Code Administrators Working Group
Meeting 2 – 01/10/2008

Attendees:

Roger Barnard – EdF Energy
Peter Bolitho – E.on
Duncan Burt – National Grid
Nigel Cornwall – Cornwall Energy
Tim Davis – Joint Office
Jon Dixon – Ofgem
Sebastian Eyre – EdF Energy
Mark Feather – Ofgem
David Jones – Elexon

Man Kwong Liu - SAIC
Phil Lucas – National Grid
Rosie McGlynn – EdF Energy
Eddie Proffitt - MEUC
Chris Rowell - Elexon
Louisa Stuart-Smith - Npower
Chris Welby – Good Energy
Catherine Wheeler - Ofgem
Chris Wright – Centrica

The previous minutes were agreed with suggested changes incorporated.

The final version of the terms of reference was agreed although a group member remained concerned that there was too much focus on the smaller parties. An observation was also made that the improvements should benefit all and the Codes are complex and broad in scope for any party.

Mark Feather gave an update on the status of the other work-strands in the governance review. The charging methodologies consultation document will be open for responses up to the 16th January. A consultation under the 'Code Objectives' work-strand on environmental policy will be published shortly. All other work-strands are progressing internally to timetable as intended.

Nigel Cornwall Presentation (Cornwall Energy Associates) – Positive aspects to the current processes were highlighted. It was felt these were fundamental to the codes and must be retained:

1) The ability to propose changes to the codes.
2) The ability to find out who (in the mod group) thinks what about a modification proposal (mod) and why.
3) Ofgem's final decision is always known and their reasons behind their decision are always given, whether you agree with them or not.

A number of issues were raised that were felt to be negative aspects to the current processes, these were:

1) Confusion lies in the detailed application of the processes involved in raising a mod and seeing it through to a decision. There is little consistency between the codes. This inconsistency leads to issues such as parties being unsure as to when is the optimum time to engage in debate on a modification proposal;
2) The one-size fits all attitude towards mods means that all mods (even house-keeping or minor non-controversial changes) end up being treated the same and going through the same process whether needed or not.
3) The constitution of panels and the way they are formed are all very different. There does not seem to be any reason for this so the group should aim to align the structure and practices of the panels.
4) It is a myth that the mod groups that are formed to investigate a mod, and surrounding issues, are independent and it could also be argued that panel members are not independent either.
5) People get invited to mod groups and panels but are then told that although they are contributing to the process they have no vote in the

final decision about whether a mod should be recommended for acceptance or rejection.

6) Smaller parties have resource issues when it comes to considering mods.

Points raised with specific codes were:

1) There is a lot of duplication in the assessment phase and the final report of the BSC processes. By contrast the CUSC process was clearer and CUSC documents more accessible.
2) In terms of the UNC, it was often difficult to understand the modification reports. The modification reports for all codes should contain simple, plain English, statements of what the modification proposal is trying to achieve;
3) The BSC and UNC allow group members to see who voted which way and why.
4) The papers for mods and related documents and also panel meetings are not available from DCUSA. This point was challenged by another group member who argued that all these documents are available on the DCUSA website or should be soon if a modification proposal that has been raised to address these issues is accepted.

Possible changes that could be made to the codes process were suggested:

1) Panels should have more rights to raise modifications.
2) The code administrator's role as a 'critical friend' should be clearly defined – they need to be properly funded to support parties and should be prepared to ask proposers and the modification groups the difficult questions that may need to be addressed in considering a proposal;
3) Final modification reports should highlight views that have been raised by industry, who thinks what and why.
4) A code of practice (COP) should be developed setting out how mods should be treated. The COP would be followed by all code administrators and could amongst other things include standard reporting and assessment templates. The COP should also set out what factors would be considered when it comes to the objectives of the code, so that proposers are aware of the possible interpretations of the objectives to avoid differences in understanding them. However, it would not be an exact interpretation of each of the objectives.
5) Different types of mods should be treated in different way with less onerous governance processes for more straightforward modification proposals (e.g. housekeeping modifications would not need to go through all the stages of the BSC process. They normally don't as they normally go straight to report phase, missing out the assessment stage).
6) A similar process to the way Ofgem carries out IAs needed to be taken up by the codes.
7) Post implementation reviews should be carried out on a routine basis, perhaps at a rate of about 1 in 10 mods being checked a year after implementation.
8) Ofgem should advise proposers if they have specific concerns about a mod before it is sent to them for decision.

