

## DN Sales Development & Implementation Steering Group Minutes

### Meeting 13

6 July 2004, 10:00 am – 2:00 pm

Ofgem's office, 9 Millbank

#### Attendees

Mark Feather	Ofgem (chair)	Steve Rose	RWE Innogy
Jess Hunt	Ofgem	Martin Kinoulty	United Utilities
Farook Khan	Ofgem	Richard Street	Statoil
Jason Mann	Ofgem	Mike Young	BGT
David Ashbourne	Ofgem	Nigel Sisman	National Grid Transco
Roger Morgan	Ofgem	Sue Higgins	National Grid Transco
Nick Wye	Waters Wye Associates	Jeremy Sandford	National Grid Transco
Helen Bray	EDF Energy	Peter Bingham	National Grid Transco
Duncan Jack	Elxon	Keith Harris	Wessex Water
Peter Bolitho	E-on UK		

#### 1. Review of items from previous DISG meeting held 22 June 2004

##### a) Review of minutes

There were no comments on the minutes from the last meeting.

##### b) Review of actions

The actions arising at the previous meeting had been discharged as follows:

- ◆ *Transco to provide a note to the CIWG on DN-DN inter-operator relationships including inter-operator agreements and further information on the circumstances in which emergency offtakes would be used. To be discussed at CIWG 13 on 28 July.*
- ◆ *If group members have new issues that they would like to consider further contact Ofgem. Comments had been received from Centrica and SSE. These were tabled at the meeting.*
- ◆ *Ofgem to circulate the RAWG 7 paper on charging methodology. This paper has been circulated to the group.*
- ◆ *Group members to examine Transco's note on structural separation and provide comments. Comments due Friday 2 July. Ofgem had received one set of comments and was in the process of finding out whether the respondent wished to have these circulated.*

#### 2. Report from the workgroups

##### (a) Report from the Commercial Interfaces Workgroup

Mark Feather informed the group that there was no CIWG meeting last week due to the tube strikes and that the next meeting is on 7 July. At this meeting the CIWG will go

through the Interruptions RIA including the cost benefit analysis. The CIWG will also be discussing the SOMSA arrangements.

**(b) Report from the Supply Point Administration Workgroup**

Roger Morgan informed the group that there has been confusion recently as to the role of the SPAWG and to clarify this the terms of reference for the group have been revised. The SPAWG will focus only on DN Sales related activities and a separate working group will be set up (outside the scope of DN sales arrangements) to progress a SPA reform development programme. The SPAWG will report on findings and developments to the DISG on 17 August.

**3. Forward work plan**

Mark Feather said that recently parties have requested a forward work plan and a timetable for DN sales. The forward work plan provides agendas for future DISG and CIWG meetings in July and August. Mark Feather explained that Ofgem intends to make available shortly a timetable which will extend beyond August.

Helen Bray asked why there is no reference to a decision on the Interruptions RIA in the forward work plan. Mark Feather explained that Ofgem will be reporting back to the DISG following an Authority decision which is expected around mid August.

Nick Wye asked how shrinkage issues which will arise from multiple shrinkage providers will fit into the forward work plan. Nigel Sisman suggested that they will be looked at as part of the development of the Uniform Network Code. Mark Feather said that Ofgem will consider further how shrinkage issues will fit into the forward work plan.

**Action:** Ofgem to consider how shrinkage issues fit into the forward work plan.

**4. Transco paper on constitution of the UNC GT Joint Office**

Sue Higgins summarised Transco's paper on the constitution of the GT Joint Office which will be the body which coordinates the modification process for the Uniform Network Code. The paper sets out the issues that will need to be considered in the establishment of the Joint Office. Sue Higgins went through the three options for staffing of the Joint Office proposed by Transco which are:

Option 1: Secretariat

Option 2: Secretariat with seconded subject experts

Option 3: Secretariat and subject expertise

Steve Rose was concerned that none of the options involved permanent legal resource as part of the Joint Office and asked how many NGT legal staff supports the Network Code modification process. Sue Higgins said that Transco envisaged that the Joint Office would have its own legal experts under Option 3. She added that around 12 to 20 legal staff are involved in specialist areas of the Network Code on a part time basis.

Duncan Jack asked if the NGT experts would continue to contribute to the UNC modification process in order to provide extra expertise to permanent or seconded staff. Sue Higgins said that it would be a commercial decision for NGT to decide what level of resources to contribute to the modification process as it is for all companies in the industry.

Peter Bolitho suggested that it is not desirable for all the current NGT subject experts to be moved permanently into the Joint Office or to rely upon secondees. He proposed another potential option for staffing which would be a hybrid between options 2 and 3. This hybrid option would have a secretariat with a limited number of core subject experts and where necessary draw on extra subject expertise from NGT. Sue Higgins suggested that it is not possible to condense expertise into a limited number of core subject experts.

Steve Rose suggested that while it is appropriate for the Joint Office to be relatively narrow in scope, it should have its own legal resources to draft proposed changes to the UNC. Mike Young suggested that legal drafting should be a relatively impartial role – once business rules have been agreed through the modification process, the Joint Office could undertake the function of translating the business rules into legal text. Mike noted that the impartiality of the legal draft would be verifiable by anyone participating in the consultation process.

