

Mark Cox  
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9 December 2009

Dear Mark,

### **Codes Governance Review Initial Proposals – illustrative licence modification drafting**

Our comments in this response are limited (with the exception of connection charging methodologies) to our view on the current Licence modification proposals and the most appropriate way to implement any changes brought about by the Industry Code Governance Final Proposals. The key points contained in our detailed response (which can be found on pages 4-10) are summarised below.

### **Charging Proposals & Licence drafting**

We do not support a move from the status quo within Gas Distribution. We do not believe Ofgem have offered any evidence to support a move away from existing arrangements within Gas Distribution. The initial proposals suggested a review of arrangements within Gas Distribution 'at a later date'. We are therefore surprised that Ofgem is now considering early changes within Gas distribution. We believe this requires further consultation.

It was not made clear in the initial proposals that Connections Charging Methodology was included within the scope of this governance review and we were surprised to see Connections Charges included within the licence drafting. This requires further consultation as we cannot see how any changes can be implemented practically.

### **Requirement for Changes to Licence**

Ofgem has produced no substantive evidence that, since the introduction of the Network Code, there has been any impediment to any network, shipper or Ofgem introducing and implementing major policy or minor drafting changes into Network Code. Ofgem has therefore failed to demonstrate that there is any adverse public interest to be addressed that would

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\*calls will be recorded and may be monitored  
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necessitate the current proposed licence changes.

### **Scope of Governance Review**

We have raised in previous correspondence our concerns that the iGT UNC does not form part of this Code Governance Review. You will be well aware of the concerns within the industry around the lack of consistency in arrangements for GTs and iGTs. The iGT UNC was seen as a step in the right direction and, as it is largely based on the UNC, the Code Governance Review would have been a good opportunity to continue the progress towards consistency. We question the overall merits in achieving common governance mechanism for gas and electricity when a significant code, such as the iGT UNC, is not included

### **Implementation proposals**

We do not believe that numerous Transporter Licence modifications are the most appropriate way to implement any changes. If Ofgem believe that they need to make licence amendments, it would be more appropriate to introduce a single Licence Condition which obligates DNOs and TOs to implement changes brought about by the Final proposals within a certain timescale (the arrangements for this could be similar to Standard Special Condition D8 that was introduced in the Gas Distribution Licence to review and develop proposals to reform the DN interruption arrangements). The changes could then be considered and developed and implemented through code arrangements. We are aware that British Gas Trading have raised UNC Review Proposal 0267 ("*Review of UNC Governance Arrangements*") in order to take forward the Code Governance Review proposals. We are fully supportive of this Review Proposal and hope that the timing of the Ofgem Code Governance Review recommendations do not preclude this Group from fully developing and implementing them.

Licence Modifications alone would not be sufficient to implement the Code Governance Review recommendations as UNC Modification Proposals would also be required (due to the changes in the modification rules as defined under SSC A11). The complexities of the recommendations within the Initial Proposals, as per the comments below, are extremely difficult to reflect in legal drafting and this is further justification for limiting, or potentially postponing, licence amendments

### **Shipper Licence amendments**

None of the proposals place any duties or obligations on Shippers. SSC A11 places duties and restrictions on Shippers, and upon Ofgem under these proposals, but it is for the Transporters to comply. We believe that Ofgem should be proposing a Shipper licence amendment to place similar obligations upon them (similar to Standard Condition 14 of the Transporter licence in relation to the Supply Point Administration Agreement).

For completeness we have included our recent responses to the specific initial proposal documents and our previous responses to the proposed licence drafting for the 'Environmental and Code Objectives' and 'the "timing-out" of code modification proposals' in Appendix 1 and Appendix 2 respectively (pages 11-20).

Yours sincerely,



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**WWU DETAILED RESPONSE TO CODES GOVERNANCE REVIEW INITIAL PROPOSALS**  
**- ILLUSTRATIVE LICENCE MODIFICATION DRAFTING**

**Major Policy Reviews and Self Governance**

**Changes to Standard Special Condition A11 (SSC A11)**

Major Policy Reviews

SSC A11 is a Transporter licence condition and therefore none of the proposals place any duties or obligations on Shippers. SSC A11 places duties and restrictions on Shippers, and upon Ofgem under these proposals, but it is for the Transporters to comply. We believe that Ofgem should also be proposing a Shipper licence amendment to place similar obligations upon them (similar to Standard Condition 14 of the Transporter licence in relation to the Supply Point Administration Agreement).

