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Consultation on the implementation of NESO's enduring regulatory framework

Dear David,

We welcome the opportunity to respond to Ofgem's Implementation of NESO's Enduring Framework consultation.

Who we are

NESO lies at the heart of the energy system as an independent, not-for-profit public corporation, owned by DESNZ, with an independent Board. This ensures there are no conflicts of interest and removes any shareholder profit motivation, reducing both the regulatory risk and hence the level of regulatory oversight required. NESO is responsible for planning Great Britain's electricity and gas networks, operating the electricity system and creating insights and recommendations for the future whole energy system.

At the forefront of our efforts is delivering value for consumers. We work with government, regulators and our customers to create an integrated future-proof system that works for people, communities, businesses and industry, where everyone has access to clean, reliable and affordable energy.

Our primary duty is to promote three objectives:

1. enabling the government to deliver net zero;
2. promoting efficient, coordinated and economical systems for electricity and gas and the economy and efficiency of energy businesses; and
3. ensuring security of supply for current and future consumers.

We take a whole system approach, looking across natural gas, electricity and other forms of energy. Participants in all parts of the energy ecosystem will be engaged to deliver the plans, markets and operations of the energy system of today and the future.

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This letter sets out our executive summary, with supporting information provided in the attached appendices to this letter. We have responded to all nine questions set out in your consultation, stating where we agree with your proposals, seeking clarification in some areas and outlining where we don't support the proposed approach.

Executive Summary

NESO was established to help the government achieve a sustainable energy future while maintaining affordability for consumers and ensuring the security of energy supply. Our role has been designed to enable a step change in the speed and the way in which we consider the energy landscape and enable delivery to meet the GB energy needs. To do this effectively, we need a regulatory framework that allows us to quickly adapt to changes in the energy system or external environment. Traditional regulatory frameworks focus on preventing harm to consumers before it happens. The pace of change in which we are operating, the need for agility and indeed our not-for-profit status, makes the traditional approach impractical and unnecessary. We must be able to proactively enable and anticipate change, supported by an agile regulatory framework which enables swift responses to the rapidly evolving energy landscape and our customers' needs. Framework changes must support timely, system-wide planning and the delivery of outcomes our stakeholders expect and need.

To this end, we are keen to collaborate with Ofgem to identify areas where regulatory burdens can be simplified. Our goal is to ensure the framework is fit for purpose, proportionate and flexible to enable an agile approach and the pace of change required.

We support the proposed removal of several Ofgem approvals that did not add value, as this will help streamline the regulatory framework and hence enable better outcomes. Additionally, we support Ofgem's proposals to consolidate financial reporting requirements and eliminate certain licence conditions, which will enhance the efficiency of financial reporting. However, despite the outcomes-focused intent of our regulatory framework, we continue to find the planning and reporting processes disproportionately burdensome. We believe there should be a unified set of planning and reporting requirements that serve Ofgem, us, and the industry, thereby minimising the burden, maximising transparency and enabling better outcomes. In the interests of streamlining and proportionality, we are committed to understanding Ofgem's needs and ensuring they receive the right information from us.

We also consider that some of the proposals introduced in the consultation will result in a disproportionate level of oversight and blur the lines of accountability across our independent Board, the Shareholder and Ofgem – most notably the remuneration and remediation proposals. In both cases, Ofgem already have sufficient regulatory tools through the performance framework, open letters, and enforcement actions if required, to address concerns. Introducing additional measures risks conflict with efforts to reduce the regulatory burden and introduces unnecessary risk without any demonstrable benefit.

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Having reviewed the full suite of licence changes proposed, we recognise that those proposed for C1 are extensive in nature and there has been limited time to give them our full consideration. It is important to ensure that the obligations, along with the accompanying Licence Expectation Document, are fit for purpose and do not lead to unintended consequences. To this end, we believe that substantial further consideration is needed before the implementation of the licence obligations. We recommend delaying this process beyond the first of April, allowing time (min. 3-6 months) for development more in line with the approach taken for implementing NESO day 1 licences. We are keen to work closely with Ofgem on this matter.

We note the new obligation relating to our advice role causes us particular concern. This proposal is subjective and unclear and risks having the effect of Ofgem regulating the substance of our advice. There is not sufficient justification given for introducing such an obligation, where it introduces risk to our ability to function as an independent body in delivering our statutory duty to provide advice.

We agree that the changes being implemented currently should not be thought of as static. It is crucial that our regulatory framework continues to evolve, and we are committed to working with Ofgem on how we can enact further changes.

We have provided more detailed answers to the specific consultation questions in Appendix 1. We look forward to engaging with you further. Should you require further information on any of the points raised in our response please contact Laurence Barrett, Regulatory Strategy Manager at Laurence.Barrett@neso.energy

Yours sincerely

Zoe Morrissey

NESO Director of Legal & Regulation

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Appendix 1 Consultation Question Responses

Q1. Do you have any suggestions on key areas of NESO's regulatory and governance framework which requires further reviews, including any relevant learnings from other sectors?

NESO was established to help the government achieve a sustainable energy future while maintaining affordability for consumers and ensuring the security of energy supply. Our role has been designed to enable a step change in both the speed and the way in which we consider the energy landscape and enable delivery to meet GB energy needs.

To do this effectively, NESO needs a regulatory framework that allows us to quickly adapt to changes in the energy system or external environment. Traditional regulatory frameworks focus on preventing harm to consumers before it happens. We must be able to proactively enable and anticipate change, supported by an agile regulatory framework which enables swift response to the rapidly evolving energy landscape and our customers' needs. Framework changes must support timeline, system-wide planning and the delivery of outcomes our stakeholders expect and need.

This shift is not unprecedented; in fact, as set out below, we can draw inspiration from the Finance sector, where a similar transition towards regulatory flexibility has enabled greater innovation and resilience. By adopting an agile, outcomes-based model, we can create an environment that fosters innovation, enhances adaptability, and ultimately drives the energy sector forward.

We look forward to collaborating with Ofgem to explore how the framework can continue to evolve.

Transition to Outcomes-Based Regulation

We support Ofgem's intended move to become a principles-based regulator as set out in its August Decision. By specifying the system, environmental, and consumer results that NESO must deliver, Ofgem can encourage innovation and investment within the energy system. Lessons can be learned from the finance sector, where the FCA's principles-based approach to regulation holds firms accountable for consumer and market outcomes, rather than expecting them to follow rigid procedures and rules. This has seen the sector within the UK thrive, while still recognising the importance of the customer.

Streamlining of Reporting

Despite the outcomes-focused intent of our regulatory framework, current planning and reporting processes are complex and burdensome. This impedes delivery of our obligations.

We believe there should be a unified suite of risk-based reporting requirements that serve Ofgem, NESO and the industry, thereby minimising the burden, maximising transparency and enabling better outcomes. In the interests of streamlining and proportionality, we are committed to understand Ofgem's needs and ensuring they receive the right information from us.

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The Finance sector might also provide useful lessons here. The Financial Conduct Authority focuses on a core set of reporting against priority outcomes, which is then used to monitor performance and target interventions.

The need for agility

Given the pace of change in the energy sector and the dynamic nature of our activities, our regulatory framework must be sufficiently flexible. This was recognised when our framework was developed and must continue to be a primary consideration for any future evolution. It was always anticipated that there would be a significant review of our regulatory framework. Our framework has undergone development, but this has been more of an iterative approach, building on the foundations of a regulatory framework from when the ESO was part of National Grid, and therefore lacks the required agility. While learnings can be considered from other sectors, caution must be taken when applying them to our framework given the unique nature of our organisation and role.

That said, learnings gathered across other regulated and public sectors provide several useful principles for shaping our enduring regulatory and governance framework.

- Holistic and continuous assessment of Value for Money
- Distinction between ex-ante appraisal and ex-post evaluation
- Performance assessed against contribution to public value, including non-market benefits

We look forward to exploring these learnings further with Ofgem and how they could be applied to our regulatory and governance framework.

Licence Changes

Q2. Do you have any comments on our proposed licence changes including any specific drafting suggestions?

We broadly welcome many of the proposed licence updates, particularly where they provide clarification of expectations, set clear outcomes-focused minimum standards, and remove approval requirements that have limited value. We also recognise Ofgem's intention to simplify and consolidate requirements to support a more proportionate regulatory relationship.

We provide specific licence drafting suggestions in Appendix 2.

Q3. Do you have any views on our proposed options and approaches to implementing new principles-based requirements on performance-related pay for senior NESO staff?

NESO was established to support the government's objective of achieving a sustainable energy future, while maintaining affordability for consumers and ensuring the security of energy supply.

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We believe that implementing Option 1 – replacing existing policy approval with high-level principles – strikes the right balance, enabling us to fulfil these objectives whilst fully meeting the intent set out in Ofgem’s decision in August and respecting the independence of our Remuneration Committee.

In contrast, Options 2 and 3 place these aims at risk without providing any demonstrable benefit or necessity.

The power of reputational incentivisation is underplayed

We acknowledge the importance of ensuring that senior executive remuneration is directly and transparently linked to the performance of the organisation. We also fully understand Ofgem’s view that there must be clear consequences for non-compliance.

As a not-for-profit, purpose-led, public corporation, NESO measures success by its delivery of value to GB plc, its commitment to its statutory objectives and efficiently achieving its business plan objectives. Ofgem provides a perspective on these through its public reporting on NESO’s performance and through structured engagements through the year with the NESO Chair and Board.

Ofgem’s view of NESO’s performance goes to the very heart of how the company, its Board and its Remuneration Committee view and measure success – of the business and its senior executives. It directly impacts on the company’s reputation and its standing with industry and government and is significantly more powerful than any of the financial incentives that were in place prior to NESO.

