

Response template for NIC and NIA informal governance consultation

Respondent details		UK Power Networks			
No.	Electricity or Gas and NIC or NIA	Chapter Name	Page/Paragraph Ref	Comments	Suggested alternative drafting
1	Elec – NIA and NIC	Various	Various	The documents are not future proofed for DNOs – is a separate piece of work to be implemented in 18–24 months' time to update the documents for the introduction of DNOs into NIA and NIC?	
2	Elec – NIA and NIC		1.13 in NIA as an example	'Ofgem' and 'Authority' are used interchangeably – they are different entities and the documents need to clarify which entity is meant in each case.	
3	Elec – NIA		1.16	The footnote states that projects with a TRL of between 1 and 9 would not be eligible – presumably the intention is to exclude projects involving technologies with a TRL of 1 or 9 (only)?	
4	Elec – NIA and NIC		2.2 in both	The URL for the ENA does not appear to work.	
5	Elec – NIA		2.5/2.10	Keeping the portal up to date “at all times” is very onerous; perhaps “reasonable endeavours to keep the portal up to date” is a better choice of words.	
6	Elec – NIA		3.4	This needs rewording such that IFI projects must conform to the requirements of the governance document from the point that they receive NIA funding, i.e. it is not retrospective.	
7	Elec – NIA		3.9 (i)	This should refer to 'Relevant Network Licensees', not 'Licensees'.	
8	Elec – NIA		3.9	There is an incorrect cross-reference to 3.17.	
9	Elec – NIA		3.16	This refers to 3.16 so is a circular reference.	
10	Elec – NIA		3.24 (and 3.35/6.4)	In relation to commercial harm and disclosure, the process by which Ofgem might reach a conclusion that information had been unreasonably withheld is not stated. We would assume that no such conclusion would be reached without extensive dialogue but as drafted this is not clear.	
11	Elec – NIA		3.25	We would propose the addition of a sentence stating that Ofgem would notify the applicant of the decision to extend the deadline within 20 working days of the submission.	
12	Elec – NIA		3.27	One page on the portal per project seems restrictive on the layout of the portal, i.e. one webpage or equivalent per project might not be the most efficient way of displaying the documents for public consumption. We suggest Ofgem confirm their intentions and then provide more latitude on the wording for the portal developers to achieve it.	
13	Elec – NIA		3.28	Regarding year-end project registration, add wording to make it explicit that a project registered within 20 working days of the year end <u>does not</u> have to start in the subsequent year; it could start in the current year.	
14	Elec – NIA		3.33	No timescales for Ofgem to do this...suggest 20 working days as per other paragraphs.	

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15	Elec – NIA		4.5	The term ‘Network User’ is not defined.	
16	Elec – NIA		4.5 – first bullet	No timescales for Ofgem to do this...suggest 20 working days as per other paragraphs.	
17	Elec – NIA		Table 6.1 – planned implementation line	The first sentence is incomplete.	
18	Elec – NIA		Definitions	Under ‘Relevant Network Licensee’ – the term ‘type of licence’ (i.e. electricity/gas or electricity distribution/gas distribution/electricity transmission etc) should be clarified.	
19	Elec – NIC		1.5	Footer 3 needs the year added after ‘March’.	
20	Elec – NIC		1.23/1.24	It is not clear as to how the two year review interacts with any updates to bring DNOs into the NIC.	
21	Elec – NIC		2.9	It would be useful to clarify whether the six month and close-down reports still have to be forwarded to Ofgem as well as uploaded to the portal.	
22	Elec – NIC		3.2	Five ISPs per Network Licensee Group – it is unclear whether this is annually or over the life of the NIC.	
23	Elec – NIC		3.8	£175k/5% is missing the ‘whichever is the smaller’ reference.	
24	Elec – NIC		5.5	Please clarify the term “original formats”.	
25	Elec – NIC		5.33 to 5.36	These appear as if they should be sub bullets to 5.32.	
26	Elec – NIC		5.43	Please clarify when the 10 working day count begins.	
27	Elec – NIC		5.52	This does not mention iv (finance). Also it is hard to read unless the Roman numerals are placed in brackets – i.e. (iv).	
28	Elec – NIC		5.52	Two pages over, a bold heading starts: ‘(b) Provides value for money...’ – but there is no (a) heading.	
29	Elec – NIC		8.3	We believe that the cross-reference to 8.6 should be 8.7.	
30	Elec – NIC		8.20	Accuracy assurance statement – what is the justification for statutory (board) director sign-off over non-board (i.e. non-statutory) director? Very few other returns require this.	
31	Elec – NIC		8.37	It is not inconceivable that under exceptional circumstances a DNO might not be able to guarantee to not incur additional costs three months before they occur.	

