

The Gas Forum



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Dear Mark

Please find the Gas Forum's response to Ofgem's review of industry code governance. The Gas Forum is content that this response may be placed on the Ofgem website and in the Ofgem library.

In this letter we hope to address the questions raised in your letter dated 28th November and to provide some comments from the Forum members regarding the scope of the proposed review. Most of our comments relate to the arrangements in codes (UNC, BSC) which we consider to be different to multiparty arrangements such as SPAA.

Is it time to look again at the effectiveness of code governance?

The Gas Forum acknowledges that there have been significant structural changes in the Industry in recent years and it may therefore be an appropriate time to review the codes governance structures. We would, however, like to highlight that the industry codes that are relevant to the gas industry have either been amended¹, or created², in response to these changes.

As you state in your letter, the statutory duties of the Authority have increased during this time period to include sustainable development and better regulation obligations and that these changes underline the need for your decisions to be based on credible evidence that has been appropriately tested and that the reasoning used is transparent and consistent.

We believe that generally the Uniform Network Code functions better than the Balancing and Settlement Code, it is less costly, simpler, and acts as a more effective vehicle in enabling improvement to the present day arrangements. We are keen to ensure that the more costly and complex arrangements of the Balancing and Settlement Code are not transferred towards the UNC.

Critical analysis of modification proposals

The Gas Forum appreciates that significant evidence gathering is carried out by our members when changes are proposed. The Gas Forum has supported the evidence submitted by its members on numerous occasions via commissioning independent and expert reports³, to assist the Authority in the decision making process.

¹ in the case of the Uniform Network Code

² in the case of the iGT Uniform Network Code and the Supply Point Administration Agreement

³ For example the NERA report on Enduring Offtake Arrangements

Many of the proposed changes to the Gas codes are developed through consultations, review groups and the Joint Office Workstreams. Although Ofgem are often in attendance at these meetings there can be a reticence to provide guidance and opinions on behalf of Ofgem. We appreciate that Ofgem representatives are not able to fetter discretion in such open fora, but as an industry we feel that there is an opportunity for improved engagement with Ofgem in the development of proposed change. This would lead to a smoother, more effective modification process.

The relevance of code objectives – are they still fit for purpose?

Our members believe that the code objectives are still broadly fit for purpose, they are transparent and well tested. Care should be taken in any review to avoid changes to these objectives that may have unintended consequences.

First and foremost, Ofgem is an economic regulator and care should be taken not to dilute the strength of the existing code objectives by the addition of others. We believe the better facilitation of competition and efficient operation of the distribution and transmission networks must remain of paramount importance for Ofgem. It is key that the consequences of any change to code objectives is fully understood, especially where it may result in conflicts between an objectives that relate to Ofgem's primary duties and those that do not.

Charging Methodologies

The Forum welcomes the review of the scope of code governance, and whether use of system charging methodologies should be included. The principle that network users should have the ability to propose changes to such methodologies may have credence; however we do have some concerns as to whether this would lead to an increase in the amount of industry change that requires management.

Other Issues

As part of this review, the members of the Gas Forum would like to see an increase in the levels of self regulation within gas governance, perhaps more in line with the MRA model. For example, when there is unanimous support for a modification proposal by Panel members, on behalf of their constituents, Authority approval should not be required. In a similar way to the MRA, all signatories would maintain the rights to appeal any decisions to Ofgem and that any proposed changes to fundamental parts of the code would continue to require approval by the Authority.

We believe that the current structure and constitution of the gas Panels and Committees remain fit for purpose. As we have previously stated gas governance has changed significantly since the DN sales and establishment of the iGT UNC and SPAA. Panel members remain close to industry issues and can therefore provide fair and appropriate representations in the decision making procedures. We do have some reservations that the BSC Panel may have representatives who are not so close to issues and would have concerns if a similar model was used for the UNC.

With regard to the quality of UNC modification reports received and the provision of legal text, the Forum feels that the procurement of legal text should remain with the transporters. As code signatories, our members reserve the rights to propose legal text to any modification proposed, but for smaller companies, mandating the proposer to procure legal text could lead to excessive costs that would deter these parties from proposing change. An alternative solution could be for the responsibility to procure legal text being placed on the Code Administrators.

The Gas Forum would also like to see a greater deal of transparency from Ofgem where they are the progenitor of a proposed change⁴. We appreciate that this is part of the role as the

⁴ For example, where a licence change mandates Transporters to raise a modification.

regulator, however, without genuine transparency, there can be perceived conflicts between the roles of Ofgem as the instigator and the decision maker on modification proposals.

In a further step to encourage transparency, we believe it would be beneficial for code signatories to see a greater openness in relation to the Authority meetings at which implementation decisions are made. For example a view of the voting and discussion that are held in relation to proposed change and a better distinction between Ofgem and the Authority.


Governance Review

Your letter highlights several bullet points that you consider a governance regime should entail. The Gas Forum are fully supportive of these objectives and hope that through this review the industry will be able to achieve a regime of this nature.

We would wish to highlight that Ofgem's role must be inclusive, transparent and timely. We are particularly concerned with the role and use of Urgent modifications.

The Gas Forum and its members will be in attendance at your Powering the Energy Debate in February, however if you would like to discuss any of the points in this letter further, please feel free to contact me on the details provided.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Steve Briggs', with a stylized flourish at the end.

Steve Briggs
Chairman, The Gas Forum