

Joint Office Of Gas Transporters

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Dear Mark,

Code Governance Review - role of code administrators and small participant/consumer initiatives – 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 provides an independent and impartial code administration service, with management of the UNC change process being its primary activity. This is very different to the arrangements of the other two major codes that are referenced throughout the Initial Proposals. In the case of National Grid, it is clear that administration of the CUSC amendment process is a small part of the organisation's role and purpose. Similarly code administration is not, as we understand it, Elexon's key function. When looking at parallels between the code administrators, we believe it should be ensured that it is only the code administration function that is being compared, with any extraneous activities that happened to be delivered by the same organisation being excluded. It is not clear that this has been achieved in the Initial Proposals. We would wish to register a strong view that the comparisons drawn between the electricity and gas code administrator's arrangements are often looking beyond code administration. Instead, the comparisons consider activities which Elexon and National Grid would be expected to continue irrespective of whether or not they also performed the code administration function.

Given this background, we are concerned that the Initial Proposals contain some suggestions for which the case has not been made, particularly in the UNC context, and that insufficient weight has been given to existing differences between the sectors. For instance, the suggested deficiencies which might be addressed through the appointment of an independently appointed Panel Chair draw from the BSC experience. However, this is shaped by the fact that the roles of BSC and Elexon Chair are combined, thereby creating a very different perspective to that of a role which simply involves Panel Chairmanship. An independent CUSC Panel chair would presumably not have access to National Grid resources in the same way that the BSC Chair, as Chair of Elexon, would have access to Elexon.

More specifically in the case of the UNC, the Initial Proposals do not sufficiently explain how an Ofgem appointed Panel Chair would be empowered to

influence the modification process. The powers of the UNC Panel Chair are limited and the sphere of influence may be less than that of the present Chair who, through active engagement in the process and leadership of the code administrator, is likely to be able to exert more influence than a Panel Chair alone.

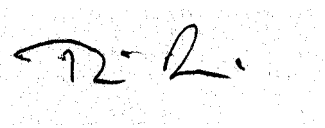
A key concern in the Code Governance Review has been improving the quality of analysis that is contained within Modification Reports. We fully accept that, as code administrator, the JO has a role to play in addressing this and have been increasingly seeking to do so. We believe that we already act as a 'critical friend' in this respect, challenging industry participants to explain and justify their views and encouraging all parties to put forward analysis to support their positions. However, we are not, and do not believe we should be, experts in all aspects of the UNC. We believe that the appropriate role of a code administrator is to provide impartial oversight of the change process – not to be the provider of analysis. Our view is that establishing clear responsibilities and accountabilities is key to addressing concerns about the quality of analysis. If there was a clear accountability for providing analysis, with consequences for failure, we could envisage a change in behaviours.

Our view remains that, to improve the quality of analysis, it would be appropriate for the proposers of change to be responsible and accountable for providing the necessary analysis in support of a change. However, recognising that this could be regarded as a barrier to change, we would also support proposals that put duties on specific licensees to undertake analysis, with commensurate funding arrangements in place to ensure that those who seek analysis are willing to fund its provision.

The JO is also concerned by the emphasis on smaller parties in the Initial Proposals. We do not recognise descriptions of the change process that imply that the 'Big Six' dominate proceedings to the exclusion of others. The UNC process is already inclusive and so-called smaller participants are very active at all stages and levels of the change process. The constitution of the UNC Modification Panel is a clear indicator of this at present, with only two of the five elected Shipper Voting Members being from the 'Big Six'. It is not clear, therefore, that the present situation in the gas arena justifies implementing changes that could be regarded as unduly discriminating in favour of a particular class of stakeholders.

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,

A handwritten signature in black ink, appearing to read 'T. Davis', is written over a light grey dotted rectangular area.

Tim Davis
Chief Executive

Appendix: JO Response to Questions Raised

Question 1: Which activities should be considered within scope of the 'critical friend' approach?

The JO believes it is appropriate for users to define the role which they are willing to pay code administrators to play, and that development of a Code of Practice provides an opportunity for this to be specified and codified. We accept, however, that all of the areas outlined in the Initial Proposals could appropriately fall within the definition of a 'critical friend' role. We would not, however, see providing advice on the operation of a Code as falling to the code administrator – this more appropriately falls to the party that is responsible for particular aspects of each Code.

