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for energy consumers

To:

National Grid Electricity Transmission Plc
SP Transmission Ltd
Scottish Hydro Electric Transmission Plc
National Grid Electricity System Operator Ltd
National Grid Gas Plc
Cadent Gas Ltd
Northern Gas Networks Limited
Scotland Gas Networks Plc
Southern Gas Networks Plc
Wales & West Utilities Ltd.

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Consultation on amending the RIIO-2 NIA Governance Document

The Authority is proposing to amend the RIIO-2 Network Innovation Allowance (NIA) Governance Document by reverting the relevant section of the document on default IPR arrangements to the previous version in the RIIO-1 NIA Governance Document (v3, 2017).

We welcome responses from stakeholders to this consultation on or before the 24th September 2021. Following this, we intend to make any necessary changes to the RIIO-2 NIA Governance Document on the 8th October 2021.

Introduction

Following consultation in our RIIO-2 Draft Determinations¹, we decided on the arrangements for the RIIO-2 NIA in our RIIO-2 Final Determinations, making several reforms to strengthen the RIIO-2 NIA framework relative to RIIO-2². Beyond the identified reform areas, we also sought to more widely improve the clarity of drafting where possible. Our intent was not to make any other substantive changes to the NIA arrangements in

¹ RIIO-2 Draft Determinations – Core Document, paragraph 8.69-8.92;
https://www.ofgem.gov.uk/sites/default/files/docs/2020/07/draft_determinations_-_core_document_redacted.pdf

² RIIO-2 Final Determinations – Core Document, paragraph 8.61-8.80;
https://www.ofgem.gov.uk/sites/default/files/docs/2020/12/final_determinations_-_core_document.pdf

place in RIIO-1, which were most recently set out in the latest version of the RIIO-1 NIA Governance Document published on 30 March 2021³.

Rationale for proposed changes

National Grid Electricity Transmission notified us by email after we had published the RIIO-2 NIA Governance Document that they considered that we had inadvertently, through drafting changes intended to improve the clarity of drafting, changed the meaning and operation of the default Intellectual Property Rights (IPR) arrangements.

We can confirm that while amending the drafting in an attempt to improve the clarity of the drafting, we had not intended to change the meaning and operation of the IPR arrangements.

As a result we are now correcting part of the wording of the RIIO-2 NIA Governance Document section on default IPR arrangements by replacing it with the wording used within the RIIO-1 NIA Governance Document. This will consist of replacing paragraphs 7.9 and 7.10 of the RIIO-2 NIA Governance Document with paragraph 7.9 of the RIIO-1 NIA Governance Document.

Comment on the intent of IPR arrangements in the NIA

We would like to reiterate our long-standing position that an inequality in power in negotiations around innovation projects between network companies and third parties should not be used to wrest control of IPR from project partners.

Additionally, we want there to be consistency in approach on IPR between network companies and the ESO, again for the benefit of third parties. This is reflected in our decision in the RIIO-2 Final Determinations that requires network companies and the ESO to produce collective guidance for third parties on the treatment of IPRs.⁴

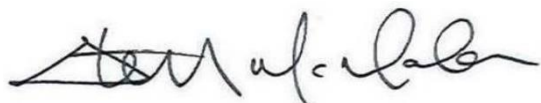
We will continue to monitor how well the RIIO-2 NIA arrangements work, including but not limited to the default IPR arrangements. For the avoidance of doubt, any potential future changes to the RIIO-2 NIA arrangements would be subject to consultation.

³ <https://www.ofgem.gov.uk/publications/riio-1-nia-guidance-documents-revision-additional-requirements-riio-2-cnia-0>

⁴ RIIO-2 Final Determinations – Core Document, paragraph 8.75;
https://www.ofgem.gov.uk/sites/default/files/docs/2020/12/final_determinations_-_core_document.pdf

Please send your feedback and comments to RIIO-2@ofgem.gov.uk, copying in graeme.barton@ofgem.gov.uk.

For more information regarding this consultation you should contact Graeme Barton (graeme.barton@ofgem.gov.uk).

A handwritten signature in black ink, appearing to read 'Steve McMahon', written in a cursive style.

Steve McMahon

Deputy Director, ED Sector, Networks

Signed on behalf of the Authority and authorised for that purpose by the Authority