

Jon Dixon
Head of Industry Codes & Licensing
3rd Floor, Ofgem,
9 Millbank,
London,
SW1P 3GE

Wales & West House
Spooner Close
Celtic Springs
Coedkernew
Newport NP10 8FZ
T. 029 2027 8500
F. 0870 1450076
www.wwutilities.co.uk

Tŷ Wales & West
Spooner Close
Celtic Springs
Coedcernyw
Casnewydd NP10 8FZ

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Dear Jon,

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

2.20.we would welcome further views on whether there are alternative ways of ensuring that the information is made available in a timely fashion, and in particular whether there is any role for Ofgem beyond its participation in the modifications process.

In general, we welcome the views that Ofgem has given in the initial proposals and believe that they offer the most balanced and effective approach in progressing the roles and responsibilities of Code Administrators.

One of the main reasons for Code Administrators to adopt a more 'critical friend' role or 'active secretariat' role has been to give better control of analysis of Modification Proposals to ensure that once they reach the Authority for a decision, they are sufficiently developed to allow the necessary evaluation (and increase the likelihood of implementation). We agree with Ofgem that the situation has improved since the implementation of Modification Proposal 0213. The recent Modification Proposal 0224 has already demonstrated these benefits even though it went through the Modification process prior to the implementation of 0213.

We are fully supportive of the 'critical friend' approach and, as per our previous responses, are confident that the Joint Office of Gas Transporters (Joint Office) already fulfils this role.

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*calls will be recorded and may be monitored
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We have no objection to the proposed inclusion of the requirement to fulfil the role of ‘critical friend’ within appropriate governance arrangements and suggest this would fit most appropriately within the proposed CAWG Code of Practice or within the Joint Governance Arrangements Agreement (JGAA).

2.43. We would welcome comments from respondents on these issues including whether there are other mechanisms available to increase Elexon, the Joint Office and National Grid’s accountability.

We believe that the existing governance arrangements, which are required by way of our gas transporter licence condition (SSC A11) and are then governed by the JGAA via the Joint Governance Arrangements Committee (JGAC), have proven to be fit for purpose over the past few years since the GDN sales in 2005.

We acknowledge the matters raised by Ofgem in terms of the potential to moving to a more service based agreement and the ability to tender out the role of Code Administrator. The existing governance arrangements do not preclude this from happening although this would need the transporters to collectively agree on taking such a step. We agree with Ofgem in that this step is not currently required but, if the industry does wish this to happen in future, we should ensure that any changes to the existing regime do not preclude this from being possible in the longer term.

CHAPTER 3

3.1.1 We would welcome views: on what these two classes of activities should encompass.

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

We are in general agreement with the scope for a ‘critical friend’ set out in the consultation document and as suggested by the CAWG. One of the main functional benefits of this approach is seen as the engagement and inclusion of small participants and consumer representatives.

We are supportive of the increased participation of small players and consumer representatives and are pleased to see that Consumer Focus has recently taken up a position on the UNC Modification Panel. Their input to discussions is extremely valuable and their continued participation is welcomed and encouraged.

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

As we touched upon earlier in our response, we believe the Joint Office already operate within the industry as a ‘critical friend’. However, we believe that there is no reason not to formalise these arrangements to ensure that this approach is maintained in the future. The gas transporter licence could be amended to facilitate this although, as stated in your consultation document, this would be fairly complicated as the licence does not specifically mention the Joint Office.

Standard Special Condition A12 sets out the requirement for Joint Office Governance Arrangements to be established and to be facilitated through the Joint Governance Arrangements Agreement. It is our view that it is within the JGAA that this could be resolved and, if this is a shared view amongst Ofgem and industry participants, we would happily take this forward at the next Joint Governance Arrangements Committee (JGAC) meeting.

