Mark Feather
Director, Industry Codes and Licensing
OFGEM
9 Millbank
LONDON
SW1P 3GE

18 September 2009

Dear Mark,

**Code Governance Review: Major Policy Reviews and Self-Governance –
Initial Proposals**

This response to the Initial Proposals is being submitted by the Joint Office of
Gas Transporters (JO) as the administrator of the Uniform Network Code
(UNC) Modification Process. The views expressed are therefore those of the
JO and may differ from those of the Gas Transporters on whose behalf the JO
operates.

The JO is broadly supportive of the range of measures set out in the Initial
Proposals. Ofgem already plays a significant role in policy development, from
time to time adopting a role which is analogous to that envisaged within the
proposed Major Policy Review (MPR) process – for example, the Code
Governance Review could be regarded as a MPR. Recognising and legitimising
this role is valuable, as would be establishing a standard framework for the
process to be followed whenever a MPR is undertaken. Similarly it is valuable
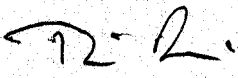for Ofgem to withdraw from a number of areas, allowing self-governance to
prevail.

Whilst broadly supportive of the Initial Proposals, it is not clear that the
anticipated benefits will necessarily accrue, and some additional development
and commitment is needed to help embed the benefits. In particular, if the MPR
process is to deliver reform in a more timely manner, it will be essential for
Ofgem to publish and adhere to a clear timetable for the Review. While Ofgem
has a good track record in this respect with regard to Price Control Reviews,
this is not always the case for code governance matters. A snapshot taken
today, for example, shows that in the case of the UNC Ofgem has committed to
publishing Impact Assessments to support consideration of Modification
Proposals 0194 and 0246 (and related Proposals). A number of target dates for
publishing these Impact Assessments have been missed. For the MPR process
to be as effective as intended, it will be important for all parties to work together
in order to ensure deadlines are achieved.

We are also unclear that it is correct for the Initial Proposals to indicate that
"Strategic policy issues would be considered in a single process and thus
reduce the need for multiple, piecemeal code modifications and multiple
assessment processes by industry, code administrators, code panels and
Ofgem." Whilst the Initial Proposals envisage a holistic process initially, it is also
the case that any changes will subsequently be subject to the existing
governance processes. Hence if changes are being made beyond a single

Code, there remains potential for multiple, piecemeal processes and assessment by industry, code administrators, Code Panels and Ofgem. In fact we believe that the Governance Review provides an opportunity to address this deficiency not only for the progression of issues following a MPR but more generally when change across a number of areas is involved. The JO would welcome development of arrangements that allow for a single, holistic process to be adopted, covering assessment, consultation, decision making and implementation.

In addition to these key points, the attached appendix addresses the specific questions raised in your document. We hope that this response is helpful and look forward to further involvement in the Review.

Yours Sincerely,

Tim Davis
Chief Executive

Appendix: JO Response to Questions Raised

Chapter 2: Key issues and objectives

Question 1: Do you agree with our assessment of the deficiencies of the codes governance arrangements and do you agree that there is a case for reform? Are the proposed reforms a proportionate response to the problems with the *status quo* that we have identified?

The JO accepts that the codes process is not always capable of dealing effectively and efficiently with major strategic issues and Government influenced policy challenges, particularly where there are strong divergences in views. Ofgem has been closely involved in a number of high profile change processes, and we support as proportionate the introduction of a process that legitimises and codifies this involvement.

Question 2: Would the MPR process enable key strategic issues to be progressed more effectively and efficiently with consequent consumer benefits?

While the MPR process may enable key strategic issues to be progressed more effectively and efficiently, we do not believe there is any evidence that this will be the case in practice. The Initial Proposals appear to envisage that Modification Proposals should be subject to the established governance processes after Ofgem has issued directions regarding the outcome of a MPR. This runs the risk that the existing process may not be any shorter than without the preceding MPR process, and could lead to reopening of the debates in a different arena. In addition, where changes to multiple agreements are required, whether that is more than one Code or to a Code and, say, charging methodologies, a piecemeal consultation process will be undertaken. This appears to lose the benefits offered by the MPR process itself, of providing a single holistic process under which all aspects of an issue are taken forward as a package.

Question 3: Would a self-governance route be suitable for a significant proportion of modification proposals?

Yes.

Question 4: If both the MPR and self-governance routes were implemented, is there a case for retaining an improved *status quo* path?

Yes. We would add that there is a case, irrespective of whether or not either or both of the MPR? and self-governance paths are implemented. In this context, we would also observe that we do not believe it is appropriate to regard MPRs and self-governance as an inseparable package, since it seems to be a statement of fact that either could be implemented in the absence of the other.

Question 5: If this package of reforms is implemented, should it apply to all codes? If not all, which? Should the introduction be phased?

The JO would support the package being introduced for the UNC but has no view on other Codes.

Chapter 3: Determining the code modification pathway

Question 1: Do you agree that, once a modification has been raised, the filtering decision should be taken by the relevant panel, subject to an Ofgem veto that could be deployed at any point before a final decision on the proposal has been made?

We believe that Panels are well placed to take these initial decisions and that doing so is easily accommodated within existing procedures.

Question 2: Do you agree with the proposed criteria that should be applied to assessing whether a modification falls into Path 1 or Path 2? Is further guidance necessary?

We support giving the Panels flexibility to interpret and apply the criteria in a pragmatic manner and, as such, would not see a need for further guidance. Our expectation is that precedents will be established which will assist the decision taking process.

Question 3: Do you agree with our proposals for redirecting modification proposals between Paths 3 and 2?

Yes.

Question 4: Should code parties be able to make requests to Ofgem at any time that they can raise an urgent modification proposal to existing arrangements that are the subject of an MPR? Do you agree that there should be a moratorium for non-urgent modifications to existing arrangements that are the subject of an MPR?

We support parties having the right to raise urgent Modification Proposals at any time, irrespective of the progress of a MPR. We would not support a formal moratorium on non-urgent Modification Proposals, which could inappropriately prevent implementation of Modification Proposals that could confer benefits and could incentivise the raising of urgent Modification Proposals.

Chapter 4: Major Policy Reviews

Question 1: Do you agree that Ofgem should retain the flexibility to vary the MPR process according to the complexity of the issues involved?

Whilst the JO considers that flexibility is important for any governance process, a MPR is most likely to be effective if there is an established process that would be followed under most circumstances. Flexibility should then be used to move away from this standard process where it can be demonstrated that this is appropriate in the specific circumstances.

Question 2: What are your views on the options for determining the outcome of an MPR?

See response to Question 3.

Question 3: Do you support our proposal that the industry should be given the responsibility of drafting appropriate MPR-related code modifications, with Ofgem having a power to draft them only if the industry fails to do so within as specified time period?

Experience has shown that 'the devil is often in the detail' when seeking to implement Modification Proposals. The JO continues to consider that any Modification Proposals emerging from a MPR should be sufficiently detailed to be capable of implementation and that the process should not be regarded as complete until this is the case. Against this background, we support the Initial Proposals on the understanding that Ofgem would continue to be closely involved in the development process even if it were industry led, and that the conclusions of the MPR remain open and capable of responding to issues which emerge as a result of the final development process.

Question 4: What safeguards and appeal mechanisms should be in place?

We recognise that the Initial Proposals have sought to include a range of safeguards and appeal mechanisms that provide reassurance to all parties. However, we continue to consider that it may be appropriate for Modification Proposals raised in response to

a direction following a MPR to follow the self governance route, such that Ofgem is not both the progenitor of a Modification Proposal and the body initially responsible for deciding whether or not to direct implementation – although remaining available as an appeal body.

Question 5: Do you support our proposal for a time-window in which subsequent code modifications could be proposed after the completion of an MPR?

We are not convinced that introducing a time-window will be practical. We do, however, support the notion that the late raising of alternatives should not be allowed to delay the progress of Modification Proposals. Our view is that the raising of alternatives should be subject to the standard Modification Rules rather than being specific to Modification Proposals raised in response to a MPR.

Question 6: Do you agree that Ofgem should be able to revise its MPR conclusions in the light of subsequent new information?

Yes.

Chapter 5: Self-governance

Question 1: Do you agree that the industry should draw up proposals for panel and voting arrangements and submit them as part of a self-governance package to Ofgem for approval?

Yes.

Question 2: Do you agree with our proposals for redirecting modifications from Path 3 to Path 2?

Yes.

Question 3: Do you agree that there should be general appeal rights equally applicable to all code participants? Do you agree with the proposed grounds for appeal?

Yes.

Question 4: Do you agree that Ofgem should hear appeals of self-governance modification decisions? Do you support the proposals in respect of interim forums, time limits and frivolous or vexatious appeals?

Yes