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14 August 2020

Dear Hannah

SHE Transmission response to National Grid Electricity System Operator's Early Competition Plan ('ECP') Phase 2 consultation

We welcome publication of ESO's Early Competition Plan Phase 2 consultation and the opportunity to provide input on this important topic.

This response is prepared on behalf of Scottish Hydro Electric Transmission plc (SHE Transmission), part of the SSE Group, responsible for the electricity transmission network in the north of Scotland.

Introduction

We appreciate the ESO has been asked to develop an ECP in response to a request from Ofgem¹. We are therefore mindful of the challenges associated with navigating such a fundamental potential change to the operation of the onshore network in Great Britain against a demanding timescale with the output somewhat predetermined by a third party.

In general, we are yet to be convinced that Ofgem has demonstrated that any proposed approach to introduction of competition in network planning will protect the needs of consumers today and in the future, more so than the existing framework. In particular, no comprehensive impact assessment or cost benefit analysis of true competition for onshore transmission has been undertaken. This makes it challenging to both develop such a regime (learning lessons from other utility sectors) and, where competition is assessed to be potentially beneficial, ensure that the regime optimises the benefits. In this regard, we are mindful of the full spectrum of tangible and intangible costs and benefits, not the narrow consideration of financing models. We understand this activity is not within the scope of the ECP but highlight it as it influences our ability to contribute constructively to the ESO's work.

Whilst we oppose the direction and pace of policy change in this space, we have sought to provide constructive input to the process. In addition, SHE Transmission has reservations relating to the consultative process being following by the ESO in respect of its competition policy. We have set out

¹ https://www.ofgem.gov.uk/system/files/docs/2019/09/electricity_system_operators_early_competition_plan_letter_0.pdf

these concerns in Annex A and would ask the ESO to reflect on these points as it considers its engagement process going forward.

SHE Transmission's position

Electricity transmission services are a natural monopoly in infrastructure design, build and operation. It is our experience, supported by comparative analysis of cost bases, that long run average costs fall as the infrastructure grows. Our experience also demonstrates the importance of sustained and committed asset stewardship in long term planning and stakeholder relationships in the provision of a public good.

We have serious reservations about mechanisms that would lead to fragmentation of existing transmission network. Economic theory and experience from other utility sectors, like rail², telecoms³ and energy supply⁴, demonstrates that there can be damaging unintended consequences to consumers and market stability that need to be considered and mitigated in the design of the mechanism. We see no public evidence of this care having been applied to the CATO implementation decisions (or OFTO which is used as a comparator). The lack of transparency in the functioning, outcomes and lessons of the OFTO mechanism makes it near impossible to undertake any independent scrutiny of both the appointment process or attributed consumer benefits.

We are also mindful of the potential impact that a fragmentation of responsibilities will have on the industry's ability to manage and maintain an economic, reliable and safe network. The introduction of several interfaces between the TOs, ESO, CATO and non-network solutions must be the subject of a robust impact and risk assessment with clear delineation of roles, responsibilities and liabilities for the future operation of the GB network. In the worst-case scenario, if there is a network incident (either physical or cyber), action and information flows must be seamless.

Stakeholders' views are crucial. We know that stakeholders have strong views on energy and on the associated infrastructure. Our experience is that stakeholders want to engage and co-create. Stakeholders also want to have trust in network providers and be able to see that high and sustainable business standards are being followed.

We are also mindful of the potential challenges this presents TOs when undertaking Business Plan preparations as part of the RIIO framework. The introduction of early competition coupled with the ESO's proposals for a low eligibility threshold will present unparalleled challenges for a TO seeking to maintain compliance with its obligations through business planning cycles. This is of sharp concern given the imperative of net zero greenhouse gas emissions and the case⁵ for accelerating grid investment to support those policy goals.

² <https://www.nao.org.uk/report/reform-of-the-rail-franchising-programme/>

³ <https://www.gsma.com/spectrum/lessons-from-spectrum-auctions-the-good-the-bad-and-the-ugly/>

⁴ After 17 suppliers went into administration in two years, Ofgem began major reform to address financial instability of market: <https://www.ofgem.gov.uk/publications-and-updates/supplier-licensing-review>

⁵ National Infrastructure Commission, Net Zero, Opportunities for the power sector, <https://www.nic.org.uk/wp-content/uploads/Net-Zero-6-March-2020.pdf>

Overall, it is SHE Transmission's view that the OFTO, CATO and ECP network solutions mechanisms are being pursued without due consideration of the potential disbenefits to the consumer. This is particularly evident from the ESO's ECP consultation document which, despite making tentative proposals, provides no impact assessment, benefits case or presents reasons for discounting alternative options (including continuing with existing frameworks).

In addition to the above, we have set out a high-level overview of the issues raised within our response to the ECP consultation questions below:

Summary of SHE Transmission's position:

The ESO should be seeking a low-risk approach to the development of models for early competition that allows time for proper scrutiny, analysis and consideration of proposals.

- The ESO should not pursue competition at all costs i.e. competition for competition's sake. The introduction of competition constitutes a major market intervention carrying risk of unintended and adverse consequences; the development of competition policy must be conducted in a safe and responsible manner.
- If the ESO does not have the vires to assess the costs and benefits of potential models, then any conclusions it reaches should be clear that these are subject to such assessment.
- The operating framework must facilitate the right for independent challenge of a decision to put a project to competition. The final decision therefore must reside with Ofgem.

ESO must seek to design a competitive model that can coexist with the existing framework, within which TO's and ESO discharge their obligations to ensure a safe, secure, and efficient network.

- As clearly articulated by Ofgem⁶, "GB has one of the world's most reliable and safest energy systems, with power cuts half the EU average and customer satisfaction with networks at a record high." This is testament to the success and strength of the existing framework, under which consumers benefit from direct engagement with the TOs and ESO, and the regulator acting as a proxy for competition to keep costs down and service levels high.
- The ESO must take great care to demonstrate that its proposals do not inadvertently erode the stability, governance, and accountability provided for under the exiting framework at the expense of trialing competition policies that are not founded on robust impact assessment and evidence base.
- Interaction with the existing NOA process is critical. Whilst the NOA will continue to recommend options for competition, the final decision must sit with Ofgem based on governed and well understood processes. We are concerned that the ESO is proposing not to apply a monetary threshold at which projects become eligible for early competition. This has significant impacts for a transmission owner in developing a business plan aimed at securing an efficient and economic network. Furthermore, it takes no account that there must be an

⁶ https://www.ofgem.gov.uk/system/files/docs/2020/07/rriio-2_draft_determinations_overview.pdf see Page 2, The Challenge

inflection point at which the costs of competition are outweighed by the benefits – the costs are not zero.

