Consultation

Consultation on the ASTI ODI Penalty Exemption Period request for Eastern Green-link 1 – EGL1

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We are consulting on whether to grant an ASTI ODI Penalty Exemption Period for the Eastern Green-link1 electricity transmission project. We welcome responses from the Electricity Transmission Owners, other stakeholders and the public.

This document outlines the scope, purpose and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses. We want to be transparent in our consultations. We will publish the non-confidential responses we receive alongside a decision on next steps on our website at ofgem.gov.uk/consultations. If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response.

Any enquiries related to the text of this publication should be sent to Ofgem at:

10 South Colonnade, Canary Wharf, London, E14 4PU.

This publication is available at www.ofgem.gov.uk. Any enquiries regarding the use and re-use of this information resource should be sent to: psi@nationalarchives.gsi.gov.uk

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Executive Summary

Ofgem's Accelerated Strategic Transmission Investment (ASTI) framework[1], introduced in 2022, aims to expedite the delivery of 26 key electricity transmission projects, and was put in place to support the previous government's goal of connecting 50GW of offshore wind by 2030. This framework includes an Output Delivery Incentive (ODI), which provides a financial reward to Transmission Owners (TOs) for timely project completion, and penalises delays. The penalties and rewards are applied at a daily rate, based on the forecasted consumer impact of project delays. TOs can apply for a modification to the ASTI ODI Penalty Exemption Period (PEP) if a Delay Event occurs. A Delay Event is an event that causes, or is reasonably expected to cause, one or more ASTI projects to be delayed by at least 30 days, which is outside the TO's reasonable control and is not attributable to any error or failure on the licensee's part.

The joint venture of SP Transmission (SPT) and National Grid Electricity Transmission (NGET) (the "JV") has requested a 480-day PEP for its Eastern Green Link 1 (EGL1) project, citing "unavailability of equipment or capacity globally in supply chain", one of the examples of an event that may qualify as a Delay Event, as listed in the ASTI Guidance and Submission Requirements Document. EGL1 is now expected to be delivered in April 2029, 16 months later than required, which would result in four months of ODI penalties for the JV. The JV attributes the delay to market conditions, supplier withdrawals, and a delayed final offer from the [REDACTED] supplier. The JV asserts it took all reasonable steps to secure the supply chain given the challenging circumstances it faced.

We are consulting on rejecting the PEP application as we do not believe that, based on the evidence provided by the JV, it has met the requirements for the approval of a PEP as set out in the Electricity Transmission licence Special Conditions and the ASTI Guidance and Submission Requirements Document. We accept that supply chain conditions were challenging, but our preliminary view is that we consider that the applicable supply chain constraints were:

- not "global" - there was not unavailability of equipment or capacity globally in the supply chain at the time of the EGL1 tender;
- not "outside the TO's reasonable control" as stakeholders were aware of supply chain constraints in 2022, and we believe the JV therefore had sufficient notice to take steps to mitigate these constraints, and;

[1] All capitalised terms are terms taken from Special Condition 1.1 of the TOs' Electricity Transmission Licence

- not the cause of the delay, which instead may have been attributable to an "error or failure on the licensee's part" as a result of its procurement strategy.

1. Your response, data and confidentiality

Consultation stages

1.1 The consultation will be open until 02/05/2025. Responses will be reviewed and the decision will be taken in due course.

How to respond

1.2 We want to hear from anyone interested in this consultation. Please send your response to RIIOElectricitytransmission@ofgem.gov.uk

1.3 We've asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.

1.4 We will publish non-confidential responses on our website at www.ofgem.gov.uk/consultations.

Your response, your data and confidentiality

1.5 You can ask us to keep your response, or parts of your response, confidential. We'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.

1.6 If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you *do* wish to be kept confidential and those that you *do not* wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.

1.7 If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the UK's withdrawal from the European Union ("UK GDPR"), the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 4.

