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Dear David

**Re: Synergies and Conflicts of Interest arising from the Great Britain System Operator delivering Electricity Market Reform**

On behalf of SSE plc, I write in response to the above consultation. SSE is involved at every level of the energy supply chain: it has generation and gas storage assets; it is an electricity transmission owner; it owns and operates electricity and gas distribution networks; and it supplies both electricity and gas to energy consumers throughout Great Britain. Given the extent of our activities, the Electricity Market Reform (EMR) and National Grid's (NG) proposed role in delivering this reform has the potential to impact at every level of our business.

**We fundamentally disagree with the Government's intention to confer the EMR delivery functions on NG, a central and major commercial player in the GB energy market.**

We do not question NG's technical and operational expertise. However, we are extremely concerned by the potential conflicts highlighted as a consequence of deploying NGET, a central and major commercial player in the GB energy market, to take on this Government advisory and ultimately implementation role. NG might be the obvious choice, particularly given the time constraints. In Appendix 1, we have set out the further work that we believe is required to more thoroughly develop the delivery model, before designating the delivery body, and to then identify the most appropriate vehicle to reflect this.

Nonetheless, **if the Government intends to pursue the approach we believe that it is essential that certain minimum requirements are put in place.** This will serve both to provide confidence to other industry players that NG is unable to exploit any potential or actual conflicts of interest and protect NG from such suspicion. For these reasons, it is important that the arrangements are robust, transparent and include regular monitoring.

In summary, we believe that these requirements fall into three key components, namely:

1. **Transmission Licensing Arrangements;**
2. **Business Separation Arrangements;** and
3. **Increased Transparency around Operations.**

This letter focuses on setting out our view on the importance of these components and how they should be introduced. Our responses to the questions posed in the consultation document are provided in Appendix 2.

## **1. Transmission Licensing Arrangements**

If NG was to operate as Transmission Owner (TO), System Operator (SO) and EMR Delivery Body (EMR Body) under a single transmission owner licence, we believe conflicts of interest will arise as a consequence of interactions between its TO – SO functions and also between its SO – EMR Body functions. Examples of such conflicts include:

- TO – SO
  - promoting generation to connect to its own transmission network;
  - promoting reinforcement of its own transmission network; and
  - favouring outage changes from its own TO.
- SO – EMR Body
  - favouring the interests of generation connected on its own transmission network, i.e. through the Capacity Mechanism; and
  - using Contract for Difference information to distort the Balancing Mechanism and/or the Balancing Services market.

To minimise the reality or perception of such conflicts arising, we recommend that these three functions should be subject to separate and distinct licensing arrangements. This would result in NG holding three distinct licences in relation to electricity transmission; namely creating the following licensees NGET (holding a transmission owner licence), NGESO (holding a system operator licence); and NGEMR (holding a EMR delivery body licence).

Such separation will remove any risk to both NG and other industry parties and increase the ability for scrutiny of the activities of the separate licensees. We believe it is the most robust outcome for the introduction of these additional responsibilities.

The following sections use the acronyms (NGET, NGESO and NGEMR) as defined above to set out how the following requirements relate to the functions that we believe should sit under each of these licensees.

## **2. Business Separation Arrangements**

If NG is to act as the delivery body for the EMR, it will undoubtedly be in a position where it could use its access to information, ability to influence and/or ability to exercise discretion in favour of one or more of its other businesses. This could be done knowingly or unknowingly but the outcome, and hence our concern, is the same. In order to safeguard NG from suspicion and provide confidence to the industry that NG will not misuse its increased powers and information, we believe the following business separation arrangements should be introduced via modification to NG's existing electricity transmission licence (for activities as NGET) and creation of the additional licences described above (for NGESO and NGEMR).

### **i. Managerial and Operational Separation**

NG is already required to implement and maintain Managerial and Operational Separation between the holder of its electricity transmission

licence and any relevant offshore transmission interest that may be held by a related undertaking (Special Condition C2). We recommend that this provision is extended to require managerial and operational separation between its functions so that NGET, NGESO, and NGEMR are distinct and separate from each other and any other related undertaking. This would be accomplished in part through the issue of three separate licences (as described above) but should be supported through the inclusion of specific conditions within each licence that require such managerial and operational separation.

We do not believe that such separation would act as a barrier to NGET providing the EMR delivery body functions as the information requirements between the SO and EMR functions could, and should, be codified in a similar manner to that laid down in the System Operator : Transmission Owner Code (STC).

Shared services that do not require access to Confidential Information (as discussed further below), such as HR for example, could be provided at a Corporate level allowing the synergies from utilising established structures to be achieved.

**ii. Treatment of Confidential Information**

Through separately licensed entities as NGET, NGESO and NGEMR, NG will increasingly require access to commercially sensitive information, beyond its current requirements. To ensure that this information is not used or shared between the licensees (inadvertently or otherwise) to the benefit or detriment of its own or other parties' interests, we recommend that each licensee is subject to obligations that restrict the use of such 'Confidential Information'.

The codification of its interactions should make provision for information to be provided by the TO to the SO (as already established under the STC) and from the SO to the EMR delivery body, but restrict the information flows from the EMR delivery body to the SO and from the SO to the TO to only insofar as is necessary or appropriate in the circumstances.

Industry participation in the development of these codes will ensure familiarity in the framework that NG's functions are operating under, thereby promoting confidence that the treatment of such Confidential Information is appropriate and minimises any potential conflict of interest.

**iii. Physical Separation**

To facilitate the requirement for managerial and operational separation and treatment of confidential information set out above, we recommend that NGET, NGESO and NGEMR are physically separated from each other and from any other related undertaking. Such physical separation should as a minimum require restricted and controlled access to areas designated to each of these licensees.

Such physical separation will minimise the risk to NG and other parties of inadvertent actions that might infringe the requirements for managerial and operational separation and treatment of confidential information.

**iv. Annual Independent Compliance Review**

To ensure compliance with the above requirements, we recommend that each licensee is required to procure an annual, independent review of their compliance with the above requirements that reports to either the Secretary of State or the Authority and is made publically available for industry parties to review.

### **3. Increased Transparency around Operations**

In order for DECC, Ofgem and other industry parties to be able to scrutinise NG's actions, we believe it is essential that there is increased transparency around NG's operations, its decision making processes and interaction between its functions as NGET, NGESO and NGEMR. This is particularly important in light of evolving EU policy and work being undertaken by ENTSO-E.

As the only System Operator and EMR delivery body, techniques used to scrutinise other monopoly functions, such as benchmarking and comparison of information provided, are less suitable. Given the complexity and information asymmetry that exists in NGESO's and NGEMR's favour, it is difficult for industry parties to challenge its operations and decision making and we believe this is likely to increase under these arrangements. Moreover, there will always be some limitations regarding wider access given the commercially-sensitive nature of much of the data which will further limit the industry's ability to peer-review its activities.

NG already holds a 'superior' position in terms of market information. In 2011, in the absence of an appropriate balancing services incentive, NG committed to providing Ofgem with access to additional, more up to date information on its operation. In retrospect, the value of this information to Ofgem was questionable. Arguably, information is only of value if the information provided is relevant and provided in a meaningful way; information in itself is not necessarily helpful, particularly if provided in vast volumes and this should serve as a timely reminder as to the 'merits' placed on information provision and transparency.

Given the difficulties around scrutinising NG's data, increased transparency around its operations, decision making processes and interactions between its non-competitive functions will allow DECC, Ofgem and the industry to understand how NG acts, even if commercial sensitivity limits the information that NG is able to make publically available.

### **Additional Comments**

In reviewing this response, the following points should be borne in mind:

- a) Due to the immature stage of the development of the detail of the EMR delivery role and the lack of information on the governance that will be implemented, our comments are based on a hypothetical view of what conflicts may or may not arise. The recommended requirements may, in the fullness of time, prove to be beyond what is required. However, to minimise any delay to the effectiveness of the EMR delivery body, we believe it is essential to start with strong protections to allow all industry parties to have confidence in the protections being implemented.
- b) Further there are a number of uncertainties that may or may not increase the level of potential conflicts arising from NG acting as TO, SO and EMR delivery body. More details of some examples that are causing us concern are provided in Appendix 1. Regular review of the governance framework

implemented will allow DECC, Ofgem, NG and other industry parties to review the impact of these uncertainties on the governance framework and ensure that such changes as are required are adopted in a timely manner.

- c) The time requirements to develop industry governance should not be underestimated. Full engagement by all interested parties should be encouraged to build understanding of the codes implemented and/or amended. However, it is essential that this process starts early to ensure all necessary documentation and processes are developed and ready for implementation.

We trust that our response will provide a useful contribution to your process. We would be keen to discuss our comments with you to answer any questions that you may have in relation to our proposals and to support the timely implementation of a robust governance framework. We look forward to hearing from you to arrange a mutually convenient time.

Yours sincerely,



**Katherine Marshall**  
**Head of Regulation, Markets**

## **Appendix 1: Further Work Required**

It is our firmly held view that further work is required before a firm decision to appoint National Grid as the EMR delivery body is made. Our reasons for this view are set out below:

### **1. Designation of the delivery body before the delivery model is fully understood**

It is our opinion that the decision to designate the SO as the delivery body for the EMR has been made before the full implications of the underlying policy are properly developed. We appreciate NG may be an obvious choice, particularly given the time constraints affecting the EMR implementation programme, but think this decision should rightly be made once the delivery model is closer to maturity and the arrangements for governance have been developed.

At present, the detail available to industry participants on the delivery model is limited and we believe that substantial work will be required to fully develop the necessary legislation and industry codes to create the framework that a delivery body will be required to operate. It is our strongly held view that it is inappropriate to designate the delivery body or to attempt to assess the conflicts that may arise from such a designation until this framework is established.

The time implications of such development also need to be fully factored into the EMR timetable. Experience from recent programmes including OFTOs and Smart Metering illustrate the time commitment required to develop a governance framework, including secondary legislation and industry codes, to reflect new or evolving roles and responsibilities.

### **2. Risk averse approach to monopoly regulation**

Historically, the approach taken to introducing monopoly regulation has been to minimise the introduction of monopoly positions and, when it can be demonstrated that a monopoly position is required, to adopt a risk averse approach to the establishment of such a party. In creating such an entity to deliver key components under the EMR (or increasing the powers of an existing monopoly party), it is our view that it is essential to start from a position where there is least scope to prejudice other industry parties and to review (and, where appropriate, relax) such provisions once the true impact is understood.

The proposed approach, with the onus and burden of proof on the industry to evidence why a hypothetical arrangement may not be sufficient, is particularly inappropriate as the framework in which such delivery will take place remains to be determined. Evidencing how an entity may act under an unknown governance framework is a subjective exercise and may prejudice a more thorough review when the framework is more thoroughly developed.

### **3. Uncertainties**

There are a number of uncertainties facing the industry at the present time that impact on our ability to fully consider the potential synergies and conflicts of any given party acting as the delivery body for the EMR. It is essential that these are fully factored in the development of the delivery model. These include, but are not limited to, the following:

- i. **Development of secondary legislation and industry codes:** The development of the governance arrangements for the EMR delivery role will create new obligations and duties for industry parties. As set out above, it is only



when these are properly understood that we can truly assess the synergies and conflicts of a given party taking on the delivery role.

- ii. **EU Network Codes:** Work going on to develop these Codes, as required by the third energy package, will create numerous new obligations for industry parties to provide the NETSO with information that it doesn't currently have access to. Current drafting suggests that these codes will significantly change the relationships between different industry participants. However, the detail of such obligations remains to be determined, creating further uncertainty in relation to the potential implications in terms of the SO delivery role.
- iii. **Rationing of Contracts for Difference (CfDs):** It remains unclear the extent to which CfDs will be rationed and the process that will be utilised if this is required. We presume that a merit order will be developed but the criteria for this remains unknown. This presents challenges in assessing potential investments, as well as raising questions in relation to potential conflicts from the implementation of the EMR delivery role.
- iv. **Funding the Delivery Body:** Limited discussion has taken place to date on the funding arrangements for the delivery body. This is of significant concern and needs to be factored into contracts, particularly for industrial and commercial customers. There is also the potential for this to create charging volatility; a matter of concern for many. This may give rise to further conflicts and synergies that cannot be understood at this time.

#### 4. SO taking on the EMR delivery role

As set out above, NG is a central and major commercial player in the GB energy market and designating its SO function as also responsible for the EMR delivery role has the potential to significantly change the current industry structure and interactions. The assertion that *'simply because a conflict of interest exists, it does not follow that National Grid would act on it'* does not provide a sound regulatory basis.

The following present particular concerns for us:

- i. **Access to information:** The suggestion that NG would have access to new information that it does not already have and / or access to information earlier than it does at present or, more importantly, earlier than other commercial players or indeed information that other commercial players might never have access to, is of real concern to us.

NG will, obviously, be subject to the outcomes of REMIT and subsequently will be prohibited from acting on any market sensitive information until it is made widely known to the rest of the market. However, the perceived possibility of NG acting in such a way has the potential to be damaging to NG (as well as other industry parties) and should be avoided.

- ii. **Ability to influence:** The suggestion that NG would be collecting evidence and conducting analysis so as to inform the key decisions that ministers make in relation to EMR is extremely worrying. Not only from the perspective of all the additional raw data that NG would have access to, but also from the perspective of what precise information NG 'chooses' to procure to fulfil its role and its presentation of the resulting analysis. We agree that there is a very real risk that NG would be able to tailor this to favour its own interests and investors. Possible examples of this include:-

- a. NGEMR's scope to influence decisions that optimise its own performance under its system operator incentives;
- b. NGEMR's scope to influence outcomes that favour generation that is either connected or wanting to connect to NGET's own transmission assets;
- c. NGESO and/or NGEMR's bias towards favouring transmission investment rather than generation investment where the decision is marginal;
- d. NGEMR could, in line with its licence obligations and core remit, favour more predictable, stable low carbon technologies when setting Feed in Tariff prices; and/or
- e. NGESO could use its access to additional information to influence its system operator procurement decisions, for example its annual STOR procurement.

NG could do this either knowingly or unknowingly but the outcome, and hence our concern, remains the same.

Ministers (or Ofgem) would have to be extremely prescriptive about the information that they sought and how this was collected and be in a strong position to challenge NG's analysis for this to give us any comfort. In practice, we believe this is difficult to achieve. As is extending policing powers to the wider industry.

- iii. **Ability to exercise discretion:** DECC and Ofgem have flagged NG's ability to exercise discretion. The suggestion that NG could use its position to discriminate against certain parties is another real concern. Again, the use of Government and Ofgem to 'police' NG's behaviour is of little comfort in this regard given the complexity and information asymmetry that exists in NG's favour. We do not believe that mechanistic processes can be designed to remove this concern, certainly not in full.

Through these increases in its powers (and especially when combined with other changes such as the development of the EU Network Codes), the potential for the SO to dictate (directly or otherwise) the future shape of the GB electricity industry raises major concerns.

## 5. Alternative models for creating a delivery body

We are unconvinced that the SO is the most appropriate delivery body for the EMR and this is furthered by the lack of transparency around the obligations that will be placed upon the EMR delivery body and how these obligations will be funded. If the provision of information to the EMR delivery body is properly codified, some of the assumptions that suggest synergies from the SO taking on the delivery role may be less relevant.

We urge Ofgem and DECC to consider whether an alternative model, such as a tendered entity (akin to the establishment of the Data and Communications Company), an industry-owned organisation (similar to xoserve) or a independently managed subsidiary (akin to Elexon, the Balancing and Settlement Code Company), may be more appropriate.

## Conclusions

In summary, we do not agree that DECC and Ofgem have adequately demonstrated that it is appropriate to combine the EMR delivery role with the current role and responsibilities of the SO. This is due, in part at least, to the lack of work undertaken to date to develop the governance framework that the entity responsible for the EMR



delivery role will be required to operate within and limited consideration of alternative models to deliver these functions. Due consideration must be given to other pending developments that will impact on the role of industry participants, particularly the SO, and how these developments interact with this proposal. Finally, the access to information, the ability to influence and the ability to exercise discretion that the SO would acquire if the EMR delivery role was combined with its existing functions has the ability to significantly change the industry, with implications that we do not believe have been fully considered.

## Appendix 2: Response to Consultation Questions

### 1. Information – conflicts and synergies (monopoly conditions)

#### ***a) Do you agree that there are unlikely to be material conflicts arising from the electricity System Operator having access to EMR related information?***

No.

As set out in our covering letter, we believe that there is a strong likelihood of material conflicts arising from the electricity System Operator having access to EMR related information under the existing licensing arrangements. It is difficult to fully assess the extent of such conflicts under the governance arrangements are established but we anticipate the potential for decisions in relation to the Balancing Mechanism and the procurement of Balancing Services to be at risk in the event that NGESO had full access to the information required by NGEMR.

#### ***b) Do you agree that there is significant potential for synergies as a result of the electricity System Operator having access to EMR related information?***

We do not agree with this statement.

It is our view that the synergies most likely to arise fall into two main categories: namely, cost savings from shared services and provision of information from NGESO to NGEMR.

As set out in our covering letter, we agree that some synergies in the form of cost savings may arise as a consequence of sharing certain corporate services between parts of the NG group. We do see merit in this, subject to the exclusion of sharing or using Confidential Information as set out in the covering letter.

We also see synergies arising from the provision of information by NGESO to NGEMR. However, we believe the requirements to provide such information should be codified as set out in our covering letter and information held by NGEMR should only be passed to NGESO insofar as is necessary or appropriate in the circumstances.

#### ***c) Do you agree that the potential for conflicts and synergies arising from the electricity Transmission Owner having access to EMR related information is limited?***

We do not agree with this statement.

There are risks inherent in the current arrangements with one of the electricity TOs having access to System Operation information and the proposal for NG to also be responsible for the EMR delivery role increases these risks beyond a level that we believe is acceptable, especially in light of evolving EU policy. We strongly recommend that the three functions are separated as set out in our covering letter to mitigate these risks.

#### ***d) Do you agree there are limited conflicts with gas distribution, gas transmission and gas system operation arising from access to EMR information?***

No.

It is our view that conflicts may also apply in relation to NG's gas transmission and distribution activities and their SO role in gas. The same issues arise, if there is discretion, for example, about a CCGT getting a Capacity Mechanism contract, then

NG's gas licensees may see merit in the plant being located to provide benefits to NG's gas networks.

The separation of the licences proposed should also restrict the sharing of Confidential Information with these other activities of NG. This will ensure that any potential risks are prevented.

***e) Are there any other conflicts of interest or synergies associated with access to EMR related information for businesses operating in mainly monopoly conditions that we have not identified?***

We are not aware of any at this time. However, we recommend that this view is re-tested in light of a fully developed governance framework.

## **2. Information – conflicts and synergies (competitive conditions)**

***a) Do you agree that the most material potential conflicts of interest with competitive businesses as a result of National Grid's increased access to information have been identified?***

Yes.

We agree that the potential conflicts of interests in relation to NG's activities in offshore transmission, interconnectors, CCS and Gas LNG have been identified.

***b) Do you agree, that where competitive businesses are concerned, there is a need for additional mitigation?***

It is our view that mitigation is required where there is any conflict of interest (potential or actual) to ensure that industry party and investor confidence is not impacted and suspicion of any conflict (unintentional or otherwise) is avoided.

***c) Are there any other conflicts of interest or synergies with businesses operating in mainly competitive conditions that we have not identified?***

We believe you have identified the primary conflicts with NG's activities that are carried out in competitive conditions. However, we recommend that this continues to be reviewed in light of the development of the governance framework and also any change to NG's activities in these areas.

## **3. Influence – conflicts and synergies**

***a) Do you think that all the major potential conflicts of interest and synergies arising from an ability to exert influence have been identified?***

No.

As set out in Appendix 1, we are particularly concerned that the EMR delivery role will create the potential for NG to influence key decisions. We believe there are further potential conflicts that may arise, including:

- a. NGEMR's scope to influence decisions that optimise its own performance under its system operator incentives;
- b. NGEMR's scope to influence outcomes that favour generation that is either connected or wanting to connect to NGET's own transmission assets;
- c. NGESO and/or NGEMR's bias towards favouring transmission investment rather than generation investment where the decision is marginal;

- d. NGEMR could, in line with its licence obligations and core remit, favour more predictable, stable low carbon technologies when setting Feed in Tariff prices; and/or
- e. NGESO could use its access to additional information to influence its system operator procurement decisions, for example its annual STOR procurement.