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

Although we agree that this initiative could be furthered via the CAWG CoP it is important to recognise that consumers, consumer representatives and smaller participants are encouraged to participate in industry debate and modification development. There are already regular events, such as the Gas Customer Forum, that provide the opportunity for consumer representatives and individual end consumers to share their views and to hear about the latest industry changes. Unfortunately there is often poor attendance at such events and it may be worth Ofgem, and industry participants, trying to address this issue. Although we agree that we need to ensure the governance frameworks promote inclusion of customers and small participants we feel that we need to get a better understanding of the issues they face in order to tackle this appropriately.

Within the existing governance arrangements we do not see how it would be possible to place a specific obligation upon code administrators; instead this would need to be on the gas transporters collectively. As with the previous question, we do not believe that a formal licence modification would be needed to progress this and either a CAWG developed Code of Practice or the JGAA could facilitate this. Our preference for this would be a CoP developed by the CAWG as the parties concerned are often the same across all codes and a consistent approach would be beneficial.

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?

The appropriate threshold for Shipper and Suppliers being classed as 'small' or 'large' is very problematic. We appreciate that the SPAA principle of one million supply points does work to some degree but it often leads to segregation of either the domestic or I&C specialist Shippers. An alternative method is to base this upon the capacity holdings (or actual gas usage / throughput) of an organisation or a combination of the both capacity and customer numbers. The importance of this definition is that it should not exclude parties from being classed as small but should be flexible enough to incorporate those organisations that can demonstrate that support is required.

The designation between large and small transporters is not a particular issue for UNC arrangements as it is only the 'large' transporters that are party to the UNC. The 'smaller' transporters (or iGTs) work within their own governance arrangements (i.e. the iGT UNC). If a small transporter were to reach 1 million supply points we believe that the definition of the SPAA transporter constituencies would need to be reviewed to determine whether they were still appropriate. We would also like to take this opportunity to express our disappointment that the iGT UNC governance framework has not been included within this Code

Governance Review. The iGT UNC has a similar structure and modification process to the UNC and is based upon very similar licence conditions. Transporters and Shippers are increasingly concerned that the two regimes have diverged over time and, by excluding the iGT UNC from this review, this will not do anything to address this.

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

There has been much debate on the constituency of the UNC Modification Panel and we believe this issue is one of the key areas that could be easily reformed to provide potentially significant benefits. It is worth reminding ourselves that the UNC Modification Panel can already consist of 17 members and not just the 5 Shipper and 5 Transporter members that people often refer to. The key difference here is that it is only the Shipper and Transporter representatives that are voting members.

The other 7 members, all of which are non-voting members and subject to being appointed, are the Panel Chairman, the Ofgem Representative, the Terminal Operators' Representative, two Consumers' Representatives, the Independent Suppliers' Representative and the Independent Transporters' Representative.

We see the key issue here being the impact of any vote or Panel Recommendation. In our view, the existing Panel recommendation plays no part in the decision process that the Authority undertakes apart from giving an indication of the views of those that the Panel members represent and whether or not the Modification Proposal better facilitates the relevant objectives contained within the transporter licence (SSC A11).

The Electricity and Gas Appeals (Designation and Exclusion) Order 2005 (the EGAO 2005), sets out the criteria for when a GEMA decision can be appealed to the Competition Commission (the CC). For the UNC process, the criteria is that an appeal can not be taken to the CC if the Authority decision is consistent with the Majority view of the Modification Panel.

We would happily support the ability for the Consumer Representative(s) to have voting powers at the Modification Panel meeting but do not feel it would be appropriate for this to influence the current appeals mechanism that is available to Shippers and Transporters. The UNC is the contractual framework that the Transporters and Shippers work within and do not feel it would be appropriate for other parties to prevent a Shipper or Transporter appeal. On this basis, we would happily see all of the current non-voting Panel members having the ability to give their own recommendation to the Authority.

This approach would be consistent with the initial proposals document in that it would recognise that the current non-voting members are likely to have different interests to those of the Shippers and Transporters. They would not necessarily be evaluating a Modification Proposal based on the transporters' relevant objectives or on the contractual impact that implementation would have on Transporters or Shippers. Standard Special Condition A11 requires the transporters to establish and operate procedures (i.e. the network code modification procedures) so as to better facilitate the achievement of the relevant objectives. By changing the mechanism under these procedures for which the appeals mechanism under the EGAO 2005 can be instigated would not, in our opinion, be consistent with our licence obligations.

