

Annual EMR Compliance Report – 2021/22

Annual EMR Compliance Report

National Grid Electricity System Operator Limited

Prepared pursuant to paragraphs 2.4.30 and 2.4.31 of Special Condition 2.4 of the Electricity Transmission Licence granted to National Grid Electricity System Operator Limited (registered in England with number 11014226 and whose registered office is at 1-3 Strand, London WC2N 5EH) under section 6(1)(b) of the Electricity Act 1989

July 2022

1. Introduction

Paragraph 30 of Special Condition 2.4 of the Electricity Transmission Licence (“Licence”) granted to National Grid Electricity System Operator Limited (ESO) requires ESO to produce an annual report in a form approved by the Authority covering its compliance during the relevant year with the EMR Relevant Duties (as defined in the licence) and implementation of the practices, procedures and systems adopted in accordance with the EMR compliance statement.

This is the annual report in respect of the period 1st April 2021 to 31st March 2022 (“the Period”), relating to Special Condition 2.4 compliance.

Definitions

For the purpose of this report, unless otherwise indicated, the following definitions set out in Special Condition 2.4 (Electricity Market Reform) of the ESO licence apply:

“**Associate**” means:

- (a) an Affiliate or Related Undertaking of the licensee;
- (b) an Ultimate Controller (as defined in Standard Condition A1 (Definitions and interpretation)) of the licensee;
- (c) a Participating Owner of the licensee; or
- (d) a Common Control Company.

“**EMR Administrative Team**” means the team established or to be established by the licensee in accordance with paragraph 2.4.9 of Special Condition 2.4.

“**EMR Compliance Officer**” (“**EMR CO**”) means the compliance officer appointed or to be appointed by the licensee in accordance with paragraph 2.4.24 of Special Condition 2.4

“**EMR Compliance Statement**” is defined under paragraph 2.4.19 of Special Condition 2.4

“**EMR Data Handling Team**” means the team established or to be established by the licensee in accordance with paragraph 2.4.5 of Special Condition 2.4

“**EMR Relevant Duties**” means the licensee’s obligations pursuant to Special Condition 2.4

“**EMR Functions**” has the same meaning as the term “EMR functions” in Chapter 5 of Part 2 of the Energy Act 2013

“**Confidential EMR Information**” (“**CEMRI**”) means all Information disclosed to or acquired in any way (and whether directly or indirectly) by the licensee or any of its agents or representatives by virtue of the performance of EMR Functions by the licensee, but excluding:

- (a) all Information that is in or has entered the public domain otherwise than as a direct or indirect consequence of any breach of this licence;
- (b) all Information which the licensee can demonstrate was lawfully in its written records prior to the date of disclosure of the same by the owner of the Confidential EMR Information or which it received from a third party independently entitled to disclose it; and

- (c) all Information properly received in the usual course of the licensee's activities pursuant to paragraphs (a) to (c) (inclusive) of the definition of Permitted Purpose.

“Confidential EMR Administrative Information” (“CEMRAI”) means Confidential EMR Information disclosed to or acquired by the licensee by virtue of its role in performing EMR Administrative Functions.

“NGET” means National Grid Electricity Transmission plc

“ESO” means National Grid Electricity System Operator Limited

“Relevant Other Competitive Business” (“ROCB”) means the business of:

- (a) participating in, or intending to participate in, a competitive tender exercise to determine a person to whom an offshore transmission licence is to be granted;
- (b) an Offshore Transmission Owner;
- (c) undertaking carbon capture and storage activities; or
- (d) owning and/or operating an entity participating in, or intending to participate in activities which require a licence under section 6(1)(e) of the Electricity Act 1989 (a licence authorising a person to participate in the operation of an electricity interconnector (“an interconnector licence”))

“Shared Services” means shared corporate services (which shall not include regulatory services) as specified in the EMR compliance statement

“Single responsible Director” has the meaning given in paragraph 2.4.25 of Special Condition 2.4

“SO” means System Operator

“TO” means Transmission Owner

2. Compliance with the EMR relevant duties

The EMR Compliance Officer (“EMR CO”) has undertaken monitoring during the Period to assess the effectiveness of the practices, procedures and systems adopted to secure compliance with the EMR Relevant Duties.

