



Bob Fletcher
Secretary, UNC Modification Panel
Joint Office of Gas Transporters
31 Homer Road
Solihull
West Midlands
B91 3LT

E.ON UK plc
Westwood Way
Westwood Business Park
Coventry
West Midlands
CV4 8LG
eon-uk.com

Richard Fairholme
Trading Arrangements
T: 02476 181421
richard.fairholme@eon-uk.com

11 October 2010

Dear Bob,

**RE: 0318 - 0325 Suite of Proposals raised to Implement the Industry Codes
Governance Review**

In the case of all of the proposals discussed below, we disagree with the proposer's justification for better facilitating the relevant objectives under *Standard Special Condition A11.1 (c): so far as is consistent with subparagraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence:*

Although on the face of it, UNC Modification Proposals 318 - 325 would seem to better facilitate this objective, this cannot be used alone as justification to recommend implementation of any of these Modification Proposals. Obligations have been placed on National Grid NTS with respect to UNC modification procedures because National Grid NTS consented to certain licence changes. Other UNC parties did not have a formal right to object or appeal these licence changes. In our view, the UNC Panel must have the right to make a recommendation based purely on the merits of the proposal. If the Panel were simply required to 'rubber-stamp' an Ofgem originated proposal because it happened to be set out in some detail in National Grid NTS's licence, then a potential merits-based appeal by affected parties would be precluded under the statutory Energy Code Modification appeals process. If the Panel is prevented from making an unfettered judgement on the merits of a proposal it can no longer exercise its responsibility to make impartial recommendations which is vested in it by this statutory process.

E.ON UK plc
Registered in
England and Wales
No 2366970
Registered Office:
Westwood Way
Westwood Business Park
Coventry CV4 8LG

0318 - Code Governance Review: The approach to be taken when raising alternative Modification Proposals

E.ON UK does not support implementation of this proposal.

We do not believe that this proposal contains adequate safeguards to ensure alternative proposals are developed to the same degree as an original solution; which was a key finding of the Code Administrator's workgroup. Consequently, we do not believe this Proposal better facilitates the relevant objectives.

0318A - Code Governance Review: The approach to be taken when raising alternative Modification Proposals

As proposer, E.ON UK supports implementation of this proposal.

Implementation of this proposal would help ensure alternative proposals are developed to the same degree as an original solution. The proposal achieves this by providing the Modification Panel with additional guidance to apply when determining the most appropriate route for a Proposal through the governance process. This allows additional relevant factors to be taken into account, such as the complexity of the proposal, the anticipated impact of implementation and the likelihood of alternative proposals being brought forward.

We have nothing further to add in respect of the relevant objectives above that which is already described in the Modification Proposal.

0319 - Code Governance Review: Role of Code Administrators and Code Administration Code of Practice

On balance, E.ON UK supports implementation of this proposal, but believes that the benefits of implementation would be marginal. Moreover, we find it alarming that the only applicable relevant objective quoted by the proposer is in respect of discharging its new licence condition and no effort has been made to justify it in terms of the other relevant objectives. As noted at the start of this response, we do not believe this alone is sufficient for the Modification Panel to be able to make a merits-based recommendation on a proposal.

Assisting small players

In practice, and consistent with the Code Administrator's Code of Practice, we would expect assistance with the governance process to be available to all Users, if reasonably requested.

One benefit of the Code Administrator providing more formal assistance (to any User) is that Modifications may potentially be more fully developed before being raised (or less likely to require amendment afterwards) because issues may have already been identified and considered prior to publication, following discussions with the Code Administrator. As a result, we consider that implementation of this aspect of the proposal should improve efficiency in the implementation and administration of the UNC (SSC A11.1 (f)).

Panels to provide reasons for decisions

The proposal that Panel Members should justify their decisions is sensible and has already been adopted by some other codes, such as the IGT UNC and CUSC. Implementation of this aspect of the proposal should increase transparency and accountability of individual Panel Member decision making and address some Shipper's concerns about Transporters "block voting" on particular Modification Proposals.

