

Energy and Climate Change Committee

Oral evidence: [Pre-legislative scrutiny of the government's draft legislation on energy](#), HC 776

Wednesday 09 March 2016

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Members present: Angus Brendan MacNeil (Chair); Rushanara Ali; Tom Blenkinsop; Glyn Davies; James Heap; Matthew Pennycook; Dr Poulter; Mr Jamie Reed; Antoinette Sandbach; Julian Sturdy

Questions [1-103]

Witnesses: **Paul Delamare**, Head of Customer Policy and Regulation, EDF Energy, **William Bullen**, Managing Director, Utilita, **Chris Harris**, Director of Regulation, RWE, **Sophie Yule**, General Counsel, Tempus Energy, gave evidence.

Q1 **Chair:** It is good to see such a well attended session. Can I ask witnesses to state their names and organisations for the record, starting on my left?

Paul Delamare: Paul Delamare, EDF Energy.

William Bullen: Bill Bullen, Utilita.

Sophie Yule: Sophie Yule, Tempus Energy Supply Ltd.

Chris Harris: Chris Harris, RWE npower.

Q2 **Chair:** Thank you. I would like to kick the session off, please, by asking a question relating to smart metering. The Government says it is necessary for the Secretary of State to be able to intervene in the smart meter programme, in licensing and in the industry codes, “to drive the timely completion of the roll out of smart meters and delivery of benefits during early operations once the roll out is complete at the end of 2020”. You all appear to have concerns about this. Can you explain: what are your concerns about this roll out and drive to 2020?

Paul Delamare: I am happy to start off, Chairman.

Chair: Thanks, Paul.

Paul Delamare: The concern is about the nature of independent regulation. That is the source of the concern. The smart metering programme is a very considerable investment for the parties. I think they have estimated a cost of £10 billion to £11 billion for that. While we have no issue with the ability for the Secretary of State to intervene in this very important programme for consumers, we find it difficult to see why that power should be extended so far into the future, three years after the target date for completion of the programme has ended. For us, it is a philosophical point about regulation that such powers obviously override, in a sense, the regulation and therefore should be kept to a minimum and perhaps revisited upon the need to extend it.

Q3 Chair: That is a philosophical point. Does anybody else have anything other than a philosophical point? Is there a practical or technical point?

William Bullen: I have a very practical point. I think the key thing that the industry needs right now in the smart meter programme is certainty, and I don't believe there is anyone in the industry that believes it is going to be completed by 2020. The most important thing the Secretary of State needs to do right now is to give the industry certainty because at the end of the day uncertainty drives cost; very practical.

Chris Harris: The programme has fallen behind a little bit to date. The DCC has had three delays so far, which puts the 2020 date under pressure. Clearly the powers, as they exist on the date that they exist for the Secretary of State, fall short of the 2020 date and we recognise the absolute need for the Government to stay on top of the programme and maintain leadership. The question is one of governance. The Secretary of State, in the exercise of his or her powers, would intervene over the top of all other industry governance and our concern would be the loss of certainty, loss of governance, loss of control that arises from that unilateral exercise of power.

Q4 Chair: Thank you. Sophie, would you like to add anything to that?

Sophie Yule: Yes. Our concerns are specifically as early movers in this because we are already going in and half-hourly settling smaller customers, so we are moving ahead of the industry-wide regulatory regime and we want to make sure that the regulatory regime doesn't prescribe certain technologies because these meters that we are currently using are more sophisticated than the meters that are likely to be prescribed for the smart meter roll out. We also want to make sure that for new market entrants, start-ups, it is not a doubling up of costs so the DCDA does not end up doing the same thing as the DCC, meaning that suppliers end up having to pay two different parties for doing the same thing and then pass that on to customers. We are already finding some early teething problems. We want to make sure that the legislation is a principle-based legislation and it doesn't do the job of innovators because we believe that customers should ultimately choose a technology that they want, not regulators.

Q5 Chair: Thank you. Speaking to representatives of a leading power company last week, they had some reservations about smart meters themselves and thought the technology might leapfrog smart meters. Do you share or know of any such technologies or have such concerns?

Sophie Yule: Yes. We are very concerned that the DCC meters will be able to manage 60 second data transfers, because that is the technology that we are currently using. We have been assured by the DCC and Ofgem that that will be the case but we have reservations, given where the process currently is. There have been some issues with the current regulatory regime that essentially force us to post collateral as if our very, very small half-hourly customers are large customers that create risk on the system. That means it prices us out of doing these very innovative things. We have been working through that in a very ad hoc piecemeal way, so we welcome Ofgem's powers to amend codes and cut through that red tape, but we just want to make sure that the industry—and particularly the people that are developing the technology—are kept in the loop here when it comes to the technology.

Q6 Chair: Anybody else in that area?

William Bullen: Yes, also on the technology. Technology is constantly moving. One of the issues we have as a business—and we have over 250,000 households who have installed the smart meters already—we are well aware that the technology is moving forward and at the same time the technology that the DCC is going to be rolling out, with the smart programmes rolling out, is essentially set in stone and it will stifle future innovation along the lines that Sophie has just talked about. There are loads of other innovations that we would like to see happen in the marketplace that are just not going to be possible.

Q7 Chair: You feel they are going to stifle innovation. Is that the problem?

William Bullen: The SMETS2 regime will stifle innovation. I think smart meters have a lot to offer. Certainly 90% of our customers have smart meters already and are really happy about that, so smart meters are a very good thing but when it gets very prescriptive it can stifle innovation.

Q8 Antoinette Sandbach: Do you have any examples of where the Secretary of State has used the existing powers inappropriately? Given the potential delays to the smart meter roll out programme, isn't it wise to have it have an extension bearing in mind we don't need to be in a position where we have to amend legislation that has already gone through? It gives a safety net doesn't it?

William Bullen: As I said earlier on I think the key thing that the industry needs is a timetable that it believes in. If the Secretary of State is saying that 2020 is not going to be the time when 100% of households need to be installed we need to know when that time is going to be, and we need to know as soon as possible.

Q9 Antoinette Sandbach: There has obviously been a clear indication, but I think my first question was there is concern generally that the powers have gone to the Secretary of State. Can you give me an example of where those powers have been exercised inappropriately, in your view, in a way that has created uncertainty, because that is your complaint?

William Bullen: Running the smart meter programme to date has created a lot of uncertainty.

Q10 Chair: Chris, do you want to respond to that?

Chris Harris: No, we don't have an example. We see it as a risk more than an uncertainty, but to stress we absolutely support the role of the Secretary of State in smart meters. The only question is the extent to which one has to impose a rule over the top of governance, so the Secretary of State can use his or her authority to influence the development of codes, licence conditions, behaviours and so on through a normal process rather than intervening at a very low and direct level.

Q11 Chair: This is a charge that the Government is adding on an unnecessary layer of bureaucracy to the process? Is it a bureaucratic or is it just a power in reserve that you feel uncomfortable about?

Chris Harris: It is a governance point rather than a bureaucracy point.

Q12 Antoinette Sandbach: You are saying that the Secretary of State cannot legislate, in effect, to exercise a power that may implement her policy priorities, or the Government's policy priorities, and that it is wrong for there to be that potential in the energy market?

Chris Harris: You are talking about primary legislation and I am talking about use of a direction. Of course we do not oppose primary legislation in any form. Of course we support that.

Q13 Dr Poulter: In the Government's explanatory note they state, "We consider that it is necessary for the Secretary of State to continue to have the ability to intervene where necessary to drive the timely completion of the roll out of smart meters and delivery of benefits during early operations once the roll out is complete at the end of 2020". There are some points generally that Tempus makes generally about your concern about whether there is a violation of Article 35 of the EU Electricity Directive through some of the abilities of the Secretary of State, potentially, to contravene the full independence of the NRA. I wonder if you want to take us through that, as we are trying to help the Government to create good legislation.

Sophie Yule: Yes. This is a general point that applies to any case where the Secretary of State has a power of veto over Ofgem in relation to energy regulation. We don't have any specific policy concerns with the Secretary of State veto over the extension of the DCC licence. It is more about clarity and about Ofgem being able to exercise their powers in an effective way.

The Third Energy Package, the Electricity and Gas Directives, requires the Secretary of State to designate an independent, national regulatory authority. Ofgem is designated as such in the Utilities Act. Under section 3A of the Utilities Act, Ofgem are required not to seek or take directions from the Secretary of State or from industry. When that was transposed from European law into domestic law, DECC did not go back through and look

at all the different vetoes that it has and tell Ofgem, “This is an example of you exercising your power as the NRA, and this isn’t”.

Ofgem are faced with having to reconcile this obligation not to seek or take directions from Government with all these specific powers of veto. Although with the extension of the DCC licence I cannot provide you with any specific examples where that might cause harm in other practical areas in relation to the capacity markets, and also in relation to modifications of the supply licence in relation to the universal supply obligation, we have approached Ofgem with examples where the letter of the law actually has a perverse implication that stops us from acting in the best interests of our customers. Ofgem fully support and agree with us but they say, “Well, we cannot do this because if we change this then DECC will just veto it or they will change it back again” or “We don’t know if we are allowed to do this”, so in practice it becomes an obligation on Ofgem to consult with and only do what they think DECC will agree with. If that is the case, then that is what the legislation should say or the provision in the Utilities Act, which is transposing the EU legislation, is meaningless. It is a question of the integrity and transparency of the legislation. That is why we brought it to the Committee’s attention.

Q14 Dr Poulter: You believe there is certainly an arguable case that this contravenes the EU directive and potentially impinges on the independence of the regulator?

Sophie Yule: Yes. I definitely think if the European Commission just looked at how we have transposed that requirement in the European law, and looked at the Utilities Act, I don’t know of any examples where Ofgem have ever used that power they have in the Utilities Act to say, “Yes, you have a power to veto our decision, but we are not going to allow you to do so because we have an obligation to not seek or take directions”. Ofgem tend to follow the most proscriptive specific power or obligation that they have. They tend to use their very specific regulatory powers and obligations rather than look at wider European or competition law powers that they have. In practice, it is partially down to the risk averse nature and the timidity of Ofgem, but that is what we have experienced in practice.

Q15 James Heapey: I want to make sure that I understand the opposition from the panel, because when Sara Bell gave evidence to us, she was a very, very enthusiastic advocate for getting the smart meter programme delivered on time. It was clear that it was essential to Tempus’s business model. She spoke very compellingly on that. Mr Bullen, in your very first remarks it was all about the certainty of making sure that this is done by 2020 and that there is a lack of confidence. This is an extension of existing powers that DECC say is so that the Secretary of State can exercise those powers to drive forward the roll out to make sure that you have that certainty that the Government is foursquare behind the implementation of this policy by 2020. I am not sure I see the problem.

William Bullen: My problem is basically I do not believe in 2020 and I want to know exactly what the timetable is going to be.

Q16 James Heapey: It is because the powers are to be extended by five years, which runs until 2023, that you have taken as an indicator that that might mean—

William Bullen: I am not sure what it means but all I—

Q17 James Heappey: Because we are here today to put a bit of scrutiny into the legislation. The legislation is extending powers that I think you want because it means that the Government can drive forward the roll out of smart meters. If we are squabbling over whether or not her powers should expire in 2020 as a commitment to delivering the policy by 2020, then fine, but I am not sure I see what the opposition is other than that.