As part of this process, Compliance Champions in the Electricity System Operator, Finance and Business Services, IS, ESO Regulation, Procurement, Corporate Affairs and Tax and Treasury were asked to complete a business separation framework document based on targeted questions and describing the controls, frameworks and processes in place within their business areas to secure compliance with the relevant duties. The matters considered and the overall outcome for each relevant objective as agreed with Ofgem are detailed below under paragraphs a to d.

The Compliance Champions within the ESO and Shared Services provided positive assurance that the controls, frameworks and processes in place are adequate to secure compliance with the EMR Relevant Duties and evidence has been provided where necessary to substantiate the statements made. The EMR CO's team has met with the Compliance Champions to challenge and review the framework and questions and share any compliance best practices identified.

In May 2021 the EMR Delivery Body provided Ofgem with a briefing note explaining the circumstances surrounding the Delivery Body's inadvertent failure to meet obligations under the Capacity Market Rules 2014 (as amended) (the "Rules"), namely;

1. Capacity Providers erroneously provided with a Termination notice,
2. Issues related to T4 Delivery Year 2024/2025 Capacity Market Notices (CAN) release; and
3. Issues with production of Capacity Market Registers

These issues did not constitute a breach of Special Licence Condition 2.4. Each issue was investigated to understand the root causes and all remediation actions have been implemented to ensure appropriate controls are in place to remove risk of future issues.

The Agreement Management (AM) Team in EMRAT is currently undertaking a deep dive review of AM processes. The primary objective of the deep dive is to provide assurance that processes relating to managing Capacity Market Agreements are compliant with the Capacity Market Rules. Where improvements are identified recommendations will be put forward to drive a subsequent action plan. To ensure that the review follows best practice an independent professional will be responsible for evaluating the approach taken and provide an opinion on the methods and findings to date and supports the primary objective of compliance against the CM Rules.

A review of the EMR change management framework, has been carried out during the period. The objective was to review and understand the change management framework, including the mechanisms, processes and controls that are in place to facilitate implementing changes, and agree any remediation actions required. The arrangements in place were reviewed to assess effectiveness and provide recommendations to improve the framework. This review involved testing the existing controls in place in the EMR teams in respect of change management, with the purpose of providing assurance that controls are effective, fit for purpose and proportionate to the level of risk.

The approach was intended to a) assess the health of the change controls in line with the corporate framework and b) review evidence of existing change controls and identify process improvements or additional controls as necessary. There is a continuous need to change, update and / or adapt processes, in response to changes to Regulations and Rules, system advances, compliance changes and changing customer requirements. There are more than 100 Standard Operating Procedures (SOPs) covering processes across the department. EMR has a Change Advisory Board (CAB) in place which has the purpose of reviewing, prioritising and monitoring change. The EMR team has a Change Governance Framework in place, whereby all changes to be implemented follow one of three routes, depending on the complexity of the change. These routes have various stage gates embedded and follow a 5-phase approach which consists of an initial decision to ascertain which route is appropriate followed by further phases of identifying, defining, delivering and closing / implementing the change. The review confirmed that the processes sampled complied with the governance process.

As part of the review a cultural survey was carried out to gain insights on perceptions of change management in the EMR teams. The participation rate was 100% and the overall response was generally positive in respect of all areas. The overall opinion of the independent review is that the change management framework and the EMR Change Governance Framework are Satisfactory and fit for purpose.

The Auction Monitor, Deloitte, has produced reports in relation to:

- (i) The Capacity Market auction for delivery year 2022 to 2023 (year ahead)
- (ii) The Capacity Market auction for delivery year 2025 to 2026 (four years ahead)

The scope covered the extent to which the Delivery Body ("DB") has complied with the requirements of Chapter 5 of the Capacity Market Rules, Regulations and the Auction Guidelines. The reports contain the opinion of the Auction Monitor for both auctions as: "the actions performed by NGESO, in its role as the Capacity Market Delivery Body for Electricity Market Reform, have in all material respects, complied with the relevant sections of the Rules and Guidelines"

As part of the monitoring the EMR CO has liaised with the Risk, Compliance and Audit teams to understand whether any key risks and issues have been identified through their processes.

The EMR CO has assessed the overall outcomes of the business separation monitoring to determine the level of compliance which has been achieved during the period as being:

“An effective compliance control framework is in place”.

Throughout the period ESO has been compliant with the relevant duties.

a) Objectives

ESO has taken steps to ensure that, in carrying out the EMR Functions

- no unfair commercial advantage has arisen to any of ESO’s nor NGET’s businesses (including the NGET TO) or any business of any Associate of NGET or ESO;
- The EMR Functions have not been unduly influenced by any of ESO’s nor NGET’s businesses (including the NGET TO) or any business of any Associate of ESO or NGET.

ESO has efficiently and effectively carried out the EMR Functions during the Period against the principles of best regulatory practice. A separate external audit found that for Capacity Market Auctions these in all material respects, complied with the relevant sections of the Rules and Guidelines.

National Grid Electricity System Operator Limited (ESO) is a legally separate entity within the National Grid Group performing the electricity system operator (ESO) role in Great Britain. ESO has autonomy in decision making on matters related to its licensed duties and the day-to-day operation of the ESO business in accordance with its Articles of Association and Reserved Matters. It is governed by its own board of directors with at least three Non-Executive Directors (NEDs). From a governance perspective, the ESO Executive Teams has delegated authority from the ESO Board. The ESO Executive Team is responsible for directing the affairs of the ESO business relating to strategy, markets, operations and financial performance.

Following legal separation in April 2019 a single OneSO structure was retained, comprising the GSO and ESO. However, on 1 January 2020 the ESO and GSO were separated to be managed separately and Gas System Operator became part of Gas Transmission. This was to provide even greater transparency and clarity about the management of the gas and electricity networks and the changes provide necessary clarity for employees and external stakeholders and make the legal separation of the ESO even clearer. These arrangements have not changed and are still current. In accordance with the licence requirements of Special Condition 2.4, a Single Responsible Director for EMR was appointed and was responsible for the EMR teams within the ESO. ESO operated and complied with all the legislation, licence, regulations, rules and codes applicable to ESO in carrying out the EMR Functions and has an open and positive relationship with Ofgem, BEIS and other industry stakeholders.

ESO is a separate legal entity from the ROCB and all commercial arrangements with ROCB are entered into on an arm’s length basis and normal commercial terms (“ALBNCT”). Pricing of services between ESO and affiliates is on a fully absorbed cost basis in line with a formal National Grid policy. Where appropriate, separate lawyers are assigned to take instructions from and act on behalf of the ESO and ROCB respectively. This approach is taken to ensure that any conflict of interest is avoided and ALBNCT arrangements are negotiated and observed.

A Code of Conduct was in place which applied to the EMR teams and had provisions within it prohibiting members of the EMR Administrative Team (“EMRAT”) and EMR Data Handling Team (“EMRDHT”) teams from taking decisions which would unduly discriminate in favour of any National Grid business or affiliate. The EMR CO is responsible for promoting a culture of compliance across

the whole of National Grid ESO and works with Compliance Champions in ESO and other National Grid businesses to educate, impart knowledge and share best practice on compliance matters.

a) *Legal and functional separation of ESO and relevant other competitive businesses*

To test the effectiveness of controls in place to ensure that there is legal and functional separation of ESO and ROCB, the EMR CO has reviewed business separation frameworks with the relevant directorates and has asked targeted questions to Finance, Treasury and Company Secretariat. The following arrangements remain in place to ensure that the ESO business (including those that were discharging EMR Functions) are carried out separately from the ROCB:

- ESO is a separate legal entity from the ROCB as set out within the Company Structure Chart within Appendix Two of the EMR compliance statement. The Board of Directors of ESO are separate to those of the ROCB (see section 6 below)
- ESO will publish its separate statutory accounts by the statutory deadline of September 2022. The accounts are subject to relevant accounting standards, which underpin separation of function, costs and revenues. A full copy of the statutory Report and Accounts and Report of the Auditors for the ESO will be publicly available via Companies House
- ESO does not hold any investments or shares in the ROCB directly or indirectly, so does not have an entitlement to vote at the general meetings of any of the ROCB
- For services, which are not covered by licence formula or industry charging statements, ESO has a Governance Policy for the Pricing of Intra business and Third Party Services. The policy is in place to secure that consistent pricing is applied for services provided to group companies and third parties. It is published on the Compliance Officer's intranet website and is promoted through the network of Compliance Champions
- ESO does not conduct or carry out any activity other than the System Operator Business or other de minimis activities (each as defined in the ESO licence) or activities to which the Authority has given its consent in writing.
- ESO employees engaged in the management and operation of ESO (up to and including Senior Managers reporting to the ESO Board) are not simultaneously engaged in the management and operation of the ROCB, other than for the provision of Shared Services as set out within Appendix 1 of the EMR compliance statement and for services which constitute de minimis activities.
- Buildings and Access Controls are in place and employees of ESO are employed in separate premises, to those employees of the ROCB. Employees involved in the EMRAT were assigned a secure access controlled area separated from other ESO employees, which was closely monitored and controlled by the EMRAT management team. Employees who visit premises which are not their normal place of work are treated as visitors in line with National Grid policy. During the COVID-19 pandemic new processes were established to monitor and govern the small number of employees working on site

b) *EMR Data Handling Team*

To test the effectiveness of controls in place regarding the EMRDHT, the EMR CO has reviewed business separation frameworks with the relevant directorates and has asked targeted questions to the EMRDHT. The following arrangements were in place to ensure that the team had been set up and was operated, supervised and managed in a manner compliant with Special Condition 2.4.

All members of EMRDHT, including new starters, have signed a confidentiality undertaking (non-disclosure agreement). The EMRDHT has also put in place appropriate systems and procedures for the storage, anonymisation and control of CEMRI. All CEMRI information was held on secure National Grid servers, with only EMRDHT members having access. The EMRDHT operates to a management procedure where required to ensure that all CEMRI data is anonymised before it was presented to any person who was not a member of the EMRDHT and only provided if it was for a permitted purpose as set out within Special Condition 2.4.7, 16, 17 and 18. This procedure ensured that there was a multiple step verification process, with one team member extracting the data and another team member checking and approving the data.

The EMRDHT had put in place and will continue to maintain document and information security policies for the receipt of CEMRI. If requested to run a future Call for Evidence (“CfE”), an IS system to manage CfE will be set up. This will be a secure password protected web portal for the recording, processing and storage of CEMRI. Functionality will be put in place by National Grid IS to ensure that only members of the EMRDHT have access to the CfE information.

c) EMR Administrative Team

To test the effectiveness of controls in place regarding the EMRAT, the EMR CO has reviewed business separation frameworks with the relevant directorates and has asked targeted questions to the EMRAT. The following arrangements remained in place to ensure that the team had been set up and was operated, supervised and managed in a manner compliant with Special Condition 2.4.

All members of EMRAT, including new starters, have signed a confidentiality undertaking (non-disclosure agreement). Members of the EMRAT were only engaged in EMRAT functions and no other activities of ESO, except for activities which were part of their role as an ESO Manager or employee, such as attendance at management meetings, company wide improvement initiatives, and training courses.

The accommodation of the EMRAT was effective in restricting access by persons who are not members of the EMRAT. The EMRAT was in a dedicated secure office, which has swipe card access to restrict access so that only EMRAT members may enter. The EMRAT is located in a dedicated section of Faraday House, with the same controls remaining in place. Faraday House has a separate entrance to National Grid House with no go-between access for employees. This prevents uncontrolled interaction between ESO employees and other National Grid employees. All non-ESO employees visiting Faraday House are treated as external visitors, with restricted access, and escorted at all times in the ESO working areas.

The EMRAT had also put in place appropriate systems and procedures for the storage, anonymisation and control of CEMRAI. All CEMRAI information was held on secure National Grid servers, with only EMRAT members and members of the EMR IS project team having access. The EMRAT operated to a management procedure to ensure that all CEMRAI data was anonymised before it was presented to any person who was not a member of the EMRAT and only provided if it was for a permitted purpose as set out within Special Condition 2.4.11, 16, 17 and 18. This procedure ensured that there was a multiple step verification process, with one team member extracting the data and another team member checking and approving the data.

The EMRAT had detailed on-boarding and off-boarding processes to ensure that control is maintained over physical access to the EMRAT office and access to CEMRI and CEMRAI through information systems.

Capacity Mechanism

The EMRAT had established document and IS security policies for the receipt of CEMRI in relation to the capacity mechanism. During the Period, systems were used to enable industry participants to submit pre-qualification data and documents.

The system was provided on a platform which allows applicants to submit data in to a secure area on the system to be reviewed and processed by EMRAT under the requirements of the Capacity Market Rules. The system was a fully developed solution which restricts access to CEMRI and CEMRAI to the information owners and the relevant EMRAT members.

In accordance with the approved Capacity Market (CM) Rules and timetable, results of the pre-qualification process were published into the public domain in November 2021.

Contracts for Difference

During the period, ESO established and followed document and information security policies for the receipt of CEMRI for Contracts for Difference (“CfD”). During the Period, systems were used to enable industry participants to submit registration data and documents.

The system was provided on a platform which allows applicants to submit data in to a secure area on the system to be reviewed and processed by EMRAT. The system was a fully developed solution

which restricts access to CEMRI and CEMRAI to the information owners and the relevant EMRAT members.

Restricted access to the system is available for Ofgem, BEIS and the Low Carbon Contracts Company so that these delivery partners can engage with various aspects of the CfD Round as required under the CfD Regulations.

d) Restriction on the use of Confidential EMR Information

Both the EMRAT and the EMRDHT teams used all reasonable endeavours to manage the process for the storage, anonymisation and control of CEMRI to persons whom are not members of either team and ensure that it is not possible to identify the generation set or the owner or operator, which is the subject of that CEMRI. There were appropriate systems and procedures for the storage, anonymisation and control of CEMRI.

A register was kept to record where CEMRI was disclosed to Shared Services personnel, other employees, external contractors, agents and advisers in order to carry out their functions or in order to enable ESO to perform its EMR Functions. Recipients of CEMRI understood the restrictions that apply and signed a confidentiality acknowledgement as required by Special Condition 2.4.18(b)(ii). The register was known as the Confidential EMR Disclosure list and is maintained within the EMRAT team by the EMR Stakeholder and Compliance Manager and within the EMRDHT by the EMR Modelling Manager.

3. EMR Compliance Statement

The Compliance Statement is an accurate reflection of the compliance arrangements in place. ESO have ongoing responsibility for updating and publishing the document.

4. Duties and tasks of the EMR Compliance Officer

a) Provision of advice and Information

The EMR CO has fostered a culture of compliance within ESO during the period by completing the following activities:

- The EMR CO has provided advice to ESO Directors, Managers and other personnel in respect of the relevant duties.
- The EMR CO has delivered targeted briefings to the EMRAT and EMRDHT teams to explain the restrictions on sharing of CEMRI data and to reinforce the Code of Conduct.
- The EMR CO has also provided communications to the wider NGET and ROCB businesses so that these employees are aware of the restrictions in sharing and receiving EMR related data and to ensure that these functions do not receive an unfair commercial advantage.
- The EMR CO has implemented a companywide communications programme to ensure awareness of the EMR functions and the sensitivities surrounding the use and management of CEMRI. Bulletins and other communication materials have been produced for team meetings and published on the National Grid's internal intranet system.
- There is also a network of Champions in place who promote awareness of licence obligations, promote a culture of compliance and facilitate compliance monitoring within their functions. The Compliance Champions within the System Operation function ensure compliance with EMR related obligations. Workshops have also been held with the EMR CO's team and Licence Champions to ensure consistent interpretation of information sharing restrictions and to identify compliance best practice.
- The EMR CO has carried out a review of the EMR change management framework. The objective was to review and understand the change management framework, including the mechanisms, processes and controls that are in place to facilitate implementing changes, and agree any remediation actions required.
- All National Grid employees in relevant roles and within the EMR teams are required to complete periodic e-learning training courses on Legal Separation, Business Separation and Competition Law, which include modules on information sharing restrictions.

b) Monitoring

The EMR CO has undertaken monitoring during the period to assess the effectiveness of the practices, procedures and systems to ensure that ESO remained compliant with the EMR Relevant Duties.

Each directorate has in place a Business Separation Framework which is a framework based on a set of targeted questions and designed to ensure that all business functions remain compliant with the relevant licence obligations. The Business Separation Framework for System Operation included the relevant obligations for EMR and they have built the necessary controls into their framework.