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32	Elec – NIC	Appendix 1 – Definitions	Definition of Project Supplier	This and following changes are intended to provide a stronger value-for-money test on large, established companies participating in NIC projects. Currently it is unclear whether it is acceptable to develop a new product as a 'Project Supplier' rather than 'Project Partner'. There is no requirement for Project Suppliers to declare their level of investment or own funding.	Project Supplier – a non-DNO Participant that makes a contractual commitment to supply a product or service which is commercially available prior to the commencement of the Project according to standard commercial terms that are not related to the success of the Project.
33	Elec – NIC		9.12	As above, ensure that all companies developing products must be declared as Project Partners.	For the avoidance of doubt, Foreground IPR within commercial products where those products will be available for use by other licensees after the end of the Project is not deemed Relevant Foreground IPR. <i>In order for this exception to apply to a Participant's Relevant Foreground IPR that Participant must be identified in the Full Submission Pro-forma as Project Partners.</i>
34	Elec –NIC		5.54	As above, a clearer statement of what the value for money test will consist of. This continues to recognise that the test will need to be modified according to whether it is being applied to a start-up or an established manufacturer.	Additional bullet between v and vi: <i>An analysis of contributions and royalties arrangements of each Project Partner, taking into account their access to capital and ability to invest capital, the possibility of revenues from overseas sales, and their assurances around how the future price of a product would reflect the benefit gained from being part of a successful GB trial.</i>
35	Elec – NIC		5.58 as drafted in your letter of 19 October 'Addendum to the informal consultation...'	Negotiation remains difficult for start-ups and smaller companies, as per the concerns raised in the letter from the Energy Innovation Centre to Ofgem on this subject. As such 'has negotiated' (past tense) at bid stage might be considered too strong for this type of company.	Remove and replace with the alternative text suggested in paragraph 5.54 above.

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36	Elec – NIC		5.58 as drafted in your letter of 19 October 'Addendum to the informal consultation...'	Please note that our preferred approach is that this clause is not used. However, if it is used, it is currently very widely drafted to require the licensee to negotiate for the use of all Background IPR and all Foreground IPR. We suggest that this obligation should be limited to negotiating for the future use of all Relevant Background IPR and commercial products which are subject to the exception in paragraph 9.12 of the Governance Document.	'Demonstrate that it has negotiated future use of any Relevant Background IPR or <i>commercial products which are subject to the exception in paragraph 9.12 of the Governance Document</i> Foreground IPR-generated through the Project for other network licensees who wish to replicate the project.'
37	Elec – NIC		9.12	Not all products are likely to have registered Background IPR (assuming registered means trademarks or patents) so this may not be a good test. As drafted, this may also result in only enhancements to existing products being subject to the exception. We would suggest not defining any further, but instead concentrate on ensuring that organisations expecting to use this carve-out fully expose their costs, as per the changes above.	Remove the footnote to commercial products.
38	Elec – NIC	Appendix 1 – Definitions	Definition of Directly Attributable Costs	The Royalty provisions in section 10 of the Governance Document allow a Network Licensee to recover Directly Attributable Costs which are for the maintenance and management of Intellectual Property Rights. This is assumed to allow the recovery of registration fees and the costs of managing IPR licences. For the avoidance of doubt this should also include the enforcement of any breach of such Intellectual Property Rights.	Costs related to the maintenance, management <u>and enforcement</u> of Intellectual Property Rights generated through Eligible NIC Projects
39	Elec – NIA		7.5	The clause from 9.12 of the NIC document would help to be included here. Otherwise there is a concern that, for example, the source code of an IT product would constitute Relevant Foreground IPR, which is not the intention, and which SMEs would not be able to agree to.	Include the last sentence of 9.12 'For the avoidance of doubt, Foreground IPR in commercial products...' but subject to the comment on the footnote above.
40	Elec – NIA		7.10	<p>'Required to consider and enter into contractual arrangements that will provide best long term value to <i>all</i> consumers during, and following...' – our recollection of the discussion at the IWG meeting on 12 October was that we concluded that there may be instances under the NIA in which DNOs did not achieve a negotiated position for all DNOs. Our understanding was that we agreed that this could be accepted, given the smaller scale of funding available within NIA, and that our focus would be on ensuring the '<i>all</i> consumers' and socialisation of royalties/discount rights was achieved with established manufacturers within NIC projects.</p> <p>Replacing with 'best long term value to consumers and other DNOs' gets across the message that it is better for these projects to progress and bring through products for other DNOs to purchase, even if not at rates negotiated for them, rather than for the project not to happen at all.</p>	Replace 'to <i>all</i> consumers' with 'to consumers and other DNOs'.

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41	Elec – NIA	Eligible expenditure	4.3	<p>As drafted, we do not think there is an equivalent of the 'Allowable Set-up Expenditure' under the LCNF. This was 'to cover expenditure it incurs to put in place the people, resources and processes to progress innovative Projects'.</p> <p>Clause 4.3 currently bounds all expenditure as being part of a registered NIA project. Our recollection was that this was discussed at a Spring/Summer 2012 IWG meeting and the intention was to continue to allow some expenditure outside of registered projects, and subject to the spending cap on internal spend set down in the licence. The discussion was that this was most likely to be needed to support absorption of learning from other DNOs' projects, and continued activity once projects have completed (such as regular reviews and additional training) to ensure that solutions have embedded into the business.</p>	<p>Add text based on LCNF governance document clause 3.5:</p> <p>DNOs may also incur spend outside of Projects, in order to put in place the people, resources and processes to progress innovative Projects. This is called Allowable Set-up Expenditure. A DNO must be able to demonstrate that it has used the amount claimed under Allowable Set-up Expenditure for the purposes listed above.</p>
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