is the TO providing an update every 2 months sufficiently frequent, or overly frequent, given the likelihood of information availability over that time?

Question 10: Do you have any additions or subtractions from Schedules 1 and 2 of the proposed new licence condition 6M/6J? Where suggested, please also provide an appropriate reasoning.

Question 11: Is the split of items across Schedules 1 and 2 correct?

Question 12: Do the items in Schedules 1 and 2 require further detail to be provided, or are the descriptions provided sufficient, in the context of application to specific projects?

Question 13: Is Chapter 6 the appropriate place for the proposed new condition M/J? Should the letter vary by licensee, or should we seek to align the letters across licensees?

CHAPTER: Four

Question 14: What are your views on our proposed modification to implement policy in connection with a TO's conduct prior to and during a tender?

Question 15: What are your views on our proposed modification to put in place timing requirements for when the TO must confirm its intention to bid and put in place conflict arrangements?

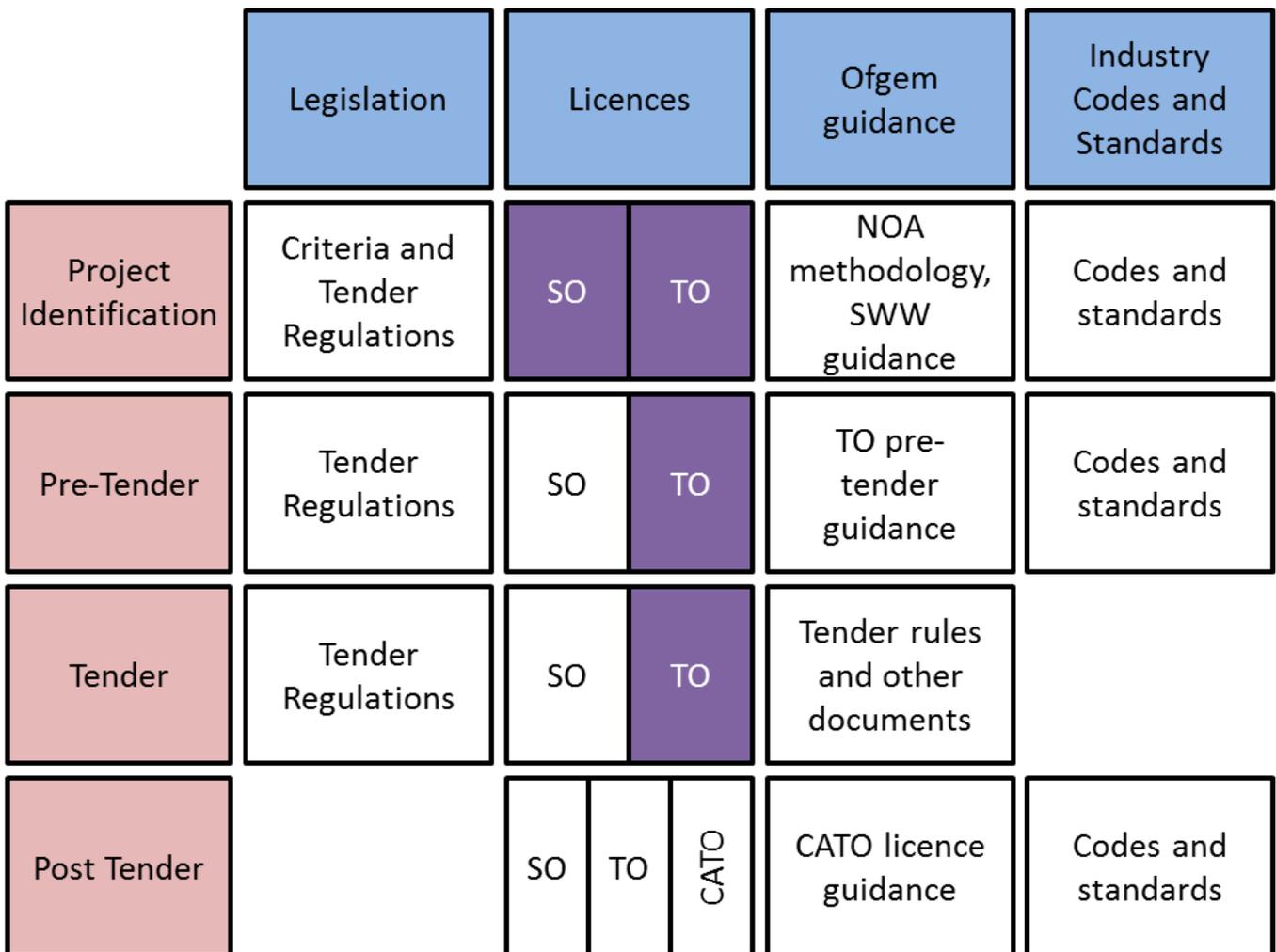
Question 16: What are your views on our proposed modification to restrict the transfer of TO employees between the Bidding Unit and the team undertaking the Tender Support Activities and pre-construction activity?

Question 17: Our current drafting allows for the independent compliance officer and single appointed director to fulfil their duties across multiple compliance roles (as set out in several conditions). Do you consider this would present any conflicts of interest or wider issues?

Question 18: Do you consider that our proposed location for the new SpC in both NGET's and Scottish licences is the best location? Specifically, is Chapter 2 an appropriate location; should we be seeking to fill unused SpCs instead of adding extra letters; should the letter vary by licensee, or should we seek to align the letters across licensees?

