

Andy MacFaul  
Head of Better Regulation  
Ofgem  
9 Millbank  
London  
SW1P 3GE

Paul Whittaker  
UK Director of Regulation  
  
paul.whittaker@uk.ngrid.com  
Direct tel +44 (0)1926 653190  
Direct fax +44 (0)1926 656520

[www.nationalgrid.com](http://www.nationalgrid.com)

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Dear Andy

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

Thank you for the opportunity to respond to the July consultation on Ofgem's Initial Proposals for Major Policy Reviews and Self-Governance. This response is provided on behalf of National Grid Electricity Transmission plc (NGET) and National Grid Gas plc (NGG). NGET owns the electricity transmission system in England and Wales and is the National Electricity Transmission System Operator. It is responsible for administering the electricity Connection and Use of System Code (CUSC), the Grid Code and the System Operator – Transmission Owner Code (STC). NGG owns and operates the Gas Transmission System and also owns and operates four of the gas Distribution Networks. In association with the three other gas Distribution Network Operators it also jointly provides for the administration of the Uniform Network Code (UNC) Governance arrangements through the Joint Office of Gas Transporters.

National Grid is generally supportive of Ofgem's Initial Proposals, although we would appreciate some additional clarity in certain areas, as set out in this letter and described in more detail in our responses to the questions raised within the consultation document, appended to this letter.

We support the approach set out in the three Path model for initiating a Major Policy Review (MPR) and that the outcome of an MPR should take the form of high-level or detailed conclusions. We would welcome further clarification on whether any licensee could be directed to raise MPR-related modification proposals or whether such directions are likely to be restricted to network operator licensees. We would also welcome an assurance that where a licensee is directed to raise an MPR-related modification proposal, that licensee would not then be prevented from responding to the proposal opposing the suggested modification, raising an alternate proposal to the one it has been directed to propose or voting in a manner it considers appropriate at the relevant code panel meeting. We cannot foresee any circumstances where Ofgem would feel it necessary to raise its own MPR-related code modification proposals due to the direction to be placed on licensees.

In our response to the December 2008 consultation, we raised a concern that implementation of the Major Policy Reviews process could remove the ability of an industry party to appeal against an Authority code modification decision to the Competition Commission. Given the reassurances provided by Ofgem following its discussions with the Competition Commission, we do not consider it necessary to create any additional appeal rights over and above those that are already available.

We agree that the MPR process should retain a level of flexibility and that MPR conclusions could be reviewed if new information comes to light that may impact on the conclusions published. Under such circumstances, we hope that relevant information or changes to conclusions would be made public as early as possible in the process to prevent wasted efforts.

While we strongly support the ability of parties to raise alternative MPR-related modification proposals, we would like further detail on the "time window" proposal, to ensure that it would provide sufficient opportunities for alternative proposals to be raised.

We support the creation of a self-governance route and the associated rights of appeal and filtering and redirecting processes set out in the Initial Proposals. We agree that the creation of such a process should help reduce the time and resources required to progress this type of code modification proposal, however we do not agree with the forecast level of proposals (50%) that Ofgem anticipates will follow this route, as we consider that it is only suitable for limited "housekeeping" changes, and therefore the proportion will be closer to 15%.

If you wish to discuss this further, or have any queries regarding this response, please contact me, Mark Ripley on 01926 654928 ([mark.g.ripley@uk.ngrid.com](mailto:mark.g.ripley@uk.ngrid.com)) or Richard Court on 01926 656146 ([Richard.court@uk.ngrid.com](mailto:Richard.court@uk.ngrid.com)).

Yours sincerely

*[By e-mail]*

Paul Whittaker  
UK Director of Regulation

## Appendix: Responses to Ofgem consultation questions

### Chapter 2: Key Issues & 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?***

As stated in our response to this question in the December 2008 consultation, National Grid recognises that the existing codes governance arrangements are not perfect and that there is room for incremental improvement, particularly where the development of cross-code or cross-licence proposals is concerned. The proposed reforms are proportionate and to a certain extent will formalise existing practice, whereby Ofgem encourages market participants to raise modification proposals to facilitate major policy reviews.

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

The MPR process should allow a holistic approach to be taken where an issue raised has a cross-industry impact, avoiding an inefficient piecemeal approach to change. However, it is worth noting that the issues and consequential impacts are not likely to reduce in complexity and therefore an MPR will still require a significant amount of industry time and resource to develop appropriate detailed solutions.

***Question 3: Would a Self Governance route be suitable for a significant proportion of modification proposals?***

We support the creation of a Self Governance route for code modification proposals, however, as stated in our response to the December 2008 consultation, we do not consider that a significant proportion of modification proposals would be suitable for this route. The proposed criteria for Path 3 (essentially anything that is not sent to Path 2 and therefore considered "trivial") means that the nature of code modification proposals suited to Path 3 will probably be limited to "housekeeping" changes.

