

## **REVIEW TERMS OF REFERENCE**

### **CODE REVIEW PROPOSAL No 0267** **Review of UNC Governance Arrangements** **Version 1.0**

**Date:** 11/11/2009

#### **Review Terms of Reference**

##### **Background**

Ofgem is currently conducting an extensive review of industry code governance arrangements. Although that review is still ongoing, it seems extremely likely that that review will conclude that changes need to be made to the way that modifications to the UNC are raised, managed and decided upon.

Ofgem may be able carry out some of its desired reforms through processes other than changes to the UNC (e.g. transporter and/or shipper licence changes), however it seems likely that changes will also be required to UNC governance rules either to support licence changes, or as stand alone developments to the UNC. It is therefore proposed that a UNC Review is established to run in parallel with the Ofgem code governance review, in order to consider the outcomes of the code governance review, understand their impacts upon UNC business, and work out the best way of delivering the required UNC changes.

It is also proposed that at the same time, industry participants review existing processes that may otherwise remain unchanged by the Ofgem review, and either confirm that they will remain fit for purpose in the post-governance review world, or decide to make additional changes in order to optimise the UNC.

This Review will therefore necessarily be both wide ranging in the scope of what is considered and, since the Ofgem review is ongoing, flexible in terms of its timescales.

##### **Purpose**

It is therefore proposed that this Review considers the implications of Ofgem's suggested way forward in the Initial Proposals for Code Administrators. In particular, the Review should consider the implications for the Modification Rules of:

1. **Embedding a 'critical friend' approach for code administrators.** Under these proposals, code administrators would be required to ensure that all arguments for and against a modification proposal are discussed and reflected in modification reports. The 'critical friend' would also provide support to small participants and consumer interests engaging in the codes process;
2. **Obligations to assist small participants and consumer groups.** Ofgem propose a new duty upon code administrators to actively engage with small participants and consumer groups, facilitating their participation in the codes processes;
3. **'Call in' and 'send back'.** Powers to enable Ofgem to 'call in' modification proposals which are not being effectively developed or assessed at a speed relative to their importance, and powers to 'send back' proposals where analysis is deficient;
4. **Published reasons for panel recommendations.** The extent to which panels provide

reasons for their recommendations differs considerably across codes. Ofgem proposes requiring the provision of transparent reasons;

5. **Independent panel chairs.** In order to ensure that the panel chair is independent, Ofgem proposes to introduce a requirement that the UNC Panel Chair be appointed by the Authority. This is the current practice under the BSC;
6. **Performance evaluation measures.** Ofgem proposes regular benchmarking in order to improve transparency on the relative performance of the code administrators and to increase accountability for costs and quality of service;
7. **Code of practice for code administrators.** Ofgem proposes that a code of practice be established to facilitate convergence and transparency in code change processes and to help protect the interests of small market participants and consumers through various means including increased use of plain English in modification reports.

In addition, Ofgem's Initial Proposals for Major Policy reviews and Self-Governance have implications for the Modification Rules. This Review should therefore consider, Modification Panel membership and voting rights with a view to ensuring that UNC Panel remains appropriately balanced, including:

1. providing for an Ofgem appointed chair, with a casting vote;
2. providing for voting consumer representatives;
3. considering whether the current Panel constitution remains appropriate or whether changes should be made e.g. the creation of more granular shipper/transporter/other constituencies;
4. considering whether the Shipper election rules represent best practice and should be defined within the Modification Rules; and
5. Implications of the proposed Administrators' Code of Practice.

### **Scope and Deliverables**

The Review shall focus on changes to the governance and efficient operation of the UNC and aim to report its conclusions and recommendations to the June 2010 Modification Panel.

The Review should aim to develop a matrix of the changes proposed by this Review and the Ofgem Code Governance Review, including changes required to the Modification Rules to implement the change. The matrix should be developed to allow the tracking of Modification Proposals required to implement the changes and their status.

### **Limits**

The Review will focus on developing UNC Modification Proposals that efficiently address any issues or requirements identified as part of this Review or in response to recommendations required by the Ofgem Code Governance Review.

### **Composition of Group**

This Review is open to all Transporters, Code Users, and consumer representatives and will be held in open session under the auspices of the Governance Workstream. In addition, participatory attendance by an Ofgem representative is positively encouraged in order that

early guidance can be provided on areas for special consideration, and areas where discussions agree/disagree with Ofgem's governance reform proposals.

### **Timetable**

It is proposed that this review group is established for a period of nine months, but with scope to suspend meetings, extend the end date, or conclude early, depending on the progress of the Ofgem governance review.

Although the frequency of meetings will be subject to review and potential change, the Review will be on the agenda of the monthly Governance Workstream. Additional meetings will be arranged to debate larger topics, such as Modification Panel composition.

Meetings will be administered by the Joint Office and conducted in accordance with the Chairman's Guidelines.