Discussion – it was argued that the code administrator's role as a "critical friend" was limited by their funding and resources and that these issues would need to be considered if the role was to be expanded.

With regard to the independence of the panels it was argued by a group member that the relevant objectives of the codes are a way of controlling any biases that

might be felt as the panels had to think in terms of whether a mod would facilitate an objective and if so how and if not why not.

Voting rights within mod groups and panels was also discussed with one member of the group highlighting an occasion when a proposal was supported by the majority of participants in an industry working group but then subsequently recommended for rejection following a vote in which only some group members could participate.

A group member felt that the mod groups should give a balanced view of all the responses and views about a mod and not have a set position on it.

The question was raised as to why mod groups needed to vote as the vote would have little bearing on the final outcome of a mod. A group member said the mod groups needed authority to shape the mod to bring about change. The voting power gave them this authority. Voting was also relevant under some codes in determining what alternative proposals go forward. Another group member felt that the voting practise came from the fact that control of the original proposer over the mod is taken over by the mod group (like under the BSC). It was suggested that the proposer should maintain control of the mod and should be the one who decides if an alteration to it should be made. It was noted that if the proposer retained control over the modification then issues surrounding voting rights would become less relevant. One group member wanted to know whether the owner of a mod should be the proposer, the mod group or the code administrator. An issue to consider if the code administrator becomes the owner is how this will be funded. It was also suggested that code administrators should be able to raise mods on behalf of smaller parties and be able to stop or withdraw mods.

A group member felt that responses to consultations should not be confidential. UNC consultation responses are not allowed to be confidential, therefore other codes and Ofgem should do the same. It was noted that most confidential responses held sensitive business information and that it was quite rare for a response to be confidential. It was argued that responses should be published but sensitive business information should be redacted.

The idea of carrying out post-implementation reviews was discussed. It was pointed out that the BSC publishes its central costs but they struggle to get the final costs of implementing a mod from parties. A group member felt that carrying out these reviews was a job for Ofgem and not the code administrators. This was challenged by another member who felt that there was a risk that as Ofgem had made the judgement to implement the mod they might be tempted to bias the assessment. It argued that doing the analysis would be an expensive job but this was also challenged by a group member who felt that just finding out the costs of implementing a mod and who had taken advantage of it would not cost that much. Another group member felt that the assessment should not be focused on just costs and take up, it should look into the impact of the mod and whether it had achieved its intention. It was suggested that the code administrators could employ an academic to assist in the evaluation of mods. One group member felt that if a mod was found to have failed in its objective then the costs of the mod should be targeted to the proposer of the mod. This view was not a majority view and most felt that this would act as a disincentive to parties who have legitimate mods to raise.

It was also pointed out that cost/benefit analysis is not the only way of evaluating a proposal and thatjust because a mod can not be quantitatively assessed does not mean it can not be qualitatively assessed.

A group member asked whether the changes to the governance arrangements that had been suggested in the CAWG meetings could be taken forward by code administrators now, or whether this should wait until the CAWG process was completed such that a coordinated approach could be adopted. Following discussion within the group, Mark Feather noted that the preferred approach of the group was that changes be developed on a coordinated basis. Mark therefore advised that it was preferable for changes to be developed on a coordinated basis. However, if the code administrators wanted to progress changes on an individual basis they should advise the working group of intended changes and the progress of those changes.

The independence of the panel chair and panel members was considered. It was argued that it was difficult to achieve complete independence as parties always had "baggage" which they bring to panel and working group meetings. Some group members also felt that the election processes for panels needed to be clarified and improved (especially in the case of the BSC). A group member did not like the idea of there being allocated seats for specific types of parties (for example, distributed generation) and that funding for special interest groups to have seats on the panels was unnecessary as there were relatively few modifications that raised issues relevant to these groups.

Mod reports should be written in 'lay-man' terms so that any party can understand especially those that are influenced by the mod but do not deal with the market everyday. There was also a discussion as to whether code administrators should assist individual parties on modifications or whether industry forums and stakeholder briefing sessions should be held more regularly.