Mark Feather considered that it is important that subject expertise is provided by people who are sufficiently independent. Peter Bolitho said that he recognised that it is important to keep the costs down, but not at the expense of maintaining independence of the Joint Office. Richard Street suggested that independence can be achieved either through the design of the Joint Office or through compliance controls and perceived weaknesses in the design can be offset by stricter compliance controls. Richard suggested that if UNC modification process were sufficiently transparent, this would facilitate independence. Jess Hunt suggested that there are also costs involved in compliance controls.

Martin Kinoulty noted that Tory Hunter and Simon Goldring have previously expressed the view that if the rules for the modification process are robust and transparent then this reduces concerns surrounding the independence of the Joint Office. Nick Wye said that it is unlikely that discrimination would occur in what are administrative processes. Mark Feather highlighted concerns shippers have raised in the past about the degree of non-independence associated with legal text and modification reports under current Network Code. Mark Feather suggested that it is not a simply an administrative process and there is the potential for undue discrimination in the production of legal text and modification reports.

Sue Higgins said that most of the concerns expressed by shippers regarding the current modification rules concern process rather than administration. She suggested that Modification Reports could go back to the Panel for confirmation that the Joint Office had accurately reflected industry views expressed in the modification process. This would ensure that the process would be actively policed by market participants. In addition Sue Higgins suggested that staff member's personal credibility would prevent them producing a biased modification report. Peter Bolitho suggested that if the process is sufficiently independent then this will reduce the risk of the Panel having to resolve such issues and modification reports having to be amended.

Jason Mann summed up the group's views. Some group members consider that report writing is formulaic and therefore they were not concerned that reports would be biased under Options 1 or 2. In contrast, some group members consider that there is subjectivity in report writing and staff members are driven by company objectives. Mark Feather noted that the majority of the group seemed to prefer a relatively thin model given that checks and balances would be built into the modifications process.

Mark Feather said that the group would return to this issue at a later stage and requested that, in the meantime, the group could send any additional comments.

**Action:** The group to provide Ofgem with any additional comments on constitution of the GT Joint Office.

## **5. Transco paper on codifying ungoverned services**

Nigel Sisman summarised Transco's paper on Agency (xoserve Limited) arrangements and "ungoverned" services. Nigel Sisman explained that the AWG has already done a lot of work in identifying which of the Agency services will be ungoverned by GT obligations under Licence and the Network Code. Nigel Sisman said that, in view of all DNs' interest in promoting good customer relations, the industry can be confident that ungoverned services will continue to be provided by xoserve. Nigel Sisman accepted that there is some uncertainty going forward and highlighted that xoserve will be setting up a user group and any withdrawal of a service will require the full support of all GTs.

Mark Feather said that consideration of non-SPA ungoverned services is beyond the scope of the SPAWG. Helen Bray queried why the matrix has been developed by the SPAWG but Ofgem is suggesting work is taken forward by the DISG. Mark said that the ungoverned services provided by xoserve are much broader than SPA issues and therefore the work should not be constrained to the SPAWG. Richard Street suggested that work on the matrix on ungoverned services initially was driven by shippers raising concerns and the issue being taken forward through a meeting with Transco/xoserve doesn't give shippers reassurance that these concerns will be addressed. Jessica Hunt noted that the group will be discussing a Transco paper on Agency escalation routes at the next DISG meeting. This note would cover the mechanisms for providing shippers with mechanisms for resolving problems if they are dissatisfied with services provided by xoserve.

Mark Feather agreed to discuss with Ofgem's supply team the most appropriate way to co-ordinate this area of work going forward and to report back to the group.

**Action:** Ofgem to report back to the group on the most appropriate way to co-ordinate this area of work going forward.

## **6. Transco paper on options for the governance of the agency**

Sue Higgins summarised Transco's paper on the options for the governance of the Agency. There are four options put forward by Transco and the DISG. These are:

- ◆ special majority shared ownership (Transco's proposal)
- ◆ equal ownership (Waters Wye proposal)
- ◆ Transco full ownership
- ◆ non executive director with deciding vote (including the option of a shipper non executive)

Sue Higgins suggested that the special majority shared ownership option ensures that the exposure of risk and cost of each GT is proportionate to the respective level of exposure of each in the event of service failure.

Nick Wye made two points: the funding of the agency does not need to equate to ownership; and risk is proportionate to the size of each business and therefore, at a unit cost level, risk is exactly the same for all GTs under equal ownership.

Keith Harris suggested that the consequences of risk on all GTs could even be disproportionately large in the case of smaller companies as they are often more finely

attuned to the bottom line. Therefore all GTs would focus on minimising risks under equal ownership. Nick Wye agreed that the quantum of risk is larger for Transco but the impact of risk is larger for smaller companies. Keith Harris noted that equal ownership models operate successfully in the water industry, and questioned why Transco is pushing for majority ownership. He said that Transco majority ownership might not be conducive to the smooth running of the industry.

