

Code Administrators Working Group Meeting 4 –25/11/2008

Attendees:

Roger Barnard – EDF Energy	Phil Lucas – National Grid
Peter Bolitho – E.on	Ed Reed – Cornwall Energy
Tim Davis – Joint Office	Chris Rowell - ELEXON
Mark Feather – Ofgem	Louisa Stuart-Smith – Npower
Arjan Geveke – DEC	Alex Travell – E.on
Robert Hammond – Consumer Focus	David Watson – Centrica
Carole Hook – National Grid	Catherine Wheeler – Ofgem
David Jones – Elexon	Chris Wright – Centrica

Introduction

The note from CAWG meeting 3 was agreed with suggested amendments.

An update on the other work-strands of the Code Governance Review was given.

It was agreed that Ofgem would give an overview of where the meetings had got to. The discussion of the slides from the previous CAWG meeting would be resumed and completed and the responses to the issues pro-forma, sent to group members on the 14th November, would be discussed at the next CAWG meeting with a new response date of the 8th December.

Where We are Now

Mark Feather (MF) presented some slides on where Ofgem felt the previous meetings had got to in the review of the modification processes.

Slides 1 and 2 - It was felt that there was no strong desire in the group to change the current process for raising proposals except maybe to introduce online forums to discuss issues. There was general agreement that panels should not be able to raise proposals on major strategic issues. Although, there is flexibility for proposals to be sent straight to consultation or to working groups in all the codes it was generally felt that more flexibility was needed for the CUSC and BSC, for example simpler processes for housekeeping modifications. It was noted that the UNC consent to modify process worked well and the concept could be extended to BSC and CUSC and also the ability to withdraw a proposal. There was a suggestion at the last meeting to remove the report consultation under the BSC.

CAWG Discussion - A group member clarified that if a proposer of a mod to the CUSC wants to withdraw their proposal they can. If a mod group feels that the mod proposal should be withdrawn they can not do this without the agreement of the proposer.

It was pointed out that the report consultation under the BSC is the usual point at which the legal text of a modification proposal can be commented on but it was suggested that the legal text could be produced earlier.

A group member felt that the point at which legal text is released may be the key point for some smaller parties as this is the point they can see the full effect a modification proposal might have on them.

One group member wondered if legal text could be changed after a policy decision is made. Another group member felt that if the policy decision on a modification proposal was clear enough then it should be simple to transfer it to legal text. This group member questioned the necessity for consultations on legal text. They felt that this was an argument for a stronger secretariat. The legal text should be decided after policy has been decided.

MF pointed out that there was going to be a consultation on code administrators looking into making secretariats play more of a 'critical friend' role and also looking into the independence of secretariats. A group member asked if this would result in the control of CUSC being taken from National Grid. It was considered a possibility given the presence of multiple transmission companies now the offshore transmission framework is in the process of being set. One group member was concerned that there was a danger of losing the expertise that NG has on CUSC issues if they do not manage the CUSC. Another group member felt that there were other ways of getting NG's knowledge other than letting them own the CUSC.

A group member felt that the consent to modify route worked well in the UNC. They were concerned by some of the modifications raised as housekeeping modifications by the BSC panel as they felt they were more than just housekeeping mods. When asked if there were any particular mods they had in mind, they described one which was, the Elexon representative clarified as not being a housekeeping modification. It was a modification that the BSC panel are able to raise on the grounds of efficiency. A group member said that they were not comfortable with the idea of the BSC panel being able to raise modifications under any other circumstance than standard housekeeping modifications. Another group member commented that it should be possible to tightly define what a housekeeping mod is. Another member wondered why panels can't just do the housekeeping modifications without Ofgem consent. It was pointed out that if there was a move to self-governance then housekeeping and "minor error" modifications could be carried out without Ofgem consent.

Slides 3 and 4 – There was general agreement in the group that proposers should be able to own their own mods rather than the working group. The working group should be able to develop alternatives or variations. Voting on proposals was not considered necessary if the proposer owned the mod and therefore would only be useful for transparency purposes. Anyone should be able to be part of the working group. The owner of the proposal should be able to withdraw the proposal. Being the UNC approach, these changes would have implications on the BSC and CUSC and they would require modifications. The CAP160 CUSC amendment was suggested as a possible way to deal with alternative modifications. This modification enabled alternative modifications to be raised and analysed in the working groups for modification proposals. This would require changes to the BSC and UNC where several alternatives can be assessed, but only one taken forward.

There were split views about whether Ofgem should be able to raise mods with some thinking that they should be able to raise and co-ordinate large policy issue mods and others thinking they could not be judge and jury. There was a split view as to whether an Initial Written Assessment (IWA) was needed with the electricity people finding them useful and the gas people being unconvinced.

CAWG Discussion – It was pointed out that the negative to CAP160 was that alternatives can be raised at the last minute which does not leave enough time for a proper analysis. One group member felt that alternative mods could be

used as a way of wrecking the original mod proposal. However, it was suggested that a benefit of the CAP160 arrangement is that alternatives can only be raised during the working group process. A contrast was drawn with the UNC, where alternatives could be raised late in the process without the benefit of working group discussion. It was asked whether a working group should have the power to stop an alternative modification. A group member noted that under CUSC the alternative mod proposals that are put forward can be rejected by the working group. The chair of the group plays an important role as they have the deciding vote. It was argued by one group member that all mod proposals should be considered early and tested early before it is presented to the panel (i.e. the "inverted" approach discussed in previous meetings).

CAWG Meeting 3 Slides (Continued from previous meeting)

Slide 9 – Mark Feather asked whether the length of the report phase in the modification process should be fixed or discretionary. A group member felt that although there was an advantage in the length being fixed, in practise it was not always possible and therefore flexibility would be better.