1.8 If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we

receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

General feedback

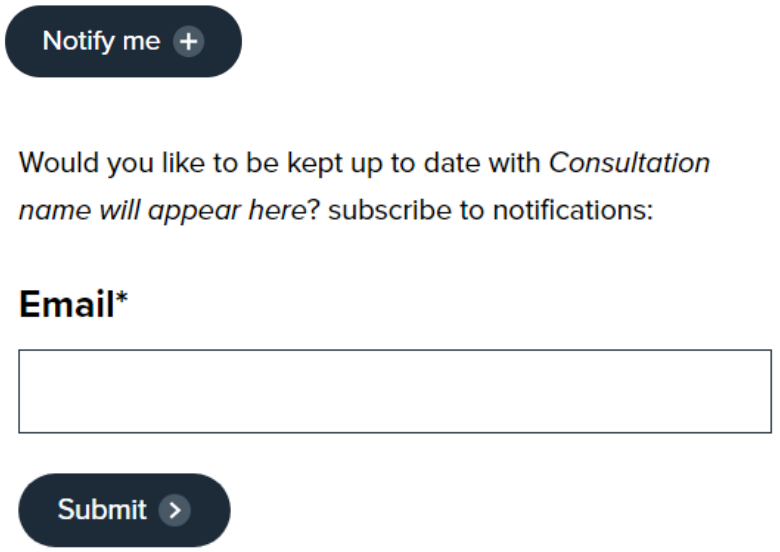
1.9 We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:

1. Do you have any comments about the overall process of this consultation?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Were its conclusions balanced?
5. Did it make reasoned recommendations for improvement?
6. Any further comments?

Please send any general feedback comments to stakeholders@ofgem.gov.uk

How to track the progress of the consultation

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website. Choose the notify me button and enter your email address into the pop-up window and submit. ofgem.gov.uk/consultations



Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:

Upcoming > **Open** > **Closed** (awaiting decision) > **Closed** (with decision)

2. Introduction

Background

2.1 Eastern Green Link 1 ("EGL1") is an electricity transmission project that will connect the Scottish and English transmission networks via a c.176km, 525 kilovolt (KV), 2 gigawatt (GW) High Voltage Direct Current (HVDC) marine cable, from East Lothian in Scotland to County Durham in England.

2.2 The Joint Venture ("JV") of National Grid Electricity Transmission (NGET) and SP Transmission (SPT) is responsible for the delivery of the project EGL1.

2.3 EGL1 received its full project funding allowance of approximately £2bn via a Project Assessment (PA) decision[2] through Ofgem's Accelerated Strategic Transmission Investment (ASTI) framework[3] in November 2024.

2.4 The ASTI framework was implemented by Ofgem in 2022 to enable accelerated delivery of strategically important electricity transmission projects to meet the previous Government's objective of connecting 50GW of offshore wind by 2030.

2.5 Projects in the ASTI framework are incentivised for delivery by their optimal delivery date[4] through the use of the ASTI Output Delivery Incentive (ODI). The ODI incentivises early delivery via a daily financial reward or penalty for early or late delivery respectively. Rewards apply if a project is delivered earlier than its ASTI ODI Target Date (which is set 12 months later than the optimal delivery date on all ASTI projects), and an ASTI ODI penalty will apply for every day a project is delivered later than its ASTI ODI Target Date. The amount of daily reward or penalty reflects a proportion of the assumed consumer detriment incurred through late delivery in terms of network constraint costs. These costs were set in our ASTI decision, where further information about the methodology and application of the ODI mechanism can be found.

2.6 The ODI includes a mechanism for exempting the Transmission Owners (TOs) from penalties under certain circumstances. An exemption through this mechanism is known as an ASTI ODI Penalty Exemption Period (PEP) and the TOs may apply for a PEP where a Delay Event has occurred. An ODI PEP is defined in the license as:

[2] Eastern Green Link 1 Project Assessment | Ofgem
[3] Decision on accelerating onshore electricity transmission investment | Ofgem
[4] See Key Terminology subchapter below

- *"the number of days after the ASTI ODI Target Date for which the Authority decides an ASTI output delivery incentive penalty will not apply following an application under Part B of Special Condition 4.9 (Accelerated strategic transmission investment output delivery incentive)."*

2.7 A delay event is defined in the licence as:

- "[A Delay Event] means an event that:

(a) causes, or is reasonably expected to cause, one or more ASTI projects to be delayed by at least 30 days;

(b) is outside the licensee's reasonable control; and

(c) is not attributable to any error or failure on the licensee's part."

2.8 Our ASTI Guidance and Submission Requirements Document ("ASTI Guidance")[5] states:

"*5.7 Whether or not the definition of Delay Event set out in Special Condition 1.1 is met will depend on the relevant circumstances and the quality of supporting evidence put forward by TOs in their applications.*

5.8 Examples of events that could potentially qualify as Delay Events include:

- *[…]*
- *Unavailability of equipment or capacity globally in supply chain*
- *[…]"*

and

"*5.25 - Ofgem will determine the duration of the actual or expected delay, taking account of:*

- *estimates of the delay period provided by the TO as part of its application;*
- *its assessment of the expected delivery dates (both with and without the Delay Event); and*
- *its assessment of the proportion of the delay that could reasonably be attributed to the Delay Event*."