However, this list is not exhaustive and other conflicts may arise including some that cannot be foreseen at this time.

Recognising the potential for conflicts does not imply that NG would seek to exploit them but the possibility that this may occur, intentionally or otherwise, raises concerns that need to be properly and robustly addressed in order to prevent such concerns undermining industry arrangements and/or commercial interactions.

***b) Which aspects of the analysis that the SO will carry out for Government are most exposed to a potential conflict of interest?***

Without the governance framework, it is hard to provide a definitive response to this question.

All analysis is subject to potential bias, both in designing the analysis requirements and in presenting the outcomes. Such potential bias raises doubts that NG may (intentionally or otherwise) carry out and present analysis in a way that favours NG or other industry parties to the detriment of others. Such concern is damaging for the market and for industry relationships.

We strongly recommend that all potential conflicts of interest are avoided to allow NGEMR to operate fully and to prevent any suspicion of NGEMR's actions.

***c) Do you agree with our conclusion that the main potential for synergies is between the SO and the EMR role?***

No.

As set out in response to question 1b, it is our view that the main synergy arises from information being provided by NGESO to NGEMR. Information flows between these parties could be provided for through the use of an industry code that provides for NGESO to provide information to NGEMR, and for NGEMR to provide information to NGESO only insofar as is necessary or appropriate in the circumstances.

#### **4. Discretion – conflicts and synergies**

***a) Do you think that all the potential conflicts of interest and synergies arising from an ability to exercise discretion have been identified?***

We are unsure at present whether the five examples set out in the consultation document will be the limit to the potential for discretion to be exercised. With substantial elements of the proposals still under development and ongoing change expected in the industry (as set out in the Uncertainties section of Appendix 1), the scope for discretion to be exercised may increase from the examples identified.

***b) Which potential areas of discretion present the most risk of conflicts of interest?***

The suggestion that NG could use its position to discriminate against certain parties is a real concern. All of the areas identified present risks and we do not believe it is appropriate to attempt to rank these. Instead, we recommend that a robust approach

as set out in our covering letter is adopted to minimise the risk and prevent actual or potential conflicts impacting on NG or other industry parties.

***c) Do you agree with our conclusion that the main potential for synergies is between the SO and the EMR role?***

We strongly disagree with this statement.

The potential for the SO to exercise discretion in the way set out in the consultation is a step-change from the current arrangements and opens opportunities for the SO to be perceived to exploit this discretion to the advantage of NG's (other industry parties') interests. Such perceptions are potentially damaging to NG and the wider industry and therefore should be avoided. We strongly believe that this can only be achieved through the approach set out in our covering letter.

## **5. All conflicts and synergies**

***a) Do you agree with the assessment of the relative immateriality of the potential conflicts between the EMR role and the SO?***

No.

We strongly disagree with this view as set out in our covering letter and response to question 1a). The perception of conflicts (even if they do not arise or are not acted upon) has the potential to be highly problematic but is difficult to quantify, especially in light of the lack of detail available at present on the governance framework.

***b) Do you agree that any potential conflicts with other activities including the electricity TO and businesses operating under mainly competitive conditions have the potential to be material?***

Yes.

For example, the potential for NGETO to utilise the information, influence or discretion available to NGESO and/or NGEMR to further generation connections in England and Wales, rather than in Scotland or offshore has the potential to have significant ramifications for all parties involved and may hamper Government policy on renewable energy.

***c) What further analysis could be carried out to determine the materiality of the conflicts we have identified?***

We do not believe meaningful analysis can be carried out until the governance framework is finalised due to the lack of certainty on the mitigations that will be in place.

To meet the proposed timeline, we strongly recommend that a robust framework is introduced in the first instance, with subsequent reviews following implementation.

## **6. Information mitigation**

***a) Do you think that conflicts of interest relating to access to information can be addressed through the design of EMR and EMR governance measures set out above?***

We think that the proposed measures will be beneficial and therefore support their introduction.

However, we do not believe that they will be sufficiently robust to resolve our concerns. Our covering letter sets out our views on how a robust approach could be established.

***b) Which of the additional mitigation measures set out under ‘further mitigation measures’ should be considered to address these conflicts of interest? Would anything else be necessary?***

We believe that the additional mitigation measures proposed will be beneficial but these are not sufficient to resolve our concerns.

