

RIIO-2 NIA Governance document

Condition	Comment												
Whole document	<p>NGGT COMMENT ONLY - Hydrogen Innovation Funding (HYIN) - as per the Licence drafting that the HYIN follows this NIA governance document and its eligibility requirements then we would expect to see some reference of this.</p> <p>If this governance document is applicable to the HYIN fund (and therefore the HPDG workstreams) then clarity around how the mechanism is triggered and the criteria to be met is required, alongside a discussion around the 10% compulsory contribution and cap on internal spend of 25% - all of which needs to be consulted on. The HPDG workstreams are planned around internal staff leading and executing the associated activities. If these projects are funded through NIA this will lead to internal spend being greater than that of the governance position (25%). In the case that the 25% internal spend position is held, external parties will be required to run this workstream. In this instance they are likely to need to cover ground already investigated by internal teams to attain the same base understanding which could lead to extended costs and timescales and a risk that the learning outcomes make less of an impact on the goals of the HPDG.</p> <p>.....</p> <p>Internal resources spend cap of 25% - clarity is required around the internal resources spend cap at 25% and its application across the RIIO-2 period. Traditionally RIIO-1 NIA allowance was annual and therefore internal expenditure was capped at 25% per year. However, with the RIIO-2 NIA allowance being for the 5-year period, is the internal cap for the whole period and not considered year on year?</p> <p>For example – NGGT has a £25m NIA allowance, 25% internal cap is £6.25m for the 5-year period. It is unlikely that external spend would be consistent year-on-year so if total NIA expenditure is considered annually and not across the period, the internal allowance cap may be too low in some years and too high in others.</p> <p>For example, if we look at 2 years the first with low spend and the second with a higher spend there is a big difference in internal caps. Can the network company consider the whole period internal cap as its’ target or does it have to constrain spend year-on-year depending on how much external spend it incurs in a given year?</p> <p>The example below shows how over the 2 years the internal cap totals £2.5m and the example internal spend totals £2.5m however the caps vary each year so in 2021/22 the spend is over the cap, in 2022/23 the spend is under the cap and in total the spend of £2.5m = the internal cap of £2.5m</p> <table><tr><th>Year</th><th>Example External Spend</th><th>Internal Cap</th><th>Example Internal Spend</th></tr><tr><td>2021/22</td><td>£2m</td><td>£500k</td><td>£1.25m</td></tr><tr><td>2022/23</td><td>£8m</td><td>£2m</td><td>£1.5m</td></tr></table>	Year	Example External Spend	Internal Cap	Example Internal Spend	2021/22	£2m	£500k	£1.25m	2022/23	£8m	£2m	£1.5m
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2021/22	£2m	£500k	£1.25m										
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Context – paragraph 1	Gas Transporter and Electricity Transmission licensee are used throughout but not defined, we think it would be helpful if they were. We assume Electricity Transmission is intended to include NGESO.												

1.7 Introduction - RIIO-1 NIA	1.7 Whilst we note the RIIO-1 NIA Governance document will cease to be effective for transmission licensees beyond 31 March 2021, it will remain effective for electricity distribution licensees, therefore suggest add the words “for such licensees” at the end of the 2nd sentence.
1.10 Introduction – compliance	<p>1.10 As licensees have a licence obligation to comply with the Governance document (allowing enforcement action for breach) and Ofgem is able to determine that expenditure that does not meet the requirements of the Governance document is “Unrecoverable NIA Expenditure” it is not clear why an additional ability to make deductions from Total NIA Expenditure is necessary or appropriate. We suggest this is amended to:</p> <p>If Ofgem considers that the Gas Transporter and Electricity Transmission licensee does not comply with the requirements of this RIIO-2 NIA Governance Document, it will explain why and ask the Gas Transporter or Electricity Transmission licensee for further information.</p>
1.11 Introduction – compliance	1.11 Please add the following sentence at the end of the paragraph “Such obligations shall take precedence over the requirements of this document in the event of any inconsistency or incompatibility.”
2.3 Supporting collaboration	2.3 Please can Ofgem clarify what particular significance is intended by phrasing this paragraph in this way. Licensees have a licence obligation to comply with the governance document in any case so we suggest it would be more appropriate to amend this to state that the requirements of this chapter will apply unless the Authority consents in writing otherwise.
2.4 ENA Smarter Networks Portal	2.4 Suggest amend as follows “... external stakeholders and enable external parties to bring forward...”.
2.6 ENA Smarter Networks Portal – Requirements	2.6 Please clarify what is required by stakeholder consultation – as part of the Energy Networks Innovation Process (ENIP) there is a process for review of the processes and tools used by the networks, this would be sufficient and would not require this specific term in 2.6 for stakeholder consultation which would be deemed too onerous by stakeholders.
2.12 ENA Smarter Networks Portal – Shared learning – additional information	2.12 It would be helpful if Ofgem could include a non-exhaustive list of some examples of other dissemination activities Ofgem would wish licensees to undertake.
2.13 ENA Smarter Networks Portal – Sharing project data	2.13 It is not clear what is deemed to be “network” and “consumption data”: and whether it includes or excludes personal data (including special category data). What is personal data isn't always clear cut and requires analysis depending on other information that a Licensee holds. We request that further detail is provided in the Guidance.
2.14 ENA Smarter Networks Portal – Sharing project data	2.14 There may also be legal, legislative or regulatory reasons why network and consumption data should not be shared with a requesting party. Those reasons may not technically be in the "consumers' interest" as they may be legal, contractual or regulatory obligations on the licensee. Accordingly, we request that this is an additional exemption from having to share such data. We would suggest that the following words are added to the start of paragraph 2.14 “subject to compliance with legal and contractual requirements....”