2.9 The JV has applied to Ofgem for a PEP of 480 days on the basis of "*unavailability of equipment or capacity globally in supply chain".* In summary, it argues that it

[5] Accelerated Strategic Transmission Investment Guidance And Submission Requirements Document

faced a lack of supply chain capacity able to deliver to the required timelines when it went out to tender on the project, and that it did everything within its reasonable control to mitigate for the challenging market conditions.

Key Terminology

2.10 The following terminology refers to well understood concepts within the electricity transmission network planning process, and/or defined terms set out in Special Condition 1.1 of the TOs' Electricity Transmission Licence, which provides for the ASTI framework. As a result, these terms are used throughout this consultation and so are explained or replicated here to assist the reader.

2.11 **Earliest in service date (EISD).** This date is provided by the TOs to the Electricity System Operator (ESO) as part of the ESO's annual Network Options Assessment (NOA) process[6], and is defined by the NESO as "the earliest date when the project could be delivered and put into service, if investment in the project was started immediately"[7]

2.12 **Optimal delivery date**. This is the year in which the NESO considers each project needs to be delivered by to deliver optimal consumer benefits within its CBA. It does not specify a date within the year by which the project must be delivered.

2.13 **ASTI ODI Target Date**. This is the date from which the licensee is not eligible for a reward under the ASTI output delivery incentive.

2.14 **Licence obligation**. A licence obligation is a regulatory requirement that a TO must comply with as part of its licence. There are licence obligations in place for the ASTI projects which oblige the TOs to deliver the ASTI projects in support of the Government's 2030 ambitions. Failure to meet a licence obligation is a breach of the licence and Ofgem then has the discretion to use enforcement action against a TO.

2.15 **ASTI ODI Penalty Exemption Period (PEP)**. The number of days after the ASTI ODI Target Date for which Ofgem decides an ASTI Output Delivery Incentive penalty will not apply following an application under Part B of Special Condition 4.9

[6] Transitional Centralised Strategic Network Plan (tCSNP) | National Energy System Operator
[7] https://www.neso.energy/document/304786/download

Table 1 delivery requirements for EGL1

Optimal delivery date	ASTI ODI Target Date	Licence obligation
2027	31 December 2028	31 December 2029

Summary of current "minded to" position

We are consulting on rejecting the PEP application as we do not believe that, based on the evidence provided by the JV, it has met the requirements for the approval of a PEP as set out in the Electricity Transmission licence Special Conditions and the ASTI Guidance and Submission Requirements Document. We accept that supply chain conditions were challenging, but our preliminary view is that we consider that the applicable supply chain constraints were:

- not "global" - there was not unavailability of equipment or capacity globally in the supply chain at the time of the EGL1 tender;
- not "outside the TO's reasonable control" as stakeholders were aware of supply chain constraints in 2022 and we believe the JV therefore had sufficient notice to take steps to mitigate these constraints and;
- not the cause of the delay in this case, which instead may have been attributable to an "error or failure on the licensee's part" as a result of its procurement strategy.

Context and related publications

2.16 Eastern HVDC - Decision on the project's Initial Needs Case and initial thinking on its suitability for competition | Ofgem

2.17 Eastern HVDC – Conditional Decision on the projects' Final Needs Case | Ofgem

2.18 Eastern Green Link 1 Project Assessment | Ofgem

2.19 Accelerated Strategic Transmission Investment Guidance And Submission Requirements Document

2.20 Decision on accelerating onshore electricity transmission investment

2.21 Decision to modify the special licence conditions in the electricity transmission licences: Accelerated Strategic Transmission Investment | Ofgem

Next steps

2.22 Subject to responses to this consultation, we will publish a decision within a reasonable timeframe after the closure of the consultation.

3. Arguments proposed in the JV's PEP application

Questions

Q1. Do you have any views, or additional information (including in support, or opposition) relating to the JV's EGL1 PEP application?

Background

3.1 The JV applied on 7 December 2023 for an ODI PEP of 480 days for the EGL1 project on the basis that a Delay Event has occurred due to the "unavailability of equipment and capacity globally in the supply chain", which is one of the criteria listed as a potential delay event in the ASTI Guidance. This would exempt the JV from penalties associated with delay against its ASTI ODI Target Date of 31 December 2028 until 25 April 2030.

3.2 The JV's current P50[8] delivery estimate[9] is [REDACTED], 180 days later than indicated in NGET's previous P50 estimate of [REDACTED][10].