We would refute Ofgem’s assertion that the absence of a financial incentive needs to be addressed. Instead, we consider that the reputational incentive is in itself the strongest driver for our executive, and indeed wider people performance, for instance in areas such as:

- delivering the agreed business plan objectives effectively and efficiently,
- ensuring NESO’s ability to influence and gain the trust of its stakeholders,
- ensuring the delivery of wide-ranging reforms such as Reformed National Pricing, Connections Reform, etc.
- recruiting the talent that will allow us to facilitate all of the above.

Ultimately NESO cares deeply about reputational damage and the impact that this could have on the ability of the organisation to deliver its purpose and meet its statutory objectives. Therefore, we believe that the reputational incentives established by the regulatory framework already provide very strong signals and that further processes for Ofgem to review and approve (or not object) to the performance-related pay outcomes for senior executives are unnecessary.

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Regulatory Impact Assessment

Ofgem's proposals include the requirement for us to maintain and publish our Remuneration Policy on our website as well as providing transparency on our decisions on senior staff performance related pay. We believe that these requirements are important aspects that help deliver accountability and transparency in this area.

To date, as noted within the consultation, there is no evidence of any systemic failure resulting in a misalignment of Executive pay that needs to be addressed. Unlike other sectors, such as water, where the poor behaviour exhibited has meant that intervention was necessary, NESO has demonstrated strong internal governance and its objectives align with those of Ofgem and DESNZ, as NESO's shareholder. Without such evidence of misalignment or systemic failure, the rationale for implementing stronger measures appears disproportionate and is contrary to the drive to reduce regulatory burden and streamline regulation. We believe that NESO should be given the opportunity to prove the ongoing efficacy of our current framework under Option 1, recognising Ofgem also retains the ability to change licence conditions at speed should it be necessary. Given this, Ofgem has not demonstrated the benefit associated with going beyond this proposal.

In contrast, there is significant risk introduced by Options 2 and 3. Most critically, the proposals risk damaging the very outcomes NESO has been designed to fulfil by impacting the operational flexibility needed to meet emerging system challenges. This need for agility cannot be overstated. To succeed in our mission, we must facilitate a step-change in the speed and delivery in the country's energy sector. However, this will only be possible within a regulatory framework that prioritises flexibility over rigidity.

The proposals risk undermining NESO's independence, creating an incentive for NESO to simply accept Ofgem views, rather than objectively challenging them where appropriate when delivering upon its statutory duties. The proposals also risk undermining NESO's ability to attract and retain high calibre Executives, which would negatively impact our ability to deliver value for GB plc and drive benefits for society and the economy.

Traditional regulation focuses on preventing harm, the new energy landscape requires a regulatory regime that allows us to be flexible and responsive. To that end, we need a framework that reflects our unique role as a not-for-profit public corporation with a key role in the energy transition and an aligned set of objectives with our regulator and government.

The current governance framework

Extensive consideration was given to the governance of NESO when it was established, including the approach to remuneration. The current framework allows Ofgem the opportunity to approve the relevant policies, but with an independent remuneration committee being accountable for its application. Option 1 is in line with this approach, but the inclusion of an Ofgem "non-objection" process or more detailed requirements are not.

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Independent Remuneration Committee

NESO's Board has a Remuneration Committee (RemCo), responsible for determining its remuneration policy and for setting the remuneration of the Chief Executive Officer and senior executives. This is in line with NESO's licence obligations. The Committee also reviews the wider NESO remuneration framework and monitors related policies to ensure that incentives and rewards remain aligned with NESO's purpose, strategy, values, behaviours, and culture.

NESO has a high calibre Board and RemCo, dominated by very experienced and proven Independent Non-Executive Directors who have the success of NESO at heart. The RemCo itself consists of only independent Non-Executive Directors – in line with UK Corporate Governance Code – one of whom is the Government-nominated Shareholder representative. There are no Executive members of the Committee. Ofgem should trust that these Non-Executive Directors will fulfil their obligations and not over reward or overcompensate NESO leadership while holding the senior leadership to account for their performance.

The RemCo is supported by external remuneration specialist advisors. This structure ensures independence and provides our Shareholder with an active role in the remuneration process. This is supported by regular reporting to the Shareholder.

This robust approach to governance is in line with the high-level principles proposed by Ofgem under option 1 and is effectively backstopped by the licence obligation to take Ofgem's assessment of NESO's performance into account in determining performance related pay.

Additional measures such as the "objection" process under option 2 are unnecessary and inappropriate. We are unclear who within Ofgem would be making this decision and therefore whether they have the appropriate remuneration related experience and capability therefore risking a less robust form of governance than what is currently in place. If Ofgem were to raise significant concerns in the future, it already has the powers to sanction NESO through licence enforcement and, if needed, adjust the licence requirements based on the evidence it has at that time.

Travel and Expenses

We welcome Ofgem's proposal to remove its approval of our travel and expenses policy and instead replace this with high-level principles and the requirement to provide transparency. This represents a proportionate approach to regulation, while ensuring NESO has a robust system of internal controls to govern these.

Q4. Do you have any comments on the approach we have taken to review and update Condition C1 and the NESO LED?

Having reviewed the full suite of C1 licence changes proposed, we recognise that they are extensive in nature and there has been limited time to give them our full consideration. It is important to ensure that the C1 obligations, along with the accompanying Licence Expectation

Public

Document, are fit for purpose and do not lead to unintended consequences. We also do not consider there is any urgency to make these changes. To this end, we believe that substantial further consideration is needed before the implementation of the C1 licence obligations, and we recommend delaying this process (3–6 months) beyond 1 April 2026, allowing time for development more in line with the approach taken for implementing NESO day 1 licence changes. We are keen to work closely with Ofgem on this matter, particularly on the following points:

- **We are concerned that the proposed changes to Condition C1 have been developed over a short period without detailed explanation in the August decision or preceding consultation.** While we acknowledge that Condition C1 has evolved incrementally, we have not had sufficient time to engage on the content as these changes have only recently been proposed.
- We appreciate the logic behind Ofgem's efforts to consolidate requirements in Condition C1 and believe that the general structure is appropriate. **However, the consultation states that Ofgem has not proposed any gas-specific requirements, which we consider a material licence change and we seek further clarification on the removal of several general licence obligations related to our new gas roles introduced in October 2024.**
- **We find that several licence obligations in the consultation drafting lack sufficient clarity.** For instance, obligations for us to 'provide transparency,' be 'robust,' or produce 'clear' work do not provide enough guidance for the licensee to understand its obligations and foresee compliance requirements. Licence conditions should not be overly subjective or unclear, as this can lead to inefficiency and frequent requests for compliance reassurance. While the Licence Expectation Document provides helpful guidance, it cannot resolve fundamental clarity issues in the licence conditions. The document itself states that it is not exhaustive and does not serve as an aid to interpret the licence.
- **We believe certain obligations are not sufficiently targeted or are disproportionate.** Our licence obligations should only require us to undertake activities within our control and disproportionate obligations may lead to unintended consequences or additional cost which does not benefit the consumer. For example, we cannot ensure that technical requirements enable us to maintain a safe and secure electricity system if we do not have full control over those requirements. The Licence Expectation Document's recognition of this issue does not override the wording of the licence. We agree with the intent for requirements for NESO to make and propose changes to industry standards and rules, but consider that the obligation should reflect the need for a proportionate approach.
- **We also do not believe that the new obligation relating to our statutory duty to provide advice is targeted or clear given the specific context of that role.** We have a statutory duty to provide independent advice on various matters. The draft requirement is so subjective and unclear that it risks regulating the substance of our advice, undermining its independence. There is not sufficient justification given for introducing such an obligation,

Public

where it introduces risk to our ability to function as an independent body in delivering our statutory duty to provide advice.

Q5. Do you have any specific drafting suggestions for the requirements within Condition C1 and the associated guidance in the NESO LED?

We provide specific drafting suggestions for C1 And the LED in appendix 2

Q6. Do you agree with our proposed requirements in relation to a Notice of Remediation?

We have significant concerns with the proposals for the C1 Notice of Remediation. We believe that this addition is unnecessary, as Ofgem already possesses sufficient regulatory tools through the performance framework, open letters, and, if required, enforcement action. These established processes are more than adequate for addressing any concerns raised regarding our ongoing compliance. As a prudent public body, we would fully respond to any concerns raised by Ofgem through the existing regulatory processes. Introducing a Notice of Remediation could lead to unnecessary bureaucracy and potentially impact our independence.

- **It is unclear how the Notice of Remediation would enhance transparency and timeliness in addressing Ofgem's concerns.** Our regulatory performance framework, which results in an annual Ofgem performance assessment, already provides extensive touchpoints across the year and opportunities for engagement between us and Ofgem, including at the Executive and Board levels. These regular touchpoints allow any areas of concern to be highlighted promptly and enable discussions on the actions we are taking to address those concerns.
- **There seems to be no apparent "gap" that needs to be filled between the performance framework and potential enforcement action.** Beyond the extensive Executive and Board-level engagement approach, Ofgem ultimately has the power to undertake investigations and enforcement actions if deemed appropriate. The licence proposal states the Notice of Remediation would be issued '*where the Authority considers the licensee needs to provide greater transparency and confidence*', but this is vague and imprecise. It is unclear why and when something would fall between performance discussions and enforcement action. This lack of clarity could lead to additional bureaucracy and impact our independence, with us frequently seeking '*informal Ofgem approval*' to mitigate the risk of a Notice being issued.
- **We have concerns about the governance structure for the Notice of Remediation.** Ofgem has long-established processes for launching enforcement action and considering non-compliance, including dedicated Ofgem teams, clear governance, and final decision-makers with independence from business-as-usual decision-making. If the governance and scrutiny of the Notice of Remediation process are limited, it could create risks around

Public

what may be perceived publicly as a potential breach. However, if the governance and scrutiny mirror enforcement action, it would seem duplicative.

