

Andy MacFaul
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Dear Andy

Re: Code Governance Review: Major Policy Reviews and Self Governance – initial proposals

Please find below NGN's response to your consultation. Our response is focussed on gas distribution and the UNC and that we are not commenting on the appropriate approach for electricity and continue to believe that there is no reason why the best solution for electricity would necessarily apply for gas.

NGN is on balance broadly in favour of the proposals to move to a three-pronged approach for modification proposals. However, we have significant concerns over the powers Ofgem is proposing to take to direct individual licence holders to have potentially onerous, contentious and costly responsibility for drafting and steering modifications through the code processes. Your consultation provides no guidance on the criteria that Ofgem will use to determine which licence holder will be selected or whether an individual licence holder will have any right of appeal or challenge to this decision. An individual licence holder could be faced with significant costs in drafting a modification to which it was fundamentally opposed.

We would also like to understand the circumstances and the criteria that Ofgem will use to determine whether to use the powers granted to it under the Gas Act to impose a new specific licence conditions or use the Major Policy Review (MPR) process to instigate major changes within the industry. Ofgem has in the past successfully used specific licence changes to instigate major changes (e.g. NETA).

The attached response addresses each of the specific questions in your consultation. Please let me know if you would like any clarification of any aspect of this response. Our response can be regarded as non-confidential.

Yours sincerely



Stephen Parker
Regulation and Commercial Director

Code Governance Review: Major Policy Reviews and Self Governance

CHAPTER: Two

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

While NGN agrees that there may be some areas within the current code governance arrangements that would benefit for reform, we continue to believe that in many areas the raising of multiple modifications promotes a healthy competitive environment, and provides the opportunity for as wide a range of opinions and options to be aired.

We would, however, welcome more involvement from Ofgem throughout the UNC modification process and believe that this could help to improve the quality of analysis contained within of final modification reports. We would like to reiterate our previous comments that it is important to ensure that the streamlined, targeted governance being sought does not add complexity, cost and time delays to industry governance arrangements.

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

An MPR process may enable the progression of strategic issues in a more effective manner but Ofgem has powers to direct specific changes through licence modification and would need to determine which route should be chosen.

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

While self-governance would provide a suitable route for some UNC modifications, it remains unclear how significant this would be. However, this would be welcomed for UNC modifications which are clearly of an administrative nature, or provide clarity to existing processes.

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

The case for an improved status quo remains as noted in our previous consultation response, in particular for Ofgem to determine the final decision in areas where the balance of risk between market sectors, or constituent groups occurs.

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

NGN is not in a position to comment on the applicability of these changes within electricity codes. We believe that the proposals are broad enough to enable implementation in UNC and see no reason why this would not be the case for all codes. While phasing would not impact on parties such as ourselves who only operate within only one code arena, it may lead to confuse those working across sectors, in particular for new entrants who will need to operate within more than one governance framework.

CHAPTER: Three

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

NGN believes that the relevant panel is the most efficient and appropriate place for the initial filtering decision to be made, subject to veto by Ofgem. We are concerned that the ability of Ofgem to redirect the filtering decision until the final decision date may cause uncertainty which could lead to inefficiencies. While we accept that information that would make redirection desirable may become available late in the process, we believe that good governance and the appeals processes should mitigate this and redirection late in the process should only be used in exceptional circumstances.

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?

NGN agrees with the listed criteria by which proposals would be considered under path 1 or path 2. We also like to understand how Ofgem will determine between use of the MPR process and the use of specific licence changes to direct wholesale industry change.

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

NGN agrees with the proposals for redirecting modifications proposals between paths 3 and 2.

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

NGN agrees that non-urgent modifications which are within the scope of an existing MPR should be subsumed within it to ensure that all options and ideas are considered. We further agree that the urgent modification option should remain available to progress changes which would provide benefit prior to the completion of the MPR.

CHAPTER: Four

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

NGN agrees that a flexible approach is appropriate as each issue considered by an MPR will have different drivers and complexities. It remains important that there is full industry consultation and impact assessment in determining the final proposals resulting from each MPR and which ultimately underpins Ofgem's final decision.

Question 2: What are your views for the options for determining the outcome of a MPR?
Question 3: Do you agree 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 a specified time period?

NGN is supportive of Ofgem leading in areas of policy change and believes that the industry is best placed to develop the detailed proposals that would result from an MPR. However, within this proposal there is still scope for misinterpretation of Ofgem's policy conclusions documents and it is critical that Ofgem remain engaged throughout the modification process that results

from an MPR. This ongoing involvement will help to ensure that Ofgem is fully cognisant of all ongoing work and would lead us to favour Ofgem drafting the final detailed modification.

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

NGN believes that the current mechanism available for appealing UNC modifications is sufficient but individual parties should be able to challenge the decision under the MPR process to appoint them to draft the modification.

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?

A moratorium on modifications that would deliver incremental improvements would not be beneficial to the industry, and any time-window restrictions would need to be able to respond to necessary changes. As a result of both interruption and exit reforms, there have been subsequent modifications for changes to improve the regime, which may have been stifled if a time-window was in place.

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

NGN agrees that the ability to remain flexible, in particular in light of any new information or the changing environment would be essential to the success of the MPR regime.

CHAPTER: Five

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?

It is still unclear to NGN how any change to the voting arrangements at UNC panel would be included. The UNC Governance Workstream is the best placed group to assess any requirements to change the current voting arrangements subject to approval by Ofgem.

Question 2: 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?

NGN agrees that a general right of appeal is the appropriate mechanism for all code participants.

Question 3: 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?

Ofgem is the natural body for such appeals, and the introduction of an interim forum, or for this process to be integrated into other UNC forums such as the Governance Workstream and/or Panel may act as an appropriate means of ensuring that appeals meet the required criteria and prevent frivolous or vexatious appeals.

APPENDIX: Two

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

NGN agrees that overall the proposed reforms meet with the objectives laid out in the consultation. In terms of efficient change management the self-governance route would undoubtedly deliver in this area, but it is unclear that the MPR process would be more cost effective or efficient than the current review proposal and development proposal processes currently utilised in UNC.

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

NGN is not in a position to fully assess the quality of the quantitative assessment in the Electricity Cash-out reform as we do not operate in this area although we acknowledge that it is possible that there might have been some savings in the areas of interruption and exit reforms had the MPR process been in place. Cost savings achieved through self-governance would relate mainly to Ofgem as NGN believes that the industry processes to assess the appropriate route for each modification, and time involved in assessing the merits of each modification would remain as it is in the current regime.

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

While it is unusual for consumers or small participants to become actively involved in UNC changes, it is not unheard of where there is a direct impact on these parties. NGN does not believe that the MPR process in itself would change this.

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

NGN agrees with the risks for both the MPR and self-governance arrangements as laid out. It is these risks that make it essential that on completion of an MPR Ofgem remains fully engaged with the modification processes to ensure that the industry interpretation of any policy recommendations are aligned to Ofgem's vision.