

# Joint Office Of Gas Transporters

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18 September 2009

Dear Mark,

## **Review of Industry Code Governance – Initial Proposals**

This response is being submitted on behalf of the Uniform Network Code (UNC) Modification Panel following a debate of the issues contained in your related consultation papers. The Panel has not set out to address each individual recommendation in the Initial Proposals documents, believing that this is best left to individual parties, but instead has concentrated on the issues it regards as important for Panel Members.

Panel Members welcome the steps included within the Initial Proposals to clarify the checks and balances which would apply when the Major Policy Review (MPR) process is invoked. In particular, Panel Members welcome all Modification Proposals raised in response to a MPR, following the same procedures as any other Modification Proposal. Assurance is especially welcome that no Panel Member's discretion would be fettered when considering whether or not to vote in favour of implementation of any Modification Proposal arising from a MPR. However, Panel Members would suggest that thought be given to creating a specific exclusion such that, when considering if implementation of a Modification Proposal would be expected to further compliance with Licence obligations, this excluded consideration of obligations to raise Modification Proposals following a MPR.

The Panel has some concerns about the possibility of constraining the timeframe within which Modification Proposals can be raised during a MPR. This would impact the existing Modification process and, by being subsumed within a MPR, Proposers would lose ownership of their own Modification Proposals - removing parties' ability to raise and develop Modification Proposals which go right through the process. However, Panel Members would not support being asked to judge whether Modification Proposals should continue or be subsumed in a MPR.

Panel Members would welcome clarification of the nature and identification of Modification Proposals raised following a MPR. It may be helpful for all such Modification Proposals to be given a specific label and status in order to identify them as such – being raised in response to comply with a Licence obligation rather than to promulgate a change which the Proposer necessarily believes should be pursued. This clear identification would make it easier for the Proposer to oppose the Modification Proposal, should they wish to do so; provide the Proposer with the same rights as any other party with respect to

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raising an alternative Modification Proposal; and support the case, described above, for excluding reliance on compliance with Licence obligations as a reason for supporting implementation. In addition, some Panel Members feel there would be merit in introducing a provision that any representative of a party required to raise a Modification Proposal following a MPR should be precluded from voting with respect to that Modification Proposal at any UNC Modification Panel meeting.

Panel Members recognise that MPRs can provide a benefit to the extent that issues can be debated and managed through a single process. However, these benefits are potentially diluted when separate processes are subsequently followed should it be necessary to progress changes in a number of areas, such as changes to charging methodologies or other Licence derived documents in addition to Code Modifications. In these cases, irrespective of whether a MPR has been involved, Panel Members would welcome consideration being given to the introduction of a single process which coordinates and integrates the range of processes into one holistic package.

In terms of identifying which Modification Proposals should follow the self-governance path, Panel Members support the initial decision being taken by the UNC Modification Panel. The Panel feels that the proposed criteria are workable and that retaining an element of discretion and flexibility is valuable.

While recognising that introducing powers for Ofgem to call in or send back Modification Proposals could be helpful in some circumstances, avoiding nugatory work for all parties, Panel Members consider that use of these powers should be very much an exception. Panel Members value the contribution of the Ofgem representative at meetings. Active Ofgem engagement throughout the change process should identify regulatory concerns at an early stage, and the industry could be expected to address any such issues, such that the call in and send back powers are not used. The Panel would be disappointed if introduction of the proposed powers meant that Ofgem became less engaged over time and relied instead on the use of the new power.

The Panel agrees that, in light of the range of initiatives set out in the Initial Proposals, the constitution of the UNC Modification Panel merits consideration. In particular, the voting rights and potential impact on appeal rights should be examined. Panel Members suggest, for example, that if consumer representatives and the Panel Chair are to be given voting rights, it would be incumbent on them to ensure they are abreast of the issues being considered. In the case of the consumer representatives, Panel Members would expect them to commit to identifying and actively representing the views of those they represent regarding specific issues. In addition, Panel Members note that Consumer Focus predominantly considers the interests of domestic customers. Consideration should be given to also providing representation for other customers and to the consumer vote being restricted to those issues which directly impact domestic customers – for example, a consumer vote might automatically be excluded for all Modification Proposals which follow the self-governance route. Given that many Modification Proposals may be of limited interest to Consumer Focus, and that voting patterns can impact appeal rights,

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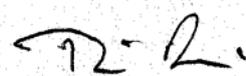
it may be more appropriate for the consumer view to be recorded rather than a formal vote being introduced.

Panel Members recognise the concern that smaller parties may find it difficult to engage in the modification process. However, in the case of the gas industry, it should be acknowledged that a range of parties that would fall within the Ofgem definition of a small participant are actively engaged in the modification process. Indeed, small parties are well represented among Shippers on the UNC Modification Panel – with 3 of the 5 Shipper Voting Members coming from companies outside the so-called Big Six shipper/suppliers. More generally, Panel Members believe that all parties, irrespective of size, can find it difficult to engage in the modification process and welcome the acknowledgement that the Joint Office of Gas Transporters should act as a critical friend. This can provide support to all parties and help to ensure that the appropriate governance processes are upheld. The Panel would, however, emphasise that the Joint Office of Gas Transporters should remain independent and impartial and should neither be expected to be, or seek to become, an expert in all areas.

The Panel notes the suggestion that Ofgem should appoint an independent UNC Modification Panel Chair. Panel Members are not aware of any call for this from industry members, and have indicated that they believe the Joint Office of Gas Transporters has demonstrated that it is impartial. Panel Members have confidence in the existing UNC Modification Panel Chair, whom they regard as suitably independent. A fear has been expressed that appointment by Ofgem could, in contrast to the stated intention, reduce rather than increase the independence of the Chair since there may be an expectation of being answerable to Ofgem.

The Panel trusts that this response is helpful but would be more than happy to provide further elaboration if the Ofgem Panel Representative would wish to raise any issues at future UNC Modification Panel meetings.

Yours Sincerely,



Tim Davis

UNC Modification Panel Chair