It was highlighted that the UNC mod process doesn't always require a mod group to debate a modification proposal before it goes to consultation. It was the opinion of the group member who pointed this out that all mods should always be considered by a working group before going to consultation, even if they are considered perfectly formed. It was suggested that this could be put in as a new rule in the UNC, although others disagreed with the suggestion and felt the present arrangements should remain.

There was a brief discussion of urgency procedures. A concern was raised that urgency procedures should be codified rather than managed through Ofgem guidance.

It was asked whether the urgency process should be made consistent between codes. A group member felt that panels should be able to comment on an urgent mod before it goes to Ofgem. It was noted that the BSC panel always have an opportunity to comment on whether a mod should be considered urgent. Another group member felt that the quality of urgent mods tended to be poor. One group member wanted to know whether panels should be making the recommendations on whether a mod should be urgent or not. It was suggested that Ofgem's urgency guidelines be embedded into the codes. A group member wanted to know whether all codes had urgency processes.

Slides 10 and 11 – There was discussion on whether code administrators should take a more active role in managing analysis on code modifications. One group member felt that the code administrators could not do an effective analysis as they did not have access to the information held by parties to the code. The group member stated that parties do not want to give competitively sensitive information to the panels as these tended to consist of employees of other code parties. A group member noted that sensitive information should not have to be revealed to other parties if code administrators are truly independent and have specialists to carry out independent analysis. One group member was concerned that the code administrators would effectively become substitutes for Ofgem and that there would be duplication in roles and analysis.

It was pointed out that a lot of the mod reports consisted of comments from different parties on whether the mod was good or bad but did not included any discussion or analysis of the matters raised.

One group member felt that if a code administrator was to act as a 'critical friend' to a mod proposer then they should act in a similar way to Gemserv, who know the codes and can advise where a mod might change other areas of the code and other codes. However, it was agreed that the role of the code administrator should be to try and bring out all arguments for and against a mod proposal and present them to Ofgem whose job it was to consider these views and make a decision. It was suggested that getting independent advice in cases where there are issues with parties giving sensitive information could be quite useful. There was support within the group for a "critical friend" model, but less support for an active secretariat that performs all the analysis itself. Another suggestion was that panels should have the right to request from a working group that independent analysis be carried out on a mod proposal. However, another group member felt that if this occurred the independent analysts might just analyse everything that Ofgem would also analyse in an IA and at the same level, which would effectively be moving the costs of analysis to parties. Ofgem noted that it's role in undertaking IAs was limited and these would only be undertaken for "important" proposals.

It was suggested that Ofgem should be able to send mods back for further analysis/consideration if they are not happy with them.

Australia was high-lighted as an example of where advocacy panels were used to help provide assistance to smaller parties seeking to engage in code change processes.

The question was raised as to whether code administrators should be able to raise modifications on behalf of smaller parties. A group member felt that this would put the code administrators in a difficult position from an independence perspective. It was felt that there was a need for a definition of what could be classed as a 'smaller' party. There was a suggestion that consultant firms could advise smaller parties where needed and that advocacy panels funded by industry would "crowd out" private sector providers of assistance.

It was pointed out by a group member that the problems for smaller parties usually arose from not knowing the processes and how to raise modifications, rather than not having representation. There was support within the group for effective consumer representation across all codes and that this should fall to Consumer Focus. It was felt that Consumer Focus should sit on the panel for all codes and that the UNC should be aligned with the BSC and CUSC. It was felt that a smaller party should be able to represent themselves as they are best placed to do this. One group member wanted to know where new entrants would fit.

Slide 12 – One group member felt that the description of a modification should be kept to a maximum number of words. It was asked whether there should be a system, providing for representation on panels for certain party types. A group member highlighted that modification proposal P129 of the BSC considered definitions for smaller parties, etc. Another group member felt that there was no difference between the issues raised by smaller parties and those raised by the larger parties. Therefore they felt concerned that so much focus was being put on smaller party considerations.

It was felt by one group member that moving to self-governance might put more pressure on panel structures. Another group member felt that the panel structure should represent the shape of the market. A group member noted that a change in panel structure would be a big change to implement and would

probably not come under the remit of the CAWG. One group member felt that if you change the constitution of the panels then a key point should be that the new panel should be representative. The group member noted that independent panel members do not have an appreciation of the commercial impacts of a proposal on code parties. However, another group member commented that independent panel members play an important role and consider whether the code objectives are met by a mod. Some felt that this was the point of the panel.

There was a general consensus amongst the group that code administrators should simply co-ordinate the consultations around a modification proposal and collate the responses. They should then present all arguments raised for and against the proposal to the Authority without any comment on whether it should be accepted or rejected. In other words they should be a procedural organisation rather than decision making bodies.

A group member felt that there was no good reason why the codes should all differ so much in their processes/construction.

Another group member felt that no-one in the industry or the panels could be considered independent but if there are a set of objectives they can use this as a reason for voting against their companies views.

One group member felt that the proposer should be able to represent themselves to the panel. This is generally done in all codes apart from the BSC but is not codified for all stages of the process in any of the codes.

It was noted that in the UNC parties can see which parties voted for what.

It was felt that there was merit in enabling legal text to be adjusted throughout the modification process until it reached Ofgem. It was felt that there should be a presumption that legal text should be prepared and a right for the panel to request to Ofgem that text is not prepared, for example where the panel considers the proposal is likely to be rejected.

Action – Responses to Pro-forma's should be sent to Ofgem by the 8th December. Ofgem to collate the responses in time for the next CAWG meeting on the 17th December.