Send back powers

Powers to 'send back' modifications could be useful if used sparingly and in cases where there is a clear failure of the Modification process. It should not be used simply for the administrative convenience of Ofgem or as a mechanism for Ofgem to seek to choreograph a particular outcome. We believe that in most cases active engagement by Ofgem in the industry codes process would avoid the need for 'send back' powers to be exercised, since timetables for assessment and the scope of any industry analysis could be altered in the light of ongoing dialogue with Ofgem.

As drafted, we consider that this aspect of the proposal lacks appropriate checks and balances. It is stated that: *"the Authority will have the power to 'send back' Proposals where analysis, legal text or any other aspect of the Final Modification Report (FMR) is in their opinion deficient. This will be provided for through a new provision to allow the Authority to send back a FMR prior to an Authority direction on whether or not to implement a Proposal"*. In our view, this gives Ofgem excessive discretion in dictating the reasons why a Proposal might be 'sent back' and gives rise to concerns that Ofgem will be able to choreograph a particular outcome by 'sending back' a Proposal until it provides the desired solution. We do not believe this would be efficient use of industry time.

Implement the Code of Practice

There are benefits to this aspect of the proposal and we welcome the increased transparency and accountability that implementation would bring to the UNC governance arrangements.

0320 - Code Governance Review: Appointment and Voting Rights for a Consumer Representative and Independent Panel Chair

On balance, E.ON UK supports implementation of this proposal, but notes that implementation would bring only marginal benefits under the UNC.

Appointment of a Consumer Representative

E.ON UK has reservations about this aspect of the proposal. A consumer representative has already been appointed to the UNC Modification Panel and we are uncertain of the benefits of an additional representative who can only be appointed directly by the Authority. We are also concerned that undue influence may be exercised in the appointment of such a representative. For instance, in theory a representative sympathetic to SCR findings could be appointed for the period that the SCR-related proposals progress through the modification process in order to lend support. This would clearly be inappropriate.

Appointment of an Independent Panel Chair & Independent Chair Casting Vote

In responses to previous Ofgem consultations on this matter we noted that changes to the constitution of the Panel to create an Ofgem approved 'independent' Panel chair with a casting vote would inevitably affect potential rights of appeal of Modification Proposal decisions to the Competition Commission. Hence, we are pleased to see that the Independent Panel Chair would only have a casting vote on determinations regarding the progress of a Modification through the governance process and not in respect of determinations on whether to recommend implementation.

0321 - Code Governance Review: Approach to environmental assessments within the UNC

E.ON UK does not support implementation of this proposal, as currently drafted.

We see merit in this proposal in terms of greater transparency in regards to the environmental impact of relevant Modification Proposals, but due to the drafting of this proposal, we struggle to see how this proposal better facilitates the relevant objectives. In respect of *Standard Special Condition A11.1 (f): so far as is consistent with subparagraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code*, we disagree with the proposer that this proposal will simplify governance arrangements and reduce delays. For example, it is not clear exactly what the role of the Panel would be in respect of environmental assessments. This ambiguity in the role of the Panel could reduce transparency and add delay into the Modification

Process. For instance, the proposal seems to infer it is the Panel's role to carry out analysis of the greenhouse gas effects of a Modification Proposal, but we envisage that the role of the Panel would be primarily a process one; to ensure that the environmental assessment is carried out (where relevant) and in appropriate timescales. In any case, we would question whether the Panel is suitably qualified to make its own environmental assessment of a particular proposal.

0322 - Code Governance Review: Inclusion of the NTS Transportation and Connection Charging Methodologies within the UNC

E.ON UK supports implementation of this proposal.

We believe it is correct that Code signatories should be given the opportunity to raise proposals to change the charging methodologies but note that in the absence of appropriate checks and balances, there is a risk of un-coordinated piecemeal changes being implemented or issues being repeatedly re-visited.

In respect of the relevant objectives, we do not believe that opening up the charging methodologies for users and affected parties to raise changes will necessarily benefit competition in terms of simplicity, tariff predictability and frequency of changes. We think there could be detrimental impacts in each of these areas, but on balance, we consider that the competition benefits which may be expected to rise from reducing the scope for discrimination between different classes of Users and their customers and reductions in cross-subsidies could outweigh the dis-benefits we have identified.