One member of the group pointed out that keeping trade bodies and small participants that may be influenced by a mod informed can be resource intensive. There are often no designated contacts for these bodies. Also, once a contact is found they may well not know much about the industry at all and they will need to be brought up to speed on the relevant code as well as the modification.

It was pointed out by one group member that the resource burden when it comes to raising mods is felt by all parties. The BSC have a list of highlighted issues in the past where mods need to be raised but parties are not willing to take on due to costs.

Chris Welby Presentation (Good Energy) – The first point in the presentation was that the definition of who is a 'small party' needs to be clarified. There are issues across the board with all codes for small parties who have very limited resources to engage in codes issues..

Specific issues with the codes were highlighted as:

1) Raising a mod is resource intensive.
2) A proposer has no idea whether a mod is likely to be accepted by the mod group or Ofgem. They are often not informed if there are major issues with a proposal until a decision is received from Ofgem at which point it is too late.e
3) Parties are unwilling to raise mod proposals as they are concerned about the resource requirement involved and whether it will be worth it in the end as the proposal may be rejected.
4) Often the data needed to justify a mod is held by other parties such as National Grid or is beyond the proposer's ability to extract.

The suggested improvements to the codes were:

1) More support for parties proposing mods similar to the way that Elexon provide support to parties under the BSC.
2) The code administrators should be more pro-active in making that support available. For example, all parties to the BSC have the option of having a person specifically assigned to them who can help with all aspects of the code, including raising mods, advising them if a mod may affect them, pro-actively getting in touch with the party to get their views on certain mods.
3) Ofgem need to give proposers an initial view on a mod.
4) Advice needs to be given to proposers by code administrators on whether a mod is likely to be accepted and what pitfalls there may be.
5) Mods that may influence small parties should be flagged to those parties.
6) The language and approach across the codes needs to be more consistent and plain English needs to be used. A best practice approach needs to be developed across codes.
7) Code administrators should have the discretion to provide funding assistance to 'small' player/participants where required.

Discussion – It was suggested that there might be a role for panels to discuss pre-mod issues that might be raised.

A group member said that issues groups (which exist under, for example, the BSC) are needed especially considering that there is no withdrawal process for mods in some codes.

A group member felt that the different levels of pro-activeness and customer interaction between the different codes was more of a reflection of the size of an administrator and their funding. They said that ELEXON was able to provide a better service as they had more staff available to them; some codes only have 6 or 7 staff that deal with administration. It was noted that ELEXON has only a limited number of staff dedicated to Governance and change.

One group member said that they would feel uncomfortable from a code administrator perspective if they had to tell a company whether a mod may influence their business as they may not know the business well enough to say what influences who. Working out whether a modification proposal is relevant to a business is very difficult even for larger players. A group member wondered if there was scope for regular forum meetings to discuss the different mods. It was argued that a balance should be kept between what everyone needs and what specific people need. There is a small supplier's forum, currently it meets monthly and is meant to last for 5hrs. However, this is rarely enough time even for a preliminary overview for mods and quite often the meeting goes on for longer. Another group member said that all these issues highlight how the code administrators need to be amalgamated. Another group member indicated that a solution to the problem would be to introduce more uniformity in processes across the codes.

Peter Bolitho Presentation (E.on Uk) – Currently the balance of influence on the codes is more in favour of the network operators and Ofgem than the users. The role of a code administrator is to act impartially to ensure fair play and to provide expertise where they can. They should do this by focusing on the rights of the proposer, ensuring all affected parties have an opportunity to have their say. Rather than achieving very high satisfaction results amongst the few, they should aim to achieve reasonable satisfaction score from the majority. Key areas

for codes include impartiality and expertise, formulating a mod, the mod process, panel recommendations and Ofgem decisions.

The reasons for raising mods were also considered, 4 main reasons were given (to which one member suggested 'commercial gain' could be added):

1) To address a specific defect or issue
2) The proposer is obliged to or has been encouraged to
3) To mitigate the worst aspects of other proposals
4) To raise the profile of an issue

Comparing the codes against each other in these areas highlights the differences between them. The BSC is administrated by ELEXON whose independence is possibly compromised by its role in systems provision. The Joint Office is the administrator of the UNC which is owned by the gas transporters and the CUSC is administered by National Grid. This means there are different levels of independence and expertise for each code.