***Question 4: If both the MPR and Self Governance routes were implemented, is there a case for retaining an Improved Status Quo path?***

Given the criteria for code modifications to proceed along either Path 1 or Path 3, National Grid considers that it is essential for the Status Quo Path 2 to remain, as this will be the route that the majority of code modification proposals will take.

***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 type of issues that would be dealt with by the Major Policy Review process are likely to have an impact on multiple codes and Path 1 should therefore be applicable to all codes to ensure that such strategic changes can be considered in a coordinated manner. However, the adoption of Paths 2 and 3 may not be appropriate for all codes, particularly those "technical" codes (for example the Grid Code), where currently only Network Operators are able to raise formal changes to the code. We therefore agree with Ofgem's approach to the Role of code administrators consultation that limits the proposals initially to the three "main" codes: the BSC, the CUSC and the UNC; recognising that once the reforms have been implemented and embedded, they could be extended to additional codes at a later date.

### 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?***

National Grid agrees that the relevant Panel should make the filtering decision. National Grid also accepts that Ofgem could have a power to veto the filtering decision.

**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?**

National Grid agrees with the proposed criteria for the assessment of Path 1 and Path 2 modification proposals. We do not consider that further guidance is necessary at this stage; however should the arrangements be implemented, it may become apparent that further guidance is necessary once modification proposals are tested against the criteria.

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

National Grid agrees with Ofgem's proposals for redirecting modification proposals between Paths 2 and 3, but considers that there should be a limit on the number of times a proposal could be switched between Paths to avoid confusion and delay.

**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?**

National Grid agrees that code parties should be able to make requests to Ofgem at any time to raise urgent modification proposal on issues relating to an MPR. This will ensure that any issues which are related to an MPR but also have an element of time restriction associated with them, have the opportunity to be dealt with in a timely manner.

We understand Ofgem's rationale for introducing a moratorium on raising MPR-related, non-urgent modification proposals and that there would be the opportunity for code parties to raise urgent modification proposals during the specified period. However, we note that the period between an Authority decision on an MPR-related modification proposal and its subsequent implementation could be lengthy, given that MPR issues would be likely to require IS changes. There is a risk that this could result in a higher than usual number of urgent modification proposals which would not be ideal, given the compacted timescales that generally accompany urgent proposals.

#### **Chapter 4: Proposed "Major Policy Review" process**

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

National Grid agrees that the MPR process should retain a level of flexibility to reflect the complexity of the issues covered by the scope of the MPR. However, it will be important that any variation from the "standard" MPR process (and the justification for such variation) is established as soon as possible in order to provide clarity to the industry.

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

National Grid supports Options 1 and 2 (use of high-level or detailed conclusions) for determining the outcome of an MPR. We are uncertain as to which industry licensees would be subject to a direction to raise the MPR-related modification proposals (whether it could be any licensee or a subset) and would welcome further clarification from Ofgem on this issue.

**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?**

National Grid considers that the industry should have responsibility for drafting MPR-related code modification proposals and associated legal text. We would welcome an assurance from Ofgem that where a licensee is directed to raise an MPR-related modification proposal, that licensee would not be prevented from responding to the proposal opposing the suggested modification, raising an alternate proposal to the one it has been directed to propose or voting in a manner it considers appropriate at the relevant code panel meeting.

We do not consider that a situation would arise where Ofgem would be required to draft its own modification proposals or legal text, as the party(ies) directed to raise modification proposals in line with Ofgem's MPR conclusions would be under an explicit licence obligation to do so. We would anticipate that where any uncertainty arose in the interpretation of Ofgem's conclusions or where a

licensee felt that it was unable to meet the specified timescales, that discussions would be held with Ofgem to resolve such issues.

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

In our response to the December 2008 consultation, National Grid raised concerns that the ability of a licensee to refer an MPR-related modification proposal to the Competition Commission may be restricted by Ofgem's MPR proposals. We acknowledge Ofgem's response to this point in the Initial Proposals consultation, stating that the Competition Commission has confirmed that it does not foresee any problems with merit-based appeals being raised under the MPR reforms proposed.

With this assurance in mind, we do not propose any additional rights of appeal over those that presently exist.

***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 would like further detail on the timings related to the "time-window" proposal to ensure that there would be enough time for a party to raise an alternative modification proposal. For example, if the "time window" lasts for two months, but the licensee directed to raise the MPR-related modification proposals only issued the proposals on the last day of that two month period, this may restrict the ability of a separate industry party to raise an alternative to that proposal.

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

National Grid agrees that, where important new information becomes available that may impact the conclusions of an MPR, Ofgem should be able to revise those conclusions and the related direction to licensees to raise modification proposals. Where the potential for any such revisions is identified, this should be made public as soon as possible in order that any development work undertaken by licensees and other industry parties would not be wasted.

## **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?***

National Grid agrees that the industry should draw up proposals for self-governance decision making Panels to submit to Ofgem. National Grid's preference is for a Panel to make self-governance decisions, as opposed to implementing voting arrangements.

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

We agree with these proposals.

***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?***

National Grid agrees that appeal rights for decisions made on self-governance modification proposals should be equally applicable to all code participants. We also support the proposed grounds for appeal.