Any new model must strike the right balance between bringing demonstrable savings to consumers; ensuring Ofgem can protect the interests of existing and future customers; and enabling TOs and the ESO to continue role of ensuring the safety, efficiency and security of the network.

- The ESO is yet to produce any form of impact assessment or cost-benefit analysis as part of its proposals. We are unclear, at this stage, where the ESO deems consumer value can be sought from the competitive process. Any savings must be fully evidenced and not be based on opportunistic market circumstances as has been the case in previous Ofgem assessments of competition or proxy models.
- Previous experience demonstrates that much of the cost associated with large capital projects is in the initial asset procurement which is already fully competitive (under UCR regulations).
- There should be no dilution of the obligations and standards expected by new entrants. This includes for safety, security of supply, competitive procurement, customer service and financial risk fence protections. The risk allocation proposed by the ESO under a competitive framework should be identical to that under RIIO-2 otherwise comparisons against a TO option will be inconsistent.
- The introduction of competition (and CATOs) will see industry undergo a significant upheaval. As the ESO acknowledges, all existing industry codes will require review. We consider that, along with the TOs, the ESO will identify those codes impacted and this will form part of the final ECP report. No decision should be taken on the appropriate changes without appropriate and formal consultation and impact assessment.
- Whilst we are supportive of the approach for the ESO to make recommendations to Ofgem on project suitability for competition, we would recommend a requirement for greater transparency and accountability in this process making recommendations. Including but not limited to the ESO being required by licence to publicly produce an annual competition recommendations report, detailing process and rationale for recommendations and a penalty only incentive on the ESO for failing to produce this report or any required elements.

ANNEX A: SHE Transmission concerns with ESO approach to consultation on wider competition policy development

This Annex sets out our view in respect of the ESO's approach to consulting industry on its competition agenda. We suggest the ESO consider its engagement strategy going forward and to consider the observations set out below.

If Pathfinders is to inform ECP policy development, it should undergo formal consultation either as part of the ECP process or through its own distinct process.

Like the ECP, Pathfinders seeks to bring competition to the network system; but unlike the ECP, Pathfinders is not being developed via a formal consultation process. While we appreciate and welcome the engagement the ESO has undertaken on Pathfinders to date and the transparency in its activities, this approach is not consistent with the consultative due process standards we would expect for a market intervention of this nature.

For example, programme documentation is available, but it is documented across multiple unconnected sources in various formats (Forward Plan, website updates, slide decks, project updates). This inconsistency and lack of a central resource repository means that the information is difficult to locate, easy to miss, and the content is open to interpretation. We struggled to identify any clear and consistent documentation that sets out the fundamental purpose and operating framework of Pathfinders, and then tests outcomes against that purpose.

Additionally, from discussions with the ESO we understand that the ESO will likely be using key findings and assumptions from its Pathfinders workstream to inform its thinking on the ECP and indeed that the two processes might come together at some stage in the future. While there might be some logic to this approach, we note that Pathfinders seeks only non-network solutions so is only of partial overlap with the ECP.

Compounded by the fact that Pathfinders itself is still in development – the ESO describe it as a 'learn by doing' process for full implementation in 2026 - it is only right that the ESO have in place a clear programme of work to gather industry views, share and verify learnings, and test the accuracy of assumptions that are being used to inform the respective policies (including where pathfinders is likely to influence the ECP).

Without formal consultation, Pathfinders is not benefiting from industry insight leaving both policies open to serious risk of error.

By failing to share, discuss and receive feedback on its proposals across competition policy as a whole, the ESO is preventing affected parties from being able to review proposals in context, which would otherwise enable them to identify errors, risks and opportunities for improvements and efficiencies.

The approach taken by the ESO makes it difficult for industry to organise and plan resources to accommodate the ESO's activity. This means the ESO is losing a valuable opportunity for its proposals to benefit from robust peer review from key stakeholders and affected parties.

It is important that the ESO is able to assure itself, the regulator, consumers and market participants that it is gathering the necessary evidence, experience, and insight it needs to identify risks and opportunities that will enable it to formulate robust evidenced-based policy that it fit for purpose.

If the ESO is to take on the role of developing and implementing industry change, we would encourage it to adopt a best practice approach to consultation underpinned by transparent principles.

Developing and implementing major industry change that carries significant risk of unintended consequences is a role typically undertaken by a regulator – or an independent statutory body – that is subject to appropriately robust standards of consultation^{7, 8} and statutory processes that facilitate independent challenge⁹.

It is our observation that these important standards and process are largely absent from the ESOs approach. We would therefore encourage the ESO to reconsider its engagement and communication programme going forward to assure itself that its full suite of competition policy is being developed in a manner that is not only suitably robust for the scale of the intervention, but that it is consistent.

Finally, we refer ESO to Appendix 2 of SSE's Hinkley Seabank Consultation Response, Critical Analysis of Ofgem's Competition Model, by Michael Fordham QC for SHE Transmission¹⁰. We refer specifically to paragraphs 16 – 19, which set out the imperative of consultative due process in the development of any competition model and the requirement for a very clear operating framework to support any competitive tendering process, which includes the legislative framework, the regulatory framework, the commercial framework and how a tender process is run. It is our observation that the constructive input provided in that representation has not been considered by Ofgem or the ESO in its approach to the development of Pathfinders or the ECP, and we urge these representations to be duly considered going forward.

⁷ <https://www.ofgem.gov.uk/consultations/our-consultation-policy>

⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/255180/Consultation-Principles-Oct-2013.pdf

⁹ <https://www.judiciary.uk/you-and-the-judiciary/judicial-review/>

¹⁰ https://www.ofgem.gov.uk/system/files/docs/2018/04/sse_appendix_2.pdf

ANNEX B – SHE Transmission response to ECP consultation questions

1. Do you agree with the types of drivers of network needs that should be within the scope of the ECP? *

No.

The Network Options Assessment (NOA) assesses projects in development to deliver additional boundary capacity or alternative system benefits, as identified in the Electricity Ten Year Statement. The ECP consultation refers to the identification of need being part of the existing NOA process. Whilst we agree this to be the case, currently the NOA does not assess network asset replacement projects which don't increase network capability and its focus is limited to year-ahead network needs. We are not in a position to agree with the NOA assessing asset replacement and are concerned that the ESO is proposing to consider asset replacement works within scope of the ECP. As Transmission Owners (TOs), we are responsible under the Electricity Act, transmission licence and a variety of industry codes to ensure a safe and reliable network. The timely, cost-effective and co-ordinated replacement of ageing assets is integral to meeting such requirements. We have real-time duties for the stewardship of the infrastructure that we own, operate and maintain and are opposed to the idea of another party independently identifying or replacing such infrastructure where, in doing so, it could have adverse implications for our continued operation of the network. It is also highly unlikely that asset replacement is likely to meet the proposed definition of 'separable' and not interfere with current TO assets and would therefore question the value of its inclusion within NOA.