A mechanism would be required to enable the Transporters, or the Code Administrator, the ability to defer a draft/proposed modification proposal whilst it is determined whether it falls within scope of a Major Policy Review. This will need careful consideration and, if it can not be incorporated within the licence amendments, will require careful consideration when developing the necessary UNC modification rule changes.

The proposed text does not specify how the Authority will determine which licensee they may direct to make a modification proposal following a Major Policy Review. As stated in our consultation responses, we would prefer for this ability to 'direct' to be removed from the licence drafting and allow any code party to 'volunteer' taking forward a Major Policy Review recommendation. We presume that the outcome of an Major Policy Review would be advantageous to either a Transporter or Shipper, as parties to the UNC, and volunteering organisations should be readily available. Through the insertion of the proposed 10(a)(v), the Authority would retain the option of raising a modification proposal if no such volunteer existed.

As mentioned above, the proposed licence changes will require significant changes to the UNC, by way of Modification Proposal(s), due to the proposed amendment to 6(b) (as it requires procedures within the modification rules to allow for Self Governance and Major Policy Reviews). We would recommend that this is developed within a UNC Review Group, such as Review Group 0267, and that formal licence changes are not made until this has been completed. We do acknowledge that both Major Policy Reviews and the Self Governance process needs to be defined within the licence (as the current licence drafting would not allow these to be only defined in the UNC) but feel that the process should be fully developed prior to this taking place.

Self Governance

As stated in our response to the Initial Proposals, we do not believe that a 'significant' number of modification proposals would, or could, qualify for the Self Governance route. The 'back casting' analysis carried out by Ofgem suggested that over half of modifications proposals

could follow this route. We have not seen the detail behind this analysis and our view is that the figure would be significantly less than this for UNC modification proposals.

It is good to see that the proposed licence amendments have put a measure of 'triviality' on the qualification requirements for the Self Governance route. Although this measure is by no means flawless, it does allow the designated panel a level of flexibility in the administration of Self Governance. However, it is difficult to see how any modification proposal could have a less than trivial impact on the areas listed in the proposed SSCA11 15D (a) (i-vii). Further consideration of this has led us to conclude that it is more likely that this Self Governance process would be more suitable for changes that, in the opinion of the Authority, go marginally beyond the remit of the Consent to Modify process.

Although not stated within the proposed licence drafting, we believe that the designated UNC panel should be required to be unanimous in determining a modification proposal met the criteria for Self Governance and anything short of unanimity would result in the "status quo" process being utilised.

The proposed text under SSC A11 15E suggests that an appeals mechanism, that is to be specified within the UNC, would allow code signatories to appeal decisions made by the designated panel. It appears that an appeal would be allowed if the panel had designated that the Self Governance route is not appropriate for a modification proposal. We believe that this should not be the case and only modification proposals that have been designated suitable for the Self Governance route should be subject to an appeals mechanism. If there are any concerns over use of the Self Governance process (i.e. the designated panel have not unanimously agreed to utilise it for a particular modification proposal) then the existing, "status quo" should apply.

Further to the above, the additional criteria under SSC A11 15E (a-c) does not quite fit with an appeals mechanism that would allow a party to appeal both approval and rejection decisions by the designated network code panel. For example, in 15E (a), if the panel decided that Self Governance process was not suitable for a particular modification proposal this should be subject to appeal on the grounds of "non-implementation". The modification proposal would still be subject to the modification rules and, if following consultation and a panel recommendation / non-recommendation, the merits of the proposal will be decided upon by the Authority. It would be at this point that Ofgem could direct that the modification proposal is not to be implemented and the existing appeals process should apply.

Under 15E (b), a party is able to appeal a decision based upon the modification proposal not facilitating the relevant objectives. This is questionable if the panel approves or rejects the Self Governance route for a modification proposal. Facilitating the relevant objectives is not a criterion under the proposed A11 15D (a) and, if a proposal were to facilitate the relevant objectives, then there would be an argument that it can not be trivial and therefore not qualify for the Self Governance route.

