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17 September 2009

Dear Jon

Code Governance Review: role of code administrators and small participant/consumer initiatives – Initial Proposals

Thank you for the opportunity to respond to the July consultation on Ofgem's Initial Proposals for the role of code administrators and small participant/consumer initiatives. 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 broadly supportive of Ofgem's Initial Proposals. We agree that Code Administrators should act as a "Critical Friend" in line with the activities described by Ofgem and consider that National Grid, in its role as CUSC administrator, already undertakes this role to an extent. We recognise that there is more that can be done in this role and to this end we are actively engaged in the development of the Code of Practice for Code Administrators. We also recognise the importance of supporting smaller participants and consumer representatives in their usage of the code modification processes and that the role of Critical Friend, as described by Ofgem in the consultation, does allow for specific assistance for such parties. We note that, as currently drafted, the definition of "small" participants could allow for organisations that are not generally considered to be small in terms of financial and human resources to be included within the obligation to receive targeted assistance.

National Grid supports the principle of voting consumer representatives on the UNC Modification Panel, in line with the existing arrangements for the BSC and the CUSC Amendments Panels. However, we wish to highlight that granting additional voting rights is a fundamental change in structure and could cause a constituent of the UNC Modification Panel finding himself under undue pressure when making recommendations.

We also support, in principle, the concept of an "Independent" Chair for the CUSC Amendments and UNC Modification Panels, although we are not aware of any criticism of the incumbent Chairmen. We note, however, that the granting of a vote to the Chair would again impact on the structure of the UNC Modification Panel. Having reviewed the consultation document, we have a number of questions regarding the selection criteria to be used for appointing an Independent Chair and the exact nature of the role and look forward to seeing the next level of detail.

In light of the two aforementioned proposals fundamentally impacting on the UNC Modification Panel structure, we consider that it may be appropriate to undertake a general review of the Panel composition.

The proposed "call in" and "send back" powers do have merit, however, as we have stated previously, we consider that the "call in" powers already exist within the codes and therefore would not require a specific licence amendment. Instead, it would be worthwhile reviewing the individual codes and, where appropriate, raising modifications to clarify the specific circumstances under which a modification could be "called in" or "sent back". Further development of the criteria for "sending back" a proposal may be required in order to codify the arrangements.

National Grid is supportive of a number of Ofgem's incremental proposals, including performance evaluation for code administrators and provision of more detailed reasons for Panel recommendations. We note that in recording decisions relating to Amendment Proposals taken by the CUSC Panel, National Grid has endeavoured to provide a greater level of detail and will continue to develop best practice in this area. As work has commenced on this initiative, we do not believe that a specific licence obligation is required.

With regard to the need to introduce licence obligations to implement these proposals, we understand Ofgem's rationale for this approach, but we consider that a more flexible solution could include a high-level licence obligation combined with detailed descriptions within the proposed Code of Practice and/or amendments to the relevant sections of the codes containing the modification rules.

We note that in its updated impact assessment on the role of Critical Friend (para 3.12 of the consultation document), Ofgem does not agree with the response of the CUSC Amendments Panel that suggested that an additional 4 to 7 FTEs would be required in order to bring the CUSC code administration function in line with those of the BSC or the UNC. National Grid acknowledges Ofgem's statement that it is not clear from the response which elements of its proposals are included within this calculation. In order to provide a more accurate forecast of additional resource requirements for its role as CUSC code administrator, National Grid would first need to ascertain a greater level of detail with regard to some of the proposed initiatives. For example, in relation to the obligation to assist small participants, Ofgem proposes that a Critical Friend would "contact relevant small participant/consumer representatives when a proposal raises issues that may impact on their group". It is not clear whether the code administrator would be required to prove that it had contacted each small participant individually or whether contacting representative organisations would be sufficient. Clearly, there will be a difference in the resources required depending on the interpretation of the obligation.

More detail on each of the points raised above is included in our responses to the questions raised within the consultation document appended to this letter.