Sophie Yule: We support the roll out of smart meters. We feel very strongly that it needs to be combined with at least a half-hourly settlement, or at least an accurate settlement of data. We want to make sure that since we are doing this we do it properly so that customers can get the value of smart meters.

Q18 James Heappey: Having agreed that the Secretary of State should have the powers is there then a further ask beyond that?

Sophie Yule: Yes.

Q19 James Heappey: It is not a further criticism of the measure that is being introduced in the Bill. It is just an ask for more?

Sophie Yule: Exactly.

James Heappey: That is fine. Thank you.

Paul Delamare: From our perspective it is about: at what point is the transition between what we might think of as extraordinary powers to the normal regulatory regime and Ofgem can propose changes and we can go off to the CMA and appeal those if we don't like those? I think no one disagrees with the need for the Secretary of State to have powers to have a successful roll out. We want to see that. We have big skin in the game in terms of the size of our programme, so that is beyond doubt. The question is: what will the circumstances be like in 2020, and how will those powers be used? That is very uncertain. We have no problem in the Secretary of State seeking to renew her powers at 2020 in that context, when we understand what that context is, but right now it does not seem that it has really been justified.

Q20 James Heappey: She has to even before 2020 because they expire in their current form in 2018, so whatever happens there needs to be an extension for her to be able to continue to drive forward her policy.

Paul Delamare: Indeed, and we do not have a problem with that. It is really about: what will the context be like when those powers are extended from 2020 to 2023?

Q21 James Heappey: One would hope that they would. She herself has sat where you are sat and told us that it will be delivered by 2020. She gave a one word answer.

Paul Delamare: That is what we are working to. In any project there are risks and issues.

James Heappey: Thank you.

Q22 Rushanara Ali: I have a brief question for Mr Bullen. Can you say more about why you particularly feel that the 2020 delivery date is way off in your assessment? Reasons for that, because the Secretary of State was very confident that she can. I am very interested in your perspective on this.

William Bullen: My perspective is built on the fact that we have installed over 250,000 households with smart meters. I don't see the pickup in the rate of installation that is going to be necessary to achieve a 2020 deadline. I am also very well aware of some of the logistical issues: supplying that number of meters, training that number of meter installers in the time we have left, given that there will still be delays yet for the DCC before it goes fully live. We don't know what capacity constraints are going to come out from the early days of the DCC operation. It is just practical experience says that. We are a relatively small company but we have done an awful lot of smart meter installations.

Q23 Chair: Thank you. A final question to RWE because you asked for more clarity and justification for extending the Secretary of State's powers. What exactly is the clarity you are looking for?

Chris Harris: When we talk about the use of powers we are mainly talking about drafting of licence conditions and the use of directions, as distinct to help and support and, indeed, intervention on to a programme. The drafting of licence conditions should be done through the normal regulatory process under consultation and dialogue and so on, so our point is one of process and I want to emphasise that we are absolutely keen for the Secretary of State to maintain a strong commitment to the programme, a close eye on it, and apply intervention should that be required but through a process.

Q24 Antoinette Sandbach: I think legally we should be required to follow a process in any event. I don't think it would be a power that was exercised without a process but I am going to move on to some of the issues around switching and settlement and, in particular, Ofgem's ability to modify the codes. Ofgem said that their current code modification process is fragmented, it does not incentivise changes that would benefit the consumer, and it is unaccountable. How do you respond to that?

William Bullen: There are a couple of areas in particular: the half-hourly settlement and the faster switching. I think some of that analysis is quite right. Codes are fragmented. There are probably too many codes. There are too many administrative bodies running the industry. To give you an example, one of the things that people often complain about the energy industry is that we cannot co-ordinate the registration of an electricity supply point and a gas supply point for somebody's house. The reason for that is that there are two completely different processes. My problem with Ofgem in this particular case is that, instead of suggesting that, "Okay, instead of having two processes let's just focus on just having one process" what they actually want to introduce is a third process. That to me just does not make any sense at all. If you use existing infrastructure to focus on just one administration process this faster switching project could be done. It could cut costs within

the industry. Instead of that I think we are going to do something that is going to add costs in the industry, and that does not seem to me to make any sense at all.

Chris Harris: Thank you. We have a lot of sympathy with Ofgem's point of view. We share much of their point of view. It was raised by the University of Exeter to the CMA on five saying codes are an issue. Codes in general have served the industry very well for the last 18 years, essentially cobbling together a very difficult regulatory architecture. However, this has been done piecemeal for a long, long period of time. The result of 18 years of modification means we do not have a streamlined process, so we very much support streamlining of the process, coalescence of the codes.

What we do not believe is that Ofgem will simply swallow up all the codes. Ofgem has a very clear regulatory purpose, which is to support DECC in the implementation of policy. It cannot be all things to all people. It cannot go and cannot have the expertise required to do code modifications. That is taking its power too far and it is not helpful on the regulator, given its very broad remit to ask them to look at that level of detail.

Q25 Antoinette Sandbach: Can I come back on that? Because obviously the draft legislation says that Ofgem must consult relevant licence holders and Citizen's Advice and Secretary of State, and presumably other relevant stakeholders. Given that obligation to consult in relation to the codes, does that not give them access in effect to the broader stakeholders—

Chris Harris: To answer that, because they have the vires does not mean they have the ability to do so. Ofgem is a good sector regulator but codes require a great deal of expertise, so there is an expertise point. The second is an appeal point. The obligation to consult does not include the obligation to recognise an appeal to an independent body, so the absence of appeal I think then creates a problem in this process. Again I would like to emphasise that we support Ofgem in its role in the regulatory architecture.

Q26 Antoinette Sandbach: Absence of appeal in relation to the implementation of a code or drafting of a code?

Chris Harris: Drafting code, yes, on its own, yes.

Q27 Antoinette Sandbach: Do you think that there should be a right of appeal included in the legislation in terms of code drafting, so any stakeholder that disagreed with a particular aspect of the code would then have a right of appeal?

Chris Harris: Rights of appeal across a regulatory landscape seem to us to be very important.

William Bullen: They do exist at the moment and they are used very sparingly, so it is not as if people are constantly appealing every decision. They don't at all. I do not know how many times people have appealed but it is a very small number.

Q28 Antoinette Sandbach: Can I ask: therefore, do you think that this legislation takes away that right of appeal?

William Bullen: That is what we understood, yes.

Paul Delamare: It does in respect of code changes, is my understanding of the proposal.

Q29 Antoinette Sandbach: That is what you object to?

William Bullen: Yes.

Paul Delamare: The balance that we need to find here is that the industry code process across multiple codes—and if we were starting again we would not have that number of codes but it is what we have—is very good at engaging with the parties. It is a very clear process that is run through. In many cases we tap into deep industry expertise that improves the proposal and quite often improves something that Ofgem themselves have proposed. That is something we want to keep.

I think, as other panellists have recognised, the issues associated with cross code co-ordination, project management and leadership are genuine issues and we need to find a way of solving those but, from our perspective, the proposed legislation goes too far in one direction. It seems to put it all in Ofgem's camp with no appeal mechanism to help keep them focused on the consultation process. That seems to me to be not the most optimal position.

Sophie Yule: We fully support Ofgem's new powers. Ofgem already has the powers to introduce a significant code review. Also, if they really wanted to, they have a power to unilaterally amend licence conditions if they want to force the code owner—for example, National Grid—to introduce code changes. Both of those examples act as a sledgehammer to crack a nut. If there is something very strategic, which is not a big suite of modifications that are inappropriate for a significant code review, that Ofgem want to introduce and the benefit of cost and they don't currently have a vehicle to do that. We have had specific issues in relation to the BSC and the DACUSA, again, when it comes to the collateral that we have to post for half-hourly settlements for small customers, and we are told by ELEXON, "We don't have the powers to necessarily help you and Ofgem don't have direct powers to amend codes". Of course we can take it to the industry and the industry panels, and they might have served the industry very well for many years but I don't think they have been serving customers necessarily that well for those years, because we have had conversations with ELEXON along the lines of, well, the trouble is if you are an energy company that is disrupting an industry and then you have to say to the industry, "Please help us disrupt you by allowing this code modification to reduce our costs so they are not anti-competitive and so they are proportionate" that seems very anti-competitive and cumbersome to do that. Giving Ofgem a tool to dive in specifically where it is needed, rather than having to bundle it into an existing significant code review that is going on, which is what they currently do, seems very sensible. I think Ofgem should have been given the powers to do that when they were given the powers in 2011 to introduce unilateral licence modifications.

Q30 Antoinette Sandbach: In terms of this appeal process then would you say that that would allow the industry to slow up all those changes potentially?

Sophie Yule: Yes. I have been involved in a previous life in DECC legal, involved in several regulatory reforms where we gave Ofgem and the Secretary of State powers to modify codes. In each of those cases we decided that for consistency we would follow the process of giving an appeal in the High Court. There is always a right of appeal but the right of appeal, if you don't have a prescribed appeal on the merits, is that everyone just starts judicially reviewing Ofgem on the basis of Ofgem acting outside the scope of their powers, which is not necessarily an efficient way of doing it if Ofgem has made a mistake of fact, for example. So, in the interests of consistency, I do sympathise with that point but I disagree completely with the notion that Ofgem don't—of course, Ofgem public policy officials don't spend their time drafting code modifications. To be honest, the sort of people that do spend their time drafting code modifications you would not necessarily want to have dinner with them. That has never stopped us from doing it before. There were lots of people in private practice and ELEXON people we have used in the past to help draft those modifications. We used a consultant that website ex-Ofgem, ex-ELEXON, very technical code modifications. This seems like more of an argument for up-skilling Ofgem than for not giving them the powers that they need to ensure that the industry is competitive and acting in the best interests of customers.

Chair: Thank you. I want to bring in Glyn. I am not sure you would accept a dinner invitation from Glyn but anyway.

Sophie Yule: I am sure it doesn't apply to everybody.

Q31 Glyn Davies: I think some things are better not discussed in Committee, especially when the cameras are on. I want to ask you one or two things about the appeal process. I think you have addressed most of the questions I was intending to ask on this issue, but if there is anything that we have missed on this. Clearly you are unhappy with the capacity to respond to an Ofgem proposal. Most of what we have seen is around the appeal process and you don't think that recourse to judicial review is satisfactory; it isn't enough. The Government tells us of course that they are making certain there is going to be an opportunity to discuss at some length. One of the fears a Government must have is that an official appeals process introduces a delay to the system and will slow everything down. If you genuinely want to challenge the fact that you need to have an appeal process, I think you have to address the fear that Government will have of delays.

Chris Harris: That is exactly the concern that we need to take on, but let's first dwell on our problems with appeals. There are two kinds of appeals: merits based and process based appeals. Of course we have retained the bulk of process based appeals but essentially got rid of merits based appeals, so the only way you can now appeal on merit is to show that it was so bad it must have violated process and it is a very, very high bar.

