

# TOTAL GAS & POWER LIMITED

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

27th February 2009

Dear Mr. Feather,

## **Major Policy Reviews and Self Governance/ Role of Code Administrators and Small Participant/ Consumer initiatives**

Total Gas & Power Limited (TGP) welcomes the opportunity to comment upon the current Code Governance Review and is fully in support of the objectives included in the scope for the review published in June 2008, which to recapitulate are :

- to promote inclusive, accessible and effective consultation ;
- be governed by processes that are transparent and easily understood ;
- be administered in an independent and objective manner ;
- be cost effective ;
- contain rules and processes that are sufficiently flexible to allow for efficient change management; and
- be delivered in manner that results in a proportionate regulatory burden.

In order to remain effective, any administrative procedures and arrangements need to be kept under review and take into account the relevant political objectives such as the recent environmental climate objectives. However, in the absence of any fundamental problems with an existing system, changes should be carefully thought out and evolutionary.

Please find set out below TGP's comments in relation to the current proposals.

In relation to the "Key Issues and Objectives", whilst we would not regard the current change processes within the Uniform Network Code as perfect, TGP considers that it is a fundamentally sound process. By and large, it is a system which promotes inclusive, accessible and effective consultation and which is transparent and easily understood.

We are not sure how the proposed Major Policy Review process will achieve the stated policy objectives in a manner which is superior to the existing process and we are concerned that there is a risk that there could be a loss of transparency, loss of industry control over developments and a limitation of the scope of competition commission appeals. This would of course depend on exactly how such reviews would be conducted in practice.

The principle of self-governance does seem to have merit. However, it would only be acceptable as long as sufficient safeguards are built in to ensure that the changes which are



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dealt with through this route are correctly defined and limited and that the process is not allowed to be controlled exclusively by the larger industry participants.

However, we would also question whether wholesale and fundamental changes are needed in order to introduce Major Policy Reviews and Self-governance in this manner.

Many of the suggested and perceived benefits of these two processes could, with appropriate co-operation from all parties, be "tested" prior to any formal implementation. The principle of self-governance could be tested by the early identification of Mods which would not have any effect upon competition or consumers. Ofgem could " earmark" these Mods as ones that they would treat with a "light touch" and which they would be prepared to "rubber stamp" if an appropriate Mod was forthcoming from the industry. Consultation by all parties upon the extent to which and how impact assessments should be carried out, could ensure that there was no "unnecessary" duplication. Once three or four Mods had been dealt with in this manner there would be a much clearer picture of what changes to the existing arrangements may be required.

With regard "Major Policy Reviews", it is clear that a means of identifying fundamental principles for reform upon which there is some general industry consensus would be beneficial. However, there is no reason in the past why consultation along the lines of that proposed in the case of the Major Policy Reviews, could not have been undertaken. So for example, in the case of Exit Reform it would have been far more preferable to have extensive debate on the principles at stake at the commencement of the process, rather than before the Competition Commission. However, if the result of introducing "Major Policy Reviews" would ultimately be to give Ofgem's views greater weight and therefore make them harder to challenge, then it would not be an improvement on the present system but would be a retrograde step.

Ofgem has already undertaken a process analogous to "Major Policy Review", when it created the credit best practice guidelines. This achieved strategic and far-reaching effects, within the current arrangements and was well supported by the industry. It seems preferable, at least within the gas industry, to maintain such a pragmatic and effective process.

At point 2.4 on page 8 of "Code Governance Review" : Major Policy Reviews it states :

"It is also important that all parties' views are properly considered by decision makers such as Ofgem. However, it should not be a pre-requisite of reforms that all parties agree by consensus on the need for reform or the nature of the reforms that should be progressed. Further, provided all parties are consulted and robust analysis is undertaken on the case for reform, progress on reform should not be unnecessarily held up by divergences in views."

Such words, in the context of the industry's experience of Exit Reform, have a rather ominous ring. If the message to the industry is, "Like it or lump it !", then a "Major Policy Review" process would not be a step forward. In our view, the current process dealt successfully with the question of Exit Reform, although the circumstances of the case and the manner in which the reforms were presented by the Authority meant that they could not be dealt with in the most efficient manner.

In the circumstances we are not convinced that the introduction of Major Policy Reviews, per se, would offer any significant improvement over the current system.



More generally :

- TGP would be opposed to any changes which diluted in any way the statutory rights of appeal to the Competition Commission.
- Any process dealing with the "classification" of a Mod as suitable for the self-governance process should involve the Modification Panel.
- Consideration should be given to an expanded membership of the Modification Panel and the one party, one vote process used to allow all Shippers to have an equal say in its development.
- It would be inappropriate for Ofgem to decide any issues "on appeal" as this would cause conflict with its other principal roles, in particular the approval of Mods.
- We would support any initiative to co-ordinate code reviews, licence changes, impact assessments and any other appropriate initiatives, but not at the expense of dismantling the currently effective processes.
- The interest of smaller industry players should be taken into account in an appropriate manner, but they should not be given disproportionate voting rights or representation or rights of appeal. The arrangements within the UNC seem to allow adequate representation if so desired.

Yours sincerely,



David Faragher  
Head of Legal

