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Version 3.0 of the Network Innovation Competition (NIC) Governance Documents

On 11 May 2017¹ we² published a consultation on draft version 3.0 of the NIC Governance Documents in relation to both gas and electricity ('the Governance Documents'). We provided the proposed revised text and our reasons for the proposed changes.

The Governance Documents explain the regulation, governance and administration of the electricity and gas NICs. The amendments reflect our March 2017 policy decision on changes to the NIC governance arrangements.³ We asked for comments, representations or objections to the proposed amendments to the Governance Documents to be made on or before 8 June 2017.

Consultation responses and final version 3.0 of the NIC Governance Documents

We received four responses to the consultation⁴, one of which was a nil return. We have carefully considered the responses and incorporated them into the Governance Documents, where appropriate. The consultation responses and our comments on these are summarised in the annex to this letter. We have made a number of minor amendments to version 3.0 of the NIC Governance Documents in response to the consultation responses. We have also made a number of non-substantive formatting and drafting changes which are not connected to the consultation responses.

Clarification on existing NIC projects – Customer Engagement Plans

In draft Version 3.0 of the NIC Governance Documents, we proposed to remove the requirement for licensees to submit a Customer Engagement Plan to Ofgem for approval (previously a requirement of Chapter 8 of the Governance Documents). We have now decided to make that change. For clarification, this means that licensees do not need to seek approval from Ofgem where they wish to change any existing Customer Engagement Plan.

¹ <https://www.ofgem.gov.uk/publications-and-updates/consultation-version-30-network-innovation-competition-governance-documents>

² The terms "we", "us" and "the Authority" are used to refer to the Gas and Electricity Markets Authority.

³ <https://www.ofgem.gov.uk/publications-and-updates/network-innovation-review-our-policy-decision>

⁴ From Northern Gas Networks, Electricity North West, UK Power Networks and SSE.

Next steps

In accordance with the NIC licence conditions^{5,6,7,8,9} we have today published version 3.0 of the Governance Documents.

Yours faithfully,

Geoffrey Randall
Associate Partner, RIIO Networks
For and on behalf of the Gas and Electricity Markets Authority

⁵ Electricity Transmission Licence – Special Condition 3I.

⁶ Electricity Distribution Licence – Charge Restriction Condition 5A.

⁷ Gas Transporters Licence – National Grid Gas Plc - Special Condition 2F.

⁸ Gas Transporters Licence – Distribution Network Operators (DNs) – Special Condition 1I.

⁹ Gas Transporters Licence – IGTs – Special Condition 2.

Annex – Summary of consultation responses and our comments

Overview

We received consultation responses from UK Power Networks (UKPN), Northern Gas Networks (NGN), Electricity North West (ENW) and SSE. None of the responses were marked as confidential. The response from SSE was a nil return.

The majority of the comments concerned non-substantive drafting and formatting issues. We have addressed these comments with minor drafting and formatting changes in the Governance Documents and we do not describe them further here.

Please note that the terms used in this Annex have the same meaning as in the NIC Governance Documents.

Hierarchy of the governance documents and Project Directions

ENW queried the addition of text to the Context page of the Governance Documents, explaining that the Governance Documents take precedence over the Project Directions where they explicitly say that they take precedence or where the context so requires. ENW was unclear as to the purpose of this change and asked Ofgem to clarify its position. ENW expressed the preference for this text to be removed and the status of Project Directions to remain as is.

We have made this change, as in certain instances the provisions of the Governance Documents will take precedence over the Project Directions. However, in light of ENW's feedback, we have amended the text to clarify that the Governance Document take precedence only where they so provide. For example, paragraph 8.17 of the Governance Documents amends all Project Directions issued in Relevant Year 2016/2017 or before in relation to the procedure by which they may be amended or revoked.

Project Deliverables

NGN expressed concern with the proposed requirement on the Network Licensee to commission a report from an independent third party with the allowed costs of this being capped at 2% of overall NIC funding. It commented that for smaller projects, the 2% cap may not be sufficient to cover the actual costs of procuring an independent third party service of adequate quality.

Whilst we acknowledge this concern, we would expect the cost of the report to be commensurate with the size and scale of the Project and we would expect licensees to take this into account when commissioning the report. Therefore, we have made no change to the 2% cap.

Close Down Reports

NGN highlighted that the provisions in paragraphs 8.32 – 8.42 concerning Close Down Reports do not cater for the situation where all Network Licensees are participating in a Project; in those circumstances a peer review would be unnecessary because all licensees are active participants. In light of this, we have included a footnote to paragraph 8.38 which explains that, in those circumstances, a Network Licensee may use an alternative peer reviewer who is a party not directly affiliated with the Project. In this case, the choice of peer reviewer must be justified in the Close Down Report.

Bid Preparation Costs

ENW suggested an amendment to paragraph 5.19 to the effect that Bid Preparation Costs (BPC) for projects which pass the ISP in or after regulatory year 2018/19 should be treated as Totex.

We can confirm that RIIO Network Licensees can treat BPC as Totex for Projects which pass the ISP on or after 1 April 2018. We do not consider it is necessary to make express provision to this effect in the Governance Documents. We are separately taking forward changes to the Reporting Instructions Guidance and to the RIIO Financial Handbook to reflect this.

Project Directions

UKPN asked us to include text to the effect that references to Project Directions in the Governance Documents are to those Project Directions 'as amended'. We have inserted wording to the Context page to this effect.

Customer protection requirements

ENW commented that paragraph 8.10 lacked clarity and could be interpreted to mean that the Funding Licensee (and/or its contractors) and its Project Partners cannot visit a premises of any Relevant Customer for the purposes of recruiting customers for project participation. We have considered the drafting of this paragraph but do not consider that any amendment is required. Recruitment of customers for project participation is separate to sales and marketing activities and is not prohibited by paragraph 8.10.

Material change definition

UKPN queried the addition of the words 'or which an independent third party would reasonably believe to have caused' to the definition of Material Change in Appendix 1 and commented that it was unclear how a licensee would be able to assess other parties' opinions. Although this a common type of objective test, we have given the definition further consideration and replaced it with: 'A change which could reasonably be believed to have caused...".

Call for ideas from Non-Network Licensees

In relation to paragraph 2.6 of the Governance Documents, ENW requested clarification as to the year in which the obligation to issue a call to Non-Network Licensees begins. We can confirm that the obligation will take effect in regulatory year 2017/2018. This means that RIIO Network Licensees intending to submit a Project to the 2018 Initial Screening Process, must have first issued a call to Non-Network Licensees for Project proposals.

Also in relation to paragraph 2.6, following a comment from UKPN, we have amended the drafting so that Project proposals which are received in a call for ideas can be taken forward in the same regulatory year *or a subsequent* regulatory year (instead of the same *or the following* year).

Technology Readiness Level (TRL)

ENW noted that a project which is eligible for funding at TRL 8 could have reached TRL 9 at conclusion. We have made an amendment to Table 4.1 to this effect.

Appendix 3 – Guidance Notes for Successful Delivery Reward

UKPN highlighted an inconsistency in paragraphs 1 and 2 of the Guidance Notes, whereby paragraph 1 referred to '24 pages' for appendices and paragraph 2 referred to '20 pages' for appendices. We have rectified this by changing the paragraph 2 reference to '24 pages'.