

Supplementary Answer Form

Project: OSEAIT

Tick if this answer has been provided verbally: ☐

Project code	NGET_OSEAIT	Question Number	38
Question date	17 October 2015	Answer date	22 October 2015
Submission section question relates to	7		
Topic	Derogation		
Question	<p>Section 7 of your full submission refers to requiring a derogation from the requirements of standard condition B9 of the transmission owners licence. Our understanding is that you are proposing that this derogation is necessary in order to allow you to charge other licensees that wish to use the site for future NIC projects on the basis of the costs of using the site (as opposed to on a commercial arms-length basis). Our interpretation is that as long as the arrangements do not involve a formal lease, if you were to charge other licensees and other companies/groups for the use of the site, this would be recovered by Excluded Services ES5 within special condition 8B, which simply requires you not to charge in a discriminatory manner.</p> <p>Do you consider the proposed arrangements comply with the definition of "permitted purposes" within condition B9?</p> <p>Will the future use of the site by other licensees involve a formal lease or temporary transfer of ownership?</p> <p>Please confirm why you think ES5 would not be applicable to this situation and a derogation from B9 is required instead?</p>		
Notes on question			

Answer	<p>We believe both regulatory frameworks could be used. The question suggests the deminis/Excluded Service route is more appropriate and we are happy to be flexible.</p> <p>Our initial decision was based on the fact that with Excluded Services is that this revenue sits outside the price control and in the absence of a specific allowance we keep all the revenue. While this would be good for NGET, it might be considered as inappropriate given the assets have been funded substantially by consumers.</p> <p>We could nevertheless use this approach for the facility. Ofgem has not set a target revenue for the project as part of RIIO-T1 so in effect the target is zero. Ofgem would use the revenue generated as part of T1 to set a target revenue level for T2 and 50% (or the prevailing sharing factor) would be deducted from NGET's revenue allowance for T2. We then have a strong incentive to go out and sell more space in the facility as part of the price control.</p> <p>The only problem with this is that potentially the consumers that fund the building of the facility (and any other Transmission licensee NIC/NIA project that pays us for space) are different to the consumers that benefit from lower TNUoS charges in the next price control. It is important to note though we would not be able to repay the investment made by RIIO-T1 consumers within this price control, the return could not occur until RIIO-T2.</p> <p>We do not have a particular problem with this but it is something that Ofgem has in the past tried to avoid. However, if Ofgem are comfortable, we would support this view.</p> <p><u>Do you consider the proposed arrangements comply with the definition of "permitted purposes" within condition B9?</u></p> <p>For projects that NGET is involved with then yes, it falls within the scope of the permitted purpose.</p> <p>In hindsight, we believe it could be argued that the facility has nothing to do with owning, operating and developing our transmission network and hence could be treated as "deminimis" activity.</p> <p>For services to other licensees, equipment manufacturers, universities, others, then we should treat this as a "deminimis" activity and the revenue should be treated as Excluded Services.</p> <p>If we did start to receive significant revenues from the service then we might require to approach Ofgem for a</p>
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Consent to take the revenue outside the deminimis limit.

Will the future use of the site by other licensees involve a formal lease or temporary transfer of ownership?

No, there will not be a formal lease or temporary transfer of ownership. We will only be making the services and capabilities of the facility available.

Please confirm why you think ES5 would not be applicable to this situation and a derogation from B9 is required instead?

We think it does conform with the definition of Excluded Services. Special Condition 8B covers Excluded Services and includes the following:

8B.8(d) Charges arising from any activity carried out under any provision the provisions of Special Condition 3I (Network Innovation Competition) which results in Returned Royalty Income for the licensee as defined in that condition.

We think it is possible to take the position that revenue earned from selling services at the facility are equivalent to a royalty and so should in principle be treated in the same way. Excluded Services are split into 5 categories and category 5 (ES5) is for miscellaneous activities.

ES5. Miscellaneous: This category consists of the provision of any other service (including the provision of electric lines or electrical plant) that:

(a) is for the specific benefit of any third party who requests it; and

(b) is not made available by the licensee as a normal part of the activities of its Transmission Business Activities.

In this case, we think we could take the position that we will charge "full price" to everyone that uses the site. If other licensees want to use it for innovation projects then they will be funded by consumers under the T1 allowance so the cost to them is not the full price.

At the next price control Ofgem sets an assumed Excluded Service revenue level from the facility (i.e. they reduce the maximum allowed transmission revenue recovery in our price control and in this way consumers benefit through lower TNUoS charges.)

We continue to treat revenues from the facility as Excluded

	Services revenue and so have a strong incentive to maximise it. In the following price control Ofgem may make further adjustments to our revenue allowance in the next price control, etc. etc.
Attachments	