The definition of 'asset replacement' should therefore be refined to include only assets which simultaneously and as the primary driver provide a change to the boundary transfer capability on the Main Integrated Transmission System (MITS). This recognises that most asset replacement work is categorised as non-load and requirements to replace are determined by an assessment of monetised risk through the Network Asset Risks Metrics (NARM); a process which is out of the purview of the ESO.

We would also recommend the term 'High Voltage & Stability' be re-phrased to 'Network Constraint' as this captures the three broad constraint issues faced on the transmission network: High Voltage, Thermal and Stability. We would also welcome a clearer definition of connection assets subject to competition and how this relates to asset ownership boundaries as per the rules set out within Connection and Use of System Code (CUSC). In this regard, we note our experience whereby sole-use infrastructure has become shared-use infrastructure (sometimes following further investment) to accommodate new connecting parties.

In addition, and as noted throughout this consultation response, the ESO has not undertaken any form of impact or cost-benefit analysis to demonstrate the value for consumers in determining an appropriate scope for the ECP; indeed, we note that no such assessment has been undertaken for any form of early competition in networks.

2. Do you think a tender launched ‘early’ (i.e. after an indicative solution has been identified) but informed by market engagement that begins ‘very early’ is a suitable process? *

Potentially. However, in order to ensure the procurement body can realise the supposed benefit, early engagement should only be undertaken with those entities already granted Pre-Qualification as per the criteria outlined within section 5.3 of the consultation. Doing otherwise would run the potential risk that no options are suitable for a tendering exercise and early engagement drives no additional benefit for consumers (at significant sunk cost).

If early market engagement, either through Requests for Information (RFIs) or Expressions of Interest (EOI) identify a lack of market appetite, the ESO must consider dropping the potential to undertake a tender exercise at this stage. The ESO should not delay efficient solutions by incumbent network companies because of a lack of market appetite. We would welcome a clear and defined mechanism regarding any decision to proceed from market engagement to a formal tender (i.e. what does ‘enough interest that would warrant running a tender’ mean in practice, and what are the required inputs, assessment criteria, assurance and challenge mechanisms).

The consultation is not clear on what constitutes market engagement and how this insight will be reflected in the ETYS or NOA process by the ESO. Any options included at this stage from the market should be developed to the same standard options developed by the incumbent network owner as specified by the Solution Requirements Form (SRF). Transparency is critical, including for the customers who have a connection contingent on the outcome of this process.

It should also be noted that under an ‘early’ model, the TO will already be developing proposed solutions with several service and asset providers to develop a solution as it is required to do so under licence. The ESO notes under market engagement, it envisages that this process would be run by the ESO given it is unlikely potential bidders would be willing to share their information with the incumbent TOs. If an asset or service provider identifies the potential to compete for a network need, it could detract from the TOs ability to provide economic and efficient solutions as required under the transmission licence, undermining the very basis for competition. We would welcome further information from the ESO as to how it would seek to prevent this potential conflict of interest without imposing undue costs.

3. Have we identified the appropriate criteria to determine whether to compete a project? *

We agree that any assessment on whether to run an early competition should be focussed on an assessment of the costs versus benefits. This full and comprehensive assessment must consider whether running a competitive process has the potential to deliver whole life net benefit than would otherwise be delivered via the incumbent TOs proposed option (e.g. through lower capital costs, reduced constraint charges etc whilst meeting the same requirements). The cost of running a tender exercise must include the cost of the proposed procurement body and contract counterparty. We note that the ESO has provided no additional information on how it will undertake this assessment. Nor has it provided any assessment of the additional costs it or other parties will incur in running these tenders. These would need to be factored in and reported transparently annually through new licence conditions on the ESO.

We note from the July webinar that - if its proposals are progressed by Ofgem – the ESO expects any assessment methodologies to be created and shared with industry at a later date (i.e. not before February 2021). We would encourage the ESO to share its proposed plans for developing the methodology as soon as possible.

However, we strongly disagree with the ESO's suggestion that projects with a capital value of under £50m could potentially be subject to early competition. We also note however, that the £50m threshold was an arbitrary number set by Ofgem as a result of the RIIO-2 Business Plan Incentive to 'flag' projects potentially suitable for early competition. There has been no assessment as to whether £50m would realise net benefits or the potential impact this could have on TOs network planning activities. It will become a significant challenge for TOs to address the needs of the network and its customers, if all potential schemes are subject to the time-consuming requirements of an uncertainty mechanism and subsequently early competition. Ofgem undertook a very narrow in scope (and in our view insufficient) assessment and cost-benefit analysis to reach the £100m threshold for late competition. Of concern is Ofgem's intention within Draft Determinations for RIIO-2 to revisit the projects of £50m+ identified in Business Plans when finalising any early competition models for RIIO-2. This would appear to suggest Ofgem expects the figure to remain at £50m notwithstanding the lack of assessment.

It is also important that the decision to run a competition process is not a hindrance to delivering infrastructure critical for safety, energy security and for facilitating Net Zero. For example, infrastructure should be able to be delivered in the time period between CfD auction results and delivery year. It is critical that the ESO includes within its criteria a timeliness assessment to run the competition process. This should assess whether the time taken to run the end-to-end competition process is prohibitively a hindrance to delivering critical infrastructure required for safety, security of supply and delivering Net Zero. A tendering process which delays a project from being delivered on its required year (i.e. when NPVs are greatest) should be avoided and the incumbent TO allowed to deliver the project. When factoring in certainty of need we recommend only projects which have a 'proceed' decision in the NOA process be subject to competition, where 'proceed' is defined as the optimal delivery date of the project being the same as the earliest in-service date.

We additionally recommend a licence requirement be introduced requiring the ESO to publish its cost and benefits assessment of running a tender. This should follow standard pro-forma and not subject to change by the ESO from year-to-year without due consultation with industry.

Under RIIO-T2, the TOs are proposing a significant investment in environmental programmes to reduce carbon emissions (with SHE Transmission also proposing a bio-diversity net gain output for T2). The ESO's cost benefit analysis must also factor in the potential impact on carbon abatement resulting from third party delivery compared to that of a TO under RIIO-2. SHE Transmission is also committed to operating a sustainable business – for example, through payment of Fair Tax, the Living Wage and transparent reporting. We would expect new market entrants to also meet best practice in this regard.

A clear delineation of responsibilities will be crucial in the success of any competitive tender. We would welcome further engagement with the ESO to determine the definition of 'separable'.