Performance Arrangements Governance Document

Q7. Do you have any comments on our proposed changes to the NESO PAGD?

We recognise that Ofgem's August 2025 Decision on the policy direction for the NESO1 performance framework has been reflected in the draft PAGD. This includes the retainment of an annual, public assessment of our performance and the overall methodology for assessment being split into two parts: (1) achievement of Performance Outcomes, and (2) delivery of value for money. However, these proposals are simply implementing policy positions for what is fundamentally a traditional style of regulation. We believe our framework needs to evolve further, to allow a more agile approach, focused on outcomes, supported by proportionate and streamlined reporting.

We note that the overall reporting framework for NESO1 is largely unchanged from BP3, with regular, within-year performance reporting being the key component. We are keen to keep working with Ofgem on refining the finer details of our reports to ensure the appropriate level of transparency of our delivery and performance; ultimately optimising our performance reporting to serve Ofgem, us and industry requirements.

Process for setting our performance expectations

We welcome the clarity provided regarding the overall Performance Outcomes being set via a combination of both our Performance Objectives and subsequent Ofgem Expectations as set out in their Determinations. We recognise the importance of delivering both of these in parallel and request that 'Ofgem Expectations' (OEs) are explicitly and clearly defined within Determinations to ensure clarity and avoid ambiguity.

Within-year and end of year assessment processes

We note Ofgem's updates to within-year processes, including clarifying the expectation to discuss our performance regularly at a senior level, changes to the end of year assessment process to align with the annual performance-related pay process, and removal of the end of year event.

While we welcome a shorter year-end assessment timeline to ensure alignment with the annual performance-related pay process, the earlier year-end report publication date (now 30 April rather than 16 May) poses risks to report delivery and quality. This is due to limited time for finalising data and ensuring appropriate governance oversight. We welcome the flexibility that has been built into the proposals to enable further discussion on this, but confirm that delivery of the required information to the required standard by 30 April is not possible. In addition, we note that a specific date is no longer stated for Ofgem's annual assessment report, even though it is a

Public

key dependency for the performance-related pay process. We would ask that a specific date is provided to ensure full transparency of the process for industry.

We support the proposal to remove the year-end event noting that over the course of the RIIO-2 period we have received very little stakeholder interest in attending this event, indeed agreeing with Ofgem to cancel it for BP2 given the low uptake. We also support a more principles-based requirement to understand feedback and provide transparency on our actions which will enable us to find more effective routes of engagement with stakeholders.

Our performance assessment methodology

We believe the Value for Money assessment methodology is focused too narrowly on cost and should be more holistic with a balanced, evidence-based judgement across economy, efficiency and effectiveness. We are required to deliver for consumers, the energy system and society. Our view is that Value for Money is a judgement about whether our activities and capabilities:

- deliver outcomes that matter for system security, resilience, decarbonisation and efficiency,
- reduce system-wide risk and avoid future costs,
- and represent the best use of resources to create public value in a complex, uncertain and long-term system.

This definition aligns with HM Treasury's Green Book and Managing Public Money and is consistent with Ofgem's duties to protect the interests of consumers now and in the future.

As we continue to embed our Value for Money framework, we would welcome further discussions with Ofgem as to how future business plan assessments could move to a more holistic view of Value for Money. This could shift the emphasis from cost metrics, forecasting and cost management as central indicators of Value for Money. While cost transparency and control are important, our Board already undertakes this role by reviewing our costs and challenging our organisation on whether it is efficient. This robust oversight allows Ofgem to take a more holistic role, avoiding the risk that it misses how economy, efficiency and effectiveness collectively contribute to system-wide value, especially over time.

We welcome changes to the overall performance grading, with the four-tier 'Exceptional / Strong / Satisfactory / Poor' scale replacing the previous 'Exceeds / Meets / Below Expectations' grading. However, it remains essential that the criteria for each of the grades are clearly articulated and unambiguous to ensure all parties have a shared understanding of how Ofgem come to a decision on a grading. Certain terminology in the guidance that differentiates the grades remains open to interpretation and lacks precise definition. For instance, the grading criteria for "Part 1: NESO's achievement of Performance Outcomes" (3.7) refers to areas of "high" and "weak" performance but does not clearly specify the scope of these terms.

We note the additional clarity that the focus of the assessment is on the outcomes we achieve, with Success Measures and other indicators informing Ofgem's understanding of this.

Public

The Independent Challenge Panel (ICP)

Please refer to our response to Q8 with regards to implementation of the ICP.

Our performance reporting requirements

We note that the overall reporting requirements for NESO1 remain largely unchanged from BP3. This includes the continued reporting of Reported Metrics. While we recognise how vital transparency is, it's just as important to ensure our information has the right level of detail and meaningful value for Ofgem and wider industry. We feel that NESO1 is an ideal opportunity to fully review the suite of Reported Metrics and we look forward to working with Ofgem through that process. Our aim is to shape an updated set of metrics that truly add value and avoid duplication with Success Measures. We also want to make sure these metrics are easy for our customers to access and give the appropriate amount of detail.

Regarding all other reporting requirements, we look forward to collaborating with Ofgem to clarify the content required, ensuring the appropriate level of transparency in our delivery and performance.

We note the continued inclusion of the requirements for a Stakeholder Survey, and the need for us to submit our proposal setting out key aspects of the survey for approval no later than one month after the start of each business plan cycle. We look forward to engaging with Ofgem on this.

Cost monitoring and reporting

We support Ofgem's proposed changes to consolidate financial and cost reporting requirements across our licences and associated documents, which will enhance the efficiency of financial reporting

We support the proposed continuation of our DD&T reports to provide transparency to stakeholders on our progress and spending in relation to our DD&T investments. We note that these have now been formalised in the PAGD. We support Ofgem's approach of keeping the DD&T reporting arrangements under review and appreciate the opportunity for consultation on potential future changes.

Q8. Do you have any comments on the way we've implemented the Independent Challenge Panel (ICP) arrangements in the NESO PAGD?

We recognise the importance of having clear mechanisms to help ensure stakeholder perspectives are fed into our performance assessments and provide strong accountability on how we've engaged with stakeholders and listened to their feedback. Overall, we support Ofgem's proposed plans for establishing/implementing the Independent Challenge Panel (ICP), recruiting for members and the role/remit of the group. As Ofgem's plans evolve, we'd like more clarity on the process for convening additional meetings, and our involvement in those meetings, and the planned size of the group.

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Given that the ICP is not yet established and there are outstanding decisions to be made regarding group governance (including report writing timelines), we feel it is too early to commit to specific dates as set out in current proposals. In particular, we have concerns over the proposed timescales for ICP meetings to discuss within year and end scheme feedback and the timing of the ICP end scheme report. We would appreciate flexibility from Ofgem over timings for these elements. To ensure ICP meetings are of most value to the Panel and are based on up-to-date views of stakeholders, we feel these meetings should take place after the six-monthly surveys.

Within the proposals for implementation there are also some areas on which we require additional clarity to be able to fully support, to ensure the full independence of the ICP and to make sure we can add value to the group in ways that are appropriate:

- **NESO involvement in recruiting members** – While we recognise our role in helping to identify our stakeholder base, we need more clarity on what this requirement looks like in practice, how much logistical and admin support may be needed and how we maintain the independence of the group. We recommend our role in this doesn't extend beyond providing any suggested names to Ofgem, making necessary introductions and reviewing proposed members to ensure our stakeholder base is adequately represented.
- **Potential administrative role in the ICP for NESO** – We need to better understand when this might occur and feel that this should be a last resort only. Furthermore, any administrative support expected of us should not extend to the production of the ICP report or any ICP documents, to ensure the full independence of the group.

We welcome continued discussion with Ofgem to provide clarity on the areas outlined above. Additionally, we will be looking at the role of our own strategic stakeholder groups, including our Independent Stakeholder Group to avoid duplication of remit, roles and responsibilities.

NESO Financial Handbook

Q9. Do you have any comments on our proposed changes to the NESO Financial Handbook?

We welcome the proposed changes to the NESO Financial Handbook so that it provides clearer and more future-proofed requirements on us. In particular, we welcome the simplification in many areas and the removal of unnecessary duplication of details or details that are no longer relevant. We also welcome streamlining the reporting requirements by combining elements of the removed RRP and RFRP processes to support the overall consolidation of financial and cost reporting.

We have identified some minor typos within the document, which we set out below:

- **Para 4.4:** The definition of “value_{restated}” is repeated and should be removed.
- **Para 5.1:** The word “depreciation” is spelled incorrectly.

Public

- **Para 5.1:** The words “return on” are repeated.
- **Para 6.2:** The term “TAXt” should have a subscript and be “TAX_t”.
- **Para 6.4:** The term “TAXt” should have a subscript and be “TAX_t”.

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Appendix 2 Specific Licence Drafting Responses

Q2. Do you have any comments on our proposed licence changes including any specific drafting suggestions?

The table below sets out our specific comments on the proposed licence changes by licence condition. Where we have raised a point on an ESO licence condition, and there is a corresponding licence condition in our GSP licence, we intend the point to apply to both licences. In some cases, e.g. condition C6, numbering from the ESO licence has been used in GSP licence changes and we request that this is checked throughout.

| New Ref (ESO licence) | Comment |
|---------------------------------------|--|
| Condition A1 | |
| General | <p>In line with our comments below, we request that the NIC provisions are retained, which would also cover a number of definitions.</p> <p>In a number of places we understand that '<i>Condition</i>' should be lower case to align with the drafting generally in our licences.</p> |
| Definition (Links to Remuneration) | <p>"Applicable Senior Staff" is broad. We request (b) is removed as many employees have '<i>relevant leadership responsibilities</i>' who are not senior staff or intended to be captured under this definition.</p> <p>We request the removal of wording at the end of this definition which says, '<i>and any persons that the Authority considers meets criteria (a) and (b) above</i>', which lessens certainty from the scope of the definition.</p> |
| Definition | <p>"FSO Day 1" definition – We suggest changing '<i>...is 1 October 2024</i>' to '<i>...was 1 October 2024</i>'.</p> |
| Definition | <p>"Remediation Plan" definition – There is a typo at '<i>...pursuant that meets...</i>' (noting our position elsewhere that this proposal should not be adopted).</p> |
| Definition | <p>"Strategic Aims" definition includes a document which '<i>meets other relevant requirements in the NESO Business Plan Guidance</i>'. This is duplicative of the requirement set out in G1.4 and should be deleted.</p> |
| Condition A2 | |
| A2.19 | <p>We accept the intent behind the change that each named document or report in the ESO/GSP licence should mirror the same form, manner and submission of any report (of the same name) in the corresponding GSP/ESO licence.</p> |

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To be clear, some relevant reports are not in the current document list in Condition A2.19 (e.g. Energy Resilience Assessment Report).

While we agree with the policy intent, we have a concern that the proposed wording at A2.19 is ambiguous and creates uncertainty in the absence of the document list. For example, under Condition C7.5 and C7.6 of the ESO licence we are required to provide analysis and assessments to Ofgem. There is a risk that the proposed wording at A2.19 may be read as meaning that wherever required to do so under the ESO licence, we are required to carry out a corresponding assessment under the GSP licence. This is clearly not the intent.

Therefore, we request the wording is amended in the ESO licence to read:

'Where obligations in this licence provide for specific named documents, reports or assessments of the same name to be produced as under the Gas System Planner Licence, the licensee must prepare the documents in the same form, manner and submission as the equivalent document in the Gas System Planner Licence'.

Condition B1

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| General | We welcome the removal of the Ofgem approval on the form of the Compliance Report as this supports the intent to reduce regulatory burden where this is not necessary or beneficial. We note that the Independence Statement will continue to be approved by Ofgem. |
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Condition B7

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| General | We welcome the removal of the Ofgem approval on the form of the code of conduct document as this supports the intent to reduce regulatory burden where this is not necessary or beneficial. |
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Condition C4

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| General | We note that the paragraph numbering is out in this condition (as C4.3 is missing). |
| C4.5 | Although there is minimal change proposed for this provision, we believe it should recognise more clearly that although we can initiate modifications to the relevant codes, we are not in control of the final decision timing (even though para C4.6 covers this to some extent). Therefore, we propose that the wording is changed to reflect this to: |

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| | <p><i>'The licensee must ensure that its procurement of Restoration Services and submission of proposals for modifications to the Grid Code and other Industry Codes are completed in time to <u>reasonably allow</u> it to have the ability to comply with the Electricity System Restoration Standard by 31 December 2026'.</i></p> |
| C4.9 | <p>There are a number of places where the paragraph includes full stops which should be semicolons.</p> |
| C4.9(d) | <p>We request the wording is slightly changed as part of the sentence rather than a new sentence and correcting the reference to say:</p> <p><i>"including information on any improvements the licensee is making to the Electricity System Restoration Model, following recommendations made by the independent auditor appointed in accordance with <u>Paragraph C4.10</u>; and".</i></p> <p>(We presume this clause should refer to <u>C4.10</u> rather than C4.9.)</p> |
| C4.9(e) | <p><i>'...risks with regards to...' seems unclear. We request this is changed to '...risks that may impact on...'.</i></p> |
| Condition C7 | |
| C7.5 | <p>We are comfortable with the proposed changes merging the existing C7.4 and C7.5 requirements.</p> |
| C7.6 – C7.7 | <p>We do not object to the requirement to have regard to views, noting that we do not see it as different to Ofgem giving its views generally in relation to performance of other of NESO's functions (where there is no such licence obligation). We would consider those views appropriately and, considering those views along with other relevant factors, make decisions as an independent resilience function, in accordance with our statutory licence duties and licence obligations.</p> <p>To avoid changing the numbering for a range of settled provisions and simplify the drafting, we request that these requirements follow on as sub-paragraphs following on from C7.6 to read:</p> <p><i>'The licensee may also carry out and provide to the Authority or Secretary of State the analysis and assessments referred to in paragraph C7.5, in the absence of a request from the Authority or the Secretary of State, where the licensee considers this would be beneficial for the resilience of the energy system <u>and, where it does so: (a) the licensee must notify the Authority and Secretary of State of its decision to undertake such analysis and</u></i></p> |

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| | <p><u>assessment; and (b) the licensee must have regard to any views shared by the Authority on....'</u></p> <p>Our requested change will mean not changing the various cross-references.</p> |
| C7.12 | <p>Whilst we are committed to sharing the relevant information under this provision, we believe that this should occur with Ofgem and the Secretary of State first, and then subsequently with materially affected parties within a reasonable timeframe.</p> <p>We therefore request changing the obligation to:</p> <p><i>'The licensee must provide its Emergency Processes Assessment, and any accompanying information and analysis that the licensee considers it appropriate to provide:</i></p> <p class="list-item-l1">(a) <i>to the Authority, and the Secretary of State by 1 December of each Regulatory Year; and</i></p> <p class="list-item-l1">(b) <i>to any such other parties the licensee considers materially affected by the issues contained in the Emergency Processes Assessment as soon as reasonably practicable, taking into account the provisions of Part F.'</i></p> |
| C7.13 | <p>In C7.13(c), 'Energy Processes Assessments' should be 'Emergency Process Assessments'.</p> |
| C7.14 | <p>We do not agree that we should be required to engage with Ofgem and the Secretary of State prior to determining the scenarios within the Emergency Processes Assessment, as this is inconsistent with the approach for the other resilience reports which are scenario based. No rationale has been provided for this difference, nor for any potential implications for the other reports we produce. Although the requirement is only to consider views rather than to abide by them, in this context having mandatory engagement may create a perception that our resilience function is not acting independently.</p> |
| C7.16 | <p>Similar to our comment for C7.12, whilst we are committed to sharing the relevant information, in this case the Industry Readiness and Preparedness Report, we believe that this should occur with Ofgem and the Secretary of State first, and then subsequently with materially affected parties within a reasonable timeframe.</p> <p>We therefore request changing the obligation to:</p> <p><i>'The licensee, in respect of the following winter and summer seasons respectively, must provide its Industry Readiness and Preparedness Report:</i></p> <p class="list-item-l1">(a) <i>to the Authority, and the Secretary of State by 31 October and 30 April of each Regulatory Year; and</i></p> |

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| | <p><i>(b) to any such other parties the licensee considers materially affected by the issues contained in the Industry Readiness and Preparedness Report as soon as reasonably practicable, taking into account the provisions of Part F.'</i></p> |
| C7.19 | We believe there is merit in looking at the process for resilience publications, including redactions. We welcome further engagement with Ofgem on this topic with the aim of taking forward further licence changes at a later date. |
| Condition C9 | |
| C9 General | We welcome the removal of the Ofgem approval, and annual submission, of the various reports and statements contained within C9. We agree that these currently provide limited value, and their removal will lead to reduced regulatory burden, whilst still providing appropriate regulatory oversight. |
| C9.1(d) | We note the drafting currently contains a typo at 'license'. |
| C9.1(e) | We ask that this drafting is reviewed and changed to align more closely with other introductory paragraphs of this nature. |
| C9.2 | We suggest that 'through consultation' is changed to 'in consultation'. The current C1.5(b)(ii) requires consultation on non-frequency Balancing Services, while the new provision relates to Balancing Services (as defined). It appears to us that this is in error and should revert to 'non-frequency Balancing Services'. |
| C9.4(c) | We request that this sub-paragraph is changed to ' <i>a summary of views submitted by parties in the consultation responses and an explanation of how these were considered</i> '. The current proposed drafting may not lead to a proportionate requirement, whereas this alternative drafting is used in a number of places across the licence. |
| C9.5 | We do not consider that 'better meet' is clear. Given the drafting allows Ofgem to direct where Ofgem considers changes align with the interests of consumers, we suggest that the opening wording relating to condition C1 is unnecessary and can be deleted. |
| C9.6 | We suggest that this derogation provision should be a separate part of the condition with its own heading, as in the current C1. |
| C9.13 | We support measures to promote transparency, including publishing an Executive Summary of the report written by an independent auditor, setting out its findings. However, we do not fully support that this publication should include the auditor recommendations. Many recommendations raised by the auditor so far have been centred on internal processes and documents |

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| | which have limited value to an external audience. We welcome further engagement with Ofgem on this topic prior to a licence decision being made to ensure the most appropriate implementation. |
| C9.14 | We request that this provision is expanded to cover the key findings from the auditor's statement. |
| C9.17 | We request this is updated to ' <i>have in place and publish a Balancing Principles Statement...</i> '. |
| Part I | We note that the Balancing Services statements are currently referred to as 'statements' and 'documents'. We suggest using one term. If 'statements' is to be used, this may require further consideration of the drafting since some such documents are no longer referred to as statements, e.g. the Applicable Balancing Services Volume Data Methodology. |
| C9.26 | We do not see that the proposed drafting is clear – in particular the use of ' <i>intentions</i> '. We request changing the final wording to ' <i>... whenever it considers a change to be necessary</i> '. |
| C9.29 | As above, we request that this paragraph is changed to ' <i>a summary of views submitted by parties in the consultation responses and an explanation of how these were considered</i> '. The current drafting may not lead to a proportionate requirement, whereas this drafting is used in a number of places across the licence. |
| C9.30 | As noted elsewhere in this response, we do not see that ' <i>better provide clarity and transparency</i> ' is clear and we request this is changed to ' <i>clarify</i> ', which we understand meets the policy intent. |
| C9.31 | Throughout Condition C9 the requirement for Ofgem approval has been removed. However, C9.31 provides Ofgem with wide control powers. Where Ofgem may seek to issue any direction under C9.31 (or C9.27(c)), we would expect continued proactive engagement to clarify those requirements and that any consultation or implementation timelines remain reasonable and practical. |
| Condition C12 | |
| General | We welcome the removal of the Ofgem approval on the form of the EYTS as this supports the intent to reduce regulatory burden where this is not necessary or beneficial. |

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| C12.6 | <p>We welcome the proposed changes to allow us to determine which, if any, information should be redacted from the ETYS.</p> |
| Condition C13 | |
| General | <p>We welcome the removal of the Ofgem approval on the form of the NOA Report as this supports the intent to reduce regulatory burden where this is not necessary or beneficial.</p> <p>However, given the NOA process is intended to be superseded by the CSNP, we believe there is merit in further engagement at the appropriate time to discuss the removal of this licence condition.</p> |
| Condition C17 | |
| General | <p>We agree with the overall intent and principle of adding requirements on us to report on the quality and timeliness of information provided by TOs. Having accurate and timely data is critical in supporting the delivery of the Central Strategic Network Plan (CSNP). However, we assume that the intent is also to cover “completeness” in some form, in which case a reference to this could be helpful.</p> <p>We note that although the proposed changes to our licence introduce these requirements, the details of these requirements are set out in the CSNP Coordination Governance Document. We have provided specific comments on this document in our response to Ofgem’s RIIO-3 Licence and Associated Documents consultation. However, we would flag that the addition of the CSNP Coordination Governance Document creates a risk of overlap between this and the more general CSNP Governance Document. We ask Ofgem to ensure there are no inconsistencies or duplication between these two governance documents.</p> <p>It should be made clear that our role should be the provision of information on a factual basis, allowing Ofgem to monitor compliance. We do not think it appropriate for us to make recommendations on the resolution of any risks or issues identified on the reported information.</p> <p>Furthermore, we strongly believe that reporting should be aligned with the CSNP stages and there should not be an additional annual reporting requirement. Annual reporting would place an undue regulatory burden on us with limited value, depending on where in the CSNP cycle we are.</p> |
| C17.3 | <p>The consultation paper notes that the change to paragraph C17.3(b) is to correct an error, whereby gas transporter licence holders should have been referenced in addition electricity transmission licence holders. However, it</p> |

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| | <p>appears to us that the drafting change creates a separate confusion in implying that the CSNP must consider network competition for gas projects. We propose to change the wording as below, which is consistent with our understanding of the intent:</p> <p><i>'determine, for electricity projects, whether a holder of a Transmission Licence or third party will deliver a project that is identified in paragraph C17.3(b);'</i></p> |
| Condition D5 | |
| General | We are supportive of the removal of this licence condition as we agree they are not necessary for us as a not-for-profit, public corporation outside of the RIIO price control. |
| Condition F1 | |
| F1.4(b) | We request that the current paragraph (c) is not changed to (b) as this better retains continuity/clarity of previous obligations. |
| Condition F2 | |
| F2.4 | The formula is followed by definitions of NIAD _t and TNIA but states that these are in difference price bases, the former in 2025/26 prices and the latter in 2024/25 prices. The formula only works if these two terms are in the same price base. |
| Part F - G | We note that the provisions relating to NIC have been removed. However, we understand, from discussions with Ofgem, that funding directions are set to continue and consequently the provisions will need to be reinstated. While this is certainly the case for us, we would urge that the licences of all applicable parties be checked for such directions to be possible. |
| Condition F5 | |
| F5.3 | We do not find the addition of the words ' <i>processes and</i> ' here to be clear and we request that these are omitted. |
| Condition F7 | |
| General | Our comments on this condition are to be read in line with our broader comments set out above. |
| F7.1 | <p>We request that licensees' (plural) is changed to licensee's (singular).</p> <p>For accuracy, we request that '<i>senior staff</i>' is changed to '<i>Applicable Senior Staff</i>'. See our comments above on that definition.</p> |

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| F7.2 | We do not see that ' <i>...a strong relationship between...</i> ' is sufficiently clear to form the basis of a licence obligation. We request that the first sentence of this paragraph, which appears to be a policy statement rather than an appropriate requirement, is deleted and changes made to the second sentence accordingly to open the paragraph. |
| F7.3(c) | We request that licensees' (plural) is changed to licensee's (singular). |
| F7.3(d) | We find this sub-paragraph confusing and suggest that this should be reversed – ' <i>...the extent to which the factors in paragraphs F7.3(a) to F7.3(c) relate to the accountabilities and performance of each Applicable Senior Staff member</i> '. |
| F7.4 | <p>We recognise the appropriateness of a requirement for us to take any instances of enforcement action into account when determining performance related pay for Applicable Senior Staff. However, the current drafting of this paragraph gives rise to a number of concerns.</p> <p>The phrase '<i>strong incentive</i>' is not sufficiently clear to include as a licence obligation. We see the first sentence of the paragraph as setting out the intent of the licence obligation rather than the obligation itself and we request that this is deleted.</p> <p>The obligation should refer to '<i>findings of non-compliance with licence conditions</i>' which would follow completion of Ofgem's enforcement process (including the use of statutory powers at the end of that process). The opening of an investigation and/or use of information gathering powers should clearly not be in scope, since at that point Ofgem has made no finding of non-compliance.</p> <p>For the avoidance of doubt, if introduced, although a relevant factor in considering Performance-Related Pay we do not see that the issuance of any Notices of Remediation, could fall within paragraph F7.4 as these are not formal enforcement action and do not involve a finding of non-compliance.</p> |
| F7.5-F7.9 | As we set out in our response to Q3, we strongly oppose the introduction of an Ofgem "objection" process relating to performance related pay. We therefore request that these requirements are removed in line with option 1 set out by Ofgem. |
| F7.12 | As noted elsewhere, we do not see that ' <i>provide transparency</i> ' as sufficiently clear to form a licence obligation. This could be changed to ' <i>explain</i> '. |
| F7.13(b) | The requirement for expenses incurred to ' <i>deliver value for money for energy consumers</i> ' is very subjective, as relating an expense directly to the delivery |

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| | <p>of an outcome would always be qualitative. The key requirement is that expenses should be justifiable within our broader operational requirements and this point is adequately captured in F7.13(a). We therefore request that F7.13(b) is removed.</p> |
| F7.16 | <p>As noted elsewhere in this response, we do not find an obligation for us to '<i>provide transparency...</i>' on expenses expenditure to be sufficiently clear as a licence obligation. We also remain uncertain as to whether this obligation is needed given that we have wider legal obligations to disclose expenses expenditure. If the provision remains, we request this is changed to '<i>The licensee must provide a reasonable amount of detail on the expenditure...</i>'.</p> <p>We note that the words starting paragraphs (a) to (c) should not be capitalised.</p> |
| Condition F10 | |
| F10.2 | <p>Although we agree with the intent of the changes to this condition, we do not agree that the change to this paragraph aligns with the policy intent. The intent is to remove the provisions which allow for cost recovery relating to activities carried on before FSO Day 1. But the effect of the drafting is to suggest that F10.2 may now be used for costs relating to activities carried on <u>before</u> FSO Day 1. It is not helpful to add this ambiguity in the licence and we request that this paragraph is not changed.</p> |
| Condition G1 | |
| G1.4 | <p>While we accept the requirement for Strategic Aims to meet requirements set out within the NESO Business Plan Guidance, we would note that setting of those requirements must allow appropriate time for the development of such Strategic Aims.</p> |
| G1.8 | <p>G1.8(c) requires the business plan to contain '<i>a clear articulation of the major outcomes the licensee is seeking to achieve...including an explanation of how those outcomes relate to the licensee's most recent Strategic Aims</i>'.</p> <p>However, the definition of Strategic Aims also includes the use of outcomes and hence creates confusion when applied in this way. It would be helpful to seek to differentiate between these outcomes (which in part is due to time-horizons) with the licence. This could be achieved by simplifying G1.8(c) to say '<i>Information to explain how the Business Plan aligns with the Strategic Aims</i>'.</p> |

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| Condition G2 | |
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| | We agree with the proposed changes to G2 to reflect the new ICP. However, we provide more detailed views in our response to Q8. |
| Condition G3 | |
| | We support the removal of this licence condition, alongside the broader Ofgem proposals around financial reporting as we believe this provides a more streamlined and proportionate approach. |

Q5. Do you have any specific drafting suggestions for the requirements within Condition C1 and the associated guidance in the NESO LED?