2.15 ENA Smarter Networks Portal – Sharing project data	2.15 This paragraph creates the potential for a licensee to be in licence breach under 2 different special conditions in respect of the same failure, licensees already have a best endeavours obligation in the digitalisation licence condition to comply with Data Best Practice Guidance, in addition as drafted a licensee would also be in breach of its licence obligation to comply with the NIA Governance, which repeats the obligation to comply with the Data Best Practice Guidance. This is not appropriate, and this paragraph should be removed.
2.16 ENA Smarter Networks Portal – Sharing project data	2.16 Please can Ofgem clarify the timescale within which this policy should be in place? It is not clear if this is referring to the same policy that has been in place under RII0-1, if not, licensees must be afforded an opportunity to put this in place as it is not reasonable to expect this to be done for 1 April 21.
3.3 RII0-2 NIA projects – project portfolio	3.3 The word “deliver” before “de-risk” appears to be a typo.
3.5 RII0-2 NIA projects – Eligibility and Process Requirements	3.5 Projects must meet the six sets of requirements set out below to Ofgem’s Satisfaction. “Ofgem’s satisfaction” is a new phrase added with respect to T1 governance. It is not very clear what this means. We suggest it would be clearer if this was amended to “Projects must meet the six requirements set out below to qualify as an NIA Project”.
3.8 RII0-2 NIA projects – Eligibility and Process Requirements	3.8 Please can Ofgem clarify why reference to electricity distribution is included when the Governance document is relevant to transmission licensees.
3.9 RII0-2 NIA projects – Eligibility and Process Requirements	3.9 First bullet point - Please can Ofgem define Research Projects and clarify the TRL levels.
3.26 – RII0-2 NIA projects - Registration process requirements	3.26 As all licensees have a licence obligation to comply with the NIA Governance document suggest that wording is included to recognise that where there is a project involving more than one licensee they will nominate one licensee to undertake the registration, otherwise it is not possible for a licensee to both comply with the obligation to register and to ensure only one registration page per project exists.
3.27 - RII0-2 NIA projects - Registration process requirements	Section 3.27 requires the approval from Ofgem under certain circumstances before project registration. Section 3.28 provides the timelines of approval process. We would suggest Ofgem set up a common email address for these notifications to be sent.

3.29 – RIIO-2 NIA projects - Registration process requirements	3.29 Is this referring to Projects Registered during RIIO-1, if so it should make this clear. Alternatively, is the intent that any approval of Registration where para 3.27 applies could be revoked? Practically this would cause issues where this happens once a project is underway, and agreements have been signed. Suggest this is narrowed so such revocation would only take place where it becomes apparent that a licensee has omitted to provide a material piece of information in its request, which had this piece of information been known to Ofgem would have led it to reach a different decision. If the licensee provides all relevant information at the time, then the approval should stand even if circumstances change.
3.30 – RIIO-2 NIA projects - Registration process requirements	3.30 As per comment above, this should be linked to a failure by the licensee to provide material information which would have led Ofgem to reach a different decision.
3.33 – Projects must take place in registration year	Section 3.33 states that Projects must start in the same Regulatory Year in which they are registered, except where Registration has taken place within 20 Working Days prior to the end of the Regulatory Year. This provision makes sense for RIIO-T1, as there was a yearly Network Innovation Allowance. Considering RIIO-T2 has a single allowance covering the 5-year period, we suggest that this requirement is no longer needed. Sometimes the contract negotiation can take longer than expected, with the third party or project start being delayed because of unforeseen reasons. Removing this will provide more flexibility to work with innovation partners.
Table 3.1 RIIO-2 NIA projects	Table 3.1 “Scope and objectives” query if it is realistic for a transmission licensee to form a view on benefits to distribution
4.5 Recovering Total NIA Expenditure - Unrecoverable NIA Expenditure	4.5 This is very broad and means that any minor failure to meet one of the numerous requirements in the document would result in expenditure being unrecoverable, query if this is the policy intent. Otherwise suggest the specific requirements within the document that must be met, are referenced
4.7 Recovering Total NIA Expenditure - Deducting Direct Benefits from Total NIA Expenditure	4.7 We suggest this should be amended as follows: Where the Gas Transporter or Electricity Transmission licensee receives a Direct Benefit solely as a result of undertaking the Project, the estimated value of the Direct Benefit must be used to cover the expenditure incurred on the Project and so must be deducted from the Total NIA Expenditure. We require clarity as to how direct benefits are quantified. The definition of Direct Benefits also to be amended as per comment at the end of this table.
4.8 Recovering Total NIA Expenditure - Recovery of additional costs	4.8 Clarification is required with the definition extended on membership funding. There are different types of membership funding which need to be distinguished: <ul style="list-style-type: none"> • Innovation scouts – such as the EIC whose purpose is to facilitate SMEs working with the gas and electricity networks to solve problems, develop new ideas and realise new innovative opportunities. These scouts do not directly operate projects and networks pay a fee for the operation of the organisation including staff, events and overheads – as such these are deemed as internal costs • Professional working bodies – such as the Pipelines Research Council International (PRCI) directly conduct projects. The membership fees are directly split across the portfolio of projects operated by the membership organisation such as PRCI and the

