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Dear Bob,

**RE: Modification proposals 0318 to 0325: Suite of Code Governance Modification Proposals**

Thank you for the opportunity to respond to these consultations. British Gas Trading (BGT) thinking and position on each is set out below.

**0318**

BGT does not support proposal 0318, but does support the alternative proposal 0318A.

The gas transporter licence requires gas transporters to have in place a mechanism to allow for the raising of proposals to modify the relevant network code, and also to allow for the raising of alternative proposals. Specifically Standard Special Condition A11 of the gas transporters' licence states (the emboldening is mine):

*10b “where a modification proposal has been made under paragraphs 10(a), 10(aa) or 10(ab) of this condition (an “original proposal”) alternative modification proposals may be made, in respect of **any** such original proposal, by any of the parties listed in paragraph 10(a) 10(aa) or 10(ab) of this condition with the exception of the person who made the original proposal provided that:*

- (i) the alternative proposal is made as described in the Code of Practice and as further specified in the uniform network code; and*
- (ii) unless an extension of time has been approved by the panel and not objected to by the Authority after receiving notice, any workgroup stage shall last for a maximum period (as specified in the uniform network code) from the date on which the original modification was proposed.*

Whilst 10b(i) makes reference to the Code of Practice (that relevant paragraph stating that “*the Code Administrator will facilitate alternative solutions to issues being developed to the same degree as an original solution*”) it is a clear principle that where any misalignment in rights or obligations exists, between the Code of Practice and the Licence, the licence takes precedence.

Whereas prevailing arrangements allow for an alternative proposal(s) to be raised in respect of each and every original proposal made, proposal 0318 seeks to restrict this ability.

Specifically, proposal 0318 would only permit the raising of alternative proposals in instances where an original proposal was directed for further development by the UNC Modification Panel. In instances where a proposal was directed by the Panel to proceed directly to the consultation phase, and in the case of Urgent modification proposals, no scope for the raising of alternative proposals would exist. To this end we believe that 0318 severely weakens compliance with the gas transporter license in that in certain circumstances the raising of alternatives will be prohibited.

We also believe that the implementation of 0318 would necessitate the adoption of two possible “work arounds”. The first would be a change to the UNC Panel’s approach to modifications. Whereas a current test applied by the Panel in respect of a proposal proceeding directly to consultation would be an assessment about whether or not the changes sought to the UNC are set out sufficiently clearly, we believe that in future such a decision is likely to involve the exercising of greater discretion by the Panel in respect of the likelihood of an alternative proposal(s) being raised. Where the Panel concluded that this was likely, the Panel may feel compelled to direct an otherwise fully developed proposal to development in order to create the scope for the raising of an alternative(s). This is likely to lead to instances where fully developed proposals are sent for development and no alternatives materialise.

The second change would see a greater number of uniquely numbered proposals being raised which are, in all but name, alternatives to original proposal which have proceeded directly to consultation without a development phase, and hence allowed no opportunity for the raising of alternative proposals.

We do not believe that either of the above outcomes accords with the intention of Ofgem’s code governance review to improve code modification procedures and make them more transparent, accessible and predictable.

Implementation of this proposal would introduce a further deficiency compared to the current regime in that it would allow a proposer to amend a proposal following production of a workgroup report. Such an amendment may be sufficient to encourage another code party to want to raise an alternative (where they might otherwise have been content with the aims of the original proposal at the time of the workgroup report), but of course that option would have been foreclosed following conclusion of the workgroup report. We believe that, again, this is a retrograde step compared to current arrangements.

A further frustration occurs in that, should proposal 0319 be implemented, there would be a greater number of instances where the Panel decides that a proposal should proceed to consultation, but legal text should be prepared in advance. The proposal therefore does not progress for (at least) a month, during which time an alternative could have been developed but is prevented by the absence of a development stage for the original.

While there is clearly an argument that 0318 better facilitates the transporters’ compliance with their licences (in that this proposal, like all the others in this suite of proposals, satisfies a licence obligation placed upon them), restricting the ability to raise alternative proposals is detrimental to this objective.

### 0318A

0318A seeks to overcome some of the deficiencies proposed within 0318 by providing guidance to the UNC Modification Panel in respect of how new modification proposals should be treated. While it retains the same restrictions in respect of raising alternatives, the guidance offered to the Panel will serve to increase the likelihood that proposals will be sent for development (and assessment) which in turn will increase the number of occasions on which alternatives may be raised. Overall we would still

question whether 0318A represents an improvement over the prevailing regime, but given the necessary assessment against the transporter licence obligation in this respect, we have to conclude that this proposal should be implemented.

### **0319**

BGT offers the following comments in respect of modification proposal 0319.

As with the other proposals in this suite, 0319 seeks to fulfil a licence condition placed upon the transporters by Ofgem. To this extent, it is hard to conclude that this proposal does not better facilitate compliance with the transporter licence.

However, there are aspects of 0319 which we believe add uncertainty into the prevailing regime, where such uncertainty does not currently exist and exposes loopholes which could render good intentions ineffective.

#### Send back powers

Currently, the UNC Modification Rules are structured such that a proposal cannot effectively stall in the process. The introduction of the ability for Ofgem to send back an FMR for further work or consideration, while laudable, could introduce such a situation. For example, the Authority may conclude that the FMR contains insufficient analysis of the costs or benefits of a proposal. A real example could be the effects of changing emergency cash out arrangements. The reality is, however, that since the GB market has never experienced a gas balancing emergency (and therefore shipper behaviour during such an emergency remains unobserved) the effects of changing from one set of theoretical outcomes to another is very difficult to assess.

It is therefore possible that, while we are confident that the Panel would do everything in their powers to oblige, in some circumstances the Panel would be unable to take any course of action which could remedy perceived deficiencies in the FMR. This could lead to something of an impasse.

#### Reasons for decisions

We support the proposed obligation on the Panel to provide reasons for decisions, but note that reasons are currently provided and therefore we would anticipate little change to current working practices.

#### Maximum periods for workgroups

The proposal is that no workgroups should exceed 6 months without Authority permission. This raises two concerns. First, the Authority may take some time in order to reach a decision about whether a workgroup may exceed 6 months, and it is not clear what happens to the workgroup pending an Authority decision. Second, where the Authority concludes that a workgroup should not exceed 6 months, there is nothing to prevent the proposer withdrawing the proposal and simply raising it again as a new proposal for development. The Panel is powerless to reject such proposals and in the absence of sufficient clarity within the proposal to justify consultation, will effectively be duty bound to issue that new proposal for development.

#### Consult Panel on requests for Urgency

The proposal is that the Panel should be consulted by the Authority on whether requests for Urgency should be granted. In principle we believe that this is a further step towards good governance, however we believe that the Panel should be given guidance as to what matters should be considered

when arriving at a decision. For example, currently a criteria for seeking urgency might be an associated date related event; however in most cases it is easy to identify a date related event for any modification proposal. Further grounds might be financial impact, and similarly most proposals will have some financial impact associated with them. Panel guidance might help in this respect.

#### Legal text

We believe that to date the Panel has done a good job of identifying the cases where legal text prior to consultation will provide a benefit. We believe that the change of emphasis on the provision of legal text, as proposed by 0319, will increase the instances where text is provided and amended during the development and consultation phase, possibly aiding clarity but also adding to the administrative burden and cost of administering the UNC.

#### Cost of Central System changes

We agree that it is helpful to have (timely and accurate) estimates of the costs of changing central systems.

#### Other changes

We agree that this is a good opportunity to make the additional proposed minor updates to the balance of the modification rules.

#### **0320**

BGT does not support the implementation of Proposal 0320.

#### Appointment of further consumer representative

The implementation of Modification Proposal 0286A, proposed by BGT, established the principle of a single voting position on the UNC Panel for a consumer representative. Further, it required that such a position must be filled by Consumer Focus, and sought to limit the extent of the voting rights in respect of UNCC and future self governance procedures.

Proposal 0320 seeks to build upon 0286A by adding scope for a further voting consumer representative, to be appointed the Authority, and extending voting rights to include areas which 0286A specifically sought to exclude.

We recognise that this proposal seeks to implement aspects of Ofgem's code governance review final proposals, which have subsequently been cast in the transporter licence, however it is also evident that these proposals themselves introduce uncertainty.

Whilst BGT supports a role for consumer representation on the Panel, and has confidence that Consumer Focus is willing and able to participate in both Panel meetings and associated discussions such that it is fully informed about the matters before the Panel,, we are concerned that Ofgem has failed to provide any clarity about the process it intends to undertake in order to seek out and appoint appropriate consumer representatives. Indeed, as far as we are aware no adequate definition exists for "consumer representative" in this context and to the extent that Ofgem has a statutory duty to protect consumers' interests, we believe it possible under proposal 0320 that the Authority could, for example, choose to appoint a member of Ofgem staff as a Panel representative.

Whilst we recognise that the Authority is not a code party, and therefore this proposal cannot place obligations upon the Authority to provide such reassurance, this lack of clarity and certainty on potential outcomes leaves us to conclude that this aspect of proposal 0320 is not fully developed.