In summary, National Grid broadly supports the initiatives included within Ofgem's Initial Proposals, but would appreciate a greater level of detail in certain areas in order to assess the impact on its function as CUSC code administrator and highlights the fundamental change in structure to the UNC Modification Panel that implementation of these proposals would cause.

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) or Richard Court on 01926 656146 (Richard.court@uk.ngrid.com).

Yours sincerely

[By e-mail]

Paul Whittaker
UK Director of Regulation

Appendix: Responses to Ofgem Questions

Chapter 3: Further Proposals

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

We consider that the primary and secondary activities described by Ofgem within the consultation document should be considered within scope of the "critical friend" role and that it would be useful for a description of such activities to be incorporated into the code administrators' Code of Practice.

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

We recognise Ofgem's two options for introducing the "critical friend" approach and consider that there is a further option which would be to use the proposed code administrators' Code of Practice. We raised this in our response to the December 2008 consultation, reproduced below:

"we believe that all code administrators, to varying degrees, already undertake the Critical Friend role as described in the consultation by supporting the panels and industry participants. However, such an obligation is not codified. [...] In our opinion, we believe it may prove difficult to codify such a role and detailing within a code of practice or guidance document may be a more proportional response."

In support of this approach, we also note that Ofgem proposes to introduce Performance Scorecards as a method of evaluating code administrators' performance. One of the areas for assessment is adherence to the principles contained within the Code of Practice (para 3.62).

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

National Grid appreciates the importance of ensuring that the code governance processes are accessible to smaller participants and consumer representatives. Enabling the participation of such representatives will help ensure that as wide a debate as possible is held and all views taken into account in the development and implementation of code modifications. We note that within Ofgem's consultation document there is some duplication between the activities of a "Critical Friend" and those activities that a code administrator could undertake to prove that it is assisting small participants and consumer groups.

We consider that any initiatives focussed on assisting smaller participants and consumer groups could be detailed within the code administrators' Code of Practice in line with the approach for activities of a "Critical Friend"; with a high-level obligation included within the relevant licence. This approach would ensure that the licensee could not be deemed to be acting in an unduly discriminatory manner when providing greater assistance to one group of industry parties over another group.

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 have a strong preference for the threshold to be applied. However, we note that the threshold proposed for gas shippers in particular may result in organisations that would not usually be considered "small" in the sense of their financial and human resources to be deemed worthy of greater assistance. It may be that the part of the overall organisation dedicated to code governance is "small" in terms of resources, but this may not be of great comfort to those organisations which are deemed "large" and therefore excluded from the offer of greater assistance.

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

We agree with the principle of including voting consumer representatives on the UNC Modification Panel, in line with the status of such representatives on the CUSC and BSC Panels. We note, however, that the licence may not be the most appropriate vehicle to achieve this, as the detail of existing Panel membership and voting rights is set out in the UNC Modification Rules. This is consistent with the approach taken for the BSC and the CUSC where Panel membership and voting rights are set out in Section B of the BSC and Section 8 of the CUSC respectively.

Notwithstanding our support for the principle of voting consumer representation, we would like to highlight the fundamental change in structure of the UNC Modification Panel that the granting of additional voting rights would cause. Currently, the Panel is comprised of 5 voting transporter representatives and 5 voting shipper nominated representatives. The Panel Chairman does not have a vote, nor do a number of other representatives who have the right to attend the Panel (consumer representative, Terminal Operators' representative, independent transporters' representative and independent suppliers' representative). Where a Panel vote is tied with 5 votes for and 5 votes against implementation of a modification proposal, the overall vote is deemed to be for non-implementation, rather than no decision having been made. This provides a "fail safe" situation in relation to the ability to appeal any subsequent decision to implement a change to the regime. The addition of one (or possibly two) consumer vote(s), could effectively result in the creation of a casting vote, potentially resulting in the consumer representative being lobbied by other industry parties in order to assist him with making a decision. This may place an unfair burden on any individual who finds himself in such a position.

With this in mind, should this initiative be progressed, it may be prudent to review the structure of the UNC Modification Panel to ensure that no one constituent of the Panel could find themselves under undue pressure when making recommendations.

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

National Grid does not have any suggestions for additional consumer representatives, but note that some UNC parties have questioned whether a consumer representative is required for larger consumers, as Consumer Focus predominantly represents domestic consumers. This issue could be covered by any review of the structure of the UNC Modification Panel.

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

We can see certain benefits of Ofgem's proposal to appoint an "independent" chair for the UNC and CUSC panels, in terms of the perception of independence, although we are not aware that the existing panel chairs have come under any criticism for demonstrating a lack of independence. National Grid provides the Panel Chairman for the CUSC Amendments Panel, in line with the provisions within the CUSC which include the requirement to act impartially. We take this role and the associated duties very seriously.

We would appreciate a greater understanding of how the process of appointing an independent chair would work and the selection criteria that would be used. From the perspective of the CUSC code administrator, it would also be useful to know Ofgem's thoughts on how the independent chair would interact with National Grid staff undertaking the code administrator function and what resources and facilities the chair might require.

With regard to the UNC panel, we highlight again that the granting of a vote to the Chair would impact on the structure of the UNC Modification Panel, although the precise impact would depend on the outcome of the other changes proposed to the voting structure of the Panel.

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

The provisions of Section 8 of the CUSC (para 8.3.1(c)) state that the term of office of the Panel Chairman shall be a period expiring on 30 March every third year following the CUSC Implementation Date. The CUSC Implementation Date was 18th September 2001; therefore the end of the current chair's ordinary tenure will be 30th March 2010. As it is unlikely that Ofgem's consultation process will have concluded in time for implementation by that date, the next expiry date for the Chair's tenure would be 30th March 2013; it may therefore be considered preferable to make an appointment prior to 2013.

With regard to the appointment of an independent chair for the UNC Modification Panel, we note that the Modification Rules do not specify an expiry date for the tenure of the Panel Chairman.

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

We consider that the independent chairs' salaries should be funded through a price control allowance, as proposed by Ofgem in the consultation document.

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

Similarly to the proposals for voting consumer representation, the most appropriate mechanism for introducing an independent chair may be through the CUSC and the UNC, rather than the licence, as the details of panel chairmanship is set out in the codes (para 8.3.1 of the CUSC and para 3.6 of the UNC Modification Rules respectively).

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

While we see value in the proposals for "call in" and "send back" powers, we do not consider it necessary for such powers to be included within the relevant licences. As we stated in our response to the December 2008 consultation, we believe that "call in" powers already exist practically within the codes. Instead, it would be worthwhile reviewing the individual codes and, where appropriate, raising modifications to clarify the specific circumstances under which a modification could be "called in" or "sent back". Further development of the criteria for "sending back" a proposal may be required in order to codify the arrangements.

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

We do not consider that a licence modification is required in order for more explicit reasons for Panel recommendations to be provided. Instead, we think this could be achieved by simply changing existing ways of working to reflect best practice; therefore a licence modification would be disproportionate. As stated in our response to the December 2008 consultation, the CUSC Panel has already endeavoured to provide a greater level of detail in its decision making, with reference to the applicable CUSC objectives and will continue to do so. To provide further clarity, this element of Ofgem's proposals could also be included within the Code of Practice to be developed for code administrators.

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?

We agree that a regular scorecard evaluation of code administrators' performance by Ofgem could have value in influencing behaviours and also in providing transparency to industry participants and those who use the administrators' services. We agree that adherence to the code of practice should form one of the elements to be assessed.

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

We do not consider that code administrators should be required to obtain and maintain ISO9001 accreditation until an explicit requirement for such accreditation is proven. We consider that Ofgem's proposed performance evaluation approach should identify areas for improvement for each code administrator. Should quality management be one such area identified for improvement in future, the code administrator(s) responsible could seek the appropriate solution at that time, potentially by sharing best practice from other code administrators. We also note that Ofgem quotes a cost associated with obtaining ISO9001 accreditation of £1k to £3k, but that this does not include the ongoing costs of internal and external assessment or the resource costs to establish any additional processes and documentation required to obtain and maintain accreditation.