

SP Energy Networks - ECP Phase 3 Consultation Response

Chapter 2 – Roles and Responsibilities

1. Do you agree with the activities of the Approver we are proposing? Please tell us why.

Yes. We agree that it is important that Ofgem should approve the outcomes of the different stages of Early Competition, as laid out within the Phase 3 Consultation, given the impact the decisions at such stages could have on other network operators' licence obligations and operation of the wider transmission system, as well as cost to consumers and delivery of Net Zero targets. However, the ESO must ensure that the additional time it will take Ofgem to approve/ reject each stage is built into the proposed timescales of running an Early Competition and subsequently any Cost Benefit Analysis (CBA) that must be carried out. We are surprised at the timescales proposed for running the Early Competition processes given that they are 2.5 to 3 years longer than the current NOA process, for identifying infrastructure projects to proceed.

As the Approver body, it is essential that Ofgem has a strong say at each stage in the Early Competition process. It is essential that Ofgem has the full oversight role of the entire process, given its regulatory responsibilities and duties as the Energy Regulator.

2. What do you think the checks, that make up the other activities, should look like? Should they be a formalised process?

We believe these checks should be part of a formalised process to provide transparency, for all stakeholders, and accountability (so as to ensure that Ofgem's principal objective and general duties are being properly taken account of and given due weight) in the checks that are being carried out by Ofgem. Any other activities carried out by the Approver, and the additional time associated, should be built into the CBA which must be carried out, as part of Ofgem's wider consultation exercise, prior to any Early Competition model being introduced.

In addition to the process being transparent, we believe that the rules and assessment criteria and purpose of each check should be published so that all organisations who chose to engage are clear on what is required, thus minimising the risk of attracting organisations who may not have the capability to deliver against the requirements or satisfy the compliance aspects of the process.

Furthermore, we believe that the check "Does the project continue to be in the interest of consumers?" should extend to Stage Gate 4, i.e. following the preliminary works to ensure that consumers are protected.

3. Who do you think is the most appropriate party or parties to perform the Procurement Body role?

We note that the consultation continues to state that either Ofgem, a Third Party or the ESO could perform the Procurement Body function and that discussions are ongoing between Ofgem and the ESO concerning the regulatory and legal arrangements surrounding this role. We agree that further work should be undertaken by Ofgem, as part of their own consultation exercise, into the roles and responsibilities of various players in any Early Competition model.

Figure 4 in the consultation paper presents the wide range of skills that will be required within the Procurement Body. We believe the proposed approach, no matter who carried out the role, could lead to inherent inefficiencies. For example, duplication of resources across multiple bodies,

resulting in a dilution of effectiveness (e.g. more bodies would result in more silos) and a lack of clarity on ultimate responsibility for the development of an economic and efficient transmission system ensuring security of supply.

In relation to the regulatory changes that would be needed to facilitate the Procurement Body role, we note that there is a lack of detail about the potential nature of the changes to the TO Licences, STC and CUSC. We would welcome more detail on this, so we can assess the potential impact any changes could have.

4. Taking into consideration the role of the Approver, do you think an Independent Assurance activity is needed?

Given that Ofgem, as the Approver, will have oversight of the different stages of Early Competition, we agree with the ESO that an Independent Assurance activity is not required.

5. Do you agree with our position on the Contract Counter party role? Please tell us why.

We believe that the party who carries out this role must have a strong understanding of the operation of the electricity system and the impact proposed contracts will have on system operation. It will be important that contracts are executed in accordance with their terms, given the impact a non-Network solution could have on the wider electricity network. We therefore believe that the ESO carrying out the role of Contract Counterparty would be sensible, given their existing experience in contracting with market players through its management of the balancing market.

6. Do you agree with our position on the Payment Counter party role? Please tell us why.

It is sensible that the Contract Counterparty and Payment Counterparty role should be the same entity as this is in line with standard contractual practice. Again, the ESO has proven experience in this area through its role in managing the balancing market.

7. Do you agree with our proposed approach to conflict mitigation?

We do not agree with the ESO's proposed approach to conflict mitigation. We note that the ESO's ongoing preferred position is that TOs should continue to play a role in network planning, with the ESO having an enhanced role to provide greater challenge to the TOs' proposals, whilst the TOs' bidding teams should be ring-fenced in order to mitigate perceived conflicts of interest.