Under our alternative proposal, the authority would be presented with a view from the combined Shipper and Transporters vote (as per current arrangements) and this would be still be used as the criteria for the condition in article 7(1) of The Electricity and Gas Appeals (Designation and Exclusion) Order 2005. Also contained within the Final Modification Report would be, if provided, a view from the other Panel members on whether they recommend implementation. For example, the FMR might state “*the Terminal Operator’s Representative has recommended implementation, the Independent Suppliers’ Representative has not recommended implementation...*” The procedures and processes that the Authority then utilises in determining whether to direct implementation of a Modification Proposal would remain unchanged (out of scope of the UNC).

We therefore acknowledge that there may be a desire for non-voting members of the Modification Panel to be able to signal and record their support, or lack of, for a Modification Proposal but we would encourage Ofgem to examine the basis for this desire and whether our suggested solution would in fact meet everyone’s aspirations. Do non-voting Panel Members just want to be able to participate and have a voice or do they specifically want to influence whether the Competition Commission appeals mechanism is available to UNC signatories?

We are also open to the concept of widening the ability for 3rd parties to raise and progress Modification Proposals within the UNC governance framework. We believe this would be a step in the right direction for inclusion of affected parties and could be utilised to deal with cross governance issues (e.g. where UNC impacts on non-UNC signatories such as Suppliers or iGTs).

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

As a gas transporter we are not best placed to suggest how consumers may wish to be represented within the UNC governance framework. We would suggest that this matter should be taken up with consumers at appropriate industry events (e.g. Gas Customer Forum, Demand Side Working Group).

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

There has been much discussion within the UNC framework in relation to the question on independence of the Joint Office and, in terms of these initial proposals, the Panel Chair. It is not clear to WWU when, if ever, the issue of non-independence or partiality of either the Joint Office or the Panel Chair has been raised. It is also unclear how any such Ofgem appointment process would work and whether there are any demonstrable benefits from taking this step. Until there is any clear advantage to this specific proposal we do not believe that it should be taken forward.

Questions 7 – 11: The introduction and appointment of independent Panel Chair arrangements.

As we are not currently supportive of this part of the initial proposals we have not given any detailed thought to how this could be achieved or what the associated arrangements should

be (e.g. salaries). If this option were to be progressed, Ofgem would need to ensure that the appropriate funding was in place at it would be over and above the current PCR allowances for these activities.

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

We believe that the ability to ‘call in’ or ‘send back’ Modification Proposals would be advantageous to Ofgem. This would help prevent Modification Proposals from progressing through the modification procedures that would otherwise leave Ofgem no other option but to direct non-implementation. Ofgem already, on an informal basis, carry out this type of activity but there are no clear procedures in place to allow this. We do not believe that this needs to be reflected in our gas transporter licence and could be accommodated within the UNC Modification Rules.

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

We would be supportive of a requirement for Panel Members to state the reasons for their recommendations and for this to be recorded within the Final Modification Report. It is key that the Panel Members remain representative of the constituency that they stand for and when giving such explanation for their recommendation it should be recognised that this is neither or personal or a company point of view.

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 have no strong views on whether this would be a beneficial step to take or whether it would simply present a subjective view on matters and lead to an increase in administrative burden. However, we do acknowledge that this would be easier to administrate and evaluate if the Code Administrators were subject to the Code of Practice that the CAWG are looking to create. This would create the ‘level playing field’ required for such a scorecard mechanism to be effective.

We would welcome further discussions within the industry on these proposals prior to the Final Proposals being issued in early 2010. It is our belief that a number of the Ofgem proposals could be incorporated into the UNC Modification Rules, by way of Modification Proposal(s), and this, along with the CAWG Code of Practice and potential amendments to the JGAA, should be explored prior to necessitating licence modifications.

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'.

Steve Edwards
Head of Regulation and Commercial
Tel: 029 2027 8836
Email: Steven.J.Edwards@wwutilities.co.uk