4. Do you agree with the approach where the ESO makes recommendations to Ofgem on the projects/needs which are suitable for competition? *

Yes. Whilst we are supportive of the approach for the ESO to make recommendations to Ofgem on project suitability for competition, we would recommend a requirement for greater transparency and accountability in this process making recommendations. Including but not limited to the ESO being required by licence to publicly produce an annual competition recommendations report, detailing process and rationale for recommendations and a penalty only incentive on the ESO for failing to produce this report or any required elements.

However, the final decision on whether to apply early competition must be subject to consultation with the final decision resting with Ofgem and subject to appropriate challenge (i.e. appeal or independent review).

Subject to the ESO adopting best practice in consultation (and decision making) that involves all stakeholders, we do not agree that a panel is required. Best practice should include a clear reasoning and metrics against which a project could be recommended as suitable for competition, along with a dispute resolution process should the incumbent TO disagree with the ESO's analysis prior to a recommendation being made to Ofgem (or potentially, the dissenting view forming part of the recommendation so Ofgem is made aware).

5. Do you agree that the incumbent TO's should participate in competitions through the same process as other bidders, and what mitigations may be needed to allow this?

No.

SHE Transmission is required under the Electricity Act 1989, electricity transmission licence, various industry codes and standards to maintain an efficient and economic network. We are therefore obliged, during network planning processes, to present the most economic and efficient solution to address network needs. We do not foresee any additional benefit of a TO participating within competitions through the same process as other bidders. In turn, we therefore do not believe that any mitigations are required, particularly given that these would impose additional cost compared with an existing process that works well and is transparently governed through industry codes. The TOs proposed solution would effectively act as the counterfactual to market offerings.

The ESO has noted its position that TOs should be able to participate in competitions as it considers it challenging to otherwise ensure fair treatment between bidders because of the different frameworks underpinning their bids. We note a lack supporting evidence that comparing bids would be more challenging and wish to highlight this approach is being adopted by the ESO through the pathfinders. We are therefore unclear as to why the ESO considers this approach is unlikely to lead to fair treatment (particularly as the TO will be exposed to additional cost as a result of its RIIO-2 commitments).

In addition, the consultation document states that the ESO will *be 'considering the merits of ringfencing the function within the TO and the merits of transferring roles and responsibilities to the ESO.'* Again, as noted earlier, as a TO we have significant obligations enacted through Parliament which

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require us to manage an efficient and economic network. The potential of ringfencing a TOs network or system planning function will significantly impinge on our ability to plan the network and subsequently meet our legal and regulatory obligations. Such a fundamental change must be subject to appropriate risk and impact assessment; we therefore encourage the ESO to share with stakeholders how it intends to approach this essential element of its policy development

The interaction of competition process and the uncertainty mechanism process for RIIO-2 network companies remains unclear. We note the consultation position of the ESO is to allow incumbents to participate in the competition process on the same commercial basis other participants. This however does not appear to align with Ofgem's position established through the recent draft determinations for RIIO-T2 (electricity) which states projects not funded through the baseline and subject to uncertainty mechanism are also subject to competition, and the uncertainty mechanism process within the price control will be used as the process for TO cost recovery.

We are unclear on exactly what the ESO is referring to in the context of 'network planning roles' and strongly disagree with the notion of a transfer of responsibilities (whilst appreciating the consultation does not directly propose a transfer). The ESO does not hold information, knowledge or experience relating to the intricacies of SHE Transmission's network and its stakeholders. It has also failed to explain or present any information as to any transfer of 'network planning roles' is in the best interests of consumers.

6. Which parties do you think would be best placed to fulfil each new role identified in the early competition model and why?

We agree with the roles identified, however do not believe that each role is required following the grant of a CATO licence. We would also welcome further analysis of the costs and benefits each additional party is expected to provide and whether this provides value for consumers. The role of approver, licence provider and licence counterparty must be Ofgem where a transmission licence (i.e. CATO) has been granted to operate transmission network (as is the case for OFTOs). Doing otherwise risks a distortion in how regulated networks are subject to regulatory scrutiny and could create an unlevel playing field.

In acting as approver, any decision taken by Ofgem to apply competition to a project must be subject to consultation and provide the right to independent legal challenge.

In the case of a non-network solution, we agree that a contract counterparty is required to monitor and manage compliance against a contract for any solution not performing the function of electricity transmission. Where the provider of a non-network solution has acceded to the codes this should be subject to an identical dispute resolution mechanism as other obligated parties.

We note that our stakeholders frequently comment on the complexity of the energy sector. If progressed, we believe that significant effort should be given to supporting stakeholders in understanding this new structure and the roles of all the parties involved. In our view, stakeholders (not least the local communities impacted) should continue to be at the heart of all network planning and development activities.

7. Do you agree with a TRS type revenue model as the default model?* In what circumstances (if any) do you think a regulated model may be more appropriate?

Not at this stage. There is no robust justification as to why the TRS type revenue model is the appropriate approach for early competition.

As noted above, we think the differences in regulation between existing and new entrants should be limited and only applied where there is a strong and compelling evidence-based case. However, assuming a TRS model is closely aligned to the RII0-2 RAV based approach insofar as incentives/pass-through costs are applied, it will provide the ESO with further certainty and a basis on which to recommend options (as per the challenge raised in response to question five).

We also note that Government is considering a Regulated Asset Base (RAB) funding model¹¹ for new nuclear plant in Great Britain. This approach was also successfully deployed for the first time to a single asset construction project – the £4.2bn Thames Tideway Tunnel (TTT) sewerage project. We would welcome further analysis from the ESO to determine why this approach is not suitable in the context of onshore electricity transmission. This model is also lacks transparency and has so far it has not been demonstrated through clear and transparent evidence this model delivers real benefits to consumers including the OFTO model which is only for constructed assets that have not reached their full asset lifecycle.

In addition, as part of the its rationale for recommending TRS, the ESO has also noted that it is comparable to public private partnerships (PPP) revenue model. Recent Government policy has indicated it will no longer use PF2, the current model of Private Finance Initiative (PFI) for new government projects¹². We would therefore welcome further analysis of why the ESO considers this approach to be suitable in the context of onshore transmission assets.

8. Do you think that revenue during the preliminary works period would help encourage participation in early competition?* If so, what mechanism would be most appropriate?

SHE Transmission does not hold a view on whether revenue during preliminary works would help encourage participation in early competition. If allowed, it is important that such revenue is not used for multiple parties to undertake the same activity and that the output is transferable.

However, arrangements do exist within the RII0-2 framework for licenced TOs. This is similar in nature to the flexible/variable payments approach proposed by the ESO. The TO will recover its anticipated view of the cost of preliminary works and, where a scheme or project is subject to an uncertainty mechanism (i.e. Strategic Wider Works), Ofgem will then assess the costs incurred by a TO during preliminary works and determine whether said costs were economic and efficient. It will then adjust the revenue of TO for construction to reflect this assessment (i.e. disallowing any costs which in Ofgem's view were inefficient).

¹¹ <https://www.gov.uk/government/consultations/regulated-asset-base-rab-model-for-nuclear>

¹² <https://www.gov.uk/government/collections/public-private-partnerships>

9. Do you agree with the current preferred option of setting the duration of the revenue period to the length of the network need? *

We do not have a preferred option. However, we do not support a revenue period being less than the network need. In doing so, there is a danger that the provider is no longer incentivised to fulfil its obligations under the contract period. We do not believe a breach of contract claim is sufficient in seeking address network failure. This also aligns with the RIIO framework and any acceleration of revenue and shortening of asset lives ignores these critical aspects of asset renewal, network resilience, and balance of intergenerational charges. These are critical points that must be considered for current and future consumers.

We do believe it is appropriate that any solution put forward can last for the duration of the network need. We also agree that funding should not progress for a period longer than the technical asset life. The technical design of any asset entering the transmission system must be able to meet the required network need, of which the duration is a fundamental principle.

10. Do you agree that the maximum length of the revenue period should be capped? * If so, at what length?

Yes, we agree with capping the revenue a period of that consistent with RIIO-2 depreciation schedules. This avoids inconsistency in any assessment due to the timing of cash flows when charges should be levied over current and future consumers consistently.

11. Do you agree with the current preferred option of including a mechanism for extending the revenue period? * How should such a mechanism work

Of the two options presented by the ESO, we agree that extending the revenue period is preferable, in principle, though still requires further development. We believe the ESO should consider the option of providing for handover to the incumbent TO. This would help ensure that any ongoing operation and maintenance is undertaken in a safe and efficient manner. This approach would also assist in preventing a scenario whereby it appears cheaper (but not necessarily efficient) for the existing provider to continue providing operation and maintenance when compared to a full replacement. The ongoing operation might appear to be in the best interest of consumers but there is very little to ensure that the provider is not artificially increasing the cost for a single asset. Particularly where it is not clear if these are caught under the UCRs and therefore there would be very little control over costs provided they remain under the UCR threshold.

If an asset is fully depreciated during the revenue period, we do not believe the successful bidder should retain any additional revenue beyond operating and maintenance costs, through the TRS for the asset in question. If the asset continues to be of use to the wider GB transmission network and meets all relevant safety and technical standards, the owner should be remunerated for operations and maintenance cost only. We do not believe it to be in the interests of consumers to continue to fund (beyond O&M) an asset which has been fully paid for. In addition, extending duration of a licence/contract will allow will mean the entity continuing to provide services upon which it is paid to do so (i.e. constraint management), leading to continuation of revenue streams. This is consistent with the RIIO model and avoids double charging for assets.

The extension of any revenue period must be subject to an appropriate 'uncertainty mechanism' built into the licence or contract. This would allow the CATO/non-network solution to apply for an extension and should provide an appropriate basis to assess continuing and potential future costs not included during the original revenue period. This should include a materiality threshold of sorts that must be met for it to be triggered (i.e. FES/NOA demonstrating that the network need extends beyond the revenue period). There is also a number of other asset condition requirements that would need to be instituted at that time as part of the assessment of costs in line with regulatory and industry asset management best practice.

12. What is the most appropriate cost assessment mechanism for fixing underlying costs after preliminary works are completed?

We strongly believe that all participants involved in the development of onshore transmission network should be subject to identical processes for fixing underlying costs after preliminary works are completed. Within the existing RIIO framework, Ofgem's costs assessment mechanism under the Strategic Wider Works (soon to become Large Onshore Transmission Investment) uncertainty mechanism has worked well. We would therefore advocate a similar process is adopted for any competitively tendered projects.

Following the ESO's recommendation to Ofgem, all cost assessment should be undertaken by Ofgem on a consistent basis to that required of a TO. This would be consistent with the approach, as suggested by the ESO, of an economic and efficient review. Consideration of the RIIO model and cycle of price controls may be required given the longer term forecasting window something which Ofgem has steered away from for RIIO-2 compared to the 8-years under RIIO-1.

We note the concerns of stakeholders that this might be subjective, but it has been deemed appropriate and in the best interests of consumers by the regulatory authority for Great Britain over the last eight years and continuing for the period of T2. There is no evidence to suggest an alternative approach would lead to additional benefit. We therefore expect that all third parties potentially seeking to provide transmission infrastructure are held to an identical standard (as is all the case for OFTOs under Ofgem's cost assessment process).

13. Will there be enough lender interest in a debt competition to drive competitive pricing? What other debt structuring options do you think would be appropriate?

We are not in a position to confirm whether there will be enough lender interest in a debt competition. This is a complex matter that will depend on the market and lender appetite compared to the specific project. We do not believe current or future market conditions should be exploited to make a case for competition compared to the RIIO counterfactual.

14. How should the indicative debt costs and level of gearing used in final bids be determined? How should the risk of the actual amounts be allocated?

There should be a process in place that governs and ensures consistency in how the level of gearing and indicative costs are determined for all bidders; similarly, risk should be allocated for different bidders in line with an agreed, transparent, and consistent process. As we have set out, there

should be a level playing field whereby high gearing structures should not be rewarded when the incumbent TOs are being required to de-lever in RIIO-T2. The regulatory requirements including indebtedness, availability of resources, equivalent strong credit rating, and reporting should apply to any competitor outside the incumbent TOs.

15. Are there any other key risk that should be addressed at this stage?

We agree with the notion that the robustness of the cost assessment mechanism will be important in managing and allocating key risks. This, we feel, adds further weight to using Ofgem's tried and tested Strategic Wider Works (SWW) cost assessment process for those projects subject to early competition in order to ensure consistency of risk allocation and approach.

The ESO might also wish to consider how, as part of the technical assessment or otherwise, it will manage the risk of the successful provider (if not a TO network asset) causes issues for the TO in its licence obligation to operate and manage the network which could lead to additional cost in order to rectify potential issues. If the TO is not involved in the assessment of bids this could risk wider system issues. We would welcome further discussion as to how this is factored into assessments and the mechanism under which any impact on TO performance would be factored into the wider regulatory framework.

16. Do you consider the overall risk allocation between bidders and consumers appropriate? What are your views on risk allocation?

Yes, it would appear appropriate at this stage. However, the allocation of risk must be subject to independent assessment based on the type of solution being progressed and undertaken on a case by case basis as is the current model for network investment. Projects can be large and bespoke covering different terrains and topography and therefore the risk allocation must be flexible to account for such differences. This is in addition to our view that the regulatory obligations and conditions should apply regardless of bidders being an incumbent TO or not.