***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?***

National Grid agrees that Ofgem should hear appeals of self-governance modification decisions and that there could be an interim forum to assess such appeals, although this would require further development to ensure that the benefits of such a forum are not outweighed by the industry resource to implement and maintain it. We also support the proposals in respect of time limits and frivolous or vexatious appeals.

## **Appendix 2: Impact Assessment**

### ***Question 1: Do you agree with our assessment of the package of reforms against the Review Objectives?***

We are providing comments against the Review Objectives headings, as set out in Appendix 2 of Ofgem's consultation document, as follows.

#### Cost effectiveness and efficient change management

We agree that the MPR process should result in some cost efficiencies as a "joined up" approach to assessing cross-code and cross-licence issues should reduce the number of piecemeal industry code change proposals raised and assessed by the industry. We also agree that this would apply to the self-governance process, to a certain extent. However, potential cost efficiencies from using a self-governance process may be limited by the low percentage of overall modification proposals which we anticipate would follow Path 3. A further limiting factor will be the appeals mechanism; if this is used frequently, it could negate any potential cost efficiencies.

#### Proportionality

As stated in our letter, we agree that Ofgem's Initial Proposals are proportionate. The only area where concerns could be raised regarding proportionality is the ability for Ofgem to raise its own MPR-related modification proposals as we consider that this power would not be necessary.

#### Inclusivity, accessibility, transparency and effective consultation

We agree that the MPR process should provide benefits of inclusivity and accessibility to those parties who consider the standard modification process to be complex or hard to engage with; however following publication of the MPR conclusions, there will be code modification proposals raised that will still follow the standard code processes. It is also worth noting that while the Initial Proposals may make the governance processes more inclusive and accessible, they do not make participation by smaller participants and consumers mandatory; such parties may still be unable to participate due to lack of resourcing or funding or due to different priorities.

The filtering process should provide the transparency benefit suggested by Ofgem, however, as the criteria for filtering modification proposals to Path 2 relies on the interpretation of "non-trivial" by the relevant code panel, issues over consistency of interpretation between individual code panels may arise initially. This could be resolved with some form of cross-code liaison and guidance.

With regard to the issue of allowing parties to raise alternatives to MPR-related modification proposals, please see our concern raised in our response to question 5 under Chapter 4 above.

#### Rigorous and high quality analysis

Enabling cross-code issues to be reviewed together through the MPR process should assist with avoiding duplication of analysis for each code. With regard to the quality of the analysis, this would depend in part on the time and funding available to whoever is undertaking such analysis.

#### Flexible change processes

National Grid agrees that the implementation of a self-governance process would provide for a more flexible change process.

#### Independent and Objective processes

We agree that it is important that any processes relating to policy reform are seen to be progressed in an independent and objective manner and that no one party is able to dominate such processes.

### ***Question 2: Do you agree with our quantitative assessment of the potential cost savings of reform?***

We agree that cost savings should arise from reviewing cross-code and cross-licence issues as a package within a finite time period, instead of assessing code modification proposals on a piecemeal basis over an open ended period. However, it is difficult to predict the potential level of cost savings that may arise in future due to the differing complexity of issues that may fall within the scope of an MPR. Given the pace of industry change, it is likely that following completion of an MPR and

implementation of the associated modification proposals, further modification proposals would be raised in the same area at a later date.

As stated in our response to the December 2008 consultation, we do not consider it likely that 50% of all modification proposals would follow a self governance route (we felt 15% to be a more appropriate estimate based on a review of recent proposals). Therefore, the associated forecast Ofgem cost saving of £125k may not be realised.

***Question 3: Do you agree with our assessments of the potential impact of reform on consumers, competition and sustainable development?***

We agree that the MPR process may provide some of the benefits described by Ofgem. Competition could be improved by an increase in the engagement of a wider range of industry parties, where parties have the resources, finances (and interest) to participate in the MPR process. This argument applies equally to the impact on sustainable development. We are uncertain whether the reforms will provide the "significant" benefits to consumers forecast in the consultation document, but we agree that cost savings from streamlining the policy reform processes could be passed onto consumers.

***Question 4: Do you agree with our assessment of the potential unintended risks and consequences?***

National Grid considers it unlikely that "industry participants would use the modification process to undermine the outcomes of the MPR". Once an MPR has concluded, a licensee or group of licensees would be directed to facilitate certain modification proposals. It is very unlikely, therefore, that those licensees would attempt to undermine the outcome of the MPR by deliberately raising modification proposals that did not meet Ofgem's MPR conclusions and subsequent licence direction. We agree that a risk exists that the MPR conclusions may not be clear enough to allow modification proposals to be developed; however in those circumstances, we would expect the licensee directed to raise proposals to work with Ofgem and the industry to provide the necessary clarity. This creates an additional risk of extending the overall time taken to implement the MPR conclusions

We agree with the identified risk that usage of the self-governance path may not result in a significant difference to the cost of assessing modification proposals for the reasons we give under question 2 above.