

Governance Workstream Minutes
Tuesday 30 March 2010
AEP, 5-11 Regents Street, London

Attendees

Tim Davis (Chair)	TD	Joint Office
Bob Fletcher (Secretary)	BF	Joint Office
Abigail Hall	AH	Consumer Focus
Chris Hill (Teleconference)	CH	RWE Npower
Chris Shanley	CS	National Grid NTS
Chris Wright	CW	British Gas
David Moore	DM	Gas Forum
Eddie Proffitt	EP	MEUC
Gareth Evans	GE	Waters Wye
Joanna Ferguson	JF	Northern Gas Networks
Joel Martin	JM	Scotia Gas Networks
John Stewart	JS	RWE Npower
Jon Dixon	JD	Ofgem
Julie Cox	JC	AEP
Lorraine McGregor	LM	Scottish Power
Peter Bolitho	PB	EON UK
Simon Trivella	ST	Wales & West Utilities
Stefan Leedham	SL	EDF Energy

1.0 Introduction and Status Review

TD gave a presentation on the Modification Panel, its present role, process, constitution and associated voting rights and how these could be amended in light of the Ofgem Industry Codes Governance Review.

CH asked what the definition of Independent Supplier is. ST advised it is a party not affiliated to a Shipper member and is appointed by the Gas Forum. TD confirmed the post is currently vacant despite the Gas Forum's best efforts.

PB considered it crucial that any change did not diminish parties right to seek Competition Commission referral should a party not agree with an Ofgem decision.

2.0 Industry Codes Governance Review – Modification Panel Constitution

2.1. Ofgem's Proposals

JD provided hand-outs summarising what is likely to be contained in the Final Proposals following the Industry Codes Governance Review. While the proposal for Major Policy Reviews is largely unchanged, the title has been revised to Significant Code Reviews. JD explained this was because the Ofgem process should not be confused with government policy reviews, as it doesn't seek to change regulations/law, though there may be licence changes.

ST asked if licence condition 4b (relating to connection charges) is likely to be in the scope of proposed licence changes as he thought these had been excluded. JD responded that connection charges would be in scope, though he could not confirm if changes to condition 4b would be proposed.

Self Governance

JD explained what is likely to be contained in the Final Proposals and how it is hoped the industry will manage the intended self-governance process. PB asked if there was a target number of proposals, which should follow self governance. JD said approximately 50% of previous proposal could have followed this route, though it is not a target and it is up to each code body to develop a process which works. Ofgem should be considered as an observer in the self-governance process.

Significant Code Reviews

JD suggested the SCR impacts on code Panels should be limited as these Reviews are lead by Ofgem, and occur prior to the modification process commencing. However, Panel constitution should be an issue for discussion and development.

Charging Methodologies

This is a new area for the code modification process and hence may raise some issues. It applies to both Distribution and NTS charging methodologies.

Role of Code Administrators

A change to the original proposals, in which Ofgem was considering appointing Panel Chairs, is likely. Ofgem will not seek to appoint the UNC or CUSC Panel Chair but will approve any proposed appointment. A voting Chair is likely be a requirement to break deadlock, though Ofgem will not be prescribing the nature of the vote, nor whether this is restricted to self governance or issues which are in deadlock.

Ofgem will require voting consumer representation on Panels and will reserve the right to appoint one of the two UNC consumer representatives directly.

Other potential modifications

Ofgem still have issues with legal text provision. Currently Ofgem receive recommendations for UNC modification proposals but have no view of when

legal text will be available and find it hard to understand how the Panel can make a judgement without text. CS asked if this should be suggested or formal text. JD felt suggested text helps, but finds it difficult to believe that some modification proposals can move forward without the production of text.

Alternative proposals have been discussed by CAWG (Code Administrators Working Group) and how best practice could be developed further to ensure alternatives are raised early in the process in order to allow full discussion and development of any alternative view.