Please see the table below for our specific drafting suggestions for C1.

| New Ref (ESO licence) | Comment |
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| Condition C1 | |
| Part A: Operation of the electricity system | |
| C1.6 | <p>We do not see the changes here as adding clarity to the requirements currently set out in the ESO licence, but they do cause confusion in a number of areas.</p> <p>Although the current licence obligation (C1.2(a)) refers to systems and processes, '<i>technical requirements</i>' has been added and it is not clear what this is referring to in the condition. We request that this is clarified, using text from the LED to explain what requirements are intended to be referred to here.</p> <p>The obligation around technical requirements is also an absolute obligation and we cannot ensure that requirements which we are not in complete control over meet specified outcomes. If retained, we request the obligation around technical requirements is separated and becomes a '<i>reasonable endeavours</i>' obligation. We do not see it as appropriate to be an absolute or '<i>best endeavours</i>' obligation (see also comments on LED below).</p> <p>We also request that the wording is revised to clearly outline what is expected from us in maintaining a "<i>safe and secure electricity system</i>" in the condition itself. This is extremely broad as drafted and not consistent with the intention behind the condition which is, as set out in para 2.1 of the LED, to comply with the relevant regulatory obligations relating to the safety and security of the system. We do not see it as satisfactory that the intent should be set out in the</p> |

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| | <p>LED, with much broader wording in the condition itself. For example, we should not be required to ensure that processes are in place to ensure health and safety on the electricity system, where a range of different entities have obligations to do so under the Health and Safety at Work Act 1974 and are far better placed to comply with those obligations. Indeed, as drafted, the licence obligation seems to create a confusing overlap between the licence obligation and the health and safety regulatory regime operated by the Health and Safety Executive.</p> <p>Based on these points, we request that the wording in para 2.1 of the LED is moved into the licence.</p> |
| C1.7 | <p>When the electricity system operator licence took effect in October 2024, in our understanding the reference to responding to requirements '<i>in an economic and efficient manner</i>' was replaced with a reference to an '<i>effective manner</i>' (i.e. effective taking into account NESO's duties overall). This reflected the new duty in section 163 of the Energy Act 2023 which gave us broader statutory objectives and focusing on economy and efficiency specifically no longer seemed appropriate. It seems to us that changing the wording back to focus on economy and efficiency alone does have an impact on how we should consider our systems and processes and we have not, within the time for this consultation, been able to fully consider the impacts. However, we see the logic in the LED that the focus on economy and efficiency relates solely to responding to operational requirements '<i>based on the prevailing obligations and arrangements for operating the electricity system and instructing Balancing Services</i>'. To ensure that the obligations are clear and not confusing, if this change is to be made, as a minimum we request that this wording is added to C1.7, rather than being set out in the LED.</p> <p>In addition, we request that the wording from para 2.6 of the LED is also added to the condition.</p> |
| C1.10 | <p>While we agree that transparency and integrity of Balancing Services markets is an appropriate outcome for us to promote, it is not within our complete control to protect against the exploitation of market power. We request that the first sentence is changed from '<i>... and protect against the exploitation of...</i>' to '<i>... and seek to prevent the exploitation of...</i>'.</p> |
| C1.11 | <p>The concept of distorting efficiency does not seem very clear to us. We request this is changed to '<i>... best calculated to ensure it does not unduly:</i></p> <p class="list-item-l1">(a) <i>distort competition; or</i></p> <p class="list-item-l1">(b) <i>create inefficiency,</i></p> |

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| | <p>across the wholesale electricity market and Balancing Services markets (where efficiency is measured based on all relevant information the licensee had available to it at the time). ...'.</p> <p>It should be clear that 'unduly' applies to both limbs here. We also consider it helpful to retain the wording currently in Condition C1.2(a) in the licence condition.</p> |
| C1.12 | <p>The wording 'transparency' is too vague to set out in a licence condition in this way. If there is to be a change from the current licence requirement, we request further information so that we can understand the change. Otherwise, consistent with the current condition C1.4(b), we request the text is changed to:</p> <p><i>'The licensee must use reasonable endeavours to ensure that its overall approach to operating the National Electricity Transmission System and the framework and process it uses for deciding between different available actions are communicated clearly to electricity market participants'.</i></p> |
| Part B: Energy system efficiency and resilience | |
| Part B (Heading) | We note this heading does not match para C1.2(b) as we understand to be the intention. |
| C1.13 | <p>We request that '...by taking...' is changed to '...by seeking to take...'. While we agree that we should seek to lead the way in this space, whether we can do so is not fully within our control in circumstances where we rely on cooperation from a range of organisations, including those outside of the energy sector.</p> <p>The LED guidance acknowledges that we will need to make appropriate choices around where to focus resource and that taking the same approach across the (whole) energy system will not be possible. For consistency with this we also request that 'across the energy system' is changed to 'for the energy system'.</p> |
| C1.14 | <p>We can't fully control the actions and communication of all TSOs and what information they do/do not provide and as drafted the obligation could be one that we cannot comply with. It is also not proportionate to expect that we would understand <u>any</u> development that may impact the energy system in Great Britain. Finally, the outcome focusses on us understanding developments and this appears to relate to communication – we suggest that the broader reference to relationships (which is not particularly clear) can be removed as can 'transmission' (which is electricity focussed).</p> |

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| | Therefore, we suggest re-wording to say, ' <i>The licensee must use reasonable endeavours to maintain effective communication with the relevant system operators for interconnected electricity and gas systems to understand developments that may impact the energy system in Great Britain.</i> ' |
| C1.15 | We agree with this principle but would note that many aspects of a secure and efficient system are outside our control. However, we believe that given the requirement is around facilitation to enable, this provides us with enough clarity and recognises we would not be able to enforce actions from other parties. |
| C1.16 | The phrase ' <i>...that create overall value for the energy system...</i> ' does not seem clear. In line with the current licence text in condition C1.4(a), we request this is changed to ' <i>... that generate value for consumers and stakeholders</i> '. |
| Part C: Markets for electricity system services | |
| C1.17 | We request that the derogation is referred to directly in the licence condition for clarity – ' <i>Subject to any derogation under C9.6 of Condition C9...</i> '. |
| C1.18 | We note that content from current paragraphs C9.2 and C9.3 around technical difference is now covered in LED para 4.3, although it is not clear to us where price is covered. We request that both paragraphs are retained in para C1.18. This could be done by adding ' <i>... in its procurement of Balancing Services, having considered relevant price and technical differences...</i> '. It is our understanding that the changes in C1.18 are not intended to remove this important principle, but in our view this should be clear on the face of the licence condition. |
| C1.18(b) | Given the complexity of the relevant technical systems and the ongoing developments of providers, although we do not disagree with the general intent, we consider that para C1.18(b) as drafted is overly blunt. Although the obligation acknowledges that NESO should resolve issues as soon as reasonably practicable, the reference to ' <i>any technical or capability issue</i> ' does not acknowledge that NESO should prioritise the issue and response based on the potential impact and taking proportionate steps to resolve it. We request that the works ' <i>taking into account the materiality of the restriction</i> ' or similar are added to acknowledge this or alternatively that this is changed to a reasonable endeavours obligation. |
| C1.19 | We agree with the policy intent that there should be no undue discrimination in the procurement of Balancing Services. However, the drafting of this requirement does not seem clear to us. In particular, what is meant by ' <i>transparently explaining</i> ' and what is meant by ' <i>justifying Balancing Services</i> ' |

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| | <p>design'. We request that the text is made more consistent with current condition C1.4(b):</p> <p><i>'...by using reasonable endeavours to ensure that the reasons underpinning its design of Balancing Services are clearly stated and made available to electricity market participants'.</i></p> |
| C1.20 | <p>We do not see an obligation for services to be 'accessible' to provide sufficient clarity for a licence obligation. We also do not agree with a requirement to maximise participation. This is not the same as maximising the benefits of competition and could incentivise inefficient behaviour such as lowering maximum bid size to increase number of units contracted.</p> <p>We do not see the need to change from current language in the licence (condition C1.5(b)) and we suggest changing to:</p> <p><i>'...must ensure that Balancing Services are designed to be effective and to enable the non-discriminatory participation of all qualified market participants'.</i></p> |
| C1.21 | <p>We welcome the proposed change to the licence that makes the condition more focused around general transparency rather than more prescriptive service by service volumes. This more outcome focused approach offers us the capability to provide a more nuanced view in longer timescales while maintaining our flexibility to adjust service specific procurement strategies (and communicate anticipated volume requirements) at shorter timescales.</p> <p>However, the wording 'transparency' is too vague to set out in a licence condition in this way. We request that this is changed to <i>'...provide details of Balancing Services it expects to procure, over a range of timeframes to provide clear investment signals and foster competition'</i>.</p> <p>We would like Ofgem to make clear that the LED does provide us with the flexibility as described above.</p> |
| C1.22 | <p>There is a typo here as 'Licenced' should be 'Licensed'.</p> <p>We agree with the objective to improve how Balancing Services operate with and in relation to the flexibility services procured by DNOs to drive whole electricity system efficiency. We are committed to working closely with the Market Facilitator as part of this objective, including by offering expert insight and advice to shape its programme of work and outputs and by seeking its input in our service development.</p> |

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| | <p>We understand that this obligation is to work with the parties listed to remove unnecessary restrictions, noting that in many cases this is not something that will be capable of being achieved by NESO alone.</p> |
| C1.23 | <p>We appreciate that the intended outcome is to support effective trading and remove unnecessary barriers. However, we cannot unilaterally remove barriers. We request this is changed to '<i>...including by seeking to remove barriers which could...</i>'.</p> |
| Part D: Wholesale market arrangements, codes and charging | |
| C1.24 | <p>For consistency with our primary duty set out at s.163 of the Energy Act 2023, we propose changing this to '<i>...facilitate a secure, efficient and economical Zero Carbon Energy System</i>'.</p> |
| C1.25 | <p>We question whether it is the right time to add further obligations on NESO in particular relating to code administration while code reform is ongoing as part of a separate process and while similar obligations are not being placed on other code administrators. We also do not find it clear what '<i>coordination across Industry Codes</i>' means in this context and request that these provisions are considered further.</p> |
| C1.26 | <p>It is not clear to us what '<i>..in a transparent and effective manner...</i>' means and we do not see this as sufficiently clear to form a licence obligation in this context. Clearly the methodologies must be maintained in accordance with Section E of the licence and reasons for those need to be reasonably explained. It is not clear that more should be included here.</p> <p>The term '<i>Connection and Use of System Charging objectives</i>' is not defined and we request this is changed to '<i>the Use of System Charging Objectives and Applicable Connection Charging Objectives (as applicable)</i>'.</p> |
| C1.27 | <p>It isn't clear to us what is meant by '<i>transparent</i>' communications and we request that this is reconsidered. In addition, in the context we do not consider that '<i>...as far as feasible...</i>' provides sufficient clarity on the outcome.</p> <p>We suggest re-drafting the entire C1.27 to say, '<i>The licensee must use reasonable endeavours to provide clear communications and forecasts around future Use of System Charges to enable market participants to understand and, to the extent reasonable, predict these charges.</i>'</p> |
| C1.28 | <p>Similar to comments above, it is not clear to us what the requirement to ensure processes are '<i>..transparent...</i>' means and we do not see this as</p> |