Likewise, if the panel were to reject the Self Governance route for a particular modification proposal, an appeal based upon the modification proposal not facilitating the relevant objectives would be nonsensical. The matter of whether a modification proposal better facilitates the relevant objectives or not would be dealt with as part of the existing modification process (through consultation, panel discussion / voting and a decision by the Authority).

## **Role of code administrators and small participant / consumer initiatives**

### **Changes to Standard Special Condition A11 (SSC A11)**

We would like to make the following comments on the proposed licence amendments:

SSC A11 6(c) would require the uniform network code to detail the arrangements establishing the “code administrator” to facilitate the UNC modification procedures. This appears to be a case of duplication as Standard Special Condition A12 (“*Joint Office Governance Arrangements*”) clearly sets out the Transporters collective obligation to establish and maintain Joint Governance Arrangements for, amongst other things, the administration of the network code modification procedures. If this proposed amendment is to establish the term “code administrator” or to establish the procedures for appointing a code administrator, then we believe that this should be within the JGA agreement (as required by A11 1(b)). For the reasons, we do not believe this addition of A11 6(c) is necessary or appropriate.

SSC A11 6(d) proposes changes to the licence that will mandate a “panel” that contains a consumer representative with a vote (as defined within the UNC) and a chairperson that has been approved by the Authority. As stated throughout this response, this level of detail should not be within the licence and should, as the equivalent arrangements already do, appear within the UNC.

The constituency of the existing Modification Panel has been subject to much debate and our view is that the voting mechanism needs careful consideration and industry discussion before changes are made. The proposed licence changes only mandate a single customer representative compared to the existing arrangements that allow for two consumer representatives to be part of the Modification Panel. The difference appears to be the voting rights of the consumer representative(s).

The requirement to have an independent chairperson is fairly vague and we believe that the existing chairperson of the Modification Panel, as an independent person, would therefore be approved by the Authority. We do not believe that the requirement for the chairperson to have a casting vote has ever been justified within these proposals. To give an independent person a casting vote would bring in to question their independence.

If the existing 10 voting panel members were increased by the inclusion of a voting consumer representative then the panel would always reached a majority decision if everyone attended and voted. We do not see how a casting vote by the chairperson would work in practice. Would this licence change require the number of voting panel members to be changed to ensure that a casting vote was possible? We do not believe that this element of the review has been worked through in sufficient detail and, as with previous points, this level of detail should be dealt with by a suitable Review Group within the UNC and not through licence amendments.

We would like to make it clear that we have no objection to the voting rights of panel members changing from the existing arrangements (subject to the necessary industry consultation). There are currently 17 representatives on the Modification Panel and we would welcome further discussion on how best their individual views could be captured and conveyed to the Authority.

The key part of the current modification panel vote is that it is referred to in The Electricity and Gas Appeals (Designation and Exclusion) Order 2005 (as made under section 173 of the Energy Act 2004). This regulation determines that an appeal to the Competition Commission is only possible when the Authority's decision is contrary to the modification panel's recommendation. We are not supportive of any changes that could remove the right of appeal from code signatories (Shippers or Transporters). We suggest that alternative options are considered, such as the Final Modification Report expressing constituency style modification panel views, or for The Electricity and Gas Appeals (Designation and Exclusion) Order 2005 to be suitably amended to protect Shippers' and Transporters' right of appeal.

Although we are not supportive of this element of the licence drafting we would welcome further discussion within the industry and with Ofgem on this specific part of the review.

The term "consumer representative" and "consumer representatives" appears in the proposed drafting of SSC A11 6(d)(ii) & 9(d) respectively. There is no definition for "consumer representative" contained within the drafting for paragraph 24 of SSC A11. We would suggest that, if this change is deemed necessary, that a suitable definition is provided.

The obligation for the code administrator to perform the duty of a "critical friend" is contained within the proposed drafting of SSC A11 9(dA)(i)-(iv). Whilst we are supportive of the measures identified in (i), (ii) & (iv), we are not clear on what is meant by "... *their involvement in and representation during the network code modification procedures...*"?

Whilst we are, generally, supportive of these proposed measures we do have concerns that no analysis has been carried out as to the additional work that this would create for the code administrator. The Transporters are currently funded for the Joint Office of Gas Transