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August 23rd, 2024

ESO Response to Review of the Energy Market Investigation (Electricity Transmission Losses) Order 2016

Dear Remedies review team,

Thank you for the opportunity to respond to your consultation on your provisional decision on changes to the Energy Market Investigation (Electricity Transmission Losses) Order 2016.

Who we are

As the Electricity System Operator (ESO) for Great Britain, we are at the heart of the energy system, balancing electricity supply and demand second by second.

Our mission, as the UK moves towards its 2050 net zero target, is to drive the transformation to a fully decarbonised electricity system by 2035, one which is reliable, affordable, and fair for all. We play a central role in driving Great Britain's path to net zero and use our unique perspective and independent position to facilitate network and market-based solutions to the challenges posed by the energy trilemma.

As National Energy System Operator (NESO) we will continue to build on the ESO's position at the heart of the energy industry, acting as an enabler for greater industry collaboration and alignment. We will unlock value for current and future consumers through more effective strategic planning, management, and coordination across the whole energy system.

Our general views on this consultation and the amendments which are proposed as the provisional decision

This CMA consultation sets out the provisional decision which will make the necessary amendments to the Energy Market Investigation (Electricity Transmission Losses) Order 2016 (**the Order**) in anticipation of designation of the Independent System Operator and Planner (**ISOP**) under the Energy Act 2023.

Overall, we support the intent of the changes proposed and agree that it is a necessary requirement to update definitions and references in the Order to ensure that NESO is captured by the terms of the Order.

We have included some further detail and proposed some refinements to the drafting changes to the Order in our key points below.

Our key points

Proposed amendment to definition of 'Transmission Company'

We agree with the CMA that changes are needed to the definition of 'Transmission Company' to ensure that the Order captures NESO, as the designated ISOP. Generally, we support the changes proposed in the provisional decision, however we suggest that some further refinement of the definition of 'Transmission Company' is required.

- 1) In order to ensure consistency with statute, we suggest:

'the holder of a Transmission Licence which is an electricity system operator licence'.

Under the Energy Act 2023, the licence introduced for the purposes of the ISOP is 'an electricity system operator licence' (EA23 s.166(4)), we believe this terminology should be replicated in the Order.

- 2) We believe that the reference to publication of standard electricity licence conditions under the Utilities Act 2000 is incorrect and should instead reference s.33. We suggest amending to:

'as defined in the standard conditions published under section 33 of the Utilities Act 2000'.

- 3) We would request that CMA provide some further clarity regarding the two limbs of the 'Transmission Company' definition. Our working assumption is that these two limbs intend to cover uncertainty around when the order is likely to be approved and the sequencing of this approval with the designation of NESO as ISOP. Our understanding is that limb 1 covers a scenario where the Order is approved ahead of designation and limb 2 covers the Order being approved on or around the same time as designation of NESO as ISOP.

If the above assumption is correct, we would ask for confirmation from the CMA that the first limb of the definition of 'Transmission Company' is only to cover ESO.

- 4) While we appreciate that 'Transmission Company' is the incumbent defined term, and the definition is being amended to incorporate NESO, we suggest taking the opportunity to alter this defined term to better match the type of organisation NESO will be.

We believe that using 'Transmission Company' to refer to NESO, as the designated ISOP, could be misleading. ESO is currently governed by a Transmission Licence, however once NESO is designated the ISOP, it will hold an Electricity System Operator Licence. Transmission Licences will be held by Transmission Operators, and avoid any confusion, it would seem appropriate to remove any suggestion that the ISOP will operate as a Transmission Owner.

In line with the terminology introduced by the Energy Act (s.166(4)), we suggest amending 'Transmission Company' to System Operator Company.

Clarification of modifications

We note that, at 3.11(b) under Proposed changes to the Order, it is stated that '*The Order should be varied to reflect the fact that the functions and obligations of the Transmission Company will be governed by an ESO licence rather than a Transmission Licence.*'

We would welcome clarification from the CMA confirming whether the intent of this variation is to replace the 14 occurrences of 'Transmission Licence' with 'ESO Licence' in the Order. While we agree that it would be pertinent to introduce 'ESO Licence' as a defined term in the Order, consideration needs to be given to each occurrence of the term and whether it can be replaced.

This exercise will be dependent on when the amendments to the Order are planned to be implemented. Once the relevant Authority makes the proposed changes to the Transmission Licence and grants an ESO Licence to

NESO as ISOP, references to 'Transmission Licence condition C3' or 'ESO Licence condition C3' will be incorrect.

Redundant sections of the Order

Dependent on when the amended Order is intended to be operative, we suggest that it could be worthwhile for the CMA to undertake a review of the Order to ascertain whether Schedules are still required.

If it is expected that the amended order will be approved and implemented post designation of the ISOP under the Energy Act 2023 s 163, we suggest Schedule 3 of the Order may no longer be needed and could be marked as not used. This approach would follow the precedent set by Ofgem in their review of Industry Codes where they have removed non operative parts of codes as necessary (for example, CUSC s.12 BETTA Transition Issues)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 Katharine Clench, FSO Legal & Regulation Manager, at [redacted]

Yours sincerely

Hannah Kruimer
Head of Regulatory Capability

¹ 'EA23 ISOP Codes Modification – Consultation', para 1.41, pg. 24, available at <https://www.ofgem.gov.uk/consultation/statutory-consultation-establishing-independent-system-operator-and-planner-isop-gb-industry-codes-2024>