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| | <p>sufficiently clear to form a licence obligation in this context. We request that this word is removed or clarified.</p> |
| Part E: Energy system planning and connections | |
| C1.30 | <p>The obligation here is very broad and, while we agree with the policy intent, we do not see it as within our control to ensure that (all) frameworks and procedures in scope meet the stated outcome. Given this is the outcome that we are seeking to meet through its effective engagement, we request that '<i>to ensure that...</i>' is changed to '<i>to seek to ensure that...</i>'. This acknowledges the outcome we are seeking to meet without giving the outcome as within NESO's control.</p> <p>Alternatively, if as might be implied by para 6.1 of the LED, the obligation is intended to refer only to <u>NESO's</u> frameworks and procedures, this should be stated (i.e. '<i>...ensure that <u>its</u> frameworks and procedures...</i>'').</p> <p>As noted elsewhere, it is not clear to us what the requirement to ensure frameworks and procedures are '<i>..transparent...</i>' means and we do not see this as sufficiently clear to form a licence obligation in this context. We request that this word is removed or clarified.</p> <p>For consistency with our primary duty set out at s.163 of the Energy Act 2023, we propose changing the final line to '<i>...support the timely, secure, efficient and economical transition to a Zero Carbon Energy System</i>'.</p> |
| C1.31 | <p>We support the shift towards more outcomes-focused obligations but believe the condition should align with areas that we can control and should not drive perverse behaviours. The current use of 'best endeavours' sits alongside a scope that covers the processes—particularly those involving distribution-only projects— that sit outside our control. Some of the procedures in scope, in particular, the connection methodologies (under Conditions E15 to E17) need to be approved by Ofgem.</p> <p>A '<i>Reasonable endeavours</i>' obligation would be more appropriate and better reflects our ability to influence outcomes in these areas and take a proportionate approach to the proposal of change.</p> <p>We note that para 6.4 of the LED states that the expectations extend to actions within our area of control, but this is not consistent with the licence obligation as drafted.</p> <p>To enhance transparency and accountability, we propose that the condition is supported by clear, data-driven KPIs that we can publish, audit and align with those already set out in our NESO1 Business Plan.</p> |

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| C1.32 | <p>While we agree with the inclusion of a '<i>reasonable endeavours</i>' obligation, the wording of this obligation is currently inconsistent with para 6.9 of the LED – it does not relate only to connections where we have a required decision-making role. We request that the obligation is made consistent with the policy intent (for example by changing '<i>...the process...</i>' to '<i>...any process for parties seeking to connect to the electricity system where the licensee has a decision-making role...</i>').</p> <p>The current outcomes focused licence obligation (in condition C1.6(f)) seeks connections decisions which are fair, consistent and timely. While this is broadly clear, in the new condition we do not see requirements for processes to be '<i>transparent</i>' and '<i>robust</i>' as sufficiently clear to include in a licence obligation. It is not clear what will make a process '<i>robust</i>' in this context.</p> <p>It is also unclear how the obligation interrelates to the approval of connections methodologies by Ofgem (under conditions E15 to E17), when those methodologies are approved by Ofgem.</p> |
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Part F: Cross-cutting requirements

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| C1.34 | <p>Although we agree with the policy intent, the terms '<i>robust</i>' and '<i>which are important for</i>' are too unclear to be included in a licence obligation in this context. What a stakeholder has a view on and considers important is not always foreseeable to us and what activities are important for the energy sector is unclear. We request that the obligation is changed to:</p> <p><i>'The licensee must ensure that through the delivery of its activities it carries out effective engagement with stakeholders on issues, recommendations or decisions: (a) which materially impact those stakeholders; or (b) which the licensee reasonably considers to be of importance for the energy sector'.</i></p> |
| C1.35 | <p>We consider that the current obligation in condition C1.4(b) is far clearer than the new proposed text. In particular, it is not clear what '<i>considering the impact...</i>' means. Given we understand that this meets the policy intent we request reverting to a similar obligation:</p> <p><i>'The licensee must take all reasonable steps to ensure that the reasons underpinning decisions or recommendations made by the licensee are clearly stated and made available to any stakeholders that the licensee considers may be materially impacted by those decisions or recommendations'.</i></p> |
| C1.36 | <p>We agree with the intent of the obligation as an outcome focussed condition to replace the current [DAG] obligations. However, it is not necessarily clear to</p> |

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| | <p>refer to analysis as being accurate or inaccurate. We request a minor drafting change to <i>'for the purpose of ensuring that any information or data it publishes or provides to the Authority or government is accurate and that any analysis does not contain errors'</i>.</p> |
| C1.37 | <p>As the designated independent system operator and planner under the Energy Act 2023, we have a statutory duty to provide independent advice, analysis and information to Ofgem and Ministers of the Crown in a range of areas. In this role we are acting as an expert body with statutory authority and, although this activity clearly falls within Ofgem's regulatory remit, it is the role we perform which is most different from traditional regulatory activities. When our licences were introduced, conditions were introduced around keeping records and having regard to a guidance document. However, DESNZ and Ofgem rightly did not seek to regulate the substance of our advice through the licence, since that would compromise the independence of the advice and so frustrate the very policy intent of the independent system operator and planner (as set out in the Energy Act 2023). This is acknowledged in the NESO Advice Process Document, which states (at para 25) that <i>'As an independent organisation, NESO maintains the discretion to decide the content of its response, within the parameters of the request'</i>.</p> <p>Condition 1.37 does not directly seek to regulate the substance of our advice. However, the requirement is so subjective and unclear in the context that it risks having the same effect. Given the breadth of potential advice requests, whether advice is clear or not is, as a standard, very imprecise. Similarly, whether advice is well-evidenced or not is not clear. It should be up to the requestor of the advice to decide whether it has met all the requirements of the request.</p> <p>Finally, we are not aware of any basis why the arrangements put in place for NESO Day 1 have not proved effective. There are already a range of obligations on us which drive us to provide effective advice, including Condition F4 and section 171 itself.</p> <p>We do not see that a case has been made to add further obligations in this area, and this has not been set out in the consultation or the Decision on the enduring regulatory framework for NESO. The advice requests that we have completed have received positive feedback, particularly in terms of the standard of work we have delivered. C1.37 should not be added to the licence.</p> |
| C1.38 | <p>It is not clear to us that the word 'easily' has a clear meaning in this context and we request this is removed. How easy it will be for published information or data to be understood by users will depend upon the user and the context.</p> |

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| | <p>We will use all reasonable endeavours to make our data and information accessible.</p> |
| C1.39 | <p>This is a very broad requirement and does not appear to us to be targeted regulation in setting an obligation relating to '<i>any processes or platforms</i>'. Our preference would be that Ofgem takes further time to work through the policy intent and refine the drafting to more closely align with a targeted intent. For example, an obligation to use reasonable endeavours to ensure that information technology platforms used by users of the electricity system for operational processes are operationally ready and effective for their purpose would be much more targeted. We note that the examples in para 7.12 of the LED are much more targeted than the licence obligation.</p> <p>In addition, although it may be reasonably clear what a robust platform is in the context, we do not see it as sufficiently clear in context what makes a robust process. Neither does the drafting cater for testing or pilot projects which may be intended to prepare a process or platform for full operational readiness.</p> <p>Given the comments above, in line with a more targeted scope we propose changing the final wording to:</p> <p><i>'are operationally ready and <u>effective to meet their intended purpose</u>.'</i></p> <p>We note the drafting currently contains a typo at '<i>license</i>'.</p> <p>Whilst we support the overall principle set out in the requirement, it is important that we have the flexibility to follow agile development and release approaches. For instance, it is often good practice to develop and release "beta" versions, to support the testing of the process/platform. These by their nature would not necessarily be "robust and operationally ready" prior to their introduction. Instead, these would support the overall intent to reach this outcome and would be aligned to the guidance of appropriate and proportionate testing/validation. We request that the licence drafting recognises that agile delivery approaches are appropriate.</p> |

Part G: The NESO Licence Expectations Document

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| C1.44(c) | For clarity, we request this is changed to ' <i>the reasons for the new or amended guidance</i> '. |
| C1.45 | Given condition A2.24, we see this paragraph as redundant and unnecessary to be added. |

Part H: Notice of Remediation

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| General | Notwithstanding our position above that these provisions should not be introduced, given the proposed scope extends beyond condition C1 of the licence, we do not understand the logic for including the provisions in Condition C1. As a new procedure for Ofgem to raise concerns outside of existing processes, it does not sit well within any existing parts of the licence but if included should be in a new Section. |
| C1.47 | <p>The phrases '<i>greater transparency and confidence</i>' and '<i>remedy any perceived performance concerns</i>' are very unclear.</p> <p>A clearer alternative would be to refer to '<i>...where the Authority considers that the licensee needs to take further steps to satisfy the Authority of the licensee's continued compliance with the obligations in this licence</i>'.</p> |
| C1.49 | It seems very unusual that the licence does not provide for a period of consultation with us on the terms of the Notice prior to it being issued. If included, we request that this is added. |

Please see the table below for our specific drafting comments on the LED.