We consider the use of the phrase "conflicts of interest" is particularly unhelpful in ascribing a status to the role of the TO, in that it seems to have crystallised a concept across stakeholders that the TOs' licence obligations are prejudicial in some way to this new process – despite no evidence being offered to support either this view or that our customers/consumers will be negatively impacted by maintaining the TOs' existing roles and responsibilities.

As we have discussed with the ESO on many occasions, SPEN's preferred option continues to be for the incumbent TO to participate in Early Competitions as the counterfactual, through the RIIO framework. Whilst we welcome the direct engagement we had with the ESO in December 2020 to explore what the TO participating as a counterfactual could look like under an Early Competition model, we are disappointed that dialogue on this particular issue was explored so late on in the ESO's extensive consultation processes. We would have liked to have explored this issue in detail as part of the Phase 2 Consultation exercise. This would have allowed the TOs the opportunity to formally respond to the details and challenges of how this counterfactual approach could work in practice. As far as we understand it, the ESO has no intention to share this work, which was discussed directly with SPEN and SSEN, with any other stakeholders. We are therefore of the opinion

that the ESO has not sufficiently explored the option of the TO continuing as a counterfactual to market bids, as a plausible option.

Adopting the counterfactual approach will insure against a situation where there is no market interest or where a market bid is unable to deliver. If the TO is not a counterfactual and there is no market interest or a market bid fails to deliver, this would undoubtedly lead to consumer detriment in terms of delays, leading to constraint costs being higher than necessary. Having the TO compete as a counterfactual, by comparing the TO solution to market bids, also ensures that consumers do not miss out on the value for money that the RIIO model has been designed and built to ensure.

We understand from the ESO that there may currently be difficulties to establishing a regime where the TO acts as a counterfactual due to a lack of CBA processes that allows for a regulated option (the counterfactual proposal) to be compared against a competitive option (the market-led proposal), for example, when comparing a regulated asset proposal that will be in place for 45 years, against a market-led proposal which will be in place for 25 years. However, the lack of sufficient and accurate CBA processes is not a sufficient reason for TOs to be removed from the regulatory framework to bid for and deliver projects in a market environment, if the counterfactual approach is the option that actually delivers consumers the best value for money. It is essential that work should be undertaken as a priority to create such CBA processes which will not only benefit Early Competition processes but also the current Pathfinder tenders, which the ESO is leading on. We ask that Ofgem takes forward this important CBA development work, following submission of the Early Competition Plan in April 2021.

In relation to the ESO expanding its network planning responsibilities, we do not believe it is appropriate for a licensee to be proposing an extension to its own roles and responsibilities. We note the ESO states its strengthened network planning role would need to involve *“the ESO undertaking greater review and challenge of TO options to support the competitive process”*. This would require an increase to the ESO's skillsets to include, for example, project delivery expertise. The ESO is also proposing to undertake more extensive challenge of TO proposals, such as challenging TO delivery dates and proposing different solutions or technologies as well as repackaging TO proposed solutions, such that they meet the competition criteria. We do not believe the ESO is best placed to undertake increased network planning responsibilities, as TOs already have the expertise, resources and skills to develop their own projects, which are already subject to the rigour on the NOA process.

8. Do you agree with the key differences between early competition and these case studies? And do you agree that the key differences would limit the lessons that can be learnt for the purposes of developing the model for early competition?

Thames Tideway Tunnel ("TTT")

As pointed out by the ESO in this consultation, the TTT competition was run by the incumbent water company (Thames Water) and the water regulator (Ofwat). Thames Water as the incumbent licence holder drove the procurement exercise and at no point was Thames Water involved in a competition with other market players to deliver and own the assets. We therefore do not think it is appropriate to compare the TTT to the ESO's proposed Early Competition Model. Furthermore, as TTT was primarily a financing competition, as pointed out by the ESO within the Phase 3 Consultation, this particular example is more akin to Late Competition than Early Competition. It is also worth noting that the TTT required a government guarantee to underpin the commercial finance, which is not proposed under Early Competition, further limiting the ability to compare the two models.

Given these key differences between the TTT and Early Competition, we would ask the ESO what lessons they wish to learn from the TTT process, to feed into the development of their final Early

Competition Plan. For the above-mentioned reasons, we do not believe the TTT should be used as a case study in the Early Competition Plan to develop the model for Early Competition.

Contracts for Difference (CfD)

As the ESO has highlighted in their consultation, there are many differences between the proposed Early Competition model and the CfD process. A key difference being that CfDs were created for trading purposes, not to compete and deliver large, high-value assets. We believe this will limit the usefulness for the ESO to use the CfD as a case study for Early Competition. However, we do accept that the ESO has developed experience in a Procurement Body role, as the EMR delivery body.

Chapter 3 – Identifying Projects

1. Do you agree that only competing projects that appear in at least two FES scenarios will provide sufficient confidence that the project will go ahead?

Whilst we can understand why the ESO would chose to propose that inclusion in two of the ESO's Future Energy Scenarios (FES) scenarios provides sufficient confidence that a project would go ahead, such an approach is counter to the least worst regret methodology, which is central to the NOA process.

In our experience, a project which may be considered of appropriate scope, scale and programme in one NOA may be:

- i. Required much earlier in the next NOA, no longer leaving enough time to continue the Early Competition process, without adverse impacts and delays;
- ii. The scope may no longer be appropriate i.e. the proposed capacity may be too high or too low; and
- iii. The network need could disappear or change.

We would offer caution in using the FES as providing a firm basis for determining strategic long-term infrastructure planning decisions. By way of example, the FES 2020, forecast a minimum transfer requirement across the B6 (the Scotland-England border) which was above the maximum transfer requirement forecast in the FES 2019, with this analysis only having been undertaken a year earlier. We agree that certainty of need is required before a project is subject to Early Competition processes, so as not to embark upon a resource intensive and costly competitive process which has to be abandoned at a later stage, as the network need changes.

We also note that the ESO is proposing in the Phase 3 Consultation to change the NOA process in order to accommodate any proposed Early Competition process. It is suggested that NOA process timescales may need to be revised with a view to ensuring enough lead in time to run an Early Competition. It is also proposed that a new signal for projects to 'proceed to Early Competition' will be required, which we understand would be before a 'proceed' signal is given under the existing NOA processes.

Our reading of the proposed timelines in the Phase 3 Consultation leads us to believe that the Early Competition processes will introduce delays of 2.5 - 3 years, compared to the current NOA processes, to the point at which a preferred bidder is selected to then take forward the required project design and delivery. Therefore, in order to avoid such delays, we believe that this earlier 'proceed to Early Competition' signal would need to be advanced by approximately 2.5 - 3 years than the current NOA 'proceed' signal, in order to provide sufficient time for the Early Competition processes proposed. If this is in fact the case, we question why the current NOA process does not also allow for network needs to be identified at an earlier stage.

Furthermore, the current NOA process is dynamic and non-linear. We therefore question how the proposed Early Competition process will be able to be flexible enough to run alongside this. For example, there are examples of where a NOA project gets a 'proceed' signal in one year, but in the NOA process the following year, the network need has either changed or the project has been given a 'hold' or 'stop' signal. A relatively recent example is the change in NOA recommendation for the Torness – Lackenby 400kV reinforcement between the SPT and NGET areas, which in part was due to an alternative solution being more economical and efficient as a consequence of the requirement to integrate new onshore wind developments, which have come forward in the interim. As TOs, we are designed to operate in such an uncertain environment, however, we question how attractive and realistic participation in the NOA process would be for 3rd party bidders, through the proposed Interested Persons Option Process.

2. Do you agree with our proposed approaches for different drivers of network investment? Are there ways single party connections could be identified as having sufficient certainty to compete?

We continue to hold the view that projects considered for Early Competition should exclude those likely to impact time critical projects or projects replacing existing assets. Given their time criticality, we do not consider any customer connection projects as suitable for inclusion within the scope of Early Competition. We do not believe that there is any example where a competitive process lasting 2.5 – 3 years, over and above the existing development timelines, would be acceptable to a developer. Further, given that asset replacement involves replacement of assets currently forming part of a TO's transmission network, we do not consider asset replacement projects as suitable for inclusion in the scope of Early Competition either.

We would also seek clarification on the distinction which the ESO considers there to be between Voltage and Stability projects, and projects intended to deliver NETS SQSS compliance. The distinction between these two types of drivers identified is not clear in this Phase 3 Consultation. This is an area which would benefit from clarification to ensure the nature of these projects in the context of the NETS SQSS is clear with a view to ensuring there is no erosion of security and quality of supply, whilst also ensuring the continued development of the system in a coordinated, economic and efficient manner.

3. Do you agree that continuing to develop the Interested Persons Option process is the best way to engage stakeholders in initial solution design?

Whilst we agree that the Interested Persons Option Process is the most suitable option (when compared to the other options presented by the ESO in the Phase 3 Consultation) for including stakeholder input into the NOA process, we consider that extensive work is required to ensure that this Process is attractive and useable for third-parties in the future. Lessons must be learned from the Interested Persons Option Process introduced in NOA 6 (2020/21) where third-party participation in the process was very low, resulting in no third-party options being adopted in this year's NOA 6. However, we do think further development of the Interested Persons Option Process will help address the perceived "conflict of interest" of the incumbent TOs having the ability to heavily influence the scope of competition, through the NOA process. The participation of third-parties through the Interested Persons Option Process will mitigate this perceived conflict of interest.

Chapter 4 – Commercial Model

1. Do you agree with the partial indexation of the TRS and the adoption of CPIH as the index? Why?

We have no specific comments on the choice of index other than the adoption of CPIH is consistent with Ofgem's direction for the RII0-2 framework, which has been influenced by the Office of National Statistics' (ONS) recent move to using CPIH as the lead measure of inflation for household costs. Ultimately, any decision on the choice of indexation should seek to achieve the correct balance for the time value of money in the interests of projects and consumers.

2. Which of the options for extending the revenue period do you think are most appropriate? Why?

Clearly any Early Competition model should benefit from fixing costs, ensuring that consumers, who will ultimately fund this strategic infrastructure, are protected from price volatility. Given the lengthy timescales involved in the delivery and operation of strategic network infrastructure, the choice of market player and their long-term viability will be important to avoid any triggering of a distressed requirement for services or last resort provisions.

3. Do you agree with the preferred option of a fixed payment to the successful bidder upon the delivery of key milestones during the preliminary works period? Why?

A fixed payment to the successful bidder upon delivery of key milestones during the preliminary works is a fair solution and is reflective of arrangements in the RII0-2 framework. Clearly any costs attributable to the milestones should be transparent and have a good level of justification – they should also be fixed, capped and cashflow neutral. We note that the risk of early default is not addressed here and whilst future payments and cashflows are neutral and avoid sunk future costs, what guarantees are to be considered for default?

4. Do you agree with our revised views and preferences in respect of the Post Preliminary Works Cost Assessment, Performance Bond and Income Adjusting Events? Why?

The process appears to be becoming increasingly complex and therefore, the assessment criteria need to be presented in a simplified fashion to ensure that this does not become a barrier to entry.

Furthermore, whilst in principle a Performance Bond is considered appropriate, the higher the value the Bond, the more expensive it will be. This will be a cost which parties will seek to recover through the TRS (and therefore consumers). To the extent that more risk is put on bidders, the higher the bid cost will be, meaning the consumer will bear more costs. These additional costs need to be factored into the project-specific CBA to be carried out.

5. Do you agree with our preferred option regarding margins and overheads? Why?

Market players are better placed to answer this question.

6. Are there any additional measures a Procurement Body could take to further drive value for consumers in securing debt finance?

Market players are better placed to answer this question.

7. Do you agree with our current preferred option with regards to equity? Why?

Market players are better placed to answer this question.

8. Do you agree with our views on indexation? Why?

Market players are better placed to answer this question.

9. Do you agree with our updated views on licence/contract and industry codes? Why?

Our position has not changed since our Phase 2 Consultation Response.

For consistency, all market players must be held to the same standards as incumbent TOs in terms of licence/contract obligations, industry code obligations and statutory duties, to support effective, efficient, co-ordinated and economical system operation and to ensure that value to consumers can be delivered. These practices should not be viewed as a barrier to entry by market players but as an important condition to the purpose and duties required of providing and operating onshore network assets that will form part of the electricity network.

We also note that the ESO's consideration in the Phase 3 Consultation of the impact on licence, statute and industry codes is limited to obligations and processes to facilitate Early Competition. The ESO has not addressed the extent to which Early Competition models will impact TOs' current licence and industry code obligations and statutory duties – this is notwithstanding our comments in our Phase 2 Consultation Response. This exercise should be undertaken prior to the ECP being submitted to Ofgem, since the impact on TOs' current licence and industry code obligations and statutory duties, is an essential consideration in the development on the ECP.

Further, given the current uncertainty surrounding the future role of the ESO, as part of the National Grid Group, consideration must be given to whether the ESO is best placed at this moment in time to undertake and fully deliver “the significant, but deliverable” industry code changes that will be required to facilitate the Early Competition framework.

10. Do you agree with our views on need change or disappearance? Why?

It may not always be the case that a network need changes or disappears. Instead it could be that the underlying network need for works may remain, but the required scope and programme may change. It is important that such distinctions are made clear.

11. Do you agree with our views and preference in respect of the 'provider of last resort' arrangements? Why?

We agree that a 'provider of last resort' arrangement would be required if the finalised Early Competition framework forbids the incumbent TO from being a 'counterfactual' to other market bidders. We are strongly of the view that such a risk could be avoided by allowing the TO to act as the 'counterfactual' and to continue to develop its own proposed project through the existing RIIO framework, until the point at which the preferred market tender is fairly and transparently measured against the TO network proposal.

Similar to the OFTO of last resort regime, we understand Ofgem would invite proposals from transmission licensees. Based on their proposals, they would then appoint the most appropriate transmission licensee as the 'provider of last resort'. If this scenario came about, it would undoubtedly increase the consumer costs for strategic infrastructure and add further delays, impacting on the delivery of Net Zero targets.

However, the difference between the proposed Early Competition framework and existing OFTO regime must be understood and considered as part of the ESO's proposals. At the moment, if the OFTO of last resort process was triggered, this would only ever be to take over fully developed, operational assets. However, under the Early Competition proposals, this could be for asset still

under construction. This would inevitably lead to additional complications, costs and delays. These differences must be factored into the ESO's assessment in this area and be identified as a tangible risk within the CBA work we understand Ofgem will take forward on Early Competition.

Chapter 5 – End to End process for Early Competition

1. Do you agree with our preferred position on pre-tender activities? Please explain your answer.

It is not possible for us to answer the question posed as there is insufficient detail, in relation to pre-tender activities, on the role and responsibilities of the TO who will be required to be part of this process. As yet, we have no visibility as to what is required of us. Outstanding questions include the type of information that will be required from TOs, the scope of the information that we would be asked to provide and who does the information need to be provided to, for example, all interested parties?

There has been no Impact Assessment of what this means for the supporting actors in the pre-tender process, such as the TOs, and unfortunately the limited details provided make it impossible for us to assess objectively or in detail, at this stage.

We understand that Ofgem intends to undertake a consultation on the roles and responsibilities of players in an Early Competition framework, following submission of the ECP. As part of this consultation exercise, we would expect Ofgem to set out in detail, the requirements expected from the TOs, as part of the pre-tendering and tendering process.

2. Do you agree with our preferred position on impact studies?

It is important that the information requests on TOs are well managed to ensure that the process does not become resource heavy for the incumbent TOs. It therefore seems sensible for the Procurement Body to organise for the necessary network impact studies to be conducted. However, it is imperative that the Procurement Body liaises directly with the relevant incumbent TOs in the development of these network impact studies, at the earliest stage, to ensure that the views of the incumbent TO, as the licenced network operator, are fully and accurately reflected in the network impact studies.

3. Is there anything in our approach to sharing network information that you believe is unworkable? If yes, please provide details?

Much greater work is needed in reaching an approach to sharing network information that is considered acceptable by all parties. As we have raised in previous ESO webinars, we believe that the ESO is underestimating the extent of the challenges in being able to share such data. In the first instance, the incumbent TOs are subject to licence obligations (Special Licence Condition 2B Restriction on the use of certain information, RIIO-T1 Licence and Special Licence Condition 9.14 Restriction on the use of certain information, RIIO-T2 Licence) which significantly restricts the sharing of information that has been provided by a third party or is about a third party.

It is also the case that the incumbent TOs are not currently funded or resourced to provide such data to market players. The ESO must learn lessons from their recent Stability Pathfinder exercise in Scotland, which placed significant resource constraints on the incumbent TOs to manage the unprecedented demand for network data and connection agreements from bidding market players. A more manageable process for the incumbent TOs must be designed by the ESO and TOs, ahead of being introduced into any Early Competition framework.

With regards to the proposed list of primary information set out in the consultation document, we

believe this may be insufficient and will primarily be driven by the nature of any particular project.

In our Phase 2 Consultation Response, we asked the ESO to provide clarity to help our understanding of how the sharing of network information would work under an Early Competition Model. We consider the following points are still outstanding and require further clarity from the ESO:

- Noting Grid Code provisions amongst other things, we question whether a Non-Disclosure Agreement (NDA) is sufficient protection (and remedy for breach) for data exchange as opposed to the obligations and sanctions imposed on licensed operators. An example is where a bidder's parent company/ affiliated companies hold generation and/or interconnector assets, and the ETYS models could contain data about competitors.
- Some information, such as generator reactive power capability charts, is not routinely shared with TOs. Some User data in the ETYS is not easily protected by encryption. The ESO should provide further detail on whether important information, such as a generation ranking order, is expected to be shared as part of this exercise.
- The ESO expects to partially encrypt ETYS data. However, the ESO needs to clarify whether it intends to tie the proposed ETYS data exchange format to a single network analysis software platform. If so, we would suggest the ESO considers whether this is acceptable in the context, as it may disadvantage some potential bidders.

4. Do you agree that individual pre-submission reviews should not be offered to bidders during the tender process if the clarification question process is in place?

Introducing a pre-submission review process would add additional time to the already lengthy programme, which would likely cause delays and not be in the interests of consumers. We therefore agree with the ESO that pre-submission reviews are not required as the clarification of questions process will be in place.

5. Do you agree with our preferred position on the Pre-Qualification assessment and process? Please explain your answer.

We expect any Pre-Qualification assessment to be in line with the requirements expected of TOs under current regulatory practice.

6. Do you agree with our preferred position on Invitation to Tender stage 1 assessment and process? Please explain your answer.

We note the reference to "Risk to Network Reliability"¹ in the consultation document. This appears to suggest that the TOs would run a "Connections Feasibility Study" based on the information provided by bidders. However, given the strategic nature of the infrastructure to potentially be developed under the Early Competition framework, we question whether the scope of such a Feasibility Study goes far enough. In addition to connections, should it not also be considering the wider impact on ensuring the continued security, reliability and resilience of the electricity transmission system, which is of upmost importance when considering any proposed solution.

7. Do you agree with our preferred position on Invitation to Tender stage 2 assessment and process? Please explain your answer.

We believe the approach is appropriate as it mirrors the same standards and requirements that the incumbent TOs already undertake and adhere to.

¹ Page 28, Phase 3 Consultation: Chapter 5, End to end process

8. Do you agree with our updated views in respect of late project delivery? Why?

In terms of late project delivery, any third party should be subject to the same late project delivery provisions as the incumbent TOs, as included in the finalised RIIO-T2 framework, including the provisions for Large Onshore Transmission Investments (LOTI) and Price Control Deliverables (PCDs).

9. Do you agree with our updated views on the preliminary works / solution delivery incentive regime being proposed for early competition? Why?'

TOs have invested significantly in understanding community issues and taken steps to resolve them. For example, through landscaping or reducing impacts through related construction work. In addition, a critical activity required to deliver Transmission projects is gaining land access to enable construction work on any approved route. SPT has published a Grantor's Charter that explicitly assures land owners of the standards SPT will adhere to.

Although a reputational stakeholder engagement report goes some way in promoting good relationships between the winning bidder and relevant stakeholders, we believe that it is vital that the winning bidder will need to achieve a similar level of community trust and engagement, as is current practice of the TOs, in order to avoid significant unexpected delays which could occur as a result of inadequate stakeholder engagement.

The consultation provides limited detail on the proposed stakeholder engagement incentive, what value is envisaged and what would happen if the stakeholder engagement report is not delivered within 3 months of the conclusion of the preliminary works stage. Would such a delay or failure to produce such a report, result in a penalty? Further details are needed in this important area.

10. Do you agree with our updated views on the operational incentive regime being proposed for early competition? Why?

It is our view that the winning bidder should be held to the same standards that the incumbent TOs are, for example in terms of environmental and technical standards, as they will be connected to the incumbent TOs' networks. We believe this should be true for all aspects of the winning bid, to ensure that the competed asset is to the same standard as a regulated asset under the RIIO model. The incumbent TO will still carry a level of return on regulatory equity (RORE) risk in these areas, and so it is important that the performance of the winning bidder does not adversely affect the incumbent TOs' performance in these areas.

11. Do you agree with our revised views and amended preference in respect of decommissioning securities? Why?

SPEN continues to hold the view that any bidding party should be subject to the same decommissioning responsibilities that the incumbent TOs are currently subject to. We believe this should be true for all aspects of the winning bid, to ensure that the competed asset is to the same standard as a regulated asset under the RIIO framework.

Chapter 6 - Implementation

1. Do you think Table 1 is a comprehensive list of high-level implementation plan activities? If not, what has been omitted?

We agree that Table 1 is a comprehensive list of high-level implementation plan activities. There is undoubtedly a significant amount of work and change which will need to be planned and must be undertaken in advance of the first Early Competition tenders being launched. Issues such as securing

primary and secondary legislation as well as facilitating licence and industry code changes will be complex, resource intensive and time-consuming exercises.

However, Table 1 fails to sufficiently account for the changes that will be needed to current TO duties and obligations under the licence, codes and statute; with the ESO having only considered the changes required in so far as it facilitates the delivery of the Early Competition framework. This omission is not helpful and fails to recognise the impacts of introducing Early Competition on the wider operation of the electricity system.

2. Do you agree with our proposed timing and sequencing for implementation plan activities? If not, what would you change?

We consider that the ESO is optimistic in forecasting that the first Early Competition tender will be able to run in the years 2023-2025, with the first tender award in the years 2025-2027. We are of this view, given the scale and complexity of activities in the Implementation Plan and that primary legislation is needed in order to allow for a CATO licence to be awarded, with the Energy White Paper indicated that CATO provisions would only be introduced when parliamentary time allowed². Furthermore, we expect Ofgem to undertake its own consultation process, Impact Assessment and CBA on Early Competition, before taking a decision on whether to introduce this model into the RIIO-2 framework.

As mentioned above, we continue to have significant concerns regarding the impact of the proposed Early Competition timescales on the delivery of critical infrastructure, necessary to meet Governments' Net Zero targets. Delays to project delivery seem inevitable, when compared to the status quo regime, due to the associated timescales and complexity of tendering and awarding/negotiating of contracts/licenses, in addition to the delays associated with the bringing into effect of the necessary primary and secondary legislation.

From this consultation, we note that the ESO estimate that it will take 2.5 - 3 years from the beginning of an Early Competition process to the 'Preferred Bidder' stage. This is substantially longer than the status quo timescales which the incumbent TOs currently work to, in terms of planning and delivering strategic network infrastructure. Such delays are likely to be costly to consumers and generators alike, and risk undermining the UK's ability to meet its Net Zero targets on time. We are therefore keen to understand how the ESO intends for such delays to be accurately reflected into the project-specific CBA process, to determine whether a project is suitable for Early Competition. Any delays to the delivery of strategic network infrastructure within the Early Competition process will result in a further rise in already significantly high constraint costs, which will ultimately be borne by the consumer. One example is that the ESO estimated in NOA5 (2019/20) that a one-year delay to the Eastern HVDC link will equate to a minimum of £300m in constraint costs. SPEN therefore continues to hold the view that the numerous and complex arrangements proposed for the delivery of strategic national infrastructure, under the proposed Early Competition framework, will delay timelines for delivering Net Zero and is not in the best interests of consumers.

3. Do you agree with the 'potentially advanceable' implementation plan activities? If not, what would you change?

We believe that any activities carried out prior to the relevant legislation being in place should be done so with extreme caution. This would avoid the situation that may arise from activities needing to be repeated, due to them becoming outdated or because they don't align with the finalised primary legislation put in place to facilitate Early Competition. As the consumer will ultimately bear the costs, SPEN's view is that further implementation work should only be undertaken once Ofgem has taken a decision to introduce Early Competition into the RIIO-T2 framework and the relevant

² BEIS, Energy white paper: Powering our net zero future, 14th December 2020

primary and secondary legislation is in place, to allow the Early Competition model to be fully executed.