There are also differences in the formulating of mods between the codes, the BSC sets up ad-hoc standing issue meetings, the UNC has regular 'workstream' meetings to discuss ideas or draft mods and the CUSC panel can refer an issue to a new or established standing group. The proposer can get advice on processing and drafting mods from the code administrator for both the BSC and UNC, whilst with the CUSC the administrator will not commit to anything unless National Grid are likely to be supportive of the mod. The definition of the defect can be anything from very detailed with great care taken with the terms of reference (BSC) to something vaguely coherent (UNC). The terms of reference can be too tight in the BSC which can lead to a mod being ruined in the eyes of the proposer; this is not a problem for the UNC as the terms of reference rarely limit the debate.

The decision for membership of mod groups also varies. The BSC panel appoints experts to the group who are the only ones who can vote on the issue. The UNC has an open door policy and the CUSC has volunteers who are appointed by the panel. The ownership of mods varies amongst the codes also, in the BSC the ownership of a mod is taken over by the mod group, and it can not be withdrawn. In the UNC the proposer can make changes to a mod in light of the discussions of the group or can withdraw it. Refinements are made by the mod group in the CUSC but the proposer can withdraw the mod at this stage.

Only 1 alternative mod can be raised in the BSC and that is at the discretion of the mod group members. Any number of alternatives can be raised in the UNC but they can only be raised late in the process and therefore the quality of them can be poor. Any number of alternatives can be raised in CUSC but they have to be approved by the mod group by majority or by the chairman.

The final mod group recommendation for code administrators is decided by majority vote for the BSC, consensus vote for the UNC and vote (if necessary) for the CUSC.

Panel members are not typically involved in the mod group for BSC mods; they usually are involved with the UNC and the CUSC.

Ofgem is constrained by "decision by dates" in the BSC (which was seen by the presenter as a good thing) but not under the UNC and CUSC. A modification proposal can be re-consulted on if a decision is delayed by more than 4 months

under the UNC. The careful timing of a decision can allow the regulator to veto an appeal.

A number of recommendations were made for each individual code and Ofgem:

1) The UNC should establish a minimum assessment period for all non-urgent mods.
2) The UNC should allow submission of alternates earlier in the process.
3) The Joint Office should become responsible for legal text under the UNC.
4) The UNC panel should set implementation dates linked to system releases.
5) The ownership of a mod under the BSC should reside with the proposer, allowing variations/refinements and the right to withdraw the mod.
6) Certain unnecessary processes under the BSC should be removed (e.g. ELEXON IWA, the separate 'definition' phase and the final consultation on the panel's recommendation).
7) The right of the proposer to address the panel at meetings should be established under the BSC.
8) The CUSC should remove the National Grid recommendation from the workgroup report.
9) The Authority should carry out its mod business in open-sessions and Ofgem reports and papers should be published and voting recorded.

Discussion – A group member felt the BSC can be too narrow in defining a mod which can lead to it being rubbished but the same problem can arise by defining the issue/mod too loosely.

Another group member agreed that a proposer should be able to withdraw a mod or at least resubmit it in the BSC. It was also agreed by a group member that the initial ELEXON Initial Written Assessment process may not be necessary and could be removed from the mod process.

Regarding the point made that Ofgem can veto an appeal if they are careful with the timing of their decision, it was argued that Ofgem would not abuse its powers in this way.

One group member was concerned that if the proposer of a modification proposal was able to address the panel at meetings then should anyone who is against the modification have that right also. The group member commented that this may create difficulties in the administration of panel meetings.

It was discussed whether an administrator could really be independent. It was noted that the independence and role of code administrators would be considered in the Performance of Code Administrators work-strand of the Codes Governance Review.

Due to the over-running of the presentations and discussions agenda item 5 was postponed until the next meeting.

Actions:

Ofgem to send out Brattle's comparative matrix of the codes to group members.

Ofgem to circulate the environmental standing work group document.

Next meeting dates: