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Mark Feather
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27 February 2009

Dear Mark,

**Code Governance Review:
Major Policy Reviews and Self Governance
Role of Code Administrators and Small Participant/Consumer Initiatives**

This response is being submitted on behalf of the Uniform Network Code Modification Panel following a debate of the issues contained in your related consultation papers. The Panel has not set-out to answer each individual question, believing that this is best left to individual parties, but instead has concentrated on aspects of key interest to Panel Members.

Major Policy Reviews

Whilst not all Panel Members considered that implementing this option was necessary, there was a recognition that, provided appropriate safeguards are in place, a more co-ordinated development route for major policy issues could be advantageous.

Indications were given by the Ofgem Panel Representative that only a few issues would be suitable for development through a Major Policy Review. To assist in managing modification business and priorities, the Panel would urge Ofgem to signal as early as possible the intention to initiate a Major Policy Review. It would be helpful if, as part of the final proposals following a price control review, Ofgem could set out the Reviews expected to take place in the forthcoming price control period, and for a composite record to be included within Ofgem's Corporate Plan.

The Panel does not consider that establishing obligations under Licences is the appropriate means for ensuring that appropriate modification proposals are raised to take forward the conclusions from a Major Policy Review. In particular, it would be inappropriate for any obligation to be put on the Panel to raise and in any sense sponsor a modification proposal which emerges from a Major Policy Review. Ofgem should also recognise the need to continue to support the development of any

proposals which are raised following a Major Policy Review, and should not underestimate the level of resources needed to do this effectively. The Panel is also concerned that the introduction of new licence obligations should not lead to an expectation that, when considering the impact of proposals on code relevant objectives, they should necessarily conclude that implementation would be advantageous.

In terms of safeguards, the Panel felt it was inappropriate for Ofgem to both initiate a proposal and be the body which decided whether or not it should be implemented. One possibility would be for the Panel to be the final body which decides whether or not an Ofgem sponsored proposal should be implemented, subject to the opportunity for any code signatory to exercise a right of appeal. The Panel also considered that, as a further safeguard, Ofgem should confirm that any Panel recommendation should be based on an assessment of the impact of a proposal on the code relevant objectives, and not on any objectives that Ofgem may have set for the Review. Continuing to assess all proposals in this way would ensure that parties were not precluded from raising alternative proposals. The Panel also felt it important that an opportunity for challenge should be embodied in the Major Policy Review process before the high level principles were established - opportunity of this nature would assist in providing direction to the development of the proposal from the outset.

The importance of stability is recognised, including an option for a two year moratorium in the areas covered by Major Policy Reviews, other than minor “housekeeping” items. However, the Panel is concerned about the practicality of any such moratorium and would not wish to be in the position of being expected to determine whether or not a particular proposal should be allowed to proceed.

Panel Constitution

Whilst noting comments regarding the need for reviewing Panel constituencies, Panel Members were not convinced that any change was required in the case of the UNC. The Panel also remains to be convinced that there would be value in allowing consumer representatives to vote in Panel meetings. The Panel would emphasise that the major codes are significant commercial contracts and that it is quite proper that only those who are parties to a contract should be entitled to vote on the appropriateness or otherwise of a change.

The Panel recognise that it could be problematic if there was a tied vote regarding whether or not to implement a proposal subject to self governance. In these circumstances, the Panel consider that the Ofgem Representative could exercise a casting vote, provided that appropriate safeguards were put in place.

Status Quo

The Panel believes that in the case of the UNC the status quo operates effectively for the majority of modification proposals. The UNC Modification Rules provide for flexibility in the way that proposals are taken forward. Panel Members believe that they exercise their discretion in these matters to the benefit of the industry as a whole and that any changes to the status quo should seek to retain the ability for Panels to ensure that the rules are flexed when appropriate to do so – making the rules fit the circumstances rather than seeking to move all proposals through an identical process irrespective of the circumstances.

Code Administrator

All Panel Members consider that the Joint Office provides independent and impartial support to the Panel regarding the modification process and have seen no evidence that the Joint Office has sought to favour the Transporters in the way that it conducts its business. Against this background, the Panel sees no reason to change the management or funding of the Joint Office, nor the appointment process for the Modification Panel Chair.

The Panel recognises that there are inevitably occasions when the standard of analysis in UNC modification reports could be improved. The Panel accepts that it has a role to play in ensuring that reports address issues of concern to Ofgem and would happily cooperate in seeking to ensure that evident gaps are addressed when identified. However, making the code administrator responsible for systems would not be expected to address any issues, which tend to relate to the difficulty of establishing behavioural responses in light of regime change as opposed to the implementation costs associated with system changes.

Small Party Initiatives

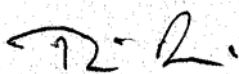
The consultation paper leaves open the question of how to define small parties and the Panel finds it difficult to provide guidance in this respect. Suggestions which have been put forward in the context of electricity tend not to be effective in the gas context. For example, based on a definition of small parties as being other than the big six energy suppliers plus National Grid, 60% of UNC Modification Panel Voting Members are from small parties. However, since smaller gas suppliers tend to be associated with large companies, such as the oil majors, it is not clear that they should benefit from any special treatment within the modification processes. The Panel's view is that the modification process should be open and accessible for all parties, irrespective of size.

Elections of Shipper Panel Members are conducted on the basis of "one company, one vote" so that smaller participants are clearly involved and able to influence the appointment of Panel Members or stand for election in their own right. Elected Shipper Panel Members emphasise that they are always open to representing the views of smaller Shippers at Panel Meetings, and have done so in practice. In addition, they offer advice on how to progress proposals through the modification process and a number of private sector organisations offer services related to the modification process on a commercial basis.

Against this background, the Panel is not convinced that an advocacy fund approach is either necessary nor desirable in the context of the gas industry.

We trust you find these comments helpful and look forward to the consultation proceeding further.

Yours sincerely



Tim Davis
Chair, UNC Modification Panel