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Dear Andy,

Code Governance Review: Major Policy Reviews and Self Governance initial proposals.

Wales & West Utilities welcomes the opportunity to comment on Ofgem's Code Governance Review initial proposals.

Our response addresses the specific questions posed, and the additional areas highlighted for views within each section. Our comments relate primarily to the Uniform Network Code (UNC) governance arrangements unless stated otherwise.

CHAPTER 2

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?

We agree with Ofgem's assessment that there are deficiencies within certain areas of the UNC governance process. The extent of these deficiencies, when compared to other industry codes needs to be carefully considered before introducing disproportionate reforms.

The examples identified within the 2008 consultation, and the Transmission Access Review referred to in the initial proposals, are not UNC related matters. We acknowledge that such issues could occur within the UNC framework but to a lesser extent.

In summary, we are supportive of the Code Governance Review but do not want to see blanket reform to all industry codes as one size does not, and should not be assumed to fit all.

We are pleased to see that Ofgem have tried to address concerns raised in responses to the December 2008 consultation.

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*calls will be recorded and may be monitored
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Question 2: Would the MPR process enable key strategic issues to be progressed more effectively and efficiently with consequent consumer benefits?

We agree that the MPR approach would enable strategic issues to be progressed more effectively and efficiently and ultimately this should have consequential benefits to the industry (including end consumers).

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

We do not think a 'significant' number of modification proposals could be managed via a self governance route. The analysis carried out by Ofgem in the last consultation suggested over half of all modification proposals could follow this route but we believe, in the case of the UNC, that the figure is far less than this. As previously stated, the decision point for a modification proposal to go down a self governance route will need to be clearly defined and documented. If the test involves a measure of the impacts on customers and/or competition then it may be very subjective and difficult to reach agreement on. The ability to re-apply the test would also be crucial as modification proposals often change over time following industry development and feedback.

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

It is essential that in terms of the UNC an improved status quo remains as this is the path we foresee the majority of modification proposals following. As outlined above we see that self governance will only be applicable to a small percentage of UNC proposals and as Ofgem have indicated, there will be no more than 2 MPRs in any year,

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

We see the MPR and the self governance options being mutually exclusive and therefore we believe they could be implemented separately. We see no reason why the concept of self governance could not be introduced into the modification rules of each code on a similar timeline. For the MPR process it may be worth Ofgem phasing the implementation and starting with the codes that which will most benefit from the process in the short term. We have no strong views on when this should be introduced for the UNC.

CHAPTER 3

3.13 We invite views on these aspects of the filtering process.

When a Modification Proposal is raised it is often worth discussion at the Modification Panel meeting even if this is just to get an understanding of the implications. It would seem inappropriate for a Modification Proposal to go straight to Ofgem for a decision on the most

appropriate path prior to any discussion with UNC signatories and ultimately the Modification Panel.

It would seem sensible for the Modification Proposal to be discussed at a Panel meeting and a recommendation given to Ofgem. As with current Panel decisions, Ofgem can override this if they have good reason for doing so. However, I would suggest that if Panel agree (majority view) that a Modification should not be Path 3 (self governance) then Ofgem should not have the ability to override this and the status quo remains as the default.

Ofgem may also need to consider whether the process is different for Review Proposals (as there is not always a Modification Proposal to consult / vote upon) and Development Proposals (as the filtering decision criteria might give a different answer after several weeks of development (e.g. the scope of the Modification Proposal changes)). A mechanism for reapplying the filter criteria may be necessary if the scope of a Modification Proposal changes or if there are any new impacts identified that would change the 'Path' of the Modification Proposal.

Within the consultation document the suggested filter decision process is Path 1 (yes or no), then Path 2 and, if both were no, then automatically path 3. It may be more sensible to have Path 2 (status quo) as the default - if the new Path 1 and Path 3 are not suitable then it would by default have to be treated as business as usual.

3.25 We welcome views on the factors Ofgem should consider in deciding whether a modification proposal might warrant an MPR.

The proposed criteria within the consultation document for Path 1 seem sensible. The initial proposals have now clarified that only 1 of these criteria would need to be met to potentially trigger an MPR rather than all three. In reality, it is unlikely that a modification proposal would be raised out of the blue and trigger the need for an MPR. It is more likely that a modification proposal is raised that relates to an existing MPR (or has some consequential impacts on one).

3.33 We welcome views on the proposed criteria for Path 2 modifications.

The criteria for determining whether Path 2 or Path 3 should apply could be very subjective and a default position would be required when it is unclear or there is uncertainty; we would suggest that this is the status quo.

More often than not a Modification Proposal will have, or at least claim to have, impacts on competition or on customers. Ultimately there are financial implications on code parties from the majority of Modification Proposals and it could be argued that this will always result in impacts on customers. A pragmatic approach may need to be taken by the Modification Panel and Ofgem to ensure that the most appropriate Path is utilised on a case by case basis.

As mentioned in our response to the December 2008 consultation, instead of having criteria for Path 2, we would rather these were reversed and applied as the test for Path 3 / Self Governance.

We also believe that consideration needs to be given once the consultation phase for a Modification Proposal has been completed. If, for example, it has utilised the Path 3 route and representations are received that highlight impacts on consumers or competition (negative or positive), this should be re-evaluated and potentially switch to the Path 2 route. This may need some flexibility with both the Modification Panel members and Ofgem having the ability to change this as and when necessary (by majority vote of the Modification Panel).

3.40 We invite views on the proposed treatment of urgent and non urgent modifications during the MPR.

It is difficult to see how a modification proposal could be given urgent status and also impact on an MPR. For the urgent criteria to be satisfied the modification proposal must be linked to an issue that may create significant commercial impact if not dealt with urgently, relate to an urgent security of supply matter or be related to an imminent date.

It would therefore seem very unlikely that a modification proposal that is granted urgent status would be linked to an MPR and, even if it was, it would seem inappropriate for Ofgem to prevent the modification proposal from proceeding to consultation.

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?

We agree that the relevant modification panel should discuss all modification proposals prior to a decision being taken on which path they go down. The decision should be taken by the Modification Panel (which includes an Ofgem representative) once the proposal has been fully developed. The filtering should be reapplied at anytime if the modification proposal, or the impact of it, significantly changes.

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?

In general we agree with the criteria that have been specified within the initial proposals. It is difficult to have guidance on such matters without being too prescriptive and creating an inflexible process. We would suggest that if guidance is required it is left to the Code Administrators and the Panel Members to develop this, as and when necessary.

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

We agree there will need to be a degree of flexibility in the process and an ability to redirect proposals down path 2 or 3. We would have some concerns if Ofgem had the ability to redirect a proposal to self governance if this was against the majority view of the Panel Members.

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?

We have made comments above (under 3.40) on how urgent modifications should be treated.

We appreciate that there may be a desire to prevent non-urgent modification proposals, that relate to an existing MPR, from progressing in isolation through the modification process. We believe that the control measures in place to deal with this will need to be carefully considered. On the basis that this decision would be taken following the necessary consultation with industry participants, and/or the modification panel, we would be supportive of such a mechanism. In reality, if a modification proposal did make it through the process and to Ofgem for a decision, it is likely that no decision would be taken until the MPR had been concluded.

CHAPTER 4

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

We agree that the process needs to remain flexible as each MPR will be different in terms of complexity, level of cross governance and impacts on industry participants. The timescales, the level of required consultation and impact analysis will also vary and any process will need to be cognisant of this.

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

Although in these updated initial proposals Ofgem have dismissed the use of Option 3, we remained unconvinced that this should be the case.

Option 1 - There have been a number of Modification Proposals that have resulted from directions from Ofgem or from explicit licence conditions placed upon code signatories. We are not supportive of this 'mechanism' as it does not offer the transparency that the process should provide. However, if there is any support for the Major Policy Review from a code party then they may wish to raise any Modification Proposals necessary to implement the conclusions. In this situation they should not be prevented from doing so.

It is also unclear how Ofgem would decide which licensee would be obligated to take forward the binding principles by way of a Modification Proposal? Previous examples, such as Exit and Interruption Reform, were not detailed binding principles and placed obligations on transporters to 'develop' proposals. As there can only be one proposer it is difficult to see how this process would be managed? A more generic obligation on all parties could be utilised and the development of a modification proposal could then be carried out by the relevant UNC Workstream (or similar). There would still be the need for a modification proposal sponsor but this may be easier to manage rather than out right obligations. An alternative would be to allow a modification proposal to be raised by a UNC sub-committee rather than a specific Shipper or Transporter?

Option 2 - This option is similar to the status quo but would involve the detailed conclusions forming the basis for any Modification Proposals to be raised by the relevant code party or licence holder. This option has the same drawbacks as Option 1 and we are therefore not supportive of it. As with Option 1, if there are code parties that wish to 'sponsor' the necessary Modification Proposals then they should be allowed to do so.

Option 3 - We were supportive of Ofgem having the ability to draft the necessary Modification Proposal and prepare the legal text. We disagree with Ofgem in that this would give the greatest certainty that the conclusions of the policy review would be effectively implemented. Any Proposal, regardless of whether it is as a result of a Major Policy Review, should go through the Modification process and be evaluated against the usual criteria.

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?

This proposal goes against the decision to no longer consider Option 3 (as above). A potential resolution to this would be for draft proposals to be prepared by Ofgem and the relevant UNC Workstream (or similar) then develop the proposal. As mentioned above, this would still require a 'sponsor' to take forward the proposal but this would be less problematic via this route.

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

The outcome of an MPR should not result in an obligation on any UNC party to ensure implementation of the recommended outputs. If this is the case then, as the existing modification process will still be utilised, the existing appeals mechanism will still apply. We agree with the updated Ofgem view that to create an additional mechanism may be disproportionate.



If you have any queries in relation to this response please contact me as below.

Yours sincerely,

A handwritten signature in black ink, appearing to read "S. Edwards", with a long horizontal flourish extending to the right.

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