Appendix 2 – CATO Regime Framework

The following diagram shows the framework for how we currently consider we would implement the CATO regime across the criteria and tender regulations, TO and SO licences, and the industry codes and standards. The boxes that are coloured purple in the diagram are the framework areas (ie the licence modifications) that are being addressed in this document.



Appendix 3 – Proposed amendments to Standard Condition C27

This is an amendment to SLC C27 of the transmission licence, which applies to the SO only. This amendment implements our decisions on project identification described in Chapter 2 of this document and Chapter 2 of the Decision Document.

Standard Condition C27: The Network Options Assessment process and reporting requirements

Introduction

1. This condition sets out the licensee's role in assessing options for the development of the national electricity transmission system (including Offshore Wider Works) and interconnector capacity. The network options assessment (NOA) process is designed to facilitate the development of an efficient, co-ordinated and economical system of electricity transmission, ~~and~~ the development of efficient interconnector capacity [and the identification of options suitable for competitive tender](#).
2. The methodology underpinning the NOA process, along with how this will be approved, is set out in Part A of this condition. The requirements for the publication of the annual NOA report are outlined in Part B. The licensee's obligations regarding the provision of information underpinning the NOA process are described in Part C. Part D sets out the role the licensee will play in the early development of options and the circumstances in which the licensee will be required to do so. Together, all of these activities make up the NOA process.
3. The licensee must take such steps as are within its power, and it considers may be necessary to enable the NOA process. In carrying out the NOA process, the licensee must act in a manner that best ensures transparency and independence.

Part A: The NOA methodology and form of the NOA report

4. The licensee must, not less than once in each financial year (and at such other times as the Authority may direct), develop proposals for the NOA methodology and the form of the NOA report in consultation with interested parties. The consultation shall be of such a form and duration as practicable to reasonably allow all interested parties to contribute.
5. Following any consultation pursuant to paragraph 4, the licensee must:

- (a) by 1 October 2015, or at such other date as directed by the Authority, submit to the Authority a proposed NOA methodology and proposed form of the initial NOA report ("the initial NOA report"). The licensee must make reasonable endeavours to ensure the NOA methodology includes the information set out in paragraph 8. Where this has not been possible, the licensee must explain the reasons and how it proposes to progress outstanding issues; and
 - (b) by 1 August of each subsequent financial year, or at such other date as directed by the Authority submit to the Authority for approval the proposed NOA methodology and form of the NOA report.
6. Submissions made under paragraph 5 must include:
 - (a) a detailed explanation of the consultation process undertaken in the development of the NOA methodology and the form of the NOA report;
 - (b) a summary of views from interested parties and an explanation of how these were taken into account in the development of the NOA methodology and the form of the NOA report; and
 - (c) copies of any formal responses submitted to the licensee as part of its consultation process.
7. The Authority will on receipt of a submission under paragraph 5:
 - (a) approve the proposed NOA methodology and/or form of the NOA report; or
 - (b) give a direction to the licensee that the NOA methodology and/or form of the NOA report requires further development, and the date by which the licensee is required to submit a revised NOA methodology and/or the form of the NOA report to the Authority for approval.
8. The NOA methodology must be designed to facilitate the development of an efficient, co-ordinated and economical system of electricity transmission, and must include (but need not be limited to):
 - (a) the approach used for determining what constitutes Major National Electricity Transmission System Reinforcements;
 - (b) the approach used for identifying the range of options to meet system needs in accordance with the development of an efficient, co-ordinated and economical system of electricity transmission to be set out in the NOA report in accordance with 15(a)(i) ~~and (ii)~~;
 - (c) how the options identified in (b) will be assessed, including but not limited to:

- (i) the approach used to assess the technical, economic and environmental impacts and risks; and
 - (ii) the approach used for modelling boundary capacity, offshore transmission capacity and interconnector capacity along with assumptions and assessment criteria used;
- (d) the approach used to assess whether each of the most appropriate of the options identified in (b) comprise assets some or all of which satisfy the requirements specified in regulations made by the Secretary of State under section 6BA(3) of the Act for the purpose of a competitive tender;
- ~~(d)~~(e) the basis for the cost estimate provided for each option;
- ~~(e)~~(f) the approach used to assess whether option(s) to enable connections for a customer, as defined in Section 11 of the CUSC, comprise assets some or all of which satisfy the requirements specified in regulations made by the Secretary of State under section 6BA(3) of the Act for the purpose of a competitive tender.
- ~~(f)~~(g) how the licensee will engage with interested parties to share relevant information and how that information will be used to review and revise the NOA methodology; and
- ~~(g)~~(h) details of the licensee's proposed timetable for updating and consulting on the methodology for the NOA reports.

Part B: The NOA report

9. The licensee must publish an initial NOA report by 31 March 2016 or such other date as directed by the Authority. The initial NOA report must be based on the NOA methodology and be in a form approved by the Authority in accordance with paragraph 7. In producing the initial NOA report, the licensee must make reasonable endeavours to ensure it includes the information set out in paragraph 15. Where this has not been possible, the licensee must explain the reasons and how it proposes to progress any outstanding issues.
10. If, following a submission of the NOA methodology and form of the initial NOA report in accordance with paragraph 5(a), the Authority has not approved or directed further development of the NOA methodology and/or form of the NOA report in accordance with paragraph 7 by 1 December 2015, the publication date set out in paragraph 9 will be treated as being amended accordingly. The amendment will equal the number of days between 1 December 2015 and receipt of the Authority's approval or direction.

11. Following publication of the initial NOA report the licensee must:
 - (a) review at least once in each financial year the NOA report prepared and published in the previous financial year and consider any improvements to better facilitate the development of an efficient, co-ordinated and economical system of electricity transmission; and
 - (b) publish an updated NOA report by 31 January or such other date as directed by the Authority in a form approved by the Authority. This must be based on and include the latest NOA methodology approved by the Authority pursuant to paragraph 7.
12. If, following a submission of the methodology and the form of the NOA report by the date set out in paragraph 5(b), the Authority has not approved or directed further development of the NOA methodology and/or form of the report in accordance with paragraph 7 by 1 October the publication date set out in paragraph 11(b) will be treated as amended accordingly. The amendment will equal the number of days between 1 October and receipt of the Authority's approval or direction.
13. The licensee must publish the NOA report on its website in such readily accessible form and manner that it considers will facilitate the development of an efficient, co-ordinated and economical system of electricity transmission, and provide a copy of the NOA report on request, and free of charge, to any person who asks for one.
14. In complying with the requirements of paragraph 13, the licensee must have due regard to the need for excluding from the NOA report any information that would or might seriously and prejudicially affect the commercial interests of the owner of that information if published or might be expected to be incompatible with any legislation, rule of law or licence condition. The licensee must provide to the Authority its reasons for any omission of information from the NOA report.
15. Each NOA report (including the initial NOA report) must, in respect of the current financial year and each of the nine succeeding financial years:
 - (a) set out:
 - (i) the licensee's best view of the options for Major National Electricity Transmission System Reinforcements (including any Non Developer-Associated Offshore Wider Works [and SO-led Options](#) that the licensee is undertaking early development work for under Part D), and additional interconnector capacity that could meet the needs identified in the electricity ten year statement (ETYS) and facilitate the development of an efficient, co-ordinated and economical system of electricity transmission;

- ~~(ii) the licensee's best view of alternative options, where these exist, for meeting the identified system need. This should include options that do not involve, or involve minimal, construction of new transmission capacity; options based on commercial arrangements with users to provide transmission services and balancing services; and, where appropriate, liaison with distribution licensees on possible distribution system solutions;~~
- ~~(iii)~~(ii) the licensee's best view of the relative suitability of each option, or combination of options, identified in accordance with paragraph 15(a)(i)~~-or (ii)~~, for facilitating the development of an efficient, co-ordinated and economical system of electricity transmission. This must be based on the latest available data, and must include, but need not be limited to, the licensee's assessment of the impact of different options on the national electricity transmission system and the licensee's ability to co-ordinate and direct the flow of electricity onto and over the national electricity transmission system in an efficient, economic and co-ordinated manner; ~~and~~
- ~~(iv)~~(iii) the licensee's recommendations on which option(s) should be developed further to facilitate the development of an efficient, co-ordinated and economical system of electricity transmission; ~~and~~
- (iv) the licensee's best view of whether the option(s) assessed in 8(d) comprise assets some or all of which satisfy the requirements specified in regulations made by the Secretary of State under section 6BA(3) of the Act for the purpose of a competitive tender. The licensee's best view must be accompanied by an explanation of how it has come to that view; and
- (v) the licensee's best view of whether the option(s) identified and assessed in 8(f) comprise assets some or all of which -satisfy the requirements specified in regulations made by the Secretary of State under section 6BA(3) of the Act for the purpose of a competitive tender. The licensee's best view must be accompanied by an explanation of how it has come to that view.
- (b) be consistent with the ETYS and where possible align with the Ten Year Network Development Plan as defined in standard condition C11 (Production of information about the national electricity transmission system), in the event of any material differences between the Ten Year Network Development plan and the NOA report an explanation of the difference and any associated implications must be provided; and
- (c) have regard to interactions with existing agreements with parties in respect of developing the national electricity transmission system and changes in system requirements.

Part C: Provision of information

16. Based on the NOA methodology set out in Part A, the licensee must provide ~~electricity~~ transmission licensees and ~~interconnector developers~~ [Interconnector Developers](#) if requested to do so:
- (a) with information and analysis to support them in their decision-making and development of options to meet system needs as identified in the ETYS. This must include information on the potential for coordination between parties where the licensee's analysis suggests coordination could facilitate the development of an efficient, co-ordinated and economical system of electricity transmission. The licensee must provide this information and analysis in such form and within such timescales as transmission licensees and ~~interconnector developers~~ [Interconnector Developers](#) may reasonably request and which is necessary to support these parties' decision making and development of options;
 - (b) with its assessment of the options that a party is considering for Major National Electricity Transmission System Reinforcements and interconnectors, as well as its assessment of any alternative options being considered by other parties. The licensee must provide the assessment in such form and within such timescales as transmission licensees and ~~interconnector developers~~ [Interconnector Developers](#) may reasonably request and which is necessary to support these parties' decision making;
 - (c) with updated information and analysis to support submissions to the Authority in such form and within such timescales as transmission licensees and ~~interconnector developers~~ [Interconnector Developers](#) may reasonably request and which is necessary to support these parties' submissions to the Authority;
 - (d) In complying with the requirements of this paragraph, the licensee must have due regard to the need to exclude from disclosure any information which would or might seriously and prejudicially affect the commercial interests of the owner of that information if disclosed or might be expected to be incompatible with any legislation, rule of law or licence condition. The licensee must provide to the Authority its reasons for any non-disclosure of information.
17. Based on the NOA methodology set out in Part A, the licensee must if requested submit to the Authority the information it has provided to parties under paragraph 16 on the assessment of options to meet a particular system requirement. This includes but is not limited to information to support a needs case for a Strategic Wider Works Output, a Needs Case for Developer-Associated Offshore Wider Works and any interconnector developers submission to the Authority. The licensee must also submit any additional information requested by the Authority. The licensee's

submissions must be made in timescales consistent with related submissions from other parties to the Authority, and as directed by the Authority.

18. In relation to interconnectors, based on the NOA methodology set out in Part A, the licensee must submit to the Authority, within the timescales directed by the Authority, information on:
 - (a) the efficiency of the connection choices made by an ~~interconnector developers~~ [Interconnector Developers](#), based on the licensee's involvement in assessing different options, including the costs of any necessary reinforcements required to connect interconnectors to the national electricity transmission system;
 - (b) the licensee's assessment of the impact of new interconnectors on system operation. This should include costs and benefits relating to provision of security of supply including ancillary services, constraint management and other operational factors, which may accrue to the licensee and to consumers; and
 - (c) the licensee's assessment of changes in wholesale prices as a result of interconnector flows and the impact of these changes on GB consumers, generators and interconnectors.
19. The Authority may direct the licensee to submit additional information on the assessment of options specified in paragraphs 16, 17 and 18, within such timeframe as the Authority may require in order to carry out any of its functions in relation to the assessment of submissions.

Part D: Early development of options

20. The licensee must undertake early development of options for Non Developer-Associated Offshore Wider Works where these have been identified as options for the development of the national electricity transmission system in accordance with the NOA methodology. The development of these options should be consistent with the NOA methodology and undertaken in a transparent manner which will enable the options to be compared with alternative options (including those being developed by other parties) in accordance with the requirements in paragraph 15(a)(i) ~~and (ii)~~.
21. [The licensee must undertake early development of SO-led Options or, where an SO-led Option requires contributions from more than one transmission licensee, co-ordinate early option development where these have been identified as options for the development of the national electricity transmission system in accordance with the NOA methodology. The development of these options should be consistent with the NOA methodology and undertaken in a transparent manner which will enable the options to be compared with alternative options \(including those being](#)

developed by other parties) in accordance with the requirements in paragraph 15(a)(i).

Definitions

“SO-led Options” – any options identified by the licensee which had not been identified by other transmission licensees and any options recommended previously by the licensee to proceed but which have not been progressed by the transmission licensee to which the recommendation was given. These could include (but are not limited to) cross-regional options (across more than one transmission area of the transmission owners); options that do not involve, or involve minimal, construction of new transmission capacity; options based on commercial arrangements with users to provide transmission services and balancing services; and, where appropriate, liaison with distribution licensees on possible distribution system solutions or other options.

Appendix 4 – Proposed amendments to Special Condition 6I

This is an amendment to SpC 6I of the TO's licences to implement our decision to use the SWW process as the trigger for Competitive Tender in RIIO-T1, as described in Chapter 3 of this document, and Chapters 2 and 3 of the Decision Document.

Text of the new condition

6I.40 Where the Authority receives notice from the licensee under paragraph 6I.36 of this condition ~~in relation to an additional~~ to request that the Authority specify a new Strategic Wider Works Output, it may seek any other analysis or information that the Authority considers relevant ~~to the Authority's assessment of the request and may specify timescales for the provision of this information such that it may be taken into account by the Authority for the purposes of reaching a determination under this paragraph. Subject to timely provision of such information by the licensee, and following consultation with such other parties as the Authority considers may be affected by its determination, the Authority will then determine, for provision within such timescales as it considers appropriate, for the purpose of the Authority:~~

(a) determining whether or not to commence a Competitive Tender;
and

(b) reaching determinations under paragraph 6I.42.

6I.41 When the Authority makes an initial decision to commence a Competitive Tender:

(a) the Authority will notify the licensee of the Relevant Assets;

(b) in respect of the Relevant Assets, the pre-tender obligations of the licensee are as set out in Special Condition 6M; and

(c) in respect of the proposed Strategic Wider Works Outputs excluding the Relevant Assets, the licensee must reassess the proposed Strategic Wider Works Output notified under paragraph 6I.36 of this condition and either confirm, withdraw or amend that notification accordingly.

6I.42 Where, following an initial decision to commence a Competitive Tender, the Authority subsequently decides not to commence the Competitive Tender, or where the licensee (under paragraph 6I.41(b) of this condition) amends the notification made under paragraph 6I.36 to reflect exclusion of the Relevant Assets, the Authority will (subject to timely provision of information by the licensee, and following consultation with such other parties as the Authority considers may be affected by its determination) determine:



Consultation on licence changes to support electricity transmission competition during RIIO-T1

- (a) whether the needs case, technical scope and timing of Delivery are sufficiently well justified and represent long term value for money for existing and future consumers;
- (b) whether the licensee has developed a sufficiently robust development plan and risk sharing arrangements to Deliver the output efficiently;
- (c) whether there is a sufficiently advanced technical option(s) for the Authority to assess efficient costs and specify a Strategic Wider Works Output; and if so
- (d) the adjustment that is to be given effect through a modification under this Part F.

Appendix 5 – Proposed new condition 6M/6J

This is a new condition to implement the pre-tender activities policy, as described in Chapter 3 of this document, and Chapters 2 and 3 of the Decision Document.

As this condition is entirely new it is presented without strikethroughs or underlined additions, just as plain text. The form of this condition is drafted in line with that which would be included in NGET's licence, as SpC 6M. We intend to replicate the condition for the Scottish TOs in our statutory consultation, with any minor amendments needed to reference the different licences, as SpC 6J.

Text of the new condition

Introduction

6M.1 The purpose of this condition is to set out the obligations of the licensee to support commencement of a Competitive Tender for Relevant Assets notified under 6I.36. This condition should be read in conjunction with Special Condition 2P regarding the conduct, business separation and information protection requirements of the licensee which apply during the period prior to commencement of a Competitive Tender.

Part A: Obligations following the initial tender decision

6M.2 Where the Authority makes an initial decision to commence a Competitive Tender (an "initial tender decision"), it will direct the date by which the Final Tender Checkpoint will commence.

6M.3 In the period from the initial tender decision to commencement of the Final Tender Checkpoint, the licensee will:

- (a) undertake activity to produce the Tender Specification Outputs in the form and manner set out in Parts B and C of this condition, in preparation for commencement of the Final Tender Checkpoint; and
- (b) provide updates to the Authority regarding progress of the Tender Specification Outputs, in a form to the Authority's satisfaction, every 2 months and:
 - (i) as soon as reasonably practicable following the licensee becoming aware of a material change to the proposed Relevant Assets and/or the Tender Specification Outputs; and
/or

- (ii) as soon as reasonably practicable following a request to do so by the Authority.

Part B: Obligations during the Final Tender Checkpoint

- 6M.4 The licensee will submit the Tender Specification Outputs to the Authority in a timely manner and in any event by the date set for commencement of the Final Tender Checkpoint under paragraph 6M.2 of this condition.
- 6M.5 From the date of the Final Tender Checkpoint commencing until conclusion of the Final Tender Checkpoint, the licensee will:
- (a) provide responses to Authority enquiries regarding the Tender Specification Outputs and / or the Relevant Assets, in a timely manner;
 - (b) populate the Data Room with the Tender Specification Outputs and any other relevant information, including information arising from responses to Authority enquiries; and
 - (c) in responding to Authority enquiries, provide information which is accurate, complete and not misleading to the best of the knowledge and belief of the licensee, having made reasonable enquiries.
- 6M.6 Upon conclusion of the Final Tender Checkpoint, the Authority will notify the licensee of its final decision as to whether or not a Competitive Tender will be commenced.

Part C: Tender Specification Outputs requirements

- 6M.7 The Tender Specification Document must include:
- (a) as a minimum, the items specified in Schedule 1 of this condition; and
 - (b) any other information which the licensee considers relevant to the proposed Relevant Assets and the purpose of facilitating a Competitive Tender.
- 6M.8 The Tender Specification Data must include such of the items in Schedule 2 and any other data that the Licensee considers applicable to the Relevant Assets.
- 6M.9 The Tender Specification Outputs are to:
- (a) be in a form which is to the satisfaction of the Authority and fit for the purpose of a Competitive Tender; and

- (b) comprise information which is accurate, complete and not misleading to the best of the knowledge and belief of the licensee, having made reasonable enquiries.

6M.10 In undertaking activity to produce the Tender Specification Outputs, the licensee will do so:

- (a) in a timely, economic and efficient manner, having regard to the purpose of the Tender Specification Outputs to facilitate the Authority commencing and conducting a Competitive Tender; and
- (b) in a manner which, to the extent possible, facilitates the transfer of all necessary property, rights and liabilities in connection with the Relevant Assets to a CATO.

Part D: Definitions

6M.11 In this condition:

"CATO" means a competitively appointed Transmission Owner.

"Data room" means an electronic data room administered by the Authority for the purpose of a Competitive Tender.

"Final Tender Checkpoint" means a process conducted by the Authority to facilitate making a final decision to commence a Competitive Tender.

"Tender Specification Data" means data produced in connection with pre-construction/preliminary works activity in respect of the Relevant Assets.

"Tender Specification Document" means a tender specification document in respect of the Relevant Assets, which will be used (i) by the Authority to inform its decision whether or not to commence a Competitive Tender, and (ii) by participants in a Competitive Tender to inform tender bids.

"Tender Specification Outputs" means the Tender Specification Document and the Tender Specification Data.

Schedule 1 Tender Specification Document		
Item	Location	Document
1.	Tender Specification Document	Functional specification
2.	Tender Specification Document	Single line diagram
3.	Tender Specification Document	Conceptual project plan/ programme
4.	Tender Specification Document	Initial drawings/designs and specifications for major components
5.	Tender Specification Document	Initial plans and specifications for construction techniques, access and logistics
6.	Tender Specification Document	Summary of any early procurement or market engagement by the Transmission Owner
7.	Tender Specification Document	Summary of ground conditions and risk

Schedule 2 Tender Specification Data		
Item	Location	Document
1.	Data Room	Needs case report
2.	Data Room	Optioneering report
3.	Data Room	Detailed conceptual project plan/ programme
4.	Data Room	Records of supply chain engagement
5.	Data Room	Route corridor study report
6.	Data Room	Contracts, designs for any early procurement by the Transmission Owner
7.	Data Room	Reporting on any limitations arising from initial design choices
8.	Data room	Ground investigation report
9.	Data Room	Load flow system studies report
10.	Data Room	Contingency analysis report

