

Geoff Down  
Innovation Manager  
Strategy & Regulation  
National Grid ESO  
Warwick Technology Park  
Faraday House  
Gallows Hill  
Warwick  
CV34 6DA

Direct Dial: 020 7901 7452

Email: [networks.innovation@ofgem.gov.uk](mailto:networks.innovation@ofgem.gov.uk)

Date: 22 August 2022

Dear Geoff,

**Decision on request for a non-default NIA registration for the marketing monitoring project "3MD"**

We<sup>1</sup> write to you regarding your request for permission for a non-default NIA registration for the marketing monitoring project "3MD".

**Background**

The Network Innovation Allowance ("NIA") funds a number of innovative projects which focus on the energy system transition and/or addressing consumer vulnerability, and which companies would not otherwise take forward as part of business as usual activities.

Under paragraph 2.14 of the RIIO-2 NIA Governance Document<sup>2</sup>, we require licensees to treat all data within RIIO-2 NIA projects as open to all by default unless they can demonstrate it is not in consumers' interests to do so or that there are other regulatory or commercial reasons not to do so. Where data cannot be open, we require Gas Transporter and Electricity Transmission Licensees to provide the requesting parties with reasons why the requested data cannot be shared, and to identify and deliver a de-sensitised version incorporating the minimum number of changes. Chapter 2 requires that Gas Transporter and Electricity Transmission Licensees collaborate with a range of parties to develop and

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<sup>1</sup> The terms 'we', 'us', 'our' refer to the Gas and Electricity Markets Authority. Ofgem is the office of the authority.

<sup>2</sup> <https://www.ofgem.gov.uk/publications/riio-2-nia-governance-document-update>

facilitate Projects funded through the NIA, with paragraph 2.3 highlighting that the Authority must give consent in writing for the Gas Transporter or Electricity Transmission Licensee not to comply with any of the above-mentioned Chapter 2 requirements.

Additionally as per paragraph 7.13, a Gas Transporter or Electricity Transmission Licensee can deviate from the default requirements for intellectual property rights (IPR) if it can:

- Demonstrate how the learning from the Project can be successfully disseminated to Gas Transporter and Electricity Transmission Licensees and other interested parties;
- Take into account any potential constraints or costs caused, or resulting from, the proposed IPR arrangements; and
- Justify why the proposed IPR arrangements provide value for money for consumers.

## **Request**

Under REMIT regulations<sup>34</sup> articles 5 and 15 and licence condition C28 4(j)<sup>5</sup>, the ESO must monitor the market for suspicious activity. The Balancing Mechanism (BM) is a specific tool used to balance supply and demand on the network. The BM is a continuously open online auction with market participants submitting “bids” or “offers” during specific time windows and is used to buy and procure the correct amount of electricity required to balance the system. The BM is currently manually monitored by the ESO. The ESO proposes a “3MD” project which aims to develop a machine-learning solution in the BM space to monitor ESO current and future markets, and extend market monitoring capabilities into new ESO products and transactions. The proposed project claims it has potential to increase the efficiency of team activities, develop more robust systems and processes, result in a fairer market for all participants and reduce balancing costs for the end consumer.

The ESO highlights that there are sensitivities in the types of behaviour being monitored in the BM space. This is because the ESO is monitoring potential breaches of Grid Code and REMIT regulations. As such, any incidents fall under REMIT regulations with respect to “tipping off” and cannot be discussed internally within the ESO. Any content that would enable interference of the specific “threshold” at which an action becomes detected may also constitute “tipping off”. As a result, the ESO notes it is challenging to follow default NIA governance requirements.

The ESO therefore proposes publishing project outcomes only to a high level description and to keep details of any model developed or data feeds being used confidential. The ESO claims publishing such details of the monitoring model would allow market participants

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<sup>3</sup> [Regulation \(EU\) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency](#)Text with EEA relevance (europa.eu)

<sup>4</sup> [The Electricity and Gas \(Market Integrity and Transparency\) \(Amendment\) \(EU Exit\) Regulations 2019](#) (legislation.gov.uk)

<sup>5</sup> <https://www.ofgem.gov.uk/industry-licensing/licences-and-licence-conditions>

insight into the system that could evade monitoring parameters used to efficiently review the BM space and keep the system in balance.

For the above reasons, the ESO has requested, as per section 7.13 of the NIA Governance Document, to depart from the standard registration rules.

The ESO also noted that learnings will still be disseminated to network licensees. The ESO highlights they will share learnings from the machine learning techniques, project outcomes, general functionality discussions, detection capability, discussion of applying these techniques in other business areas if identified and lessons learned from the process.

Additionally, the ESO have also explained that the costs/negative impact of the non-default arrangements are outweighed by potential project benefits. The ESO notes the cost of developing, implementing and maintaining detection methodologies are outweighed by the potential cost savings for the consumer if even one case of suspicious activity is captured.

## **Decision**

We confirm approval of the request for a non-default NIA registration for the project "3MD". We agree disclosure of sensitive project data has the potential to allow market participants insight into the BM space which could potentially affect the effectiveness of the ESO's market monitoring.

We are satisfied that the ESO will share high level knowledge with network licensees and the benefits of the non-default arrangements outweigh the costs. The future benefits of innovation are inevitably uncertain, however, this is no different to other innovation projects. More widely, a fair market that keeps the system in balance is in the interests of consumers.

Under paragraphs 2.3 and 7.13 of the NIA Governance Document, we approve deviation from these default rules for the project "3MD".

If you would like to discuss any detail in this letter, please contact [catherine.warriolow@ofgem.gov.uk](mailto:catherine.warriolow@ofgem.gov.uk).

Yours sincerely,

Graeme Barton

**Head of Price Control Operations – Small & Medium Sized Projects**  
**For and on behalf of the Authority**