The JV's argument in favour of awarding a PEP

3.3 The 480-day PEP application is on the basis that there was "*unavailability of equipment or capacity globally in supply chain available*" to deliver the project to its optimal delivery date of 31 December 2027, and that the JV took all reasonable steps to secure supply chain capacity.

3.4 The JV argues in its Delay Event submission that it could not reasonably control the current availability and capacity of the global supply chain for converters, cable and wider works, but took all reasonable steps to mitigate these risks (see paragraphs 3.15 to 3.16 for details of the steps the JV took).

3.5 Its primary evidence for the Delay Event is that no supplier engaged in its tender process made an offer that would deliver the project before the ASTI ODI Target Date, and that, even in respect of other projects globally with which the same suppliers *did* contract, they were not able to offer delivery dates before the ASTI ODI Target Date of 31 December 2028.

3.6 The JV supports its application by arguing that suppliers withdrew from its tender process due to capacity limitations, and it has provided letters of

[8] A "P50 estimate" means the date by which there is a 50% probability that the delivery will be completed. In other words, there is an equal chance that the delivery will occur before or after this date.
[9] As provided for in their PEP application
[10] Provided in their ASTI delivery plans submitted in December 2022

withdrawal from the suppliers initially involved in the tender process as evidence for this.

3.7 Furthermore, it states in its Delay Event submission that the number of suppliers able to provide the equipment required to meet EGL1's specifications was highly restricted, with just three suppliers capable of designing, manufacturing and installing 525kv 2GW HVDC converters, and only four capable of manufacturing HVDC cable to this specification, only three of which it says were sufficiently vertically integrated to perform in-house installation.

3.8 The outcome of the supplier withdrawals was that at the Best And Final Offer (BAFO) stage, the JV was left with just one bidder for the provision of cable and one for the converter station.

3.9 The key factor that saw the P50 estimate for project delivery delayed by 180 days to [REDACTED] is the delivery date for the [REDACTED]. The delivery date offered by the [REDACTED] supplier at BAFO was six months later than the supplier's previous offer. On this basis, the JV argues that the delay to the project is the result of market conditions, and that its current offer is the best possible date that could be achieved in such conditions.

3.10 The JV considers that the timing of its tender process and contract awards is within its control, but that the delivery dates offered by suppliers are outside its control. The JV argues that it achieved better-than-expected timelines for awarding contracts compared to the Initial Needs Case and Final Needs Case assumptions, and that the delay is therefore not attributable to any error or failure on the its part.

3.11 The JV highlights in its submission that it engaged the market as early as reasonably possible after receiving informal confirmation from Ofgem that it would be the Delivery Body for the project. It states that Ofgem took 16 months to make this decision, from the Initial Needs Case submission in October 2020 to informal confirmation by email in January 2022. It adds that both SPT and NGET raised the need for urgency with Ofgem during this period.

3.12 The JV adds that Ofgem's addition of 12 months to the ASTI ODI Target Date in the 2022 ASTI Decision did not account for the specific market challenges that it has faced in relation to the EGL1 project, and that Ofgem could not have accounted for these challenges because they did not come to light until 2023.

3.13 The JV noted that EGL1 project is one of a number of projects within the ASTI regime that was already well progressed within the previously prevailing LOTI

arrangements. As such the JV considers that it has not been able to fully benefit from the accelerating benefits of ASTI in the same way as other ASTI projects. The original delivery plan for the EGL1 project whilst under LOTI planned for informal engagement with suppliers throughout 2022 with the intention for the ITT to start in late 2022 to allow for contracts to be awarded by the summer of 2023 for delivery by the end of 2027. We note that through the Project Assessment process for the EGL1 project we have provided for additional cost protections which are not available through the LOTI process, to help give certainty to the TOs and facilitate accelerated delivery.

3.14 The JV has also noted that it took the same approach to procurement for the EGL2 project and was able to secure suitable offers from suppliers, indicating, in the view of the JV, that this procurement approach was effective.

Attempts to mitigate the global supply chain issues

3.15 The JV argues that it took steps to mitigate the impact of global supply chain issues on the project's delivery timeline. It argues that it took the following steps:

i. transparently reporting and updating assumptions around supply chain constraints to Ofgem;

ii. undertaking early supply chain engagement, including on delivery date estimates;

iii. running a robust procurement process which started as soon as reasonably practicable (two days after they had informal confirmation from Ofgem of need and delivery body, and five months ahead of Ofgem's formal publication), including providing incentives for the supply chain to meet key dates;

iv. challenging contractors during the tendering process to get the best outcome for GB consumers in a very limited market in terms of price, quality and delivery;

v. securing supply chain commitment in a constrained market ahead of Project Assessment (PA) decision;

vi. an earlier than planned contract award; and

vii. arranging a pre-contract agreement with its sole remaining [REDACTED] supplier after round 2 of the tender, to ensure it didn't also withdraw

from the process, which would have left the project without a [REDACTED] supplier.