17. Do you have any views on the list of potential activities that could be undertaken to support bidders, the information that would be required and the potential value to consumers they could drive?

SHE Transmission does not have a view at this stage until further information becomes available.

18. What are your views on the challenge of flexing the procurement process to varying needs but maintaining standardisation?

Flexing procurement process

It will be extremely challenging to flex the procurement and maintain consistency and fairness in evaluation. In seeking to simplify the tendering process for a complex, high-value, high-risk, highly-regulated fraction of a utility market, the ESO is naturally experiencing difficulties in designing a one-size fits all tendering process for a such a wide range of potential projects, needs cases, and costs. Creating an onerous tendering process for low value projects of less than £50M could offset the benefit of engaging in the process; and on the contrary, creating an overly simplistic tendering process

for mega projects could introduce an unacceptable risk where quality, safety or cost-management are compromised.

If the ESO is intent on creating a one-size-fits-all tendering process, then we would suggest it prioritises the maintenance of quality, safety and cost-management of the medium-large and mega projects to avoid introducing unnecessary risk of project failure or cost escalation, which could compromise the benefit competition sought to bring in the first place. We consider the 'medium' category cost range is too broad and should be reduced to a maximum value of £500M.

Tender process model

On the tender process model, the two-phase ITT proposed is unusual and the ESO has not provided enough detail for us to comment on; for example, the proposed evaluation criteria are not available. It also appears that in the second phase, significant costs could be incurred that appear to have no route for recovery.

Regarding indicative costs, whilst we understand the rationale, we believe that there is little merit in bidding based on indicative costs as it builds more uncertainty into the tender process. Indicative costs could be largely different from outturn costs in the case that a "non-standard" design is chosen. This could lead to additional risk premiums being built into the bid and then an economically incorrect result from the tender process. It does not drive the most economically advantageous and efficient outcome for consumers.

Utility Contract Regulations

Finally, we note on page 62 the ESO considers that the UCR might not be suitable for the competition process and that it is considering alternatives. We disagree and do not believe the UCRs are optional. The introduction of an alternative regime would add unnecessary delay and pose additional risks and costs to consumers than would otherwise be the case under the existing model.

This was confirmed on the webinar on 23-July-20 when the ESO suggested bespoke regulation might be more appropriate. While we understand that the ECP faces a challenging task, we disagree that the ESO should seek to create bespoke regulations to fit its policy, particularly where there has been no reasoning provided as to why it considers the existing regime unsuitable. As the ESO itself points out, fairness and transparency are of paramount importance and these principles form the foundation of the UCR. We believe the ESO should urgently share more information about its logic in this area both in terms of why the UCR is not suitable and why it believes the creation of replica and bespoke regulation is an appropriate precedent to be setting.

Until the ESO shares more information on this, we cannot engage constructively on this point. As with all elements of this consultation, we would welcome more detail to inform our understanding and contributions to the discussion.

Passporting prequalification

We agree with the need for a 'passporting' pre-qualification for a certain period and appreciate and understand the ESO's rationale for referring to OFTO regime as a comparator. However, in relation to

OFTOs, the solution being tendered tends to be consistent (i.e. point to point connection). This will not always be the case under the ECP model as there may be many different solutions to address a network need and it might cause difficulty in meeting all possible permutations.

We agree with the ESO that bidder pre-qualification should somehow be specific to project size (or type of asset likely to be provided).

We would also welcome ESO sharing its thinking in relation to duration of qualification to be considered so that we can review in more context and provide feedback. In addition, we would welcome further information on how potential bidders with a passport will be re-assessed after a period. We note that companies with good financial standing can suddenly find difficulties as a result of a single event (negligence claim, or recession, or a pandemic for example). As a minimum, and regardless of 'passporting' we believe that all companies must be able to demonstrate they meet the necessary standards (or maintain them for those with a passport) at the PQQ stage.

ESO should also consider and share its thinking on how new entrants to the market for each bid will be treated.

19. Do you agree that the proposed list of primary information relating to network information is adequate to identify and cost potential solutions for both network and non-network solutions? *

Provision of information

We are concerned about how the data provided by bidders will be assured, quality controlled, updated, managed, and secured. Proper data governance is essential, and this is especially true if the ESO needs to later refer back to data provided that turned out to be incorrect. Further, in this situation, what course of action will be taken against parties liable and what action will be taken to protect parties affected.

In addition, when TOs are considering network requirements this is being done against a 'live' network background. The provision of information under ECP appears to envisage a point in time assessment. This would more than likely fail to take account of changes in the existing network between information being provided and the commissioning of the asset. In order to ensure that consumers are not paying for sub-optimal solutions (or stranded assets) we would welcome further clarification from the ESO as to how it intends to mitigate this risk throughout the procurement process. To what extent will the TOs be required to continually update information being provided (and how is the additional cost of doing so factored into the overall benefits case)?

Lastly, if pre-submissions are reviewed by TOs, there needs to be appropriate controls and assurances in place with which market participants are comfortable.

20. What are your views on our current thinking for the elements that potential bidders should demonstrate at PQ?

We encourage the ESO to consider the following points:

- The need to demonstrate that appropriate commercial governance and financial stability are in place as part of the Pre-qualification stage;
- The liabilities period needs to be considered, in particular in respect of how a consortium would ensure they can maintain liabilities over the period (and the potential impact of failure/default on other network operators i.e. through collateral warranties);
- It is concerning that the ESO is seeking to make allowances – via a two-stage PQ phase – for small suppliers with poor or no financial standing. We do not believe that this level of market intervention is either justified or responsible.

We note that the ESO has not provided any thinking or proposals in this consultation for the situation where a successful bidder fails to complete the project or defaults its commitments. We expect this to be set out in the next consultation. Ahead of this next consultation, we would encourage the ESO to consider the learnings of other sectors where regulators have intervened to increase competition. We point the ESO specifically to the energy supply sector, where negative unintended consequences have resulted from competition being incentivised prior to appropriate governance arrangements being in place to protect market stability and customer service.

In relation to market participants failing, we have set out some additional information below to assist in illustrating our view above. This demonstrates the need to consider the wider impact on industry and consumers of failing market participants, and the need to factor this risk into any mechanism designed to facilitate new entrants.

Background

Over recent years, the combination of new technology and low barriers to entry enabled a sharp increase in the volume of energy suppliers operating in GB. This brought innovation, choice and increased price competition for certain tariffs, but it also attracted business models that were unsustainable. In 2018 and 2019, 17 suppliers (almost a third of all retailers) went into administration displacing 1M customers¹³. The costs of managing a sudden exit from the market – including unpaid industry debt and customer credit balances – was covered by the remaining solvent suppliers, which was inevitably passed on to consumer bills.