Question 2: What is the appropriate mechanism to introduce the 'critical friend' approach?

We would support an approach which provides flexibility regarding the role to be played and hence would seek to keep any licence obligations to a minimum. To ensure consistency between Codes, the proposed Code of Practice would seem the appropriate place for the 'critical friend' role to be amplified and codified.

Question 3: Should a specific obligation be placed upon code administrators to assist smaller participants and consumer representatives?

It is not clear why discriminating in favour of one class or other of participant is appropriate and the JO would prefer to see any obligations framed in terms of supporting all those who would benefit from such support.

Question 4: For the purposes of identifying those who will be offered greater assistance by the code administrator, what is the appropriate threshold between small and large participants for each category of party?

We do not support offering greater assistance to some parties than others and believe that any threshold runs the risk of creating artificial distinctions and undue discrimination.

Question 5: Is it appropriate to modify the Gas Transporters licence in order to provide voting member status to consumer representatives on the UNC?

Irrespective of whether or not the Gas Transporter licence was modified, the UNC Modification Rules would need to be amended to introduce voting rights for a consumer representative. We would only feel it is appropriate for the licence to be modified if no such Modification Proposal was forthcoming but Ofgem wished to ensure that the change was progressed.

Question 6: Are there any other bodies in addition to Consumer Focus that the Authority should consider as potential consumer representatives on the UNC?

Consideration could be given to identifying a large user representative, leaving the larger organisations to determine among themselves the process for determining how their representative should be identified.

Question 7: Do you agree that the Authority should appoint the chairs of the UNC and CUSC panel in addition to the BSC?

We are not aware of any industry concerns about the UNC Panel Chairmanship. The present Chair seeks to adopt an independent and impartial position, and it is not clear that appointment by the Authority would bring any greater independence or impartiality. The separation of the Panel Chair from the code administrator may also bring disadvantages, with the Panel Chair having very limited responsibilities and influence over the modification process. Whilst combining the role of Panel Chair and leadership of the JO, rather than simply appointing a Panel Chair, may be closer to the Elexon model, it is not clear how this would differ from the status quo.

Question 8: Should such an appointment be made only at the end of the current chairs ordinary tenure?

If it is concluded that an Ofgem appointed Panel Chair is appropriate, the JO would be happy to continue to provide a Chair until such time as the Ofgem appointee was able to take up the position. Replacing the existing chairs when a vacancy arises would be an efficient approach and help to ensure a smooth transition

Question 9: How should the salaries of the independent chairs be funded?

The JO would support a user commitment approach whereby those who support any change are willing to pay for its introduction. If Ofgem were to appoint an independent Chair, it would therefore seem appropriate for Ofgem to fund the cost directly in the first instance, albeit with subsequent recovery through licence fees.

Question 10: What is the appropriate mechanism by which these proposals can be introduced?

If Ofgem were to appoint an independent Panel Chair, we would support both licence and UNC modifications being made to accommodate this.

Question 11: Do you consider it necessary to include the powers to 'call in' and 'send back' modification proposals within the relevant licences?

Since Ofgem is not a party to Codes, it would be appropriate for any powers of this nature to be provided for in licences.

Question 12: Do you consider that a licence modification requiring more explicit provision of reasons for recommendations is appropriate?

We consider that obligations regarding the level of information to be provided in Modification Reports or elsewhere is more appropriately specified in Code Modification Rules and/or the Code of Practice rather than in licence conditions.

Question 13: Do you consider that a regular scorecard evaluation of the code administrators' conducted by Ofgem would be of value, particularly in influencing the behaviour of the code administrators?

The JO would be happy to cooperate with the development and maintenance of a scorecard if this is perceived to be of value. We would, however, expect a Code of Practice to be more likely to influence behaviour than an Ofgem produced scorecard.

Question 14: Do you consider that code administrators' should be required to obtain and maintain ISO9001 accreditation for their processes?

We believe that ISO9001 accreditation would be a disproportionate requirement in the context of a ring fenced code administrator, such as the JO.