I completely recognise that under some way of managing this, an appeal could be used by an industry player just to play things into the long grass and draw things out. None of us want that, so we must find an answer to that but there are still ways of solving that, for example, leave to appeal and so on. I have not thought that through in a great deal of detail but I think getting rid of appeals for the simple reason that one is concerned that an

appeal might slow things down is not a good enough reason, because appeals are not vexatious. There is a very high hurdle to launch an appeal. We only ever launch an appeal if we think there are very strong grounds to do so, not just to delay things.

Q32 Glyn Davies: It is an interesting area the fear of delay I think is impacting on this and there is a bit of a danger, I suppose, that the Government in seeking to address that introduces delays of its own. If you add the whole thing together with an appeal process, it looks as if it is much delayed. The other part of this is the impact assessment. In the normal course of everything I have been involved in, in the planning process, I am usually arguing for impact assessments. I think delay is an issue that is bound to be of interest to a Government. Is the desire for an impact assessment as well another source of concern about delays?

Paul Delamare: I think it is a matter of regulatory practice that impact assessments are conducted. There is normally a range of choices that have been made in terms of how something should be designed or implemented, and it is sensible to be able to test those choices with an impact assessment. It seems to me to be part of the good regulation envelope that should surround projects that are this important.

Q33 Glyn Davies: Are you content that what you might be expecting from the draft Bill is providing the sort of level of impact assessment that you would like to see?

Paul Delamare: My understanding is that the draft Bill excludes these matters from the normal scope of the normal requirement to produce impact assessments and that is something that seems to be a bit odd.

William Bullen: We would agree with that, and I want to reemphasise that there a good quality impact assessment is absolutely essential if the policy is going to fly and deliver real benefits to consumers. We were talking earlier on about the smart meter project and there is no doubt in my mind that the impact assessment was not a particularly accurate document and, consequently, probably some poor decisions have been made as a consequence of that. It is important to have it. It is also important to consult and to listen, rather than it just being a tick box exercise.

Glyn Davies: Yes. Thank you.

Q34 Antoinette Sandbach: In relation to the significant code review process, Ofgem has also argued that it needs its powers because it cannot make urgent changes and that changes required, as a result of the CMA process, may take too long to implement. What do you say to that?

Paul Delamare: We do not know what the CMA is going to say tomorrow.

Chair: The Committee is a day early on the question, you see.

Paul Delamare: Certainly we would support improvements to the significant code review process, in terms of the ability to set the timetable, for example, for the speed of the code change. That is something that could be contemplated. I don't think that necessarily means

that the whole process should be handed over to Ofgem because, as I said earlier, you risk taking it away from the expertise that can really drill into the issues.

Chris Harris: We think industry codes are good for incremental change. They are less good for big changes. The many big changes that we need to do: one to make our electricity system in particular fit for purpose to be more flexible in the future; another one is the CMA. It would seem that a less significant code review might be a way to wrap these things together, if they necessarily go together. If it is five remedies that are not connected then you can just follow the normal code, so it is only if they are connected together.

Sophie Yule: Ofgem already have the power to change the licence conditions, so if there were consequential amendments, and these were made to codes, it makes complete sense for them to be able to do that in the course of making those licence modifications without needing to launch a whole significant code review in all of the delay that comes with doing that.

Q35 Dr Poulter: Picking up on the bit of policy made so far, Ofgem will have a somewhat different role in regard to code modifications and perhaps lack some of the expertise or experience to deal with those issues at the moment. Do you foresee this being a problem and will this cause delays for the regulator, or how do you think they may overcome that?

Sophie Yule: The Secretary of State has powers to amend codes and licences, for example, the draft legislation in relation to extending the competitive transmission regime onshore. In practice that will not be done by DECC. That will be done by Ofgem managing the industry code panels. That is how it always works in practice. Ofgem managed to outsource or bring in the expertise in those cases to make sure those code modifications were done in an efficient way in full co-operation with DECC. I have worked on working groups on several projects at DECC with people at Ofgem doing exactly that.

Q36 Dr Poulter: You are fairly happy that this will be easily managed, Mr Harris?

Chris Harris: Ofgem people are expert in Ofgem regulatory matters. Industry people are expert in industry matters, for example, IT changes and so on. To implement modification very commonly requires lots of IT and procedural changes, and to know what those changes are, how to execute them and how long they are taking, requires industry knowledge that lives in the industry. I think it is a lot to ask any one party to know everything.

Q37 Dr Poulter: So the impact of the change in the consultation requirements may have an unintended consequence—as you described—that some of the industry expertise and the consequences for industry and perhaps further afield may be in the practicalities in day to day operations of changing regulations. That expertise and knowledge would be lost you feel?

Chris Harris: Yes.

Q38 Dr Poulter: I want to stay with you for a moment, if that is all right. Picking up on some of our earlier discussion about some of the legality of this, in terms of the new directives more broadly, you suggest that Ofgem would potentially have a conflict of interest if they are an initiator and arbiter of a regulatory change process. Do you think there are potential legal issues of predetermination being brought in and potential challenges coming forward in that way?

Chris Harris: We haven't seen it from a legal perspective. We think the Government sets policy, Ofgem implements policy and the industry gets on essentially with the plumbing. Our concern on conflict of interest was at a much more conceptual level as I think to legal. Ofgem should be the implementer of Government policy and if you ask it to do everything, essentially including industry, supplier level IT architecture, which is required for code modifications, that is asking it to do too much and it brings attention on its duties.

Sophie Yule: On the procedural point, when Ofgem were given the power to modify licence conditions, which were extended in the Third Energy Package transposing regulations in 2011, and whether Ofgem would be judge, jury and executor if they had those powers, and I believe—and that has changed subsequently—that there was an appeal to the CC, which would now presumably be the CMA, introduced for that reason so that they would not be initiating and holding on the same thing.

Q39 Dr Poulter: No, indeed. But just on that—because we were talking earlier about the independence of the regulator and the importance of that under the EC directive—if you effectively have a regulator that, as part of the new consultation process that is being proposed, has to consult with Ministers is there, again, a lack of separation potentially that is linked to perhaps being in breach of that EC directive of potentially making this ultra vires?

Sophie Yule: If DECC has a mandate to set the policy framework and Ofgem should be implementing that policy framework in accordance with its duties that come from the European regulation bit, and how to go about doing that particularly in the day to day when it comes down to things that Ofgem do understand, like making tariffs cost reflective and taking action against anti-investigative practices, Ofgem should at least have clarity over where it does have autonomy and where it doesn't have autonomy. Our concern is that because we have given Ofgem notional autonomy in the Utilities Act and then of course there are vetoes scattered everywhere, that Ofgem just will not do anything without DECC saying they explicitly can. So we have been told to go and talk to DECC when we have approached Ofgem about regulatory matters quite a few times.

Q40 Dr Poulter: Yes, and that issue is potentially exacerbated by the fact that Ministers are to be consulted as part of the Ofgem process?

Sophie Yule: I think Ministers should be consulted about it. It is just that when you give, say, a veto of Ofgem's powers you should specify whether Ofgem does not have to follow that veto if they think they are breaching the European conditions or, at least, you need to look at whether or not that provision is meaningless because in practice it is.

Q41 Rushanara Ali: Are you concerned that, without clarity about whether this would be a veto or not, that there is a risk of political interference? Is that what you are getting at?

Sophie Yule: We don't have a specific policy issue in relation to the extension of the DCC licence and that particular veto, but in other areas we have encountered problems because of this issue.

Q42 Rushanara Ali: Are there parallels with other regulators; are there parallel examples that any of you can think of?

Sophie Yule: I am not sure, to be honest. I would be surprised if there wasn't.

Q43 Rushanara Ali: Is this a major departure? Is that concerned with the effect on a regulator having autonomy as you say that they need? Would anyone else like to come in?

Paul Delamare: I am not aware of any other examples. This area is something that the CMA did look at in its initial proposals about the fuzzy boundary as it saw it between DECC and Ofgem. In terms of ways of minimising that, then the clearer the policy instruction is from Government, the clearer that that is set out on the face of the legislation that then gives Ofgem the power, the better I would think.

Q44 Dr Poulter: Mr Harris, you wrote that the proposed powers are very broadly drafted and that you worry whether there would be potential for the unintended consequences to be that Ofgem could rove beyond areas that they are currently engaged in. Could you take us through some of your concerns about the broad drafting?

Chris Harris: Sure. Ofgem's powers get broader and broader, and they are required to have regard to more and more things, climate change and rural areas and so on. This creates a problem for them when acting in a narrower domain. Let's take code 1 implications as an example. A proper code modification process will look entirely within the vires of the code and say, "We have been given a task. We need to do a modification and we need to make the system efficient and make competition work, and that is where we should maintain our focus and vires". If Ofgem comes in at the end of the process and says, "Well, this has some adverse environmental social policy" or whatever, it very properly acts to block or change that modification. But then we have a process problem because what do you then do? Do you go back to the beginning and say to the people in the code, "You must have regard to this climate change policy or that fuel poverty policy" except that you cannot do that. So when you do code modifications they must absolutely, beginning to end, go through the vires of the code, and if there are consequences of making the system more efficient they must be dealt with outside the code environment.

Q45 Antoinette Sandbach: I am not sure I agree with that as a matter of principle. Certainly, if we are looking for example at rural areas, some rural people effectively have guaranteed market failure because many rural councils cannot access dual fuel deals. So, however the code is drafted, it does not deal with that issue, does it?

Chris Harris: I think we agree. Let's suppose we think that 20% of people not connected to the gas grid is an issue no code can solve that. What you do is say in policy, "We think there is an issue. We want you to connect. Please write a code to enable the connection once we have built the infrastructure".

Q46 Antoinette Sandbach: Or you could say in your code that, for example, any deal that is offered to rural customers should be X-amount away from—

Chris Harris: We are talking cross purposes here. When we are talking about codes mainly we are talking about industry facing codes, the way one industry player interacts with another and with a system. You are talking about a code of practice, such as smart metering, which is still a code of practice or a billing code or practice or a sales code of practice and so on, all of which we had. That is not the subject of the current debate. It is a very legitimate point on consumer facing codes of practice. It is not the codes that we generally talk about when we talk about industry facing codes. I think we completely agree that we are just talking about different codes in different places.

Q47 Antoinette Sandbach: You are saying there is a different requirement for industry codes of practice that are, in effect, internally facing rather than externally facing customer codes of practice?

Chris Harris: Yes.

Sophie Yule: But they should not be completely standing on their own and looking at their own vires without having those parameters set by Ofgem and in turn by the Secretary of State. There is a hierarchy of regulation here and it is the tail wagging the dog if you then say that the code cannot be the end delivery point of a particular mechanism. Because in the industry that is the problem that we have at the moment, which is why Ofgem should be able to make very strategic, very efficient changes where it needs to implement something at the base level of the codes and the procedures that underlie the codes.

William Bullen: I am sure that the particular issue with rural customers is one of investment. Each of the distribution companies has a licence. Ofgem already has the powers to direct them to do things within that licence and it is just a question of price control, so I am not even sure for that particular reason that you would need to get into any code change at all.

Sophie Yule: But if Ofgem is directing an industry party to, "Please go and fulfil our policy obligations by doing this" and the industry is dragging its heels, if Ofgem has that power just to go in and do it itself it does create a certain pressure for the industry to get on and do it itself in a way that actually works.

William Bullen: Provided that that distribution company makes an adequate return from its investment why would you not do that? I have probably used the wrong word. It is not a question of directing it. It is just saying, "We will allow you to make this investment and recover that cost in your rate bonuses".

Chair: Thank you panel for your useful insight.

Q48 Matthew Pennycook: Can I turn to the mandatory half-hourly settlement that has been mentioned a couple of times before? We have been told this is essential to getting towards a smart, more flexible grid, integral to the smart meter roll out, good for customers. Surely there is a case for Ofgem being able to facilitate mandatory half-hourly settlements, would you agree with that?

Sophie Yule: We would, definitely, yes.

Q49 Matthew Pennycook: Others?

Paul Delamare: Yes, we think the mandatory half-hourly settlement is an inevitable part of releasing the benefits of smart meters. I don't think that is the issue. The issue is how the powers are defined and achieve that and whether there are appeal rights as we discussed.

Q50 Matthew Pennycook: No one disagrees with the principle that we should move towards that for consumers?

Chris Harris: Since 2005 we have actively campaigned for a mandatory universal half-hourly settlement. Clearly there are lots of other enablers like Smart. For this, like everything else, it has to be done properly because, if we don't do it properly, it will become a mess. That is why governance is essential. Of course, we absolutely support Ofgem's very active involvement in half-hourly settlement.

William Bullen: Let me make the point that the opportunity to half-hourly settle customers already exists. It is just that there are some detailed rules in the way that the industry charges for some of the administration processes that deter people from half-hourly settlements. We have 300,000 customers with half-hourly metering basically, but we don't settle on a half-hourly basis because it would be prohibitive in terms of cost. Once again, I don't see this as being a huge change requirement. This is a relatively minor change and it is a question of removing the deterrent to half-hourly settle, rather than forcing people to half-hourly settle. If there was no deterrent people would do it because of choice and that is what we would like to see happen.

Q51 Matthew Pennycook: Mr Bullen, these are the significant costs I think that Utilita have expressed concerns about. Can you go into a bit more detail about where those come from, those costs?

William Bullen: First of all, we often get into a debate within the industry about half-hourly settlement for electricity. We have a much, much bigger problem in the settlement of gas. At the moment, as I say, we have very detailed rules about the way that electricity settlement works and people get very stressed about whether it is accurate pricing signals every half hour. The gas industry is settled based on estimates. The cost to us in some years can be prohibitive for a small supplier certainly, so where we would like to focus the settlement argument is around gas because, frankly, with electricity there is an administrative problem that deters people from using half-hourly settlement. For gas there

is just simply not the facility to daily settle your gas customers, and that is a big problem. It is particularly a big problem for pre-paying customers.

Q52 Matthew Pennycook: Anyone else on that?

Sophie Yule: I can only speak to electricity because we are only an electricity supplier, but we feel very strongly that half-hourly settlement needs to be mandated. We don't think there is any point in making customers pay for smart meters if they are not receiving the value that smart meters bring by being half-hourly settled. At the moment, we do convert people to be electively half-hourly settled. There are 36 "easy" regulatory steps that we have to go through to do that and people have no idea that if they run their washing machine at night that they don't save any money, because they are still profile settled. People don't realise that when they get a smart meter nothing will change unless they are also half-hourly settled, so why not just bring it with smart meters and we are very supportive of Ofgem's indications that that will be brought about. We want to make sure that the timetable isn't further delayed to do that. My only concern would be that we should not necessarily set our sights on half-hourly settlement because the European network codes are looking at perhaps even 15 minute settlement periods, and some other places, like Ontario in Canada, have five minute settlement periods and so we don't want to set in stone half-hourly settlement at the same time when Europe is looking at 15 minute settlement. The principle is that you should give customers accurate smart meters. They can have 60 second data so that they can be settled against their actual consumption. The more accurate the better, so we need to mandate half-hourly settlement but let's not make the legislation not future proof. Let's make sure that we don't end up having to redo everything if Europe ends up settling at 15 minute settlement periods.

Q53 James Heappey: Legislation in this area may need to grow further in due course. I suppose it all rather depends on how the big energy companies embrace the opportunity of their consumers to switch half-hourly in pursuit of the cheapest price. So, as we have npower and EDF here, you might look down the camera and say, unequivocally, that you are huge supporters of half-hourly switching and that you will create no inertia in that system, so that your customers can move to the cheapest price at the first opportunity.

Chris Harris: Indeed we do support the work towards half-hourly settlement. If we look forward to our energy policy in 2015, it is absolutely essential.

Paul Delamare: Our answer is the same. I think there are a number of other aspects to think about in this area. One is that there is a considerable programme of change that the industry has to cope with. The half-hourly settlement is going to be a significant IT project for us, so we have Nexus, which improved the gas settlement process, half-hourly switching, centralised registration, roll out of smart meters and then anything that the CMA throws at the industry as well to deal with it. That is a very significant programme of change that needs to be co-ordinated. It has limited budgets and limited experts to do that, so it needs to be seen in that context.

Q54 Matthew Pennycook: The nub of this question, if I am hearing you all correctly, is that you all agree with this in principle. There are a number of regulatory barriers; problems

around governance. What could the legislation do? Particularly given that the timeframe for this is 2018, how would you like to see the legislation changed, as is on the face of this Bill, to enable you to be able to get to mandatory half-hourly settlements in the way that you would like and remove some of these barriers?

Chris Harris: In IT terms and in industry terms and all these others, 2018 is extraordinary challenging. We cannot write a law and just expect it to happen. Of course, if one throws money at things one can possibly make our input but here not necessarily. There are 17,500 half hours in a year. We have to multiply the resolution of our citizens by that amount. That is a most extraordinary change.

Q55 Matthew Pennycook: We everyone agree that 2018 is too optimistic? The Government is being unrealistic about that?

William Bullen: I don't think it will take that long. If you go down a legislative route but if you just concentrated on enabling half-hourly settlement, for example, in electricity in the existing regime and not deterring it, then you could have it.

Q56 Matthew Pennycook: What could be in this Bill that removes those deterrents?

William Bullen: For me it is just about the charging structure within the current electricity settlement arrangements.

Sophie Yule: It is imperative that it is brought forward otherwise customers will just bear the cost of smart meters without being able to access the upside of it. We don't think this Bill should be looked at in isolation. It needs to be looked at with wholesale reform of the wholesale market, so that if you did not have retail suppliers that also owned for fossil fuel generation, for example, then the incentive to bring this about more quickly and efficiently, and help customers to save, and to do demand response and new storage and other things like using energy efficiency, would actually be there, so that would be our answer.

Chair: Thank you. Are there any final questions? I have a feeling that James Heappey has a final question.

Q57 James Heappey: I find it extraordinary when the large companies say that 2018 is ambitious. This is not a surprise. The smart meter roll out has been on the horizon for some time. The intent to move towards half-hourly settlement, to power switching, was clearly the by-product of those smart meters. How have we reached the stage where we are two years from that date and you apparently seem so ill prepared?

Paul Delamare: I don't think that is fair. Half-hourly switching makes sense when there is a point at which there is a certain saturation of smart meters in people's homes. If you start too early then you may have a problem of certain customers being cherry-picked and—

Q58 James Heappey: But the design of the IT systems, the processes by which you achieve all of this, these should all be well advanced by now. That is work that can be done

concurrent to the roll out of the hardware. Your preparedness as businesses is not dependent on the arrival of smart meters. You should have been preparing in parallel.

Paul Delamare: As we are because Ofgem is leading forward a process of doing that. I think the important thing with any big IT project is that you do it from left to right, as it is described. An arbitrary deadline is usually pretty unhelpful, you need to design it from left to right, understand: what are the issues? What are the changes? What is the time needed to make sure that it is a success for everyone, in particular consumers?

Chris Harris: A system with full half-hourly settlement capability is more expensive than one without, and one does not know exactly what the industry process will look like to support half-hourly. So every time one does a big system refresh you say, “When is half-hourly settlement going to arrive?” Remember, we have been campaigning for it for a very long time. What we have always said is, “It does take a long time, so let’s start early and give it enough time”. What you are asking us to do now is start late and give it not a lot of time, so that is why it is a challenge and it is not fair to say we are not prepared. This has been in our sights for a long time, but you cannot put the detailed coding in until you know when it is going to happen and how it is going to happen.

Sophie Yule: Obviously, we have not gone in with hundreds of thousands of customers that we then have to retroactively change, so I do sympathise with that barrier. We feel very strongly that because we are independent we are incentivised to use that technology to systematically optimise the customer supply chain. So we make sure our customers avoid the red duos zone. We do triad avoidance and, therefore, we can offer them a lower tariff, so we are selling them the advantage of using half-hourly settlement and smart meters. If someone said about Airbnb or Uber, “I think with Airbnb you have to let strangers stay in your home”, people would think it was terrible and if you said, “Well, I had to get in the car with a stranger because I couldn’t afford a Black Cab home” people would say, “This is an awful infringement of our rights”, so it is the positioning of it as something that is being imposed on customers. We need to look at empowering customers to choose this because they are choosing it and we, as a small technology company, turned supplier, are working with our CRM provider developing the technology because there isn’t a CRM system that copes with half-hourly settled domestic customers at the moment. If I had a spare couple of million that is what I would put my money into because these technologies when half-hourly settlement is mandated, and it is coming, they are the ones that are going to make their money because of these systems, we are doing it, and actually it is the innovators that are driving this forward so the best thing Ofgem can do is make it as easy as possible for disruptive industries to bring the rest of the industry forward on this.

Q59 Chair: Thank you. I suppose those listening at Tech City with a million to spare might indeed take that tip. Panel, I would just like to ask you, before we wind up, are there any final comments you would like to make on the draft legislation? I will start with Paul on the left. Anything in particular, Paul, you would like to say? You don’t have to.

Paul Delamare: I don’t think so. The only area we have not talked about is the powers for Ofgem to have competitive tenders for onshore transmission.

Chair: We will move to that with the next panel.

Paul Delamare: That is something that we have a particular interest in in relation to our Hinckley Power Station, where the planning is well advanced. Our key concern there is that we don't have a new approach overlaid onto an in-flight project that can lead to—

Chair: Thank you. A good point and well made. William Bullen?

William Bullen: Coming back to this general point about mandating things. If there are benefits in something for consumers then it should be something that people are free to choose. I have a general philosophical problem with the idea of mandating everything. If there are clear benefits then it is for us as suppliers to innovate and offer services to customers, so less mandated power, less mandated rules.

Chair: Sophie?

Sophie Yule: We say that people don't want to be energy traders. They want everything to be as simple as possible, and if they are getting smart meters and we haven't had universal reform of the settlement system to make sure they can access the benefit of them, then it is just another barrier as far as saying, "You can do this but you have to do something first and go through this process first", so I think making it simple for customers to access the upside of this is the best thing that we can do for customers.

Chair: Thank you. Chris Harris?

Chris Harris: Thank you. We very much embrace the future. I recognise that you have given us a sense of us dragging our heels on this. In 1998 there was a massive change in our industry and we spent the next 18 years resolving some of the design issues. What we want to do is get the design issue right and do things at a proper pace so we get it right. It is much more important to get it right than do it quickly.

Chair: Thank you very much. Thank you, panel, for your time this afternoon.

Examination of Witnesses

Witnesses: **Chris Bennett**, Project Director, Integrated Transmission Planning and Regulation, National Grid, **Tony Glover**, Director of Policy, Energy Networks Association, **Frank Mitchell**, Chief Executive Officer, SP Energy Networks, and **Chris Veal**, Managing Partner, Transmission Investment, gave evidence.

Q60 Chair: Thank you. Could witnesses please again state their names and organisations for the record, again starting on my left?

Chris Veal: My name is Chris Veal. I am the Managing Partner of Transmission Investment.

Frank Mitchell: Frank Mitchell, SP Energy Networks.

Tony Glover: Tony Glover, Energy Networks Association.

Chris Bennett: Christopher Bennett, National Grid.

Q61 Chair: Thank you very much, panel. The Government and Ofgem suggest that competitive tendering for offshore transmission could lead to significant savings and benefits, particularly for customers. What is your view?

Frank Mitchell: Can I start, Chairman?

Chair: Yes, indeed.

Frank Mitchell: From SP's transmission business we were recognised in view of Tier 1 as being the most efficient transmission business in the UK. We support competition because we think there is an opportunity for us in doing that, but we are mostly minded that it is only there to ultimately reduce the cost and the benefits for our customers. One of our concerns here is this primary legislation is very high level. There are a lot of financing questions that typically you could argue could be answered through the next level of consultation, but I am very concerned that I see time skills have been set already to achieve that, ambitions by 2017, but I don't give significant weight to the amount of detail that has to be thought through in this area. I will elaborate on that later on, Chairman, if you don't mind.

Tony Glover: Yes, the Energy Network Association, as I am sure the Committee know, represent all the electricity and gas network operators in the UK, I might add, including my colleagues to either side. From our perspective, on behalf of all the network operators, we have been very actively involved in facilitating the discussions around onshore competition and, in fact, we currently preside over and chair a working group bringing together the key players, both from within the networks and of course from the OFTO community and others with an interest. That is working alongside DECC and Ofgem. To be absolutely clear, we are extremely keen to facilitate competition where it is to the benefit of the consumer. I think the key point here—and reiterating what Frank has said—is that it has to be to the benefit of the consumer. Competition is not an end in and of itself. It is a process to deliver the interests of the consumer, and that absolutely has to be at the heart of this. From our members' perspective, while as I say we have been working very actively in this area, we have serious concerns about the level of detail currently available in this. The fact that distribution networks have been added to the show at a very late stage, without any kind of impact assessment, we have some uncertainty issues around that. We are also concerned that this lack of detail means that when this legislation comes to Parliament—and, as Frank says, the timings are pretty tight and looking at when the Queen's speech is likely to be and when this legislation is likely to be before you—we would like there to be a proper primary legislative debate of some of these key issues, and we cannot just wait for them all to come when we hear about the secondary legislation.

Q62 Chair: Thank you, Tony. Any other panel members wish to comment on that point?

Chris Bennett: Yes. We absolutely support competition where it is in the interests of consumers, but I think it is important to recognise that those savings are deeply reliant upon the development of the detailed regime. One of the things that have not been mentioned yet by the other panel members is how important robust impact assessments are, to make sure that benefits are delivered to consumers. In terms of the impact assessments at the moment they have relied heavily on the offshore regime. I think it is

important to recognise the differences between introducing competition into the onshore regime compared with how it was introduced in the offshore regime, so I think it is important when we introduce the legislation that we have full and proper impact assessments. I notice Paul in the last session from EDF expressed views from EDF, so I think the voice of generators is going to be important. We cannot afford, as part of this legislation, to delay any new generation coming on to the system. I think that is going to be an important factor. It was an important factor, when the offshore regime was brought in, that the voice of the generators and their potential concerns associated with potential delays to the project was an important factor that was taken into account, so really robust impact assessments to understand the costs, the benefits and the potential risks. I am absolutely not saying that some of these risks will definitely materialise but understanding the potential risks, I think, and robust impact assessments are crucial.

Q63 Chair: Thank you. Transmission Investment, National Grid and the Energy Network Association said there are a number of differences between the offshore and the onshore regimes, including a lack of construction risk with onshore transmission. Has the potential onshore competition and the potential savings been overstated?

Chris Veal: No, I don't think they have and I would probably argue that they have been understated. I would say that is because the savings that DECC has put forward have been based on the operational cost savings and have not included construction cost savings. I think the evidence both from the UK in terms of the competition in offshore transmission and the innovation that is brought into that sector, is that competition does drive down costs. There is no reason to think that would not happen in construction as well as in operation. I think the evidence from around the world as well, where competition in the construction of onshore transmission has been introduced—and it has been in countries like Brazil for probably 15 years now—has shown that there are very significant savings in construction costs to be made as well. While I agree with much of what my colleagues have said, in terms of it has to be introduced in the right way, it has to be done where the benefits to consumers are going to be realised, it has to be done in a way that is sensitive to projects that are in flight, so it doesn't need to delay as a generation project, I think all that is very true and obviously we have to be very mindful of that as it introduces the regime. But I think the benefits are really there.

Q64 Chair: What changes do you think the Government needs to make to draft proposals to ensure cost effective competitive onshore transmission?

Chris Veal: What changes should they make to the current draft legislation?

Chair: Yes, in their draft proposal.

Chris Veal: I read through the legislation and, again in common with my colleagues, it is enabling legislation, it is primary legislation, and it is very high level. A lot of the detail will be in the secondary legislation. The legislation is essentially just extending the enabling powers that Ofgem and the Government have for offshore and extending those onshore. To that extent I think it works. I don't think there are changes required for that. I think a lot of the detail, as my colleagues have said, will be in the secondary legislation

and that will require a lot of consideration and a lot of scrutiny to make sure that that is right as well.

Chair: Thank you. Antoinette and James have brief questions before we move to the next section with Matthew.

Q65 Antoinette Sandbach: I just very quickly wanted to come back to you, Mr Glover, about the late inclusion of the DNOs. My understanding was that this process would extend to the 400KB network. Are you saying it applies to the 400KB and 132?

Tony Glover: This is one of the concerns we have, I think, the lack of clarity about who this will apply to. What we have basically been told by DECC is that this is forward planning, putting in something that we will not have to worry about or consider for a little while. However, the clarification on that has not been made clear to us, and we would like to have a clarification on that. We would also specifically like to have a clarification that this will not apply within the current price-control period that we are currently in. RII0-ED1 is underway and will continue to 2023. Obviously we do not want that to be impacted by a level of uncertainty for something that was not considered as part of the companies' business plans when that price-control process was underway. That is our concern. The reality is that we have had competition in connection providers at distribution level for 10 years now, and in fact we have seen an increase over the last four or five years of independent connection providers of about 14% up to 32%. It is not something we are against.

Q66 Antoinette Sandbach: Sorry, I am going to interrupt you there then. Does that mean that the practical result of the late inclusion of the DNOs is very little, if there is already that competition in that sector?

Tony Glover: I think late introduction is an issue if it is not clarified as to how it will apply in terms of the type of project, and indeed, as said, whether it will apply within the current price control. The current framework that exists is the pre-control process that we operate within. This has not been considered as part of that.

Frank Mitchell: Tony, I would only add that the confusion also is how this sits beside existing legislation that is already placed on distributors. It has to facilitate competition today. That is not clear when you ask questions about how that is going to sit in the context of existing legislation that is already on the shores.

Q67 James Heappey: Two questions, first, Mr Veal, it is reassuring to hear that there is evidence of savings in construction costs. Is there also evidence where this has been done elsewhere of increased innovation in the way that electricity is transmitted?

Chris Veal: I am sure there is, but I couldn't point you to it straightaway. Certainly in terms of what we do, I think we have found that there are things that we do that are innovative in the operational phases of the projects. An example of that is we have a project that has been part funded by Ofgem through the Network Innovation Competition. We are looking at converting a telecom-cable repair vessel that is on 24/7 standby to repair

telecoms cables so that it can also repair power cables at a moment's notice. That should reduce the repair times and costs for offshore power cables greatly and ultimately save consumers a huge amount of money.

Frank Mitchell: Sorry, can I make one point in that context? I would just be minded that the Committee reflect on the standards of service in South America and the quality supply that South America achieves through this in the context of any competition transmission. Maybe that is worth investigating, the quality of supply by those transmission networks, in the context of what happens in the UK. That is one point of concern. Secondly, the preferred option that has been professed by DECC and Ofgem is what is called the late CATO option. That means that we have to already have a design set. You have to have gone through consenting. We have to make sure we understand how it is being constructed, to get all the appropriate consents to allow you to build the construction routes, and so on. What is left at the end is very little. What are left at the end are the construction cost and then some operating costs. Currently in our market place we tender 90% of our construction work already in a very competitive tendering process. The other part, the operational costs, Ofgem themselves say these projects have very little operating cost exposure on them relatively so, therefore, it is a marginal issue.

Q68 James Heappey: That is very interesting. The product of this legislation may be that there is some saving in the construction costs, but we are not going to see companies bidding with different types of pylon technology, some people trying to go under the sea, some people trying to go under the ground?

Frank Mitchell: Unless you understand them through the whole consenting and planning process, again, which effectively will add to the process.

Q69 James Heappey: Okay. Which leads me to, Mr Bennett, you seem to understand Paul Delamere's concern on the previous panel over the Hinkley pylons from EDF's perspective. What impact does this legislation have on them?

Chris Bennett: I don't think it is just for Paul, it is for all generators, any generators who currently have a contracted date. One of the questions that I think is recognised through the development of the regime so far is it will add time to go through the competitive tendering exercise. Under the current regime, existing transmission operators would often do pre-engineering and start construction work early. The key question, I think, is a project-specific question, whether it can overlay the 18 to 24 months of the competitive tendering exercise? Can you do that without jeopardising dates that generators already have.

Q70 James Heappey: Although it is somewhat rich for EDF to criticise you for introducing uncertainty in a project's timeline, given the uncertainty they are introducing into the project.

Chris Bennett: The point, the generic one, in terms of generators, whether it is generators in Scotland, whether it is other nuclear generators, is basically—

Frank Mitchell: Maybe just referring to that issue widely from a generator point-of-view, we have in Scotland another 5 gigawatts of contracted generation still to be connected. This process has no ability to work under Scottish planning legislation the way it has been headlined.

James Heappey: I think we are coming to that later, so we will interrupt you and—

Frank Mitchell: We will maybe do that, but there are significant delays, and people are concerned about that, given the lack of thought process in their network to date.

Chair: I am intrigued to hear that time might become a pressure at Hinkley, but never mind. Matthew Pennycook.

Q71 Matthew Pennycook: Thank you, Chair. I was going to start by asking whether you were content with the fact that the measures in the Bill with regard to competitive onshore tendering were largely enabling legislation, but you have been quite clear on that. Could I ask you connected with that, and with the risk of going slightly off on a small tangent: what do you think lies behind the timing of these provisions being in this Bill? We have just had an Energy Bill go through Parliament. I was on the Committee, it is pretty thin gruel. Given this is long-frame enabling legislation, why was this not brought forward earlier?

Frank Mitchell: I do not know. There is lack of clarity on why people are rushing through this. I have asked the questions. There seems to be a political will to get it in, but people are well aware, and policy makers are well aware, that if this is done incorrectly it is going to be counterproductive to the UK consumer. It is going to cost the UK consumer money with what we see in constraint costs. At a time where generation reserves are at their lowest ever and transmission assets are going to be critical from a security-supply point of view, any delay and uncertainty to go on and build some of the core transmission capability we need across the chief areas of concerns—that is why the detail has to be correct. I see no need to rush in to do something by 2017, and I can see no rationale for that being the case.

Tony Glover: Indeed, we have had, as I have said before, a lot of constructive discussion. Chris sits on the group that we co-ordinate, and this has been very positive working with DECC and working with Ofgem. Let's be absolutely clear, I do not want to reiterate the point, but we are not against the principle. It is, as Frank says, getting that detail right. Of course, this is enabling legislation, but at the end of the day we have an impact assessment that does not have the level of detail required in order to test some of the policy points. We also have a lack of detail in some of the key areas that we are talking about that could cause delays. If we cannot meet the ultimate test of meeting the consumer interest then we will have failed.

Chris Veal: Can I just add to that, I am not sure why it is being seen as being rushed through, given that competition in onshore transmission has been muted for probably five to seven years and Ofgem's ITPR project has been running for most of that time, which has looked at the option of how to deliver the onshore transmission network. I think one of the reasons why Ofgem and the Government have not brought forward these proposals earlier, and it is me surmising, rather than anything else, but I think they wanted to bed

down the competition in offshore transmission and demonstrate that that works and delivers savings before extending that into other parts of delivery of transmission.

Q72 Matthew Pennycook: Just so I am clear from the panel, is it practical to suggest that the criteria for triggering competitive tenders could be laid down in primary legislation?

Chris Bennett: I don't think all of the detail can appear in the primary legislation. I think that is absolutely recognised. As I said at the beginning, the savings are going to be dependent on the detail of the regime, and the detail is not there at the moment. I think one of the things that could be considered in the legislation is to include project specific impact assessments, because again, I think the impact assessments to date have relied on the offshore regime. We need to remember the offshore regime to date, all of the assets have been built by the generators and they have not built by a competitive CATO doing the work. There are significant differences. Going back to the generator point, for a specific project, understanding the cost benefits and the risks is important. There was an independent report we commissioned with Frontier Economics, and one of the statistics they put forward was, in the event that a nuclear power station was delayed for a year, for whatever reason, the cost to consumers could be £1.5 billion. So understanding the risks, and making sure that in developing the regime we understand how to mitigate those risks, and deciding which projects we compete, given the need to not disincentivise generators to get out to massively important issues.

Q73 Mr Jamie Reed: Is it your view that DECC does not understand the risks?

Chris Bennett: I have had conversations with DECC and they have recognised for the projects, once it has determined which projects meet the criteria for competition, that there should be a process to assess the costs, benefits and risks. But at the moment the impact assessment is a generic one, and within the impact assessment it assumes that none of the risks will materialise.

Frank Mitchell: The only thing I would add to that is there is a general sense of, "Trust us, the secondary legislation will take care of all your concerns", without any fundamental answers to fundamental questions being available just now. It goes to the point, I think, of how well thought through has it been coming in here. Ultimately we support it, because we think we can have an opportunity to do it. That is why the late CATO model does not work for us, because the biggest prize for us is for the UK consumers to allow us to innovate at the design stage. That is where you make the most influence to it. That being knocked out has fair limited the ability you have to go there. Ultimately my concern is not that we will not have a chance to consult, and debate, and get this right, it is if the timescales of 2017 are set in stone, that ambition is out there, we are doing right-to-left planning with areas that are really difficult to work through and have many stakeholders. I am sure we are going to talk about planning issues, and everybody knows how tough the planning issues are. This is not something that can be dealt with lightly. I think it is important that we recognise that there is a lot of work to be done, and it can be done as long as we do not have some false deadline set in front of us.

Q74 Matthew Pennycook: This is specifically to Mr Bennett; you said it is critical that all the relevant stakeholders are brought into the decision-making process around whether a specific asset is contested. Do you think the Bill as it is could be amended to cater for that, and if so, how?

Chris Bennett: Yes. I think my earlier reference to potentially having a project-specific impact assessment, so it should be consulted upon, would be one of the mechanisms to do that. If that suggestion was taken forward within the project-specific impact assessment the generator who might be connected would be part of that process, as would the local communities. I think that is a potential vehicle. We, in advance of Ofgem consulting on onshore competition, spent a lot of time making sure our stakeholders were aware of the proposals. At the back end of last year there was not a great deal of understanding, and we engaged with local communities, the National Trust, as well as the generators, to make sure they were engaged in the debate and responded to Ofgem's consultation. If you look at the responses to those consultations, people do want to engage on this. Therefore, I think we do need to find a way to make sure that all the relevant stakeholders are engaged on this to make sure there are not unintended circumstances that arise through legislation.

Q75 Matthew Pennycook: The last question from me, the explanatory notes that we have seen with the Bill state that the Secretary of State has to consult Ofgem, and if appropriate, licence holders and others, before making regulations down the line. Does that go far enough in terms of the consultation you would want to see on secondary legislation about who was brought into those discussions and who was consulted?

Frank Mitchell: My concern is that we end up with a false timeline against this, the ability to do that with due process, and due consideration, and involve the stakeholders, who include communities, local planning authorities, as well as industry players and generators, to give them the due time and ability to have the opportunity to really get their heads around this and work through some of the issues. I think it is a timeline issue for me, rather than that legislation.

Chris Bennett: It is another example of where it is different to the offshore regime. The majority of the offshore infrastructure is, by definition, under sea, whereas the major infrastructure that we are talking about here does absolutely go through local communities, and there are very difficult discussions to be had with communities to get the right balance of visual amenity versus cost. Another difference between onshore and offshore regime is the interaction with communities, not only in deciding what work is required in the first place, but during the construction activities. On land you are engaging with communities for several years in building these projects.

Tony Glover: If I may, Chair, just briefly, another key issue of course is the interrelationship, another difference, if you like, with the offshore regime, which we seem to be greatly relying on here. That is the interrelationship between the existing networks onshore and these projects. The reality is obviously that is not the case offshore. Onshore you will be connecting into National Grid and Scottish Power's network, you will be connecting into distribution networks, and the impact that that can have. A particular issue for us has been around the performance issues. If there is a problem with the CATO asset, how does that impact on the neighbouring network, and analysing the impact of that and ensuring that the fault for that is clearly aligned? So the CATO asset owner is very

important in terms of the very strict performance standards that networks currently exist under. That should be taken, I think, into consideration, and we have raised it and it has not been thus far. I think another example of rushing forward without considering some of these key concerns.

Q76 Dr Poulter: Do you accept that any Governments drafting legislation, particularly with some of the issues to do with the industry we are talking about here, but there needs to be a degree of flexibility and future proofing of legislation, and that is where secondary legislation has a role? I see nodding, which is good. In terms of bringing a little bit of greater clarity to and reinforcing the consultation process and the effectiveness of that secondary legislation to make sure that it does deliver what it is intending and it is engaged properly with stakeholders, what would you like to see? If you could see something put into the face of the Bill that would improve that consultation process, that would improve the development of secondary legislation, what would you want to put in?

Chris Bennett: I think the single one thing would be impact assessments. So the need to run an impact assessment engaging with stakeholders consulting on it, and following that process of an impact assessment, deciding whether the likely benefits were likely to outweigh the costs. I think that is right. I think that would be a potential addition to the legislation.

Q77 Chair: Would the rest of the panel agree with that one aspect?

Tony Glover: Yes.

Chris Veal: Unsurprisingly, I don't think I would. I am not quite sure what this project impact assessment is going to do that a normal consenting process is not going to achieve in terms of what the impact of a development on a range of stakeholders is going to be. What we are talking about here is who is going to deliver the project, which is typically something that does not have a big impact on the stakeholders as to which particular party owns the asset at the time. I think there is a risk that if you require another consultation on another aspect of this project some of the risks that we talked about earlier, about delays and introducing extra time into this process, means that this process is more likely to delay the project as a whole, rather than speed it up.

Q78 Chair: Mr Bennett, come back and help us.

Chris Bennett: If I go back to the independent report from Frontier Economics, if there are delays associated with introducing a new process, which by definition will take time and will introduce additional hand offs, one of the statements was £1.5 billion if it was a nuclear station a year late. The other one was the potential impact on the financing of a generator. Even if the delay does not occur, if there is a perceived risk to investors of an increased risk that could impact on their project, that equally could have a cost as well. There is a real example here. The offshore regime, it was the generators who were really worried about delays to their projects that led to the changes to the rules there that enabled the generators to build the assets themselves. There is real precedent here that people,

generators, investors, are worried about delays, and there is real evidence that if delays did occur the cost to consumers could be quite large.

Q79 James Heappey: The leftward glances when National Grid were talking about consultation with communities and visual annuity that suggest that you know I have some experience in this area. It seems to me, Chair, that the Government might be missing an opportunity to—because the employment of the different types of pylons means that you have different runs of cable between those pylons. Therefore, different companies might be coming forward with different technologies for the same solution, and the competition should come ahead of the planning process with a competition of concept, and price, and impact on the environment. Otherwise I fear that, as we have just seen with the Hinkley connection project, National Grid will state the requirement using their own blinkered, not listening to anybody way, as we have seen in Somerset, and then others will be invited to build the line that they have chosen to prescribe. You are not going to agree, but I—

Chris Bennett: I am not going to agree with the Hinkley example. What I will agree with is we have said in our responses the Early model, rather than the Late Model, which would have the system operator saying what the requirements are but not doing the detailed engineering and getting consent, does open up more scope for innovation and opens it up more to the market to put forward alternative solutions. The Early model I personally believe is where the value would ultimately be to consumers.

Chris Veal: Can I just come in? I think I would agree that the Early model does give much more scope for innovation and for value to be added. But I think as may have been said, this is a new regime, there are always uncertainties associated with introducing something new. I think what Ofgem and the Government are proposing is to start with a Late regime, to introduce it in a slow fashion, and move into an Early regime as things get bedded down. I think that is a very prudent approach.

Frank Mitchell: Let me bring it back to communities. For all the reasons we think the Early approach is the best approach for the value for the British consumer, to get the best value of innovation, equally for communities they all know who they are dealing with. They all know who they are dealing with, and they will look them in the whites of the eyes, and what that means for the communities, what that means for mitigation, what that means for construction, what that means for villages, what transport is going through it, all your vehicle plans, they will be dealing with the people who ultimately deliver it. Under the Late Model it will be very difficult for anybody and they actually do not have this capability, because it is not part of their core competency to do this work, to talk to villages and say, “This is what we think should be happening, but of course we are not the ones who are ultimately going to construct it.”

Q80 James Heappey: That is a very interesting point, because the devil was absolutely in the detail in the Hinkley connection project consultation, and that sort of detail, the construction detail, the planning inspector spent months agonizing over. I am not quite sure, for all that you say, Mr Veal, about the prudence of going forward tentatively, surely you prolong the planning process by there being the initial statement of requirement, and the environmental assessment, and presumably some sort of consent order to proceed with that, and then a further planning process that will need to be scrutinised in some detail by the

planning inspector over the detail of the construction and the impact that will have. That seems unworkable to me.

Chair: I am going to leave that lengthy question hanging there at the moment, and we will come back to that later. Glyn Davies.

Glyn Davies: Yes. I want to hear something, but I am being a bit repetitive in terms of what we are asking generally, the Government having taken an approach where they want to eliminate delay, and it is featured in one or two aspects of what we have been asking. Clearly from some of the answers you are not content about some of the issues that might cause delay. The Government's view tends to be that innovation will bring the price down. There are people giving evidence suggesting that the delays can cause the price to go up. Are you content with the position the Government is taking on this, or do you think there should be some fundamental change in the general approach?

Chris Bennett: I don't think you can say there will not be delays. I don't think, likewise, you can say there definitely will be delays, and you cannot say that an existing transmission licence is immune from delays to projects as well. Yes. These are inherently major projects with risks associated with them. I think my main point is we need to really understand the potential risks of delay, and it is that assessment and understanding of that—these are material sums, if risks do materialise, that there needs to be that assessment. I don't think you can say that there will not be delays associated with this process, and as the discussion just said, in terms of the scope for innovation, under the Late Model the majority of the thinking, and the design, and the consenting has already been done before you go out to tender. The scope for really driving innovation and quickening up the time I don't think exists in the Late Model. It might exist in the Early model, but the sheer fact that you are introducing a competitive, tendering timeline that is sequential in approach will, by and large, increase the time to deliver projects.

Frank Mitchell: I was just going to add, even under the Ofgem consultation document, under both models they do talk to an 18 to 24-month tendering process. They think that can be mitigated in some planning approach that we can talk about under planning issues, but there is an 18 to 24-month process that Ofgem have in their processes that is not there currently. If it ultimately drives benefits, if it ultimately drives things we are looking for, then I think that is good. Under their prescribed processes that is what they have outlined as built into both the Early and the Late process.

Chris Veal: I think it is important to realise that is not a sequential process, that you do the planning, then you do the Ofgem tendering process. They are run in parallel. It is not an 18 to 24-month delay.

Q81 Glyn Davies: Can we learn anything from the offshore competition process we had? Can you learn any lessons when we are transferring the offshore transmission competition to onshore?

Frank Mitchell: Tony sits and chairs. We work and we work on the OFTO scheme. It is an initiative to facilitate that, but the current schemes were not built under this regime. They were built under generators not wanting to put the risk of their connection under this competition regime. They built them, and then there was a financial selloff of those assets

later on in the project. Depending on where you were on cost-a-day, where your borrowing costs were as far as where you raise capital, then you could take a position on how much you wanted to pay for those assets to get a revenue stream. That model may exist coming here, but all I would say is the offshore construction that was done typically all have one customer. These are onshore, they will have multiple connections, and they will have communities depending on them. They are a different beast as far as the actual construction engineering-wise of what you would have for an offshore model.

Q82 Glyn Davies: One can see the difference there, but what lessons would you learn from the experience of offshore?

Frank Mitchell: You cannot directly apply the offshore model to what you are doing onshore, because engineering-wise it is different, and ultimately the financing of it was done at a time that just suited the project that was going on.

Chris Veal: There are a couple of things. There are many differences and it is not exactly the same clearly. There are some things that you can read across. There are two points I would make. It is not on the financing side; yes, the cost of capital depends on when you are trying to raise it but I would say that in the 15 competitions that we have had for OFTOs to date they have all gone to new entrant investors. It has been the new entrant investors that have been able to raise the lowest cost gap. Some of the incumbent TOs have sought to take part in that process but they have not been competitive. New entrants will drive down costs in capital.

The other point I would make is that the incentives you put on these new transmission licensees are very important. In the offshore regime the incentives are on making sure the availability and the connections are as high as possible. These incentives have worked very well. Our assets have an availability of over 99.9% and we have had some assets for over five years now. So getting the incentivisation is right. That is true both for the operational phase but also in the delivery phase. Getting incentivisation right to deliver things on time is important as well.

Q83 Glyn Davies: Can I just ask National Grid? I do not know whether you think there is any need for clarification in the onshore tendering position that you are in but if there is any need for some clarification is that likely again to lead to delays?

Chris Bennett: I am not sure what else to add in terms of what I have already said. There is clearly potential for delays. One of the areas I have already mentioned is the potential of extending the timelines. So I am not sure there is much more—

Q84 Glyn Davies: The role of the systems operator; does that need to be looked at? Is there any need for clarification of that?

Chris Bennett: Yes. In terms of particularly the Late Model, the Late Model is looking at putting new obligations and new roles on the system operator. Frank has already mentioned under the Late Model it would be the system operator within National Grid that would be doing the pre-engineering, would be doing the consent, so we need to make sure

we have the capabilities to do that. We would also need to make sure that any commitments that we made during the consenting process, there was a way to make sure that those were followed through during the construction phase.

Under the Late Model—the devil is in the detail on this—within the detail there is probably quite a lot of additional activities that the system operator would be undertaking. The system operator would have to do that and have to make sure we do not take our eye off operating the system and all the challenges associated with operating the system in the future as well, so plenty of challenges to overcome.

Just to be clear, we are supportive of developing the detail of the regime. We have been proactive with ENA. We have been working with Ofgem and Government to try to overcome these challenges. We see our role as hopefully being constructive in putting on the table what the cost benefits and risks are. We proactively undertook—got Frontier Economics to do a CBA analysis specifically looking at the onshore regime because we had concerns we were relying too heavily on the offshore regime.

So lots of these things, the industry, through the ENA working with DECC and Ofgem, can work through these issues. The question is: how quickly is this going to go into primary legislation and licences? It is more important to us that this is right and introduced quickly.

Q85 Antoinette Sandbach: I am quite interested because I have had the experience of the offshore and the onshore mainly through DNOs and also through Grid saying that they have to hold back capabilities. DONG Energy in North Wales brought an offshore project onshore. The complaints I had from constituents were absolutely minimal because they agreed straightaway to underground it. I have Scottish Power running a connection from an onshore wind farm to a substation where it took months, and there was a huge reluctance to underground, as a result of which lots of local residents were extremely upset. I have the same in Anglesey where National Grid effectively reserved a whole load of capability for potential offshore wind; that those licences were surrendered and is never going to be materialised. Do you think this Bill will maximise that opportunity, particularly for local people, in the impact of this infrastructure on local tourism businesses and local people? That is where the impact is although the electricity very often is being transported to big cities and in the case of the North Wales coastline it is into Manchester and Liverpool. Do you think this Bill will address those concerns and make sure, for example, that the DONG style thing where they could say, “We can come in and we can deliver that with minimal landscape impact”?

Chris Bennett: I don’t think this legislation will. On all major infrastructure schemes there is a balance to be made between visual amenity and cost to consumers. That is what we wrestle with in every project that we do and we are trying to get the right balance between the cost to consumers and the visual amenity. I don’t think under the Late Model anything changes in that regard. It would be National Grid’s role in the Late Model to make those choices of gauging with communities and then get through the planning process.

In the Early Model, that is one of the debates is how much visual amenity is put in versus trying to drive down the costs. The challenges remain the same in this regime.

Q86 Antoinette Sandbach: The pricing, for example, there is one pricing used by National Grid for undergrounding but the reality is, it is the cost of delivering that in an urban area; it is very different from delivering it in a rural area. Your subcontractor was telling me that the prices used by National Grid were inaccurate in terms of what was being presented in consultation. Now if this kind of legislation lays that open and stops that kind of presentation being made then that must be a good thing because it minimises the impact on consumers and those that—it throws more transparency.

Chair: Will the legislation achieve that?

Frank Mitchell: I don't think it will, certainly not in the Late Adoption Model. I do not know a specific case but ultimately, as our transmission operator get driven to a least cost solution for the GB customer and then you have to trade off visual amenity. I don't think the synopsis of this issue, certainly not at a late stage, and what I would also say is that equally given that the—under the Late Model communities would not ultimately have a great deal with, it would be very difficult to achieve voluntary reliefs and you are going to drive yourself up through necessary reliefs and CPO much more because you just do not have that real information to give the communities that you are dealing with.

James Heappey: Clearly whether it is late or early to achieve that and the things that would have helped down in Somerset we should perhaps be pushing for a change to the Holford Rules as part of this legislation. Chair, those are the rules that govern the way that environmental impact is assessed when choosing where to site pylons.

Q87 Chair: Can I move on to the impact in Scotland. You were speaking earlier, Mr Mitchell, about the difference in planning. How can the draft legislation be amended to avoid any potential negative impact on Scotland due to that planning regime that you talked about earlier? I think Energy Network Association have also alighted on this point in evidence to the Committee.

Frank Mitchell: Why is that important right now? If you look at the thresholds that have been set for where this might apply. First, in case people forget, we think this is a good thing to do and we think it is a good opportunity for our business, and we want to work it right. But within Scotland the threshold for a project for hydro-transmission is £50 million, SPT is £100 million and for National Grid it is £500 million. That is set to 2021. That means the vast majority of projects are going to end up in Scotland in the early stages of this process.

GB constraints are around about £332 million a year in new charges. That is a big cost to the GB customer. Two-thirds of that is due to constraints of transmission within Scotland, we have a very constrained network in Scotland dealing with the masses of generation that want to come on to it. When we look at what is being proposed and we try to work it through under the context of planning legislation in Scotland we cannot get very far. We cannot get very far in understanding how this is going to apply under section 37 Electricity Act, section 57 Town and Country Planning (Scotland) Act, environmental impact assessment, voluntary reliefs, necessary reliefs, compulsory purchase.

We would not profess to be experts in this but I would refer you to the Scottish Government's response where they quite clearly say this needs to be properly thought through in the context of the devolved planning legislation in Scotland. As it stands, planning will have to be reapplied for once the actual delivery companies are recognised because of not a way to—for much of what would have to be approved to transfer those rights. It has to be reapplied for. If you look at the Scottish Government's own response to this issue, it points to we need to have a very detailed review, including many other stakeholders that are involved in this to make sure we get this right. Unless we are going to end up probably adding another 15-month to 24-month delay potentially and what that means for the constraint issues.

Q88 Chair: So given that we are at the moment engaged in the pre-legislative scrutiny of our Westminster Bill, what can be done to this draft legislation to address the problems that you have highlighted there?

Frank Mitchell: In some way I would like to say assurances that—broadly with the DCO in England and Wales obviously there are some concerns around what it means for communities, but it has to be a bit more structured and recognising there is devolved planning legislation in Scotland and whatever is happening in the context of this Bill has to recognise that and work within that context. I don't think it addresses that at all. We have not seen anything that you addressed in the primary legislation, not even in any of the consultation to date addresses that substantively. That needs to be looked at in the context of this legislation.

Tony Glover: It appears it might have been overlooked. That is a serious concern.

Q89 Chair: An example of something I have some sort of knowledge of is an interconnected for renewable energy in the Scotland Islands would happen to be in the SSE area. Will this legislation enable you to tender for that and would you be interested in tendering for that, do you think that would bring some economies to that proposed link?