Ofgem are placing responsibilities on the development of modification reports with Code Governance bodies to ensure self-governance is effective and to help parties understand the modification proposal and its likely impacts, in particular those relating to the relevant objectives.

JD advised the Final Proposals are likely to be released before the end of the week and will include licence drafting (this element is still available for consultation).

PB questioned whether the SCR proposals have impacts on rights of appeal and was concerned that changes in Panel constitution could prevent the right to appeal to the Competition Commission. PB was particularly concerned that the licence changes requiring a party to raise a proposal following an SCR meant that party would be expected to recommend its implementation, and so impact the right of appeal. He suggested the proposer should not be entitled to have a vote at the Modification Panel in respect of any proposal arising from an SCR. JD did not accept that the proposed changes would create an imbalance if the parties manage the process correctly, and emphasised that the licence requirements will not fetter the proposing parties right to vote either in favour or against the modification proposal they have raised.

ST agreed that if WWU were required to raise a modification proposal, they should still have the right to vote on its merits, one way or the other. PB felt the process should still contain additional checks and balances to ensure a parties right to appeal is not affected. SL agreed that any licensee should not be mandated by licence to support implementation of a modification proposal they were not in support of. ST did not believe transporters would accept such a licence condition - they would be likely to accept an obligation to raise and support the development of a modification proposal but not to be obligated to support its implementation.

TD asked if the licence requirement would be on all licensees or networks only. JD clarified that it will be a relevant network licence requirement - this element of the Ofgem proposals will be subject to consultation and all parties can provide comments if they believe additional safeguards are required.

JC asked if the licence proposals would prevent other parties raising a proposal. JD believed it would not, as parties could raise an alternate at the appropriate time.

TD asked if any of the Shippers present supported EON Us view that the proposer should not be allowed to vote on licence driven modification proposals. SL felt this could be desirable but would want to see the proposed

licence drafting before reaching a view.

SL asked if Ofgem intend to chair meetings held as part of the SCR process, or whether they would appoint an independent chair in line with their recommendation for code modifications. JD said the proposals were not prescriptive and asked those present to consider options for future discussions.

TD asked for views on the suggested casting vote for a Chair, such as on the implementation of a modification proposal. GE suggested that if this were restricted to deadlock situations only, it would not be an issue as currently a deadlock is regarded as a “no” decision such that deadlock is avoided. CW agreed that the current process has protection built in and deliberately avoids deadlock within the modification rules. ST suggested the current Modification Rules and voting rights should be retained since this would, in particular, protect appeal rights.

TD drew attention to the current modification proposal to allow consumer representatives to vote. JD confirmed Ofgem’s view that it is essential consumer representatives have a right to vote where there is a clear consumer impact. However, where the modification proposal is following the self-governance route, with no impact on consumers, they may not expect to see the Consumer vote. AH agreed with this principle, which had formed part of the Consumer Focus consultation response.

SL was concerned that creating areas on which parties can or cannot vote may be counter productive. It would be hard to know where to draw the line, and you could end up with different lists of parties being able to vote on different modification proposals, creating uncertainty and complexity. The EDF Proposal to allow the Consumer Representative a vote was deliberately simple in order to avoid these complexities.

ST supported Consumer Representatives being entitled to put forward a recommendation regarding a modification proposal, but that this did not require a formal vote. PB could see merit in consumer representatives voting as it may prevent a deadlock situation, but the issue would be define what they can vote on. GE supported SL’s view that any consumer votes should be allowed at anytime since to do otherwise devalues the process.

AH questioned if parties had expressed similar views when consumer representatives were allowed to vote under both the CUSC and BCS. PB advised that processes differ - National Grid has no right to vote in the BSC process whereas the consumer representative does, which is the opposite of the UNC arrangements. There was consensus that moving to the BSC model was not a preferred way forward for the UNC Panel.

TD asked if other Transporters shared WWU’s concern regarding the potential impacts on the appeals process should consumer representatives be allowed to vote. All present DNs confirmed this was the case, but CS advised National Grid NTS were less concerned due to their experience with CUSC and BSC.

AH asked if parties were concerned that Consumer Focus could appoint both consumer representatives. GE was happy with the approach provided Consumer Focus appointed representatives representing a cross section of all

consumers. JC considered it would be difficult for Consumer Focus to vote on proposals which favour one set of consumers over another. CW was concerned there were no obligations on Consumer Focus to choose representatives from across all consumer types, and British Gas had raised an Alternative Proposal in light of this. SL felt this was a minor issue as there is currently no issue with Shippers choosing their representatives - he believed it was preferable for Consumer Focus to have two representatives rather than another consumer body appointing one which may represent a particular consumer type. CW argued that two consumer representatives could unduly distort the potential rights of appeal and, though one representative may still have this impact, the barrier is not as high as with two.

TD suggested that the Modification Rules could be changed to allow for the right of appeal to be based on code signatory votes only - although this may require agreement support from Government and Ofgem in order to sure the statutory instrument and its interpretation would be as intended. ST asked if other codes are covered by the appeals right, and JD confirmed they extend beyond the CUSC, BSC and UNC and include codes where there is no consumer representative vote.

LM suggested, in light of the concerns raised, that there may be merit in changing the process from only requiring a simple majority. Safeguards could then be included in the process to allow a degree of protection for all parties. TD suggested that a version of this may be that at least one vote could be required from each constituency for a recommendation to be made. It was agreed that this could be a useful approach and could preserve the right of appeal.

TD asked if consumer representatives would be more likely to attend Panel meetings and if they could vote. This was confirmed by all three consumer representatives at the meeting. However, ST pointed out that he is a large transporter representative at the iGT Panel where he has no voting rights. He is happy with this approach because his comments are captured during discussions and recorded.

AH asked CW to explain his thoughts on why Alternative Proposal 0286A compared to 0286. CW explained that he was in favour of consumer representation but that he did not want the impact on the appeals process to be a significant hurdle and he did not think consumer representatives would want to be closely involved with industry specific aspects, which is why excluding UNCC (Uniform Network Code Committee) voting had been proposed.

ST offered to run through a presentation that sought to draw on the issues raised and set out an initial WWU view. GE was concerned about the late submission given the fundamental issues raised, and emphasised that parties he represented had not had sufficient notice to provide any feedback. He argued that the presentation should be deferred until the next meeting. ST felt the topics already discussed were covered in his presentation and there was no content that had not been raised previously at Governance Workstream meetings. GE suggested that if the presentation were accepted, it would nonetheless be necessary to repeat the debate in future when all interested parties could be represented, such that presentation now would inevitably

create duplication. GE added that there were differing views and he offered to present at the next meeting.

Action GOV1050 GE to present views on panel constitution and voting at the 15 April Governance Workstream.

SL and LM were less concerned about considering the presentation - the group was not expected to make decisions or reach conclusions but the presentation would provide some thoughts which could be taken into account in future.

At this point GE left the meeting.

2.2. Discussion of Options

ST presented WWU's initial view on potential changes to the Modification Panel and associated processes, taking into account the Code Governance Review and Modification Proposal 0286/0286A.

ST outlined what he saw as the advantages/disadvantages of 0286/0286A, and particularly the adverse impact of implementing either on the appeals process. Contrary to Set's suggestion that a voice of 1 in 11 is not great, JC questioned why this was not better than 0 in 10. EP also agreed that any vote would be better than the current situation where consumers have none.

PB thought Ofgem had indicated that they would look at any controversial vote to understand the context and reasons where transporters/shippers are split and the vote is carried by the consumer representative vote. JD agreed, that Ofgem always look at Panel decisions as being representative of an industry view, though the recommendation does not fetter its decision.

In justifying a consumer vote, JC challenged ST as to what the gas industry is about and its objectives. ST accepted that delivery of gas to consumers is central. However, the UNC is an agreement between Shippers and Transporters. EP felt decisions impact on consumers as transporter charges are passed on to consumers and that is why consumers should be represented and have voting rights – he would support one from Consumer Focus and the other appointed by some process that allows representation from trade associations or similar. EP also made a point that there has been historical reluctance to change and allow consumer voting representatives - this is not a healthy way to manage the change process. ST responded that he was in favour of representation but that did not equate to simple voting rights.