#### Appointment of Independent Chair

We support the introduction of the ability for the Authority to veto a proposed Panel Chair appointment, but again would prefer to have a statement from the Authority setting out the grounds on which they might take such action. We would also seek confirmation that transporters will be genuinely at liberty to propose candidates of their choosing, and that they will not be subject to any kind of pressure from Ofgem/the Authority to propose a particular candidate who Ofgem would favour, especially given the introduction of a chair voting right.

#### Chair's Casting Vote

The UNC Panel voting arrangements are currently structured such that each voting member is able to either cast their vote in support of the matter at hand, or not vote. Since business is generally conducted requiring a simple Panel majority, it is currently impossible to reach a position of a hung Panel.

This proposal seeks to change the current voting rules, in order to create a regime where a hung Panel becomes possible. The addition of the Chair's casting vote, as also proposed by 0320, would then provide for the breaking of this deadlock. We can't help thinking that this proposal, therefore, both creates the problem and seeks to solve it. We are not convinced that this is a particularly efficient outcome.

#### **0321**

BGT supports the implementation of this proposal. We believe that giving greater consideration to environmental impacts of a modification proposal fully aligns with current thinking on the detrimental impacts of greenhouse gas emissions on the environment. We also agree that it is appropriate to widen the interpretation of the relevant objective dealing with the efficient and economic operation of the network in order to focus attention on this subject.

#### **0322**

BGT supports the implementation of this proposal. It has long been a source of immense frustration to us that such significant elements of shippers' cost base have been essentially ring-fenced outside of the UNC governance processes. This has served to stifle both open and transparent dialogue and understanding of the methodologies, as well as innovative approaches to charging. This arrangement effectively leaves shippers at the mercy of National Grid in respect of control of these methodologies.

By providing shippers with greater influence over these methodologies, we believe that the industry is more likely to see greater focus upon ensuring that charges are apportioned in the most efficient and appropriate way. To this end, we agree that the relevant objective which will be better facilitated to the greatest degree is competition between shippers.

#### **0323**

BGT supports the implementation of this proposal. The UNC already benefits from a degree of self governance under the guise of the UNCC. This proposal seeks to expand the scope for self governance to include a greater number of non-material modification proposals.

We believe that there will be relatively few instances of proposals which will progress all the way through the self-governance route, either because it is considered that they don't qualify as self governance proposals in the first instance, or because they are diverted into another governance stream mid-way through their lifecycle.

We are reassured by the safeguards set out in the proposal, specifically the appeals process, and would hope to see these used in very few instances, especially as the industry becomes accustomed to managing self governance proposals and is better able to identify proposals which are likely to prove to be contentious.

We consider that the relevant objective most applicable to this proposal is efficiency in the administration and implementation of the UNC, in that it may lead to fewer occasions on which the Authority will be required to make determinations in respect of modification proposals. In order to better facilitate this objective, we would expect to see a reasonable proportion of modification proposals proceeding along these lines. Conversely, however, there is no doubt that the addition of a self governance route, with its associated safeguards and appeals processes, serves to add complexity to overall governance regime. Not only will a party need to decide which route they believe is most appropriate for their proposal, but once raised there will remain residual uncertainty as to whether the proposal actually completes its journey along that process.

From the outset of its Code Governance Review, Ofgem considered the implementation of Significant Code Reviews and Self-Governance to be a package of measures which could not be separated. On this basis we believe it would be entirely inappropriate to implement proposal 0324 but not implement 0323.

#### **0324**

BGT supports implementation of this proposal. While it remains to be seen how Ofgem will actually use this new power, we are particularly encouraged that this proposal should see the end of Ofgem trying to force changes through the UNC by means of imposing licence conditions upon transporters; a process which has led to significant inefficiencies and frustrations in recent years. This process should, at least, give visibility to such matters, and force greater accountability from Ofgem for its actions.

This proposal contains some sensible measures to ensure that where an SCR is instigated it is able to capture all relevant subject matter, and we are supportive of these. We remain slightly uncomfortable with the concept of Ofgem requiring certain Code parties to bring forward proposals that that party may not agree with, but accept this as possibly the "least bad" option to achieving the SCR objective.

We agree with the proposer that this proposal probably best facilitates efficiency in the administration and implementation of the network code.

Also, as noted above, given that self –governance and significant code reviews were always intended to be a package of measures, we believe it would be wholly inappropriate to implement one without the other.

#### **0325**

BGT supports implementation this proposal. This proposal seeks to encode DN charging methodologies in much the same way as 0322 does for NTS charging methodologies. The reasons and extent for our support therefore mirrors our response for 0322.

Please contact me if you would like to discuss this response.

Yours sincerely,

Chris Wright  
**Commercial Manager**