Costs and disruption to industry

Failed payments to environmental schemes

For the 2018-19 obligation period, multiple struggling suppliers failed to make their regulatory payments into the Renewables Obligation (RO) and Feed-in-Tariff (FiTs) schemes, which triggered the

¹³ Source: <https://www.energyscanner.com/which-energy-suppliers-have-gone-bust/>

mutualisation process. This meant that compliant and partially compliant suppliers were required to make up the shortfalls of £100M and £4M for RO¹⁴ and FITs¹⁵, respectively.

Last Resort Supply Payments

Once approved by Ofgem, a supplier of last resort makes a claim for a Last Resort Supply Payment from the relevant licenced distribution networks, who collect the funds from the remaining solvent suppliers in the market. This payment covers the costs incurred in onboarding affected customers and the cost of honouring the credit balances built up by affected customers before the supplier went into administration.

Some noteworthy Last Resort Supply Payments for the period include: OVO's claim of £12.4M¹⁶ approved in January 2020; Octopus Energy's claim of £13.2M¹⁷ approved in January 2019; and Co-op Energy's claim of £14M, approved in January 2018¹⁸. It's also worth noting that these claims represent only a portion (c. 50-70%) of the actual cost of credit balances. The rest is typically provided by the new supplier.

Use of system bad debts

As Ofgem explains in its consultation document¹⁹, when a supplier fails (or has its supply licence revoked), it may have certain unsettled liabilities toward DNOs. Where such liabilities are due to the supplier not paying the relevant DNO for the use of their system to supply their customers premises, they constitute UoS Bad Debts. These costs are not documented anywhere but it's worth noting that Ofgem was prompted to review industry procedures around UoS bad debt in light of the increasing trend of supplier failures.

Resulting industry change

In addition to the required input from industry to engage in and manage the supplier of last resort process, the regulatory change involved in retrospectively addressing shortcomings in the operating frameworks cannot be underestimated. In 2018²⁰ Ofgem launched a programme of work to address the lack of protections against poor customer service and financial instability. It also set out to ensure

¹⁴ Table 2 and Table 2 of <https://www.ofgem.gov.uk/publications-and-updates/renewables-obligation-late-payment-distribution-2018-2019>

¹⁵ See section 1.3 of https://www.ofgem.gov.uk/system/files/docs/2019/12/feed-in_tariff_annual_report_2018-19.pdf

¹⁶ https://www.ofgem.gov.uk/system/files/docs/2020/01/decision_on_ovo_energy_lrsp_claim.pdf

¹⁷ https://www.ofgem.gov.uk/system/files/docs/2019/01/octopus_last_resort_supply_payment_claim_-_final_decision.pdf

¹⁸ https://www.ofgem.gov.uk/system/files/docs/2018/01/last_resort_supply_payment_claim_from_co-operative_energy_final_decision.pdf

¹⁹ https://www.ofgem.gov.uk/system/files/docs/2018/11/initial_consultation_letter_draft.pdf

²⁰ <https://www.ofgem.gov.uk/publications-and-updates/supplier-licensing-review>

a failing supplier paid their share of costs and to minimise the implications of supplier failures for remaining suppliers and consumers²¹.

After a considerable period of development, the regulator is now introducing new entry requirements and increasing scrutiny of supply licence applicants, as well as changes to distribution licence conditions²² to better govern the obligations and timescales for last resort payments. This process has been complex and resource-intensive both for the regulator and industry.

Recommendation

We encourage the ESO to consider the experience of the retail market and ensure that it has designed upfront a suitably robust pre-tender framework that will ensure financial stability and appropriate governance in the management of poor performance or company failure that minimises the impact on other market participants and consumers.

21. Do you think that the range of criteria we are considering at ITT (stage 1) is appropriate and will drive value for consumers? *

We are concerned that the ESO is not necessarily going to know whether a solution is optimal at ITT Stage 1, nor will the bidder be able to provide cost certainty at such an early stage of the process. The ESO should avoid trying to set a solution too early in the development process and be aware of the likelihood that solutions and costs will be subject to change.

We also note that cost efficiencies of a proposal should be of paramount importance in ensuring this competitive process brings both innovation and savings for consumers. As such, we would have expected more detail on how this will be assessed. Further, we would have expected to see how each criterion will be weighted when proposals are scored (including how cost is balanced against technical requirements). As with previous responses, we reiterate that more detail is required so that we can understand the ESOs proposals and provide useful and constructive feedback on them.

Whilst appreciating that during ITT it is difficult to provide any form of cost certainty, in order to ensure that a solution has the potential to drive value for consumers, is it possible to develop a form of sharing factor based on the certainty of cost at stage one (as per Ofgem's Business Plan Incentive i.e. the higher the degree of cost certainty earlier in the process, the higher the potential for improved incentives).

22. Do you agree with our approach for evaluating bids at ITT (stage 2)? *

There is very little detail on how ESO propose to evaluate bids or how each criterion will be weighted when proposals are scored. More detail is required so that we can understand the ESOs proposals and provide useful and constructive feedback on them.

²¹ <https://www.ofgem.gov.uk/publications-and-updates/supplier-licensing-review>

²² https://www.ofgem.gov.uk/system/files/docs/2018/11/initial_consultation_letter_draft.pdf

Requirements for maintenance proposals do not seem to form part of the delivery assessment. We believe this should be the case and would welcome more information from ESO on their proposal not to include requirements for maintenance in the delivery assessment.

23. Do you agree with the criteria/features we have proposed to be within the evaluation? *

As above, there is insufficient detail on how ESO propose to evaluate bids or how each criterion will be weighted when proposals are scored; as such we cannot provide a response. More detail is required so that we can understand the ESOs proposals and provide useful and constructive feedback on them.

24. What are your views on our current thinking for the PB stage?

We do not agree that an incumbent TO should require a CATO licence (unless the successful bidder is from another company within the same group in which a CATO licence would be required).

We agree that any successful party, whether CATO or contract, must accede the relevant industry codes.

25. What is your view on the need for a bid bond and what do you think would be an appropriate value and time period?

We note that securities are required from generators under the STC wishing to connect to the transmission network. We would expect a similar regime to be in place for any CATO or non-network solution in order to demonstrate commitment to developing the successful solutions. Value should be determined on a complexity and value basis.

