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Dear Nicola,

### **Informal Consultation on NIC – Governance Documents**

Thank you for giving us the opportunity to comment on your informal consultation document dated 10 October 2012. We have reviewed the draft NIC governance document from the perspective of an OFTO, as OFTOs will have certain special features relative to other transmission companies – for instance their use of non-recourse debt. From this review we have derived the following list of questions and points of note:

<b>Section</b>	<b>Comment</b>
-	<p>What (if any) requirements are placed on licensees' procurement processes when selecting subcontractors? (e.g. is there a requirement to use competitive procurement).</p> <p>To what extent do subcontractors need to be named in the proposal submitted to Ofgem?</p> <p>To what extent does the selection of subcontractors need to comply with the Utility Procurement Regulations given that the NIC work is being allocated competitively by Ofgem?</p>
1.24	<p>It is important to ensure that rule changes (whether through the review process or otherwise) are not applied after-the-event once the licensee has accepted the Project Direction and work on a project has started. (We understand that this is Ofgem's intention, but it would be useful if this could be made explicit)</p>
2	<p>We are not members of ENA, although we do participate in the ENA's OFTO Forum. Because of this we think that, rather than a universal obligation on licensees to participate in the development of the ENA's Portals, it would be more appropriate if this obligation were to be limited to RIIO licensees. This does not, of course, affect our willingness to use the Portals.</p>
5.67	<p>In order that we can plan for participation in the NIC, it would be valuable if we knew timescales for each phase of the 2013 competition. At present only the completion date in November 2013 appears to be fixed.</p>
5.69	<p>The four working day period for a licensee to accept a draft Project Direction appears to be extremely short. Our understanding is that the Project Direction</p>

	<p>need not exactly replicate the terms that a licensee has bid to Ofgem, and as a document issued under the governance rules it would be, in effect, equivalent to a licence change.</p> <p>A change to a document as fundamental as the transmission licence is likely to require careful legal consideration before approval, and possibly approval from project lenders. Four days is not sufficient for this; we would recommend that the proposed wording be provided by Ofgem at least a month prior to the deadline for agreement. Alternatively there might be arrangements that allowed the licensee to “walk away” without obligation prior to receiving funding following April if it found the Project Direction to be unacceptable on detailed examination.</p>
5.71	Can Ofgem confirm that the auditor is only checking for compliance against the Project Direction (i.e. there is no other set of rules to be complied with), and that expenditure will only be disallowed for noncompliance with the Project Direction.
8.2	<p>If work is to start before funding starts in the April following the decision, or if the rate at which funding is required in early months exceeds the flat monthly funding rate (para 7.5 refers), then presumably the licensee will need to lend money into the Project Bank Account.</p> <p>We could not find any information on the interest rate that the Licensee can charge to the Project Bank Account in this circumstance, or confirmation that these interest charges can be recovered through changes to NETSO. Regulatory consistency would suggest that the interest rate should be the same as the Interest During Construction (IDC) rate allowed by Ofgem on asset-construction expenditure.</p>

If you have any questions about this response, please do not hesitate to contact me.

Yours sincerely



**Sean Kelly**  
Director