| New Ref (LED) | Comment |
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| 2.1 | As noted above (in our comments on C1.6), we agree that the intent of this paragraph is appropriate, but request that this is the licence obligation, rather than text in the LED which is inconsistent with the licence. |
| 2.2 | <p>We request changing '<i>different scenarios</i>' to '<i>a range of scenarios</i>' for clarity.</p> <p>We request changing '<i>unanticipated</i>' to '<i>unplanned</i>' for clarity. The purpose of the expectation is for us to anticipate and plan for future events and so we do not see the current wording as correct.</p> <p>We request that '<i>material</i>' is added - '<i>...pose a material risk to the operation of the [NETS]...</i>'. We do not see it as a reasonable expectation that any risk should be planned for, no matter how remote or unrealistic.</p> <p>The final sentence refers to '<i>skills</i>' which is not the subject of the licence obligation being covered (and, if included, should be moved to another condition). We request that this is replaced with '<i>processes</i>'.</p> <p>Finally, while it is reasonable to consider future-facing investment we do not see it as a reasonable expectation that we invest in the future with no qualification around the foreseeability of the situation being invested for. We request this is changed to '<i>...needed as is reasonably foreseeable to meet security standards for the future</i>'.</p> |

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| 2.3 | <p>We agree that it is a reasonable expectation for us to keep relevant standards/requirements for operating the electricity system under review and propose changes where appropriate. However, the current obligation/expectation blurs lines of accountability and places an unreasonable burden on us. It also drives unhelpful behaviours of us spending substantial resources on flagging potential issues and changes to Ofgem and code bodies where issues are not wholly understood but where we consider that doing so is necessary to mitigate risk of possible licence breach. We request that, in both the licence obligation and LED, this is changed to a reasonable endeavours obligation/expectation and that the expectation to flag '<i>at the earliest opportunity</i>' is replaced with '<i>promptly taking into account NESO's understanding of the issues involved</i>'.</p> |
| 2.4 | <p>As noted above, we request that the first sentence is added to the licence condition to align with the intention of the provision and prevent inconsistency between the wording of the licence and the LED.</p> <p>On the second sentence, we propose changing '<i>legislation</i>' to '<i>statute</i>' to align with other parts of our licence (see, e.g., conditions C9.1 and E12.2)</p> |
| 2.5 | We request that the phrase ' <i>(without limitation)</i> ' is changed to something less legalistic, such as ' <i>at least</i> '. |
| 2.6 | We see this as part of the licence obligation, rather than guidance for us to have regard to and request that this wording is moved (Under C1.7). |
| 2.7 | Although we agree with the intent behind this paragraph, we do not see it as a reasonable expectation that we should ensure that IT infrastructure can accommodate new types of Balancing Service providers as soon as such new types arise with no period for NESO to adapt its systems. We request adding the words ' <i>...and taking reasonable steps in advance to be able to accommodate and instruct...</i> '. |
| 2.9 | We consider that the expectation in para 2.9 should be an expectation to take reasonable endeavours to consider proposing changes or promptly raise issues with others. |
| 2.12 | <p>In the first sentence, we request changing this to '<i>...to be able to understand Balancing Services providers' compliance...</i>'. The current wording could be read as if the expectation is for us to understand all providers' compliance at all times.</p> <p>We do not find the expectation in the second sentence to be very clear (i.e. '<i>where necessary</i>' and '<i>appropriate</i>'). We request that this is changed to '<i>We</i></p> |

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| | <i>would expect NESO to investigate potential non-compliance and raise concerns to the Authority (in each case where NESO considers this to be appropriate to meet the outcomes set out in Condition C1.10)'.</i> |
| 2.15 | We suggest that the approach should align with our statutory objectives, rather than the broader concept of 'consumer interest' and request this is updated. |
| 4.1 | It would be helpful to understand further what other formal written agreement is being referred to here. |
| 4.4 | Although we agree with much of the expectation as appropriate, we do query whether ' <i>with no less restrictive way to achieve the purpose</i> ' is appropriate as a threshold for service design as it seems unduly onerous and may impact on flexibility of considering appropriate services. |
| 4.5 | We do not consider that we will be able to ' <i>demonstrably evidence</i> ' in all cases and suggest this should be changed to ' <i>demonstrate</i> '. |
| 4.7 | We question whether the reference to ' <i>...at relevant stages</i> ' is clear here and request that it is clarified or deleted. |
| 4.9 | Our understanding is that the licence obligation allows us to provide a more nuanced view in longer timescales while maintaining our flexibility to adjust service specific procurement strategies (and communicate anticipated volume requirements) at shorter timescales. We request that this is acknowledged in the LED. |
| 4.10 | We request this is changed to ' <i>take steps to implement</i> ' given implementation of opportunities may not always be within our control. |
| 5.1 | We suggest that the term ' <i>arrangements</i> ' should be used instead of ' <i>frameworks</i> ' for consistency with the licence condition. |
| 5.2 - 5.3 | While it is helpfully acknowledged in para 5.2 that the expectation relates only to matters within our control, para 5.2 - 5.3 leave it quite unclear the extent to which we should proactively review Industry Codes (both those we manage and others) to propose/recommend changes. We agree with the sentiment that we should use expertise to proactively propose changes, but request that an element of proportionality is included. This could be done in a number of ways, but we suggest that ' <i>...This includes seeking to change...</i> ' is changed to ' <i>...This includes taking reasonable and proportionate steps to change...</i> '. This approach aligns with para 5.5 of the LED. |

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| 5.5 | Please see our comment above on paragraph C1.25 and our request for these provisions to be considered further. |
| 5.9 | Para 5.9 needs some level of proportionality to the expectation. We suggest that ' <i>...NESO to use its expertise...</i> ' is changed to ' <i>...NESO to take reasonable and proportionate steps to use its expertise...</i> '. This approach aligns with para 5.5 of the LED. |
| 5.10 | We request adding at the end of this paragraph – ' <i>which are within its control</i> '. |
| 6.1 | ' <i>...Regional Energy System Planning...</i> ' should be corrected to ' <i>...Regional Energy Strategic Plan...</i> '. |
| 6.2 | It isn't clear what ' <i>assessments</i> ' are being referred to here and we request that this is deleted or further explained. |
| 6.3 | For consistency with our primary duty set out at s.163 of the Energy Act 2023, we propose changing this to ' <i>...support the timely secure, efficient and economical transition to a Zero Carbon Energy System</i> '. Similar to comments above, in our view para 6.3 needs some level of proportionality to the expectation. We suggest that ' <i>...NESO should make...</i> ' is changed to ' <i>...NESO should take reasonable and proportionate steps to make...</i> '. This approach aligns with para 5.5 of the LED. |
| 6.4 | We welcome the additional clarity the LED provides, but paragraph 6.4 should more strongly recognise that we do not control processes for projects that do not connect to or affect the transmission system. We agree with the expectations in paragraph 6.5 as these relate to processes we manage directly. |
| 6.5 | Para 6.5 needs some level of proportionality to the expectation in terms of ' <i>ongoing review</i> '. We suggest that ' <i>...making beneficial changes...</i> ' is changed to ' <i>...taking reasonable and proportionate steps to make necessary changes...</i> '. This approach aligns with para 5.5 of the LED. We request that ' <i>beneficial</i> ' should be clarified to ' <i>necessary</i> ' changes, being necessary changes to align with the outcome of the condition. |
| 6.6 | Paragraph 6.6 could be further refined to acknowledge that DNOs have no obligations to engage with us where their projects have no transmission impact. |

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| 6.11 | We do not consider that we have a mechanism to 'ensure' TO/OFTO costs are fair and reasonable and request that the drafting is changed to 'seeking to ensure'. |
| 7.1 | We request changing to ' <i>Using open engagement methods that promote accessible and inclusive engagement</i> ' for clarity. It is not clear what being ' <i>transparent</i> ' means in the context and we request that this is removed. |
| 7.3 | While we welcome the addition that we must respond to reasonable and proportionate requests from stakeholders for greater explanation, we consider that the same proportionality should apply generally to our explanation of consideration of consultation responses and to our approach to responding to requests (e.g. not only the requests themselves but also the number of requests). Put simply, we do not see that we should be held to a higher level of expectation than Ofgem or other public bodies would be held. We request that the expectation should be for us to take reasonable and proportionate steps to explain stakeholder feedback and answer requests for greater explanation. This change would provide greater consistency between para 7.3 and para 7.5. |
| 7.4 | We would like further clarity on the requirement around "distributional impacts of recommendations and decisions" and would welcome further engagement with Ofgem on this prior to any decisions being made. We do not see that ' <i>level of transparency</i> ' is clear in the context and we request that this is clarified or removed. |
| 7.7 | We request that there should be a degree of proportionality to this expectation. In many cases it will be clear to all stakeholders that there is uncertainty or limitation and we do not see it as proportionate for us to always be expected to set this out. The words ' <u>unless already clear</u> we would expect...'. |
| 7.8 - 7.10 | As set out above, we request that these provisions are removed. (Comments below are subject to this overarching point.) |
| 7.9 | We do not see it as a reasonable expectation for us to understand what Ofgem/government will need to carry out their subsequent decisions or policy measures. Although we note the "reasonably" qualifier, it does not appear to us that this helps in the context. First and foremost, the primary purpose of request for advice should be to have a well-defined scope. This clarity will enable us to provide the most relevant and useful advice for their future decisions. It's essential that the request clearly outlines its purpose and what it will be used for, allowing us to deliver our advice accordingly. |

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| | <p>Including this detail here could inadvertently create an incentive for NESO to continuously ask for additional details and questions to satisfy the licence requirements. This, in turn, could slow down the process and make it overly burdensome. From our experience with previous advice requests, timely analysis is often crucial to support ongoing policy discussions. We request that the first sentence is removed.</p> <p>In addition, we note that there may be some circumstances where we are not permitted to share all background information (e.g. due to national security classification) and we request that this is acknowledged in the expectation.</p> |
| 7.10 | <p>Although we do not disagree with the expectation that advice should be impartial and we take impartial decision-making very seriously, other processes already deal with this and we see this expectation as unnecessary. More importantly, we are concerned that this expectation as set out may be used by stakeholders driving a particular position in their commercial interest to seek to make arguments about bias of particular NESO employees. This would be a very unhelpful behaviour to drive within industry and appropriate processes already exist. We therefore request this is removed.</p> |