0323 - Code Governance Review: Self Governance

E.ON UK supports implementation of this proposal.

Self governance seems the most efficient route for minor modifications, such as those raised for 'housekeeping' purposes. However, if a modification is so inconsequential as to meet the self-governance criteria it is questionable whether it should be a UNC Modification Proposal in the first place (or rather a 'Consent to Modify' under the existing governance arrangements).

0324 - Code Governance Review: Significant Code Reviews

E.ON UK does not support implementation of this proposal.

We accept that with the right safeguards a new Ofgem led 'Significant Code Review' process could potentially offer benefits in terms of more transparent and efficient decision making for major reforms. However, it also poses a great risk to the market if the process were to be used to drive inappropriate interventions. While there may be merit in undertaking a thorough review of an area before a Modification is raised, if industry participants view a Code change as beneficial they can bring forward modification(s) when appropriate; whereas any such review, especially one potentially lasting 12 months+, might increase regulatory uncertainty.

Thus, SCRs seem likely to have a negative effect on competition, affecting companies' ability to plan ahead; so deterring both new entrants and further investment by existing market participants for whom the costs of managing such risks will increase. Any change to a market framework (such as the UNC) that provides a mechanism for possibly unwarranted regulatory interventions and the risk of frequent changes in policy, increases market uncertainty. Markets that are subject to such uncertainty are less likely to encourage new entrants and thus facilitate competition.

Any review undertaken without close industry involvement and a lack of appropriate checks and balances also means the Authority would be acting as both judge and jury and risks producing an impractical, unworkable solution. For the Authority to direct the Licensee to raise a modification to perform a certain function or to impose a particular mechanism risks enforcing a solution, which may have unforeseen negative effects for market participants. This may be a particular problem when concerning an area on which the Licensee has no expert knowledge.

If the SCR process was to result instead in a report highlighting issues and providing an overview of options from which the industry could develop a solution, this would be more practical. Development by an industry workgroup in consultation with UNC Parties is the most effective and efficient process for uncovering potential impacts and developing the most appropriate solution. As it is, the proposed process not only calls into question the independence of the Licensee, but will also stifle timely development of alternative options by industry by 'subsuming' proposals raised during the SCR phase. Constraining development of other solutions also risks poorer quality decision-making through limiting the options on the table when a direction is made. In our view, the lack of adequate checks and balances in this proposal also increases regulatory uncertainty.

Our view might change in favour of implementation of this proposal if:

- a) A higher threshold of support was required for the UNC Panel to recommend implementation of a proposal that effectively originates from an SCR (such as that set out in UNC 0312 – “Introduction of Two-Thirds Majority Voting to the UNC Modification Panel”); and
- b) There was a limit introduced on the time that work on an industry proposal could be suspended during an SCR.

It is important to acknowledge that in suggesting these safeguards, we are not in any way seeking to question the competence of the decision makers, but it is nevertheless important to ensure that those entrusted to make decisions are incentivised to make timely decisions of the highest quality. The new powers for Ofgem to effectively originate modification proposals under SCRs means that the process for arriving at a Panel Recommendation needs to change in response, to maintain the efficacy of the statutory Energy Code Modification appeals process as envisaged by Parliament.

In addition, an industry proposer’s right to progress a modification under the normal modification rules should not be unduly delayed because of an SCR. If the suspension of industry work on such proposals was limited to say 12 months from the commencement of the relevant SCR, this would provide an incentive on Ofgem to progress its SCR in a timely fashion. Again we would not expect this, or the appeals safeguard, to be used very often but the existence of such procedural checks and balances will help assure the quality of regulatory decisions.

0325 - Code Governance Review: DN Transportation Charging Methodology and Change Governance

E.ON UK supports implementation of this proposal, for the same reasons as set out in response to Mod 0322 - *Code Governance Review: Inclusion of the NTS Transportation and Connection Charging Methodologies within the UNC*.

If you wish to discuss this response in any more detail, please do not hesitate to contact me on T: 02476 181421



Yours sincerely,

Richard Fairholme (by email)
Trading Arrangements
E.ON UK