11.	Data Room	Short circuit system studies report
12.	Data Room	Reactive Power and Voltage Control studies
13.	Data Room	Proposed outage schedule, and records of engagement between the Transmission Owner and System Operator
14.	Data Room	Details of Distribution Network Operator crossings including number of crossings and proposed outage plan
15.	Data Room	System models/data
16.	Data Room	System harmonics data (eg harmonic loci)
17.	Data Room	Information on Transmission Owner/System Operator interfaces, including draft interface agreements
18.	Data Room	Information on 3rd party Interfaces, including draft interface agreements
19.	Data Room	Geotechnical desk study data compilation, including assessment summary and recommendation for intrusive works
20.	Data Room	Peat slide risk assessment report and data
21.	Data Room	Phase 1 Contaminated land report
22.	Data Room	Preliminary Unexploded Ordnance/Unexploded Bomb risk assessment
23.	Data Room	Borrow pit assessment report
24.	Data Room	Targeted topographical survey report
25.	Data Room	Phase 1 Habitat Report
26.	Data Room	Protected species survey reports
27.	Data Room	Hedgerow survey reports
28.	Data Room	National vegetation classification survey report
29.	Data Room	Ornithological survey reports
30.	Data Room	Noise assessment report (initial and detailed design)
31.	Data Room	Flood risk assessment
32.	Data Room	Desk based archaeological assessment report
33.	Data Room	Initial access studies and feasibility
34.	Data Room	Traffic impact assessment
35.	Data Room	Approval in principle with relevant highways authorities
36.	Data Room	Offshore geotechnical report
37.	Data Room	Offshore geophysical report
38.	Data Room	Seabed bathymetric changes report
39.	Data Room	Metocean study

Consultation on licence changes to support electricity transmission competition during RIIO-T1

40.	Data Room	Cable burial risk assessment
41.	Data Room	Statement of community engagement, summary of (or copies of) consultation responses, community liaison group minutes
42.	Data Room	Application documents, draft development control order, summary of pre-application discussions, submissions and documents (eg gatecheck reports, written responses, inquiry reports)
43.	Data Room	Development consent orders or draft development consent orders, Section 37 consents and deemed planning consents, marine licences, planning consents for elements consented through the local planning authority/local authority
44.	Data Room	Environmental statement, environmental management plans (eg waste management plans, habitat management plans, visual impact mitigation schemes), statutory consultee responses, environmental liaison group minutes
45.	Data Room	Summary and list of finalised land agreements
46.	Data Room	Agreements in principle for land access
47.	Data Room	Information on progress made with voluntary land agreements
48.	Data Room	Details/status of any involuntary land agreements

Appendix 6 – Proposed new condition 2P/20

This is a new condition to implement the conflict mitigation arrangements, as described in Chapter 4 of this document, and Chapter 4 of the Decision Document.

As this condition is entirely new it is presented without strikethroughs or underlined additions, just as plain text. The form of this condition is drafted in line with that which would be included in NGET's licence, as SpC 2P. We intend to replicate the condition for the Scottish TOs in our statutory consultation, with any minor amendments needed to reference the different licences, as SpC 2O.

Text of the new condition

Introduction

- 2P.1 The purpose of this condition is to put in place arrangements to mitigate potential conflicts of interest for Competitive Tenders. This will be achieved through business separation requirements between the licensee and any Bidding Unit, the licensee's obligations as to its conduct in performing its Tender Support Activities in connection with a Competitive Tender, and the processes the licensee must follow to comply with these obligations.
- 2P.2 Part A sets out the overarching obligations on conduct of the licensee when undertaking its Tender Support Activities. Part B sets out the business separation requirements between the licensee and any Bidding Unit. Part C sets out the obligations on the licensee to restrict the use of information that the licensee has access to through its Tender Support Activities. Part D sets out the compliance methodology statement the licensee must publish to describe how it proposes to meet the obligations outlined in this condition. Part E sets out requirements on the licensee to appoint an independent compliance officer and to report on compliance against the licensee's duties.

Part A: Conduct of the licensee when undertaking its Tender Support Activities

- 2P.3 In performing its Tender Support Activities, the licensee must act in a manner which is transparent and intended to secure that neither the Bidding Unit nor any other participant in a Competitive Tender obtains an unfair commercial advantage (including any advantage from a preferential or discriminatory arrangement) in connection with a Competitive Tender, as a result of the licensee performing its Tender Support Activities.

Part B: Separation of the licensee and any Bidding Unit

- 2P.4 Without prejudice to the licensee's obligations under conditions B5 (Prohibition of cross-subsidies), B6 (Restriction on Activity and Financial Ring Fencing), 2C (Prohibited Activities and Conduct of the Transmission Business), 2N (Electricity Market Reform), and 2O (Business separation requirements and compliance obligations, and conduct of the System Operator in performing its Relevant System Planning Activities), the licensee must conduct its Tender Support Activities separately from any Bidding Unit.
- 2P.5 The licensee must ensure that persons engaged in the management or operation of the licensee (up to but not necessarily including the members of the licensee's board of directors) are not simultaneously engaged, either full or part time, in the management or operation of any Bidding Unit, other than in the provision of Shared Services provided by the licensee to its Associates and the provision of services which constitute de minimis business (as defined in standard condition B6 (Restriction on Activity and Financial Ring Fencing) to the extent that the provision of those services by the licensee complies with the requirements of standard conditions B5 (Prohibition of cross-subsidies), B6 (Restriction on Activity and Financial Ring Fencing) and B9 (Indebtedness).
- 2P.6 The licensee must ensure that arrangements are in place which are effective in restricting access by persons engaged in the management or operation of any Bidding Unit to any part of any premises which is occupied by persons engaged in the management or operation of the licensee.
- 2P.7 The licensee must ensure that the systems for the recording, processing or storage of information relating to or derived from the TO performing Tender Support Activities, to which persons engaged in the management or operation of the licensee have access, cannot be accessed by persons engaged in the management or operation of any Bidding Unit.
- 2P.8 The licensee must ensure that:
- (a) a Bidding Unit does not comprise any person involved in Tender Support Activities, or in pre-construction activity in respect of the Relevant Assets, in each case from the date of final implementation of employee transfer restrictions, as agreed in the licensee's compliance methodology statement, but in any event no later than 6 months prior to the date for commencement of the Final Tender Checkpoint as specified by the Authority in the notice made under Special Condition 6M.2; and
 - (b) no person involved in the activities of a Bidding Unit transfers to the licensee during the Competitive Tender.

- 2P.9 The licensee must notify the Authority of whether or not it intends to participate in a Competitive Tender as a bidder within 8 weeks of the direction given by the Authority under Special Condition 6M.2, or such longer period as the Authority may direct under this condition, but in any event no later than 6 months prior to the date for commencement of the Final Tender Checkpoint as specified by the Authority in the notice made under Special Condition 6M.2.

Part C: Restrictions on the use of information in connection with Tender Support Activities

- 2P.10 Any information held by the licensee relating to or deriving from its Tender Support Activities is to be treated as confidential information for the purpose of this condition. Accordingly, the licensee shall not (and procure that its Associates shall not) directly or indirectly disclose, authorise access to, or authorise use of such information to any employees, agents, contractors, consultants and advisers of the Bidding Unit or any other participant in a Competitive Tender, other than as provided for in paragraph 2P.11.
- 2P.11 Paragraph 2P.10 shall not apply to the disclosure of confidential information:
- (a) where the licensee is specifically required to do so as a condition of this licence or under the tender regulations;
 - (b) as required under the STC;
 - (c) to persons engaged in the provision of Shared Services, to the extent necessary to allow them to carry out their respective functions to support the licensee in performing its Tender Support Activities; and
 - (d) which is required by law or regulation, or the rules of any governmental or regulatory authority having jurisdiction over the licensee.

Part D: Compliance Methodology

- 2P.12 Under paragraph 40 of Special Condition 6I, where the Authority receives notice from the licensee under paragraph 36 of Special Condition 6I in relation to an additional Strategic Wider Works Output, the Authority may seek any other analysis or information that it considers relevant to its assessment of the request, and may specify timescales for provision of this information such that it may be taken into account for the purpose of determining whether or not to commence a Competitive Tender. When so requested by the Authority under paragraph 40 of Special Condition 6I, the licensee must submit to the Authority:

- (a) a statement (“the compliance methodology statement”), describing the practices, procedures, systems and timescales by which the licensee will implement and secure compliance with each part of this condition;
- (b) the proposed form of the compliance report, as provided for in paragraph 2P.23; and
- (c) the proposed form of the compliance certificate, as provided for in paragraph 2P.23.

2P.13 Following receipt of the documents to be submitted under paragraph 2P.12, or any revisions of them as provided for in this paragraph and paragraph 2P.14, the Authority will, by the date of the direction given under Special Condition 6M.1 (notifying the licensee that it proposes to commence a Competitive Tender) either:

- (a) approve the (individual) documents and notify the licensee of each approval; or
- (b) give a direction to the licensee that any of the documents requires further development and the date by which the licensee is required to submit a revision to the Authority for approval.

2P.14 Following the Authority’s approval of the documents submitted under paragraph 2P.12, the licensee must:

- (a) unless the Authority otherwise consents or directs, comply with the terms of the approved compliance methodology statement at all times during the Competitive Tender;
- (b) where the licensee notifies the Authority under paragraph 2P.9 that it intends to participate in a Competitive Tender as a bidder, implement the procedures and systems by which the licensee will secure compliance with the business separation requirements under Part B of this condition, according to the timescales set out in the approved compliance methodology statement; and
- (c) review these documents and revise them as necessary, including when circumstances change such that the documents no longer secure compliance with this condition or when the Authority directs, to ensure that they continue to be complete and accurate in all material respects. The licensee must submit any revisions made to these documents to the Authority. Any revisions of these documents will only become effective once the Authority has approved them, in accordance with paragraph 2P.13.

2P.15 The licensee must publish a copy of the approved compliance methodology statement and each revision of it on its website within 15 working days of its approval by the Authority.

Part E: Appointment of a compliance officer and compliance reporting for Competitive Tenders

- 2P.16 The licensee must ensure, following consultation with the Authority, that a competent person (who shall be known as the "compliance officer") is appointed for the purpose of facilitating compliance by the licensee with this condition. The person appointed as the compliance officer pursuant to this paragraph may also hold other compliance officer roles for the licensee or its Associates licensed under the Gas Act 1986.
- 2P.17 The licensee must appoint a Single Appointed Director, being a member of the managerial board for the Transmission Business, for the purpose of ensuring the performance of, and overseeing the duties and tasks of, the compliance officer set out in paragraph 2P.21 and the licensee's compliance with the specified duties. The Single Appointed Director must report to the board of the licensee in relation to the obligations set out in this condition.
- 2P.18 The licensee must ensure that the compliance officer:
- (a) is provided with such employees, premises, equipment, facilities and other resources; and
 - (b) has such access to the licensee's premises, systems, information and documentation,
- as, in each case, the compliance officer might reasonably require for the fulfilment of the duties and tasks assigned to him pursuant to this condition.
- 2P.19 Except to the extent provided for in paragraph 2P.16, the licensee must ensure that the compliance officer is not engaged in the management or operation of the Transmission Business or any Associate of the licensee.
- 2P.20 The licensee must make available to the compliance officer details of any complaint or representation received by it from any person in respect of the conduct of the licensee in undertaking the specified duties.
- 2P.21 The duties and tasks of the compliance officer must include:
- (a) providing advice and information to the licensee (including individual directors of the licensee) and the Single Appointed Director for the purpose of ensuring the licensee's compliance with this condition;
 - (b) monitoring the effectiveness of the practices, procedures and systems adopted by the licensee to ensure its compliance with the specified duties and described in the compliance statement;
 - (c) advising whether, to the extent that the implementation of such practices, procedures and systems require the co-operation of any other person, they are designed so as reasonably to secure the required co-operation;

- (d) investigating any complaint or representation made available to the compliance officer in accordance with paragraph 2P.20;
- (e) recommending and advising upon the remedial action which any such investigation has demonstrated to be necessary or desirable;
- (f) providing relevant advice and information to the licensee (including individual directors of the licensee) and the Single Appointed Director, for the purpose of ensuring its implementation of:
 - (i) the practices, procedures and systems adopted in accordance with the compliance statement; and
 - (ii) any remedial action recommended in accordance with sub-paragraph (e);
- (g) reporting to the Single Appointed Director any instances of non-compliance which come to his attention, relating to a member of any of the managerial boards of the licensee, taking into account the interests of a business other than that in respect of which the board of which he is a member of has been established; and
- (h) reporting to the Single Appointed Director as to the compliance officer's activities in respect of compliance with this condition to support the licensee to produce a compliance report under paragraph 2P.22.

2P.22 If the Authority so directs, and no later than 90 days following this direction, the licensee must produce, in a form approved by the Authority in accordance with paragraph 2P.12, a report ("the compliance report"):

- (a) as to its compliance with the specified duties during the period since the last compliance report; and
- (b) as to its implementation of the practices, procedures and systems adopted in accordance with the compliance methodology statement.

2P.23 The compliance report produced in accordance with paragraph 2P.22 must in particular:

- (a) detail the activities of the compliance officer during the relevant period covered by the compliance report;
- (b) refer to such other matters as are or may be appropriate in relation to the implementation of the practices, procedures and systems described in the compliance methodology statement;
- (c) set out the details of any investigations conducted by the compliance officer, including:
 - (i) the number, type and source of the complaints or representations on which such investigations were based;

- (ii) the outcome of such investigations; and
 - (iii) any remedial action taken by the licensee following such investigations; and
- (d) be accompanied by a certificate (“the compliance certificate”), in a form approved by the Authority in accordance with paragraph 2P.13, approved by a resolution of the board of the licensee and signed in good faith by the Single Appointed Director pursuant to that resolution, on the licensee’s compliance with the specified duties. The compliance certificate should certify that, to the best of the Single Appointed Director’s knowledge, information and belief, having made due and careful enquiry, the report of the compliance officer fairly represents the licensee’s compliance with the specified duties.

- 2P.24 The licensee must, as soon as reasonably practicable, following the approval of the compliance certificate by the board of the licensee, and in any event no later than 120 days following the Authority’s direction to produce a compliance report under paragraph 2P.22, submit to the Authority a copy of the compliance report and compliance certificate produced in accordance with paragraphs 2P.22 and 2P.23, and publish copies of each of them on its website.
- 2P.25 The licensee must, if so directed by the Authority, appoint an Independent Examiner for the purpose of providing a written report to the Authority:
- (a) reviewing the practices, procedures and systems which have been implemented to secure compliance with this condition;
 - (b) assessing the appropriateness of such practices, procedures and systems for securing compliance with the licensee’s obligations under this condition; and
 - (c) reporting on the licensee’s compliance with the requirements of this condition.
- 2P.26 The Independent Examiner’s report must be provided to the Authority within three working days of the licensee receiving it from the Independent Examiner.
- 2P.27 The Independent Examiner’s report must be commissioned at such intervals as the Authority may direct.

Part F: Definitions

- 2P.28 In this condition:

“Tender Support Activities” means activities undertaken by the licensee through (i) performing the pre-tender support obligations set out in Special Condition 6M and /or (ii) performing obligations in connection with



Consultation on licence changes to support electricity transmission competition during RIIO-T1

a Competitive Tender set out in tender regulations made under section 6C of the Act.

“Bidding Unit” means that part of the licensee group or business (including an associate of the licensee) that intends to participate, or is participating in, a Competitive Tender as a bidder.

Appendix 7 – Proposed amendments to Special Condition 1A

For the purpose of these proposed licence modifications, we have included any new defined terms used in the modified conditions in the dedicated 'definitions' condition for that section of the licence. They are included in the relevant draft conditions in Appendices 3 to 6.

Any new defined terms used in the modified licence conditions that are common to both the proposed 6M/6J and 2P/2O as well as our proposed amendments to 6I will be added to SpC 1A – Definitions and Interpretation. These are outlined below.

Definitions to be added to Special Condition 1A:

- **Competitive Tender** – a competitive process, regulations made under 6C of the Act, to grant an electricity transmission licence in respect of the construction and operation of Relevant Assets to a CATO.
- **Relevant Assets** – assets which the licensee has proposed for delivery of prospective Strategic Wider Works Outputs (i) in respect of which the licensee has submitted a notification under paragraph 6I.36 and (ii) in connection with which the Authority proposes to commence a Competitive Tender.

Appendix 8 – Feedback Questionnaire

We consider that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

Please send your comments to:

Andrew MacFaul

Consultation Co-ordinator

Ofgem

9 Millbank

London

SW1P 3GE

andrew.macfaul@ofgem.gov.uk