

Ref: AW/PW/085

Mark Feather
Director, Industry Codes and Licensing
Ofgem
9 Millbank
London
SW1P 3GE

21 January 2008

Dear Mark

Re: Review of Industry Code Governance

NGN welcomes the opportunity to respond to the open letter of 28 November 2007. Note that our response focuses on code governance in gas distribution only and not on issues within electricity or transmission. This response can be regarded as non-confidential.

In summary, we believe that the governance is effective in gas distribution and no substantive change is required. A major review was undertaken less than three years ago to enable DN sales and it may be a little early to instigate another review of gas code governance. Nevertheless if Ofgem instigates a full review we will participate actively in it. We agree with Ofgem's seven objectives to consider as part of the review set out at the conclusion of their letter.

Below we provide some comments on your letter grouped under each of the section headings that you use.

Effectiveness of code governance

Ofgem is concerned that there may be weaknesses in the way that the codes are governed that prevent industry and consumers from getting full value. However, the Joint Office (JO) appears to be administering the process effectively with no concerns raised either by shippers or transporters and no significant modifications proposed to the governance rules.

The fact that there are around six modification proposals raised each month suggests that the code arrangements do not "represent an undue barrier to entry".

Critical analysis of modification proposals

If there is a strong case for a modification then it is up to the proposer of the modification and those parties that support it to make the case and to provide the quality and depth of analysis that Ofgem considers appropriate. Similarly, if an industry participant believes that a proposed modification is not in the best interests of the industry then it is up to that participant to undertake the analysis. Where this is not forthcoming, particularly when there is no evidence to support the modification, then the modification deserves to fail. For modifications that Ofgem believes are critical it would be helpful if Ofgem was involved at an early stage in the development of the modification; this would provide Ofgem with an opportunity to identify issues and provide guidance on any additional analysis it deemed appropriate.

Relevance of code objectives

The code objectives are, appropriately, linked to the objectives of network operators. It is worth noting that Ofgem's statutory duties are different to those of the networks. Consequently if Ofgem requires modifications to fulfil its own statutory duties then it may be Ofgem rather than industry participants that should undertake the analysis to assess the modification proposal. The current Impact Assessment arrangements appear to work well in developing impartial analysis and providing full opportunity for consultation and any shortcomings in these arrangements can be addressed in the revised guidance on impact assessments now out for consultation.

Charging methodologies

It is appropriate that charging methodologies are governed by transporters and approved by Ofgem. GDNs have fully consulted the industry on all changes to methodologies since DN sales and responses have been taken into account in submitting reports on proposed changes to Ofgem. The current governance process is robust and transparent and enables engagement by all market participants; the Charging Forum is an industry forum which any market participant can call to meet at any time and where any interested party can suggest changes or voice concerns.

NGN believes this process works well and that it would not be appropriate for other market participants to be able to directly influence modifications on charging methodologies. We would not be supportive of transferring the methodologies into industry codes to be governed by independent code administrators. It is likely that market participants would then propose modifications linked to their own objectives, for example favouring either domestic or I&C markets, and these would not further wider industry objectives.

Other issues

Ofgem suggests some other issues that we address below:

Fragmented code administration

This is not an issue in gas. Ofgem raises the issue of efficiency incentives and cost controls: the JO is a tightly managed, low cost administrator and the GDN price review efficiency targets apply equally to the JO.

Ofgem also asks whether cost administrators need to be independent of market participants. Although the JO is owned by gas transporters it acts in an independent manner and we are not aware of any suggestion from market participants that the JO is not objective and impartial in its administration of the UNC.

Structure of code panels and other committees

The mod panel structure works well with a 5-5 split between shippers and transporters. It is noteworthy that frequently the shippers don't vote together on issues and neither do transporters.

Deficiencies surrounding the provision and quality of legal text

In general provision of legal text has worked well. There was a minor issue on legal text provision for one modification and the JO has implemented some changes to improve the process. In addition, it may be helpful if shippers are encouraged to provide legal text for their more complex modifications to ensure that there is clarity on their proposals.

In conclusion we trust that this response has been helpful and we look forward to further involvement in the governance review project. Please don't hesitate to contact me if you would like clarification of any of the points raised above.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alex Wiseman', with a stylized flourish at the end.

Alex Wiseman
Regulation Director