26. Do you agree the tender revenue stream should not commence until successful commissioning and that no payments should be made to the successful bidder prior to this point, except potentially for preliminary works and/or where there is a particularly long solution delivery works programme?*

Yes, we agree with this approach on the condition of maintaining financeability and considering any counterfactual mechanisms existing in the RII model that provides similar incentives and penalties for on time output delivery. Care must be taken with regards to short term financeability and longer term benefits to consumers particularly given the challenges in undertaking an appropriately robust Cost Benefits Analysis (CBA) for consumers. These challenges resided in the CPM and SPV models and under this approach there is no reason to believe they would not persist.

27. Do you have any views on incentives or penalties in relation to preliminary works and solution delivery, including the impact of commissioning delays on the tender revenue stream / revenue period?

We agree with the ESO that explicit incentives are not required in relation to timely and quality delivery of the preliminary works and solution delivery works as it will be in the interest of the successful bidder to do this to allow them to successfully commission their solution and for the revenue stream to commence.

Network codes and regulatory obligations underpin and govern the operation of the entire network system. They are imperative to the safety, security and cost-effectiveness of the system, and as such they are complex, robust, and undergo meticulous impact assessment prior to their introduction or amendment. We are concerned with the ESO's proposal to replicate these strict code requirements across contracts for non-licensee bidders without providing any detail or proposals around how it would ensure contractual requirements mirror the code requirements, how parties would comply, how the ESO would monitor compliance, and how the ESO would ensure that the process required of non-licensed bidders does not provide a competitive advantage over licensed bidders, or that it does not introduce unintended consequences that damage the integrity of the network as it stands.

The lack of consideration at this stage as to how non-licensed providers of non-network solutions will be held to account with regards to solution delivery and impacts is concerning. Contractual arrangements will need complex and careful drafting to ensure that risks and liabilities are appropriately apportioned and understood by participants ahead of any competitive process. The ESO must provide comfort and be able to evidence to TOs that they will be able to operate the network under the existing compliance regimes, unaffected by non-network solutions. In the event that this assurance cannot be provided, the ESO must ensure that there are robust contractual mechanisms for enforcement of industry requirements and for recovery of consequential TO costs ultimately borne by consumers.

We note that under RIIO-T2, Ofgem is proposing to propose to introduce a suite of three Large Project Delivery mechanisms that should be available for application to large (£100m+) transmission projects in RIIO-2 in order to incentivise their timely delivery, and to minimise consumer detriment if delivered late. The three mechanisms are:

- re-profiling of allowances
- milestone based approach to recovery of allowances; and
- project delay charge.

We would suggest the ESO's proposals in relation to early competition closely align with Ofgem's proposals following the publication of Final Determinations for RIIO-2 to ensure a level playing field and consistent approach across industry.

28. Do you agree that the existing industry arrangements in respect of commissioning will be appropriate for early competition with minor adaptations?* What adaptations do you think would be required?

Yes. All parties involved in operating the onshore transmission system must be held to an identical standard (either via codes or licence). However, we remain concerned at the difficulty associated with attempting to set out obligations within a contractual agreement. Ownership of transmission licence and network assets was purposely designed as a monopoly activity to clearly and transparently manage risk through legislation, licences and codes. Failure to comply with these requirements results in not only cost, but additional penalties and ultimately the potential for a licence removal. We would welcome further insight from the ESO to understand how it intends to manage this via a contractual route.

29. Do you agree with the proposed potential operational incentive regime for early competition?* Are there any topics omitted which you feel should be incentivised and why?*

Incentives

The potential operational incentive regime is likely to depend on the solution being tendered. For example, an Energy Not Supplied (ENS) incentive is possibly less appropriate for a radial link to a single generation customer as ENS is currently measured based on the loss of demand resulting from a network fault. If the network need results in a CATO who is directly supplying end consumers through a Grid Supply Point (GSP) then ENS is potentially more suitable.

We also support alignment with RIIO-2 obligations in relation to environment, asset health, stakeholder engagement (including the reputational survey of communities impacted by infrastructure) and timely connections.

We do not consider that incentives are required for non-network solutions. If the non-network solution does not provide the services required under contract it is penalised according to that contract (i.e. reduction of revenue for a period).

New Investment

The tendering exercise was undertaken to address a specific network need and develop a solution to address that need. The only scenario under which new investment could default to a successful tenderer should be where a CATO licence has been granted (with identical obligations to that of a TO in respect of connection offers etc). Where this is not the case, the need for new investment on the network should default to the incumbent TO to develop through existing processes, subject to competition if the new network need meets the relevant thresholds and requirements.

We are unclear under which scenario new network investment would ever be required for a non-network solution. If the non-network solution was failing to meet its required output under the contract this should be managed through provisions within the contract (i.e. revenue tied to availability, no penalties if this is due to third party interference).

Operational switching and outage management

We believe a CATO would have to be subject to the GB Network Access Policy (NAP). The NAP is designed to facilitate efficient performance and effective liaison between the ESO and the TOs in relation to the planning, management and operation of the National Electricity Transmission System (NETS) for the benefit of consumers. This approach must be maintained in order to ensure a consistent approach to managing the GB network for all transmission owners. Doing otherwise potentially risks the safe and secure operation of the network.

30. Do you agree that with minor adaptations the existing industry codes/processes they can incorporate both network solutions and non-network solutions arising from early competition?* Are there any fundamental gaps or issues you foresee in relation to early competition?

We do not believe it is for the relevant TO to highlight where existing industry codes/process can be amended to incorporate both network and non-network solutions. We also do not have the resource to commit to a root and branch review of all network codes currently which we consider is implicitly required. We would expect the ESO to undertake an initial gap analysis and issue this for consultation. Looking back to the experience of OFTO implementation, minor adaptations appears an unlikely outcome.

31. Do you agree that decommissioning costs should be considered as part of the tender evaluation and that there should be an obligation on the successful bidder to develop a proportionate decommissioning plan and place a form of decommissioning security at an appropriate time?*

Yes, we agree that bidder decommissioning plans and costs are assessed as part of the tender process. It would also require bidders to maintain such plans and hold decommissioning security once operational. The Government's view²³ is that a person who constructs, extends, operates or uses an installation or related electric line should be responsible for ensuring that it is decommissioned at the end of its useful life, and should be responsible for meeting the costs of decommissioning (the "polluter pays" principle. We agree with this approach.

The ESO's consultation also notes that consideration needs to be given as to whether it is necessary for decommissioning arrangements to be underpinned by legislation. However, we understand the Government's view on decommissioning of OFTOs was formed, in part, due to these assets being located offshore and the requirement to comply with international obligations. We are therefore unclear as to why the ESO considers that similar arrangements are required for onshore (that cannot be equally managed through a licence or contract as is the case for all other obligations under an early competition).

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/880737/decommissioning-offshore-renewable-energy-installations-energy-act-2004-guidance-industry.pdf