Steve Rose noted that under the SPAA proposals, BGT's contribution to funding is not commensurate with its voting rights. Richard Street suggested that the key point is that there doesn't have to be a link between risk and ownership and they can be separated.

Peter Bolitho suggested that under equal ownership there is a risk that the agency's ability to implement changes which are in the interests of the industry and customers might be hindered if a stalemate arises. He suggested that giving the deciding vote to a non executive independent party would enable differences between conflicting interests to be reconciled. Sue Higgins said that having an independent director on the board of the agency might be problematic because they would not be fully exposed to the risks associated with a potential breach of licence if the agency fails to deliver agreed service standards.

Nick Wye said that the agency will evolve over time but if Transco have special majority ownership it will develop in the interests of Transco. Sue Higgins said that special majority voting would prevent Transco introducing changes solely in its interests. Keith Harris reiterated that the aim of the creation of the agency is to facilitate the smooth running of the industry and equal ownership encourages the industry to work together.

Peter Bingham suggested that under the option of equal ownership Transco should be exposed to a lesser percentage of funding and would have less accountability. Jess Hunt clarified that the equal ownership model did not necessarily entail that all GTs would contribute to funding equally – rather, funding could be contributed in accordance with some size-related measure.

Mark Feather said that options for the agency need to be considered in the context of the statutory and licence duties of Gas Transporters and their ability to meet these duties, including efficient operation and securing effective competition between shippers and suppliers. Mark Feather requested views round the table on preferred options. Steve Rose, Nick Wye, Helen Bray, Martin Kinoulty and Keith Harris supported the option of equal ownership. Mike Young stated that Option 1 was not palatable and indicated that that could see merits in either of Options 2 or 4. Peter Bolitho supported the Option 4 (a non executive director with a deciding vote). Richard Street did not express a view, however he agreed with the objections raised by Nick Wye, and indicated that his support would lean towards Option 4.

## **7. Transco paper on emergencies & site isolation**

Jeremy Sandford summarised Transco's paper on gas supply emergencies and gas escapes. Transco currently operates a national organisation that covers the provisions for gas supply emergencies and gas escapes including:

- ◆ call handling
- ◆ work despatch
- ◆ dealing with reported gas escapes

Transco will still be required to provide a national call handling service and for the interim would provide work despatch services to IDNs. Each IDN would be required to have its own arrangements in place for dealing with reported gas escapes.

Martin Kinoulty asked if the costs and liabilities are clear in the arrangements. Jeremy Sandford said that costs will be agreed upfront. Richard Street suggested that currently Transco has an incentive to co-operate across DN's because they are all owned by Transco but there will be different incentives to co-operate with IDNs in the future. Jeremy Sandford said that there will be a code of co-operation in the agreement.

Jess Hunt said that Neil Shaw of the Association of Independent Gas Transporters (AIGT) had raised a number of issues in an email to Ofgem and had asked that they be raised at the meeting. Consequently, she asked Jeremy what would happen to the contracts that are currently in place between IGTs and Transco for emergency services in the case that the DN that an IGT is connected to is sold. Jeremy said that Transco would continue to provide emergency call handling on behalf of IGTs post-DN sales as it is a statutory requirement. Jeremy said that work despatch would originally be provided to IGTs by Transco, however, this contract could eventually novate to IDNs. He said that the AIGT's questions had stemmed from concerns that the work despatch agreement could come to an end in the future before IDNs have put their own suitable arrangements in place, and that it might be appropriate for DN's to have a licence condition requiring it provide work despatch services to IGTs.

Martin Kinoulty noted that it would be important to understand where a failure to co-operate leads to a breach of licence. He said that there will be an obligation on DN's to provide resources and support to another DN under the Emergency Assistance Agreement, however, the legal responsibility is not clear. Jeremy Sandford said that Transco would consider what resources are available and respond in an appropriate way which is the current process.

Steve Rose questioned whether shippers would be included in any review of the Gas Supply Emergency procedures. Jeremy Sandford said that the Gas Supply Emergency procedures are publicly available and the intention is not to exclude any parties. Mark Feather requested that any further comments or questions be provided to Ofgem before the meeting on 3 August where the conclusions on emergencies will be presented.

**Action:** The group to provide any further comments or questions on emergencies & site isolation to Ofgem before 3 August.

## **8. Ofgem position paper on mergers**

Jason Mann summarised Ofgem's policy on future mergers between DN's. He said that any merger would reduce the number of comparators available for comparative regulation which would reduce the benefits derived from DN sales. Therefore Ofgem would seek to take the same approach that it has taken in electricity DN mergers. Jason said that Ofgem would seek to ensure that the principle of protecting the interests of consumers is maintained such that following a merger between DN's there would be a reduction in regulated revenue across the companies in the merged group. He noted that the level of any reduction of regulated revenue would be derived as and when it becomes necessary to do so. Mark Feather said that due to the paper being tabled late for the meeting any comments could be made at the next meeting.

## **9. Presentation on licence approaches**

Jess Hunt highlighted to the group that Ofgem is gearing up for a new strand of work on the licensing framework. She set out initial views on how Ofgem propose to do this and outlined the way forward.

### **Next meeting**

The next meeting will be held at Ofgem's offices on 20 July 2004.