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Dear Jon

Re: Code Governance Review: Role of code administrators and small participant/consumer initiatives – initial proposals

Please find below NGN's response to the Initial Proposals. Please note that our response is focussed on gas distribution and the UNC and as we have no experience with which to comment on the approach for electricity. We maintain our belief that the current governance arrangements for UNC works efficiently and effectively. The UNC is a contract between gas transporters and shippers and, although we believe that other parties should have full opportunity to comment and to make representations where they are directly impacted by changes, we are concerned that they should not be able to directly influence matters to which they are not party.

We continue to urge Ofgem not to impose change in the operations of the gas industry simply for consistency with electricity arrangements and believe that the Joint Office continues to provide an impartial and supportive role in the operation of UNC.

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. Note that our response can be regarded as non-confidential.

Yours sincerely

Joanna Ferguson
Network Code Manager

Code Governance Review: Role of code administrators and small participant /consumer initiatives – initial proposals

CHAPTER: Three

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

As stated in our previous consultation response, NGN believes that the Joint Office of Gas Transporters operates within broadly within the definition of the ‘critical friend’ and actively challenges assumptions and ascertains made within modification proposals, requesting further evidence for inclusion in Final Modification Reports where required.

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

NGN does not believe that it is necessary to amend the licence or the UNC to introduce a role that is broadly being undertaken by the Joint Office and would consider that a less onerous method of re-enforcing the current role of the Joint Office would be a more suitable approach to formally introducing the ‘critical friend’.

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

NGN believes that any additional assistance that could be provided by the Joint Office to small participants or consumer representatives should at the most be on a reasonable endeavours basis and only be in the form of encouraging engagement with the process rather than providing technical expertise. We believe that the Joint Office already actively tries to engage the relevant parties in all UNC modifications and note that all UNC workstreams are open to any party. This combined with easy access to all UNC related documentation which is readily available on the Joint Office website leads NGN to believe that the Joint Office should not be compelled to take any additional steps in this area.

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?

Within the gas industry in particular, using the definition of a small participant as noted in the consultation document will include divisions of many large multi-national companies. We acknowledge that these divisions may only offer services to specific sectors with relatively small regulatory teams, but note that these ‘small participants’ are already well represented on the UNC modification panel and in their attendance at industry meetings.

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

It is important that any involvement from consumer representatives is limited to areas which could have a material impact on them. If a representative is to have voting rights on the UNC panel it is essential that they are engaged and fully aware of the issues which are being addressed. It may be more appropriate for a consumer vote to be recorded, but not included in the formal recommendation for implementation.

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

The currently scope of Consumer Focus relates to the domestic and micro-business sectors only so it may also be appropriate to consider whether there is an equivalent body who could act as a consumer representative for larger consumers.

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

NGN does not believe that an Ofgem appointed chair to the UNC would necessarily deliver any benefits, and further notes that the impartiality and independence demonstrated by the current chair is a well supported view both within NGN and the wider industry.

The current UNC arrangements do not enable the chair to vote, and it is NGNs belief that this provides the chair with an impartial position which encourages the 'critical friend' role. The current representation on the UNC panel can lead to situation where the recommendation decision results in a tied vote. NGN believes that where this is representative of the UNC parties views, this should be how the recommendation is presented to Ofgem for their final decision. NGN notes that Ofgem also took this view in their recommendation to remove the casting vote from the CUSC panel in its decision letter for CAP100 in 2005.

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

If such an appointment is decided upon, it should only be made at the end of the current chairs tenure.

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

The funding mechanism for UNC governance as a cost pass through item would remain appropriate for any revised constitution. The current costs of the Joint Office, including that of an new independent chair could continue to be borne in such a way.

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

NGN believes that this could only be achieved by modification to the Joint Governance Arrangements Agreement and GT Licence.

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

As noted in our previous consultation response, NGN believes that any mechanism that would increase the accuracy and completeness of a proposal and the ability for a timely implementation is welcomed. NGN agrees with a process, whereby a 'completed' proposal could be sent back for additional work by Ofgem, to assist in a final implementation decision. Such a move would prevent unnecessary duplication of effort whereby rejected proposals had to be re raised with minor changes reflecting Ofgem's concerns. We would expect these powers to be exercised only occasionally.

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

The determinations of each UNC panel member whether to recommend implementation is based on a view that the modification better facilitates the relevant objectives set out within UNC. NGN agrees that the formal recording of these views should be captured at the time of the recommendation.

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

NGN considers that comparative benchmarking and regular assessment and review as appropriate to the role of the code administrators. It is important, however, that the categories being benchmarked are truly comparable across the codes and that differences in procedural or governance arrangements do not unfairly influence an individual score.

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

NGN does not believe that this is necessary for the Joint Office, however, provided this does not add significant additional costs, we do not oppose this.