As part of the monitoring process, the effectiveness of the controls are tested and reviewed and risks identified where appropriate. Each Licence Adviser has submitted their framework to the EMR CO who has conducted challenge and review sessions to discuss the robustness of the controls in place. The EMR CO has also liaised with the wider National Grid Risk, Audit and Compliance teams to verify the outputs.

c) Investigations Conducted

ESO has not received any complaints, as set out in paragraph 28 of Special Condition 2.4, during the Period. There were no reportable incidents during the Period.

d) Report to the single responsible director and the Compliance Committee by the EMR CO

The EMR CO reported to the Compliance Committee on the performance of ESO, EMR and Shared Services in respect of legal separation in June 2021, January and May 2022.

5. Certificate of Compliance

The ESO Certificate of Compliance in respect of Special Condition 2.4 Electricity Market Reform was approved by a resolution of the Board of Directors of ESO for signature by the Single Responsible Director on 11th May 2022. A copy of the signed certificate is attached at Appendix 1 of this report.

6. Boards of Directors for ESO

The Directors for the Board of ESO for the period are shown in Appendix 2.

The ESO is governed by its own board and various committees to the board. The ESO Board has delegated authority from the National Grid Group Board and has autonomy in decision making on matters in relation to the ESO, in line with its terms of reference.

7. Minimum Posting Periods

Details of all employees who have moved into or out of the EMRAT and EMRDHT teams have been referred to the EMR CO. Employees moving into the teams have signed the Confidentiality Undertaking, received a briefing on the EMR Code of Conduct and been trained on the processes in place to manage CEMRI. Employees moving out of the teams have been reviewed by the EMR CO in accordance with the EMR compliance statement and the EMR CO has provided exit briefings and reminded them of their obligations under the terms of the Confidentiality Undertaking and contract of employment.

All employee transfers for the EMR Administration Team have been in accordance with the minimum posting periods set out in Appendix 8 of the EMR compliance statement. There have been no exceptions during the Period.

8. Further Information

Any enquiries regarding the content of this report should be addressed in the first instance to the EMR Compliance Officer at the following address:

EMR Compliance Officer

National Grid ESO

UK Legal

Faraday House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA

Special Condition 2.4

National Grid Electricity System Operator Limited

Certificate of Compliance

**in respect of Special Condition 2.4 Electricity Market Reform
for the period 1st April 2021 to 31st March 2022**

Capitalised terms have the meanings given to them in the ESO Licence.

I hereby certify on behalf of ESO, that to the best of my knowledge, information and belief having made due and careful enquiry, the report of the EMR Compliance Officer fairly represents the licensee's compliance with the EMR Relevant Duties.

Signature

Gregg Smith, Single Responsible Director in respect of Compliance with the EMR Relevant Duties

Date

Approved by a resolution of the ESO Board members on 19th July 2022

Appendix 2 – Directors of ESO

Name	Title	Appointed	Resigned
Megan Barnes	Director	30.11.2018	01.04.2019
Clive Burns	Director	30.11.2017	01.04.2019
Duncan Burt	Director, Operations	01.04.2019	17.02.2020
Gillian Merron	Non-Executive Director	01.04.2019	
Hannah Nixon	Non-Executive Director	01.04.2019	
Kayte O'Neill	Director of Transformation	01.04.2019	
Paul Plummer	Non-Executive Director	01.04.2019	
Reisin Quinn	Head of National Control and ESO Chief Engineer	09.03.2020	30.11.2020
Fintan Slye	Director, Electricity System Operator	01.04.2019	
Claire Tuckman	Finance Director	01.04.2019	04.05.2020
Zoe Morrissey	Company Secretary – non Board Member	23.05.2019	
Lawrence Hagan	Company Secretary	16.10.2017	01.04.2019
Chantal Ackon	Joint Company Secretary	01.04.2019	04.10.2019
Gregg Smith	Finance Director	04.05.2020	
John Linwood	Non-Executive Director	16.06.2020	
Regina Moran	Non-Executive Director	01.08.2020	

National Grid Electricity System Operator Limited, Legal Department,
Faraday House,
Warwick Technology Park,
Gallows Hill, Warwick, CV346DA
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