	<p>relationship is supplier to network – as such these costs are deemed as external costs which require an NIA registration.</p> <p>The approach for the professional working bodies is as per the 2017 agreement with Ofgem and the three derogation letters regarding default IPR.</p>
5.6 Regulatory reporting for RIIO-2 NIA projects – Publishing annual summaries of NIA activities	5.6 Query where the cumulative report is to be published.
5.8 Regulatory reporting for RIIO-2 NIA projects – Publishing Rules for Innovation Good Practice	Publishing Rules for Innovation Good Practice is the old name for Energy Networks Innovation Process – need to update all mentions of the Innovation Good Practice Guide for consistency.
5.9 Regulatory reporting for RIIO-2 NIA projects – Publishing Rules for Innovation Good Practice	5.9 This is placing a retrospective obligation on licensees as the licence obligation bringing the NIA Governance document into effect does not take effect until 1 April 21 and this document is not in final state. This date therefore needs to be moved back.
5.10 Regulatory reporting for RIIO-2 NIA projects – Publishing Rules for Innovation Good Practice	5.10 Clarification is required on the requirement to improve “accessibility and content” – does this requirement seek for continual development on the how networks provide access to innovation projects and the results of the project or is its intention to cover accessibility requirements to ensure that everyone can access the information regardless of their needs (e.g. simple language, plain text for visual impairment etc?)
6.5 Knowledge transfer – Publishing Project Progress Information	<p>6.5 As per earlier comment, it may be that legally it is not permitted to disclose it, it is not necessarily always going to be due to commercial interests/harm. Also suggest the wording is amended as follows:</p> <p>“If the Authority later considers that information has been unreasonably withheld by the licensee...”.</p>
7.9 Intellectual Property Rights – Ensuring Value	<p>7.9 It is not completely clear what is the acceptable/ default position regarding ownership of Foreground IP. Can you please confirm if the default position is:</p> <p>one of four options: 1) the party independently creating the Foreground IP will own it; 2) jointly created Foreground IP will be owned jointly amongst those creating it; 3) the Gas Transporter or Electricity Transmission licensee owns all Foreground IP; or 4) an alternative position that is approved by OFGEM; OR</p> <p>simply the Gas Transporter or Electricity Transmission licensee owns all Foreground IP and the other options are considered as non-default options.</p> <p>Can you please also provide examples to illustrate each of the different acceptable positions? Perhaps defining “default IPR” would be helpful.</p> <p>7.9 The requirement to have a licence that complies with paragraph 7.7 should apply in all cases, not just where the Gas Transporter or Electricity Transmission licensee owns all Foreground IP. We request that the guidance is updated to clarify that regardless of the ownership position regarding Foreground IP, a licence that complies with paragraph 7.7 applies in all cases.</p>

7.12 Intellectual Property Rights Guidance for third parties on the treatment of IPR	7.12 Please can Ofgem clarify if this is the same as the Best Practice document referred to earlier which also covers IPR, if so, suggest this document is referenced for clarity.
8. Definitions	<p>We suggest the following amendments to Definitions:</p> <p>Direct Benefits - These should be benefits accruing to the licensee during the Project implementation "...as a direct result of the Project and which can be objectively quantified..."</p> <p>Total NIA Expenditure –for clarity we believe the same definition of Total NIA Expenditure as is used in the licence should also be used in the Governance document. We also note that there is no reference within either the Governance document or the licence to Ofgem directing Unrecoverable NIA Expenditure, we therefore suggest this should be amended to reference expenditure that is determined by the Authority not to satisfy the requirements of the Governance document. We therefore suggest the following definitions are used:</p> <p>“Total NIA Expenditure” has the meaning given to such term in Special Condition 1.1.15 of the Electricity Transmission licence and Special Condition 1.1.16 of the Gas Transporter licence.</p> <p>“Unrecoverable NIA Expenditure” means expenditure that the Authority has determined does not satisfy the requirements of the RIIO-2 NIA Governance Document, in accordance with the provisions of that document.</p>