4. Do you agree with our views on early competition prior to early competition legislation? Why?

We strongly agree that the Early Competition model should only be introduced once the relevant primary and secondary legislation is in place, allowing for fully licensed entities, CATOs, to be established. Only then can both network and non-network solutions compete alongside each other to address identified network needs, which is the distinguishing feature of the Early Competition proposals.

Chapter 7 – Early Competition and Distribution

1. Is there any issue with the high-level early competition process being developed that means it could not be used for distribution sector needs? If yes, please specify the issue(s) and why they make the process unusable.

A model which has been developed specifically for the delivery of electricity transmission projects and is now being considered for introduction into the electricity distribution sector, must take into consideration the distinct differences between the transmission and distribution network. We have shared such differences with the ESO, both in the ENA ED2 competition subgroup and webinar discussions, in the past. We also summarise these below:

- o Existing competitive markets are already operational in distribution networks which will limit the scope for the introduction of any new competition models.
- o Distribution has a different network typology from transmission. Distribution is a radial network with many voltages and hundreds of customer connections whereas transmission network is meshed with fewer voltages and tens of connections and fewer voltage differences.
- o The size and value of projects are much smaller in distribution.
- o Distribution investments tend to be more integrated into existing network infrastructure, such as the replacement of existing assets, rather than large new assets which can be built offline.
- o There are often different project planning and consenting processes for distribution projects.
- o The ESO does not have the same role, remit or visibility within distribution networks compared to transmission networks.
- o The measure of consumer value from tendering assets at distribution could be different from transmission. We believe that further work is needed here.
- o The decarbonisation of heat and transport will have a greater impact on distribution networks. Different competition models therefore may be needed to support Net Zero, with priorities such as only ‘touching the network once’ to minimise customer disruption.
- o The distribution network is physically closer to the end-consumer and so there are different practical implications of introducing 3rd parties that do not exist at the transmission level.

We are of the opinion that this Phase 3 Consultation, and the model that it is proposing to implement, is only relevant to the Transmission sector. If Ofgem does decide to move forward with introducing an Early Competition model into the Distribution sector, a separate Early Competition model, specifically designed for the electricity distribution sector, must be developed and fully consulted upon by Ofgem.

2. Which party is best placed to perform each of the key roles at distribution level? Where a third party is chosen please specify who you think this could be and why?

We accept that similar key roles are likely to be required should Ofgem take the decision to introduce an Early Competition framework for distribution networks. As the ESO’s roles and responsibilities of managing the transmission network are very different to their role in distribution

networks, we do not believe it is appropriate to consider similar responsibilities for the ESO at a distribution level, given the significant differences in the operation of the distribution network, compared to the transmission network.

The role of the DSO is critical to the delivery of a safe, efficient, reliable and decarbonised energy system. An effective DSO model will reduce system balancing costs, whilst enabling the flexible networks necessary to facilitate customers' use of low carbon technologies. Some key activities we envisage the DSO undertaking include: accurate forecasting; efficient dispatching of flexibility; successful coordination with ESO; and ensuring data quality utilisation and visibility.

As the future role of the DSO, as an operator of the distribution network, is currently being considered by Ofgem as part of the design of the RIIO-ED2 framework, we are in agreement with the ESO's conclusion, that there is not an evident role for the ESO to play in any Early Competition framework, should one be introduced into distribution networks. Given the DNO/DSOs detailed knowledge and proximity to their own distribution networks, not to mention the communities and customers that they serve, DNOs/DSOs are better placed and better equipped to take on the roles of Procurement Body, Network Planner as well as Contract and Payment Counterparty as these roles reflect the current roles and responsibilities of DNOs/DSO in managing the distribution networks.

3. Should any of the additional roles be created as specific roles? If yes, please set out who you think is best placed to perform the role and why?

At this early stage, we cannot identify any additional roles which would be required. However, if Ofgem does intend to extend the Early Competition framework into distribution, a full and extensive consultation exercise would be required by Ofgem, to consider all relevant roles and responsibilities as part of the proposed new framework. This would be the appropriate point to determine whether any additional roles would be required.