We believe it is essential that the following components, as described in our covering letter, are implemented:

1. **Transmission Licensing Arrangements;**
2. **Business Separation Arrangements;** and
3. **Increased Transparency around Operations.**

## **7. Influence mitigation**

***a) Do you think that conflicts of interest relating to influence can be addressed through the design of EMR and EMR governance measures set out above?***

Whilst we strongly support the proposed introduction of scrutiny of analysis; transparency to allow third party; and a robust governance framework, it is our view that the most appropriate and robust way to manage these conflicts of interest is to establish separate licences, with specific provisions on the handling of confidential information, as set out in our covering letter.

As set out in Appendix 1, experience to date suggests that a high level of information asymmetry already exists in NG's favour and this proposal will further that. We are very concerned that the reliance on ministers and the industry to scrutinise the analysis will require a significant level of time to review information provided by NG and we do not believe the introduction of mechanistic processes will be sufficient to mitigate this risk.

***b) Which of the additional mitigation measures set out under ‘further mitigation measures’ should be considered to address these conflicts of interest? Would anything else be necessary?***

We believe that the additional mitigation measures proposed will be beneficial but these are not sufficient to resolve our concerns.

We believe it is essential that the following components, as described in our covering letter, are implemented:

1. **Transmission Licensing Arrangements;**
2. **Business Separation Arrangements;** and
3. **Increased Transparency around Operations.**

## **8. Discretion mitigations**

***a) Do you think that conflicts of interest relating to discretion can be addressed through the design of EMR and EMR governance measures set out above?***

We think that the proposed measures will be beneficial and therefore support their introduction.



However, we do not believe that they will be sufficiently robust to resolve our concerns. Our covering letter sets out our views on how a robust approach could be established.

***b) Which of the additional mitigation measures set out under ‘further mitigation measures’ should be considered to address these conflicts of interest? Would anything else be necessary?***

We believe that the additional mitigation measures proposed will be beneficial but these are not sufficient to resolve our concerns.

We believe it is essential that the following components, as described in our covering letter, are implemented:

1. **Transmission Licensing Arrangements;**
2. **Business Separation Arrangements;** and
3. **Increased Transparency around Operations.**

**9. Mitigations – business separation**

***a) Overall, will the design of EMR, the proposed governance arrangements and the existing regulatory framework be sufficient to mitigate the conflicts that we have identified?***

No .

We do not believe that this is sufficient and have set out in our covering letter how this can be supplemented to ensure a robust framework.

***b) Are other mitigations also likely to be necessary? If so, please specify what and why.***

Yes.

As set out in our covering letter, we believe further mitigations are required. The detail of these and our reasoning set out above.

***c) Are business separation requirements (beyond restrictions on information flows) necessary?***

Yes.

As set out in our covering letter, we believe further mitigations are required. The detail of these and our reasoning set out above.

***d) If business separation is necessary what entity should be subject to the ring fence?***

As described in our covering letter, we recommend that the three functions (namely, TO< SO and EMR delivery body) should be subject to separate and distinct licensing arrangements.

This would result in NG holding three distinct licences in relation to electricity transmission; namely creating the following licensees NGET (holding a transmission owner licence), NGESO (holding a system operator licence); and NGEMR (holding a EMR delivery body licence).

Such separation will remove any risk to both NG and other industry parties and increase the ability for scrutiny of the activities of the separate licensees. We believe it is the most robust outcome for the introduction of these additional responsibilities.

***e) What degree of business separation do you think would be necessary to mitigate conflicts of interest?***

It is our view that business separation consist of four components:

- i. Managerial and Operational Separation;
- ii. Treatment of Confidential Information;
- iii. Physical Separation; and
- iv. An Annual Independent Compliance Review.

Our detailed comments on each of these components, including why we believe they are important, is provided in our covering letter.

***f) How can we best protect the synergies between the EMR and SO roles when considering additional mitigation measures?***

Appropriate synergies should be protected through the adoption of an industry code, akin to the System Operator – Transmission Owner Code (STC), that codifies the interaction between NGESO and NGEMR. Development in conjunction with industry will assist in promoting transparency and understanding of the new arrangements.