SL did not consider the right of appeal would necessarily be impacted by consumer representative voting rights – if required, rules could be put in place to allow parties the right of appeal based on UNC party votes alone. AH was concerned that the consumer voice was being disregarded if they were not to be allowed a vote - it is a clear way of expressing the consumer's voice. ST was unsure why consumers were getting a vote when other non-voting code representatives were not.

PB suggested that other company/supplier relationships do not require consumer representatives to be involved in commercial arrangements. EP felt that these are commercially driven and based on individual agreements

whereas transporter/shippers have one agreement which applies to all, and the service is regulated.

Constitution of Modification Panel

ST outlined a number of options for the panel constitution. PB thought there were other constituencies to consider, such as separate producer representatives, since these could be regarded as a distinct class of Shipper – debates should not simply focus on a domestic/I&C split. JC asked if all the options included voting consumer representatives. ST said the options were about changes to the Panel rather than consumer representative issues.

SL challenged why it is necessary for all transporters to be represented on the Panel. ST responded that each network has its own network code, and therefore need to be represented.

JC expressed a view that FMRs could be amended to clearly reflect the view of panel representatives, both voting and non-voting. ST agreed this would highlight what constituencies think about a modification proposal and its implementation. AH felt this could be a good idea but should be used in addition to voting. EP agreed, as it could highlight who supports the proposal and why.

ST wanted the process to be able to capture Panel decisions and to inform Ofgem - this would be similar to other code processes. JC did not think the current FMR process necessarily captures alternative views on why relevant objectives are or are not met.

CS asked if Set's preference was to give all panel members vote. ST explained he was not concerned about voting as opposed to all parties having a reasonable say in the process and their view recorded. EP agreed with this up to a point but wanted assurances that if anyone is present they should be given the opportunity to vote. TD asked if this would still be acceptable if non-code party votes were not counted for the purpose of allowing an appeal. EP was happy with this approach. JC thought this was still a difficult process and Ofgem would need to be made aware of the voting choices of those represented in case a party wishes to seek an appeal, and this may ultimately impact decisions.

3.0 AOB

DM provided a presentation on the proposed Gas Forum process for Shipper UNC Modification Panel elections, explaining the changes from previous years and improvements in transparency. PB noted that voting is based on licensed entities, but it can be difficult to identify all relevant parties. LM asked when the deadline was for comments on the Gas Forum, and DM indicated these should be provided by the week after Easter.

CW commented that he was supportive of the process for considering options and felt discussions during the meeting had been useful in exploring ideas and potential changes. It was recognised that there was no clear consensus and that specific proposals would be taken forward as and when any party raised a Modification Proposal.

4.0 Diary Planning

JD confirmed Ofgem have 2 workshops booked:

23rd April - Licence drafting

29th April - Code of practice and KPIs.

The JO anticipate arranging further meetings once Ofgem have published their Codes Governance Review Final Proposals.

5.0 Next Meeting

15 April 2010, following the UNC Committee meeting.

Action Ref	Meeting Date(s)	Minute Ref	Action	Owner*	Status Update
GOV1047	21/01/10	3.2.1	Amend the draft guidelines document based on comments received for presentation to the Governance Workstream.	National Grid NTS (RH)	Carried Forward
GOV1048	21/01/10	3.2.2	Provide a view on the possibility of adopting a process for a cost pass through mechanism for marginal User Pays charges.	Ofgem (JB)	Carried Forward
GOV1049	18/02/10	2.3	National Grid NTS to consider the comments received and amend UNC 0281.	National Grid NTS (RH)	Carried Forward
GOV1050	30/03/10	2.1	Present views on panel constitution and voting	Waters Wye (GE)	Due at 15 April meeting