3.16 The JV states in its delay even submission that "despite the EGL1 Project's two rounds of supplier engagement it was impossible to predict the unprecedented impact of the supply chain on the original project programme".

Evidence Provided

Supplier withdrawal

3.17 The JV provided evidence that [REDACTED] suppliers effectively withdrew, with [REDACTED] not making a round 1 tender submission, and [REDACTED] best offer being late 2030. It also shows that [REDACTED] supplier's best offer moved back by six months at the BAFO stage.

3.18 The JV provided the suppliers' withdrawal letters. All but one cite capacity limitations as one of the reasons for withdrawal, with most also citing additional reasons. The [REDACTED] supplier's BAFO letter does not reference capacity limitations as the reason for the delay to the delivery date offered.

Supply chain evidence from published sources

3.19 The JV pointed to publicly available information showing that demand for HVDC cable and converters was high. This showed that NKT's order backlog by the end of 2023 was more than double what it was at the end of 2022[11].

3.20 It also showed that the total value of projects that Prysmian Group was working on rose fourfold over five years[12].

3.21 It also showed that the BalWin3 offshore grid connection system was being delayed due to increased demand for HVDC technology[13].

3.22 It cited a PwC report[14] which suggests that the energy transition will be constrained due to a "green skills gap". This report does not focus on the electricity transmission sector, nor does it report on HVDC specifically, but points to a broader skills shortfall across the UK energy sector workforce.

Baringa Report

[11] Offshore Wind Accounts for 45 Pct of NKT's High-Voltage Order Backlog | Offshore Wind
[12] 2023 Outstanding projects execution | Prysmian
[13] BalWin3 & LanWin4
[14] Energy-transition-constrained-by-green-skills-gap-of-c200000-jobs-PwC-GJB

3.23 The JV referenced a Baringa report commissioned by DESNZ[15]. This report assessed electricity transmission supply chain constraints. It concluded that the supply chains for HVDC converter stations and HVDC cable are both experiencing severe constraints. It notes that the German-Dutch Transmission Owner TenneT had been successful in securing a high number of HVDC projects, and that this would reduce the available capacity to the UK market. The report does not highlight 2023 as particularly challenging year.

Comparable HVDC projects contracted

3.24 The JV also provided publicly available evidence of HVDC projects contracted for within a similar time period as EGL1. This list is not a complete view of HVDC projects contracted globally. It shows that several projects contracted for commissioning dates later than EGL1, but also that two projects [REDACTED] that were contracted in the same year achieved earlier forecasted commissioning dates. Our view is that these are suitably comparable as HVDC projects of a similar scale, but we understand that the JV does not consider that they are comparable because of specific differences in the cable used.

[REDACTED]

[REDACTED]

3.25 The JV also provided a chart showing its own analysis of HVDC cable capacity (see figure 2 below). It argues that this chart shows that demand will outstrip supply. It is not clear in its submission to us how it calculated demand and supply, nor which suppliers and contractors were included in the analysis (i.e. was this a global or more limited picture). Furthermore, the Y axis of the chart does not identify the units of supply and demand being measured.

3.26 This chart appears to suggest that a significant volume of HVDC cable supply is available beyond the "incumbent supply", which we understand to be the group of suppliers engaged by the JV in its tender process. We are not aware of a compelling reason for limiting market engagement to this group.

3.27 The total capacity and total incumbent capacity show a static level of supply between 2025 and 2035. Publicly available information suggesting that several HVDC suppliers are increasing their capacity to account for the surge in global demand would appear to contradict this view.

[15] UK renewables deployment supply chain readiness study | Baringa

Figure 2 Graph showing the JV's analysis of HVDC cable demand vs supply

[REDACTED]

4. Our consideration of the PEP application

Questions

Q2. Do you agree with our assessment of the EGL1 PEP application?

Q3. Is there any additional evidence or information that should be considered in making our determination?

Q4. Do you agree with our assessment of the JV's procurement process?

Summary of our view

4.1 We have considered the evidence presented by the JV. All of the requirements set out in "Special Condition 4.9 Part B: Applications for modifications to Appendix 1" of the TOs' licenses and the ASTI Guidance and Submissions Requirements Document must be met to qualify for a PEP. Given the evidence provided to date, our preliminary view is that the requirements have not been satisfied for the following reasons:

4.2 The ASTI license states that the Delay Event must be the cause of a delay to project delivery against its latest delivery estimate of 30 days or more. We are not convinced that the supply chain conditions were the cause of the delay to the project. The evidence provided by the JV, and our assessment of it, suggests that an "error or failure on the licensee's part" as a result of its procurement strategy may have caused the delay. Further evidence provided by the JV also points to a misunderstanding of consenting requirements by one of its suppliers, which we are concerned may have caused the delay to project timescales.

4.3 The ASTI license makes provisions for a PEP in the event of unavailability of equipment or capacity globally in the supply chain. At this stage, we do not consider that the JV has demonstrated there was *unavailability of equipment or capacity globally in supply chain* at the time of the EGL1 tender. The evidence provided is limited to European and US projects, and does not provide a global supply chain outlook. The evidence provided by the JV also shows that projects we consider to be comparable contracted with suppliers, achieving better delivery timescales than EGL1. Our current view is that this may suggest fault with the JV's procurement strategy.

i. Furthermore, our preliminary view is that we consider that the likely difficulties with the supply chain were anticipated prior to 2023, as this was one of the reasons why the ASTI ODI Target date was delayed. We do not consider that the issues identified later were of a different order

and were outside the JV's reasonable control and incapable of being mitigated.

4.4 The ASTI license states that a qualifying Delay Event must be outside of the reasonable control of the TO, and not due to any error on the part of the TO. On the basis of the evidence currently available to us, we do not consider that the delay was outside the JV's reasonable control and unattributable to any error on its part. The evidence presented by the JV suggests instead that its approach to market may have impacted the offers received from suppliers. Based on the evidence presented, we remain concerned that the JV did not make sufficient efforts to consider adjusting or adapting its procurement strategy to prevailing market changes. We consider that this view is supported by the JV's correspondence with its prospective suppliers, with one prospective bidder directly referencing this as a reason for their discontinuation in the tender process. [REDACTED]

Is there an expected delay of at least 30 days to the project?

4.5 We agree that evidence provided by the JV suggests that there is likely to be a delay to EGL1 of more than 30 days.

4.6 We consider the 480-day application to be an incorrect estimation of how long the PEP application should be, notwithstanding the fact that we do not consider that a Delay Event has occurred in this instance. The 480-day calculation used the project's original EISD as its reference starting point for the calculation, rather than using the latest best estimate of delivery date before the Delay Event occurred (as per the requirement of the ASTI Guidance and Submission Requirements document[16]). Thus the 480-day request implies that the EISD of [REDACTED] was the latest best estimate of delivery ahead of the proposed delay event. We know from NGET's December 2022 delivery plan that this was not the case, since the P20-P80 date range all fell within [REDACTED].

4.7 The P50 estimates provided by the JV from before[17] and after[18] the proposed Delay Event suggest a delay of approximately 180 days to the project. Our preliminary view is that the criteria for a Delay Event are not satisfied, but, in any event a 480-day delay would have been untenable, given that the delay to

[16] ASTI Guidance document paragraph 5.18 "*We expect the application would include: The expected delivery date for the project according to the most recent project delivery plan…[]"*
[17] From the TOs' December 2022 ASTI delivery plans
[18] From the JV's PEP application

the latest best estimate of the delivery date is just 180 days, based on the evidence provided by the JV.

Has the JV demonstrated unavailability of equipment or capacity globally in the supply chain?

4.8 We do not consider that the JV has demonstrated that there has been *unavailability of equipment or capacity globally in supply chain*.

4.9 Although the JV has provided some evidence relating to European and Eastern US HVDC projects, we are concerned that this limited outlook does not represent the full global picture for the HVDC market capacity at the time of the EGL1 tender. The criteria as set out in the ASTI guidance state that example of a Delay Event is a lack of capacity *globally*, and not only regionally.

Other similar projects had been procured on similar timeframes to EGL1.

4.10 Publicly available information provided by the JV in support of its application shows that other HVDC projects of a similar scale were procured within the same time period as the EGL1 tender. According to further publicly available information, two of these projects appear to have achieved better estimated completion dates than EGL1:

- [REDACTED]:
  - Cable contract awarded in March 2023
  - Converter contract awarded in June 2023
  - Expected completion date 2028
  - Project Specs: 400km 2GW (over two 1GW HVDC cables), 400kv cable
- [REDACTED]:
  - Cable contract awarded in March 2023
  - Converter contract awarded in July 2022
  - Expected commissioning date 2027
  - Length of project 170km, 2.9GW HVDC link (over two cables), 320kv cable

4.11 The suppliers that withdrew from the EGL1 tender committed to these comparator projects, which shows that there was capacity in the supply chain at the time of the EGL1 tender, but that this capacity was awarded to other projects in place of EGL1.

4.12 Our preliminary view is that the JV's approach to the market on EGL1 may have been a contributing factor to capacity not being secured. This is a factor within the licensee's reasonable control and would be attributable to an error or failure

on the licensee's part. Our views on the JV's approach to market and our concerns relating to the supplier letters provided are explained further in paragraphs 4.20 to 4.25.

Are these distinct from the challenging market conditions already factored into our ASTI Decision

4.13 Our ASTI decision in 2022 made a considerable adjustment to the ODI mechanism, extending the ASTI ODI Target Date for all ASTI projects by 12 months. This decision was mainly driven by an increasingly challenging market for electricity transmission projects, and in particular for HVDC components. These market conditions were observed by Ofgem and reported by TOs in their responses to the ASTI consultation 2022. All parties anticipated these conditions would persist for several years beyond the ASTI decision. The factors Ofgem considered included TenneT's bulk procurement round of 2022, reported by TOs in their 2022 ASTI consultation responses. We understood that this would put particular local pressure on the TOs at this time.

4.14 The decision to move the ASTI ODI Target Date back by 12 months compared to our consultation position was not to account for particular difficulties on individual projects, but was a portfolio-wide approach to reflect the challenges TOs may face across numerous projects. This change across the whole portfolio means not only greater protection from ASTI ODI delay penalties to TOs, but also greater benefits for timely delivery rewards through the ASTI ODI mechanism.

4.15 Having taken into account the information provided to date, we consider that the difficulties with the supply chain on EGL1 were evident prior to 2023, and do not consider that the issues identified in 2023 were of a different order or were outside the JV's reasonable control and incapable of being mitigated.

Was the delay caused by unavailability of equipment or capacity globally in supply chain?

4.16 The delivery date offered in the [REDACTED] supplier's BAFO resulted in a 6-month delay to the project compared to its previous best offer. This, as we understand it, is the reason for the 180-day delay to the P50 estimate of project delivery.

4.17 The BAFO letter (provided to us by the JV) attributes this delay solely to a misunderstanding of the consenting requirements for the project and does not mention capacity or equipment constraints at all.

4.18 This suggests that the delay to the project may not be due to *unavailability of equipment or capacity globally in supply chain*. It is not clear to us what impact this misunderstanding may have had on overall project timescales: if the supplier had accounted the correct consenting requirements from the beginning, we do not know what delivery date could have been achieved.

4.19 The JV has informed us that the correct information was available as part of its tender process and argues it is therefore not responsible for the misunderstanding. Although the JV has argued that it did not directly cause the misunderstanding by providing wrong or insufficient information to its prospective suppliers, we consider it to be the within the JV's control to check that correct assumptions are being made for consenting requirements when considering bids, and we are concerned that this issue only came to light at the BAFO stage.

Was the delay outside of the reasonable control and not attributable to any error on part of the JV?

4.20 Our provisional view, based upon the evidence received from the JV to date, is that the delay was not outside the JV's reasonable control, and we are also not yet satisfied on the basis of the evidence available that the delay is unattributable to any error or failure on the JV's part. This is for the following reasons:

Did the JV take the right approach to market?

4.21 Ofgem does not dictate any particular procurement strategy, but different approaches have strengths and weaknesses in different cases. In this case, the JV's chosen strategy may have resulted in a lack of acceptable offers. Specifically, the tender sought a fixed price mechanism, which transfers the majority of delivery risk to the contractor. We welcome feedback on the view that fixed priced mechanisms generally work best where contractors have a high degree of input and control over the project's design and programme. Since mechanisms of this kind mean that suppliers own the risk for successful delivery, our view is that suppliers tend to require a significant level of input into the design, or assurance that the scope is straightforward and easy to price. None of these conditions applied to EGL1. Specifically, we welcome further views and evidence on whether the following choices were beneficial or detrimental to the JV:

i. The EPC (Engineering, Procurement & Construction) contracting model used. We welcome further views and evidence on whether earlier

contractor involvement could have benefitted the project timescales or contractor interest.

ii. Technical constraints: [REDACTED]. The JV sought a fixed project scope from the market. We welcome further views and evidence on whether a wider scope which allowed bidders to provide input and tailor delivery may have resulted in more interest and better offers.

iii. Locational specificity: [REDACTED]. We welcome further views and evidence on whether seeking a contractor's input at an earlier stage, and in particular allowing for input on converter site locations, orientations and layouts, may have resulted in more interest and better offers.

iv. Use of fixed price tendering: once BAFOs were made, there was limited incentive for suppliers to better the price, and limited opportunity for costs to change, placing a significant amount of project risk on the contractor. We welcome further views and evidence on whether a target price or hybrid mechanism would have been more attractive to prospective suppliers.

v. Use of fixed delivery date: [REDACTED]. We welcome further views and evidence on whether additional flexibility on dates may have attracted more bids.

vi. Use of a restrictive lotting strategy: bidders were required to make bids for the provision of either cables or converters that included civils works. We welcome further views and evidence on whether a more flexible tender allowing bids for civils and components separately would have been more attractive to prospective suppliers. This was noted as an issue by one of the suppliers in its tender withdrawal letter.

4.22 Although Ofgem does not dictate any particular procurement approach, our provisional view is that in this case, earlier contractor involvement and a more flexible procurement approach may have benefitted the overall delivery timescales of the project. In choosing not to adopt that approach, our provisional view is that the JV appears to have prioritised certainty on the cost and technical requirements over other factors, such as flexibility of design, apportionment of risk, and contractor engagement. Those choices are for the JV to make, and it may have benefitted from that approach if the market had provided suitable offers. However, the risks of the approach not succeeding are also for the JV to bear. Ofgem raised these same issues with the JV in 2023

when conducting the Project Assessment for EGL1 and, based upon evidence seen to date, consider there is a significant risk that these issues may have been borne out and they may have materially affected the JV's procurement process, possibly leading to a later offer from suppliers.

4.23 We also note that the TOs have changed their procurement strategy on more recent projects, moving towards more flexible procurement approaches. Ofgem does not endorse or prescribe any particular procurement strategy, however TOs are accountable for the choices and strategies they use and these choices will be scrutinised by Ofgem in the event of a Delay Event application, given the particular circumstances for each project.

How the supplier tender withdrawal letters support our view

4.24 As part of its PEP application, the JV provided letters of withdrawal from the suppliers that withdrew from the tender process. The JV argues that all of the supplier withdrawals were due to unavailability or supplier capacity limitations.

4.25 Having considered the letters provided, our preliminary view is that we are not satisfied that the withdrawals are solely the result of capacity issues. These letters support the concerns set out at 4.21 suggesting instead that factors related to the JV's tender strategy may have contributed to suppliers withdrawing. These issues were:

i. The lotting strategy used in the tender, which meant that suppliers were responsible for civils works as well as supply of components. One supplier had indicated in early tender engagement with the JV that it had a strong preference against this lotting strategy. Given what the JV knew about the supply chain challenges, we consider that it would have been prudent for it to have taken more consideration of the feedback from suppliers during the early tender engagement, and to have reflected this in their procurement strategy. We consider that in doing so the JV may have attracted a better outcome for the project's delivery.

ii. The cable specification: another supplier noted that it would not be able to support "a 2027 completion date with XLPE cable" which suggests that either the completion date or the technology requirement was a factor in its decision to withdraw. We consider that this suggests that if the tender approach had been more open to alternative technological solutions, this may have resulted in more supplier interest and potentially resulted in better offers for timely delivery of the project.

Appendices

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Appendix 1 - Privacy notice on consultations

Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller, (for ease of reference, "Ofgem"). The Data Protection Officer can be contacted at dpo@ofgem.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

4. With whom we will be sharing your personal data

(Include here all organisations outside Ofgem who will be given all or some of the data. There is no need to include organisations that will only receive anonymised data. If different organisations see different set of data then make this clear. Be a specific as possible.)

5. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for (be as clear as possible but allow room for changes to programmes or policy. It is acceptable to give a relative time e.g. 'six months after the project is closed')

6. Your rights

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3rd parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at https://ico.org.uk/, or telephone 0303 123 1113.

7. Your personal data will not be sent overseas (Note that this cannot be claimed if using Survey Monkey for the consultation as their servers are in the US. In that case use "the Data you provide directly will be stored by Survey Monkey on their servers in the United States. We have taken all necessary precautions to ensure that your rights in term of data protection will not be compromised by this".

8. Your personal data will not be used for any automated decision making.

9. Your personal data will be stored in a secure government IT system. (If using a third party system such as Survey Monkey to gather the data, you will need to state clearly at which point the data will be moved from there to our internal systems.)

10. More information For more information on how Ofgem processes your data, click on the link to our "ofgem privacy promise".