Frank Mitchell: Our preference would be to do that under an Early Model because that point we can get into the design of it and the capability to construct it in a way that most bring real value to the GB customer. Doing it under the Late Model ultimately you are down to whether you can competitively tender the construction piece a bit better than somebody else's marginal benefit. I would encourage the Committee to focus on if we are going to put this in to get the benefit of the GB customer by focusing on the Early Model and we would be interested in doing that, to bring the efficiency benefits we deliver elsewhere.

Q90 Chair: Do you look forward to some of the opportunities this Bill can give you to do exactly that in areas you have not been in before?

Frank Mitchell: We were already recognised as the most efficient transmission business under RIIO-T1 by Ofgem and we think this gives us great opportunity to extend those efficiencies across GB. But it would be wrong to do it if the detail was not right, because ultimately it would be counterproductive to the industry and, more importantly,

counterproductive to the consumers in GB because it would end up increasing prices rather than reducing them.

Q91 Dr Poulter: This legislation includes provisions to allow tendering for distribution networks. I think it is on the basis that there is effectively a blurring of the distinction in transmission and distribution in the future. What are your views on that?

Tony Glover: I said at the beginning that did come as quite a surprise to us that it was included and has been referred to by colleagues. ENA has been—

Chair: Does it appear to be an afterthought?

Tony Glover: We have been told that the inclusion of distribution assets is about future proofing the legislation, as I think I said earlier. There are no proposals to transmission and distribution assets in the near future. That is what we have been told. But it is the fact that we are all having this discussion and there is a lack of clarity about this that is a cause for concern. The cause for concern for our members is this should not impact on the current price control, which is underway. We already have elements of connection competition at distribution level and indeed, as ENA, we have co-ordinated a competition in connections code of practice to standardise the process so that customers can deal on a level playing field on a very straight national basis. That has been very well received by those we deal with and by Ofgem and DECC. That is a positive, but what we are concerned about is that there is a total lack of clarity about when this inclusion will be applied other than not in the near future. I think we need something explicit and in writing that is clear about the intentions of DECC and the Government in this respect.

Q92 Dr Poulter: You mentioned you want something in writing. Would you want something else put on the face of the Bill? Would you want that in the explanatory notes?

Tony Glover: Yes. I think it would be good to hear from the Minister.

Q93 Dr Poulter: The Minister's word is only as good as what is said in the House. The legislation is what—

Tony Glover: Then we would like to see something in writing, yes, to that effect, within the explanatory notes.

Q94 Dr Poulter: What would you like to see?

Tony Glover: Something in the explanatory notes, something—

Q95 Dr Poulter: What do you want to see?

Tony Glover: I think we would like to see that this regime will not apply within the current price control process, which is RIIO-ED1 that is underway already and goes through into 2023, so certainly not before that.

Frank Mitchell: I don't see why it is there at all. I don't see any gap at all. There is already a section 52 under the licence where we have to facilitate competition. I think it confuses people. It is something that looks very speculative in nature and may be delaying the process because it has not been consulted on and I think it is just causing more confusion. I don't see the need for it to be there at all. Rather than having to qualify it, I think there is no need to do it. That is not to say that at some point in the future it can't come back on to the agenda but we can't see any benefit in having that in there at all. It just causes confusion.

Q96 Dr Poulter: So you would like to see, at the very least, further consultation on this before something was firmed up in a full Bill?

Frank Mitchell: I think so but unless that can happen—and I am not aware of the timetable that is addressing that to do that properly. Rather than not do it properly, I would just remove it because I don't think it really adds anything to the conditions that are already there. I can't see what it adds.

Tony Glover: Despite the fact, as Chris will confirm, we have been having a lot of discussions with DECC and Ofgem and the key players over the last year or so, this has never been on the table. This has come on to the table at very much the eleventh hour. There has been no consultation, no discussion about this. At the very least, we have concerns, as I said, about the impact on the current price control period. Certainly looking at it, it seems to be something that the future proofing is not for the near future. It does seem slightly nebulous. Clarification on this is urgently needed and, as Frank says, if they cannot clarify that then it probably should be left for future legislation.

Q97 Chair: It has been put to me that the distribution should be included in the impact assessment. This was by representatives of Scottish and Southern Energy. Would you agree with that?

Tony Glover: Absolutely. It is not in there. That is the point. It is not in the impact assessment at all. We have talked about a few other overlooks and afterthoughts. This definitely seems to be an afterthought.

Q98 Chair: You are looking for no retrospective application either. You are aware of the period to 2023 and that should be left alone?

Tony Glover: Absolutely. That has to be.

Q99 Chair: A further point on retrospective. Anything retrospective could risk delays and undermine work that is already planned, and you also agree with that. I am guessing that any retrospective action would cause—

Frank Mitchell: On existing projects. There are a lot of projects underway just now before the regime but generally to try to apply a regime change halfway through a process is only going to be destructive. I think that is typically going to be an increase in cost and an increase in timescale and that is bad for GB customers and it is bad for the people who are

depending on that infrastructure. For any projects that are in flight, you have to think about the context of whether this should be applied or not and in my view it would be no.

Q100 Chair: SSE said that the benefits to customers would be wiped from this and the cost, as you said, would go up and the cost would go to customers ultimately, which is ironic given what the Government say constantly about customers in the present time as opposed to customers in the future or whatever. You agree with that point, do you?

Frank Mitchell: I agree.

Q101 Glyn Davies: I just have one question I wanted to ask. It is part philosophical, part really addressing quite directly to this. What is wrong in principle with the idea of generators building, testing and operating transmission projects before they then transfer them to the operator; again, a competitive process? I suppose the part that drives this question or instigates this question in me is if National Grid has a major project it is in a monopoly position. It provides it and you take it or leave it. The process by which they do it is not subject to any sort of competition at all. If you think it is incompetent, it is dreadful, it is a waste of money—I am not saying it is—there is nothing you can do about it. It is just National Grid. I think the Government need to find some way of introducing competition into that process. We don't think this has gone through a process of consultation but there has to be some way of dealing with and answering that kind of a question. You can't just have a monopoly that can do what it wants.

Frank Mitchell: Maybe some thoughts on that and then I will hand over to Chris. Right now there is nothing stopping a generator building a transmission connection. That exists just now. The point is it affects the backbone of the transmission network through this legislation and they can start to impact other generators by doing that. I think that is a conflict of interest that has not been resolved in this model and how that is going to work. If generators start to do construction work, that affects the backbone, affects other generators. Right now they can make that connection themselves and construct that themselves. Equally well, if we do a quote for a connection and anybody thinks that quote is that too high or unreasonable, they have the ability to appeal that quote and get it tested. That exists just now. Thirdly, the regime we have in the UK—and we can criticise all we want—has delivered the lowest cost grid in the whole of Europe. That was tested by this Committee and its predecessor Committee already and verified.

We can be critical of it and, as I say, I think competition is a good exercise of bringing some new insight if we do it correctly. If we do it wrongly, it will be counterproductive, but I don't think you should lose sight of the ability the generators have now.

Chris Bennett: I don't think anybody is saying that there are not potential benefits in competition. It is about getting the regime right. In the debate we had earlier, the potential value here is probably in an earlier model that does open more of the chain for different innovative solutions. We are working with ENA, Ofgem and DECC. This is absolutely an area that we should be exploring to try to introduce competition to drive benefits to consumers but it needs robust impact assessments and it does need the cost benefits and the risk to be assessed, but where looking through that process there are potential benefits, then we are absolutely up for competition with Frank and the rest of—

Q102 Glyn Davies: What do you think inspired DECC to bring this forward? They are bringing it forward very late in the day. It has come as a surprise to many people. I know trying to imagine what drove other people's thinking is a strange exercise, but what made them bring this in late?

Chris Bennett: I don't think necessarily it is late. I agree with Chris that there have been conversations around it. The question is around the detail of the regime. As a principle of introducing competition, everyone agrees competition generally brings benefits to consumers. The concept of competition, trying to reduce financial monopolies are all absolutely valid areas and DECC did flag it up with Ofgem a while ago. At the moment, though, there is still a lot of work to be done on the detail of how these major infrastructure projects will be delivered under the competitive regime and it is through the detailed regime that benefits will occur to consumers. If we don't get it right then those benefits won't occur.

Chris Veal: Can I add on the generator point that I agree with my colleagues? It is not right that the generator builds part of the backbone of the system where other users might be using that same piece of transmission infrastructure because what the generator does could have an influence on other users of the system. I must admit, I don't think that is the intention of what has been introduced here, but I agree it should be clarified. I think the intention is that generators would only be able to build sole use assets, assets that only they would use and not everybody else on the system. It is very much akin to what happens offshore where a generator builds the sole use link between the offshore wind farm and the onshore grid.

Q103 Chair: Thank you, panel. The afternoon has thinned out a little from the crowd we had at the beginning. As I did with the previous panel, I would like to ask if there are any final comments you might want to make on the draft legislation, or indeed any changes you would like to make. If you can be brief, that would definitely be appreciated.

Chris Veal: I will start. Just to reiterate what I have said, I agree that the major benefits of this should come with the early model eventually but because of the fact it is a new regime it makes every sense to introduce this in a measured way and for Ofgem to do the late model first and then extend it into the early as and when experience is gained on how to do this without causing any delays, for example.

Frank Mitchell: One area we did not touch on from the legislation was the key of last resort. I think that is worth looking at to make sure that if a project finishes or the company building it goes bankrupt—and I think there is concern by the policymakers in the middle of that—who picks this up, is an issue that has to be looked, owner of last resort and how that is properly dealt with. You can't pick up something at a cost that was probably undeliverable to start with, so we need to make sure we address that in some of the legislation to clarify it.

The lack of detail is a concern to me and we have touched on some of it, not all of it: issues to do with if you are replacing existing assets who bears the risk on that existing asset in supporting cities and towns out there; issues to do with how these things are going to operate together in the future; how that fits into the context of black start regimes. All

these issues are very detailed and important and fundamental from a supplier's point of view and also from a constraint point of view for GB customers. All I would encourage is that we move forward. We want competition, but we should give it sufficient time to iron out this detail and not be having false timelines put in front of us that ultimately will end up costing the GB customer more.

Tony Glover: I would reiterate all those point, but as I began I shall finish. We are strongly supportive of competition; we are facilitating; we have been working with the players for well over a year now. To answer the point that this has not come as a surprise, I think the problem is that there is a lot of detail racing up at the last minute that we have not looked at and we don't understand because there is a lack of clarity around some of these proposals. I would say about competition that it is not an end; it is a means to an end. We need to remember that at the end of the day we are about meeting the interests of the consumer, in terms of costs and other issues around environmental impacts. Those considerations need to be what the end is all about. Competition has to facilitate that. If it does not, if it increases costs, if it increases delays, if it reduces consultation then it is not going to work, so we need to get that right. The one thing is, as they say, less haste, more speed. We need to go forward speedily but we need to not rush without getting that level of detail, and we don't have that at the moment.

Chris Bennett: I am conscious of time. I agree absolutely with what Frank and Tony said. The only thing I would add is that it is worth considering project assessments, impact assessments. Some of these projects do need, on an individual basis, to understand the costs, the benefits and the risks. I think that is a potential amendment to the legislation to ensure that robust impact assessments do take place.

Chair: Panel, thank you very much. The purpose of this is to try to ensure that we get better laws and better information and people like yourselves who are stakeholders in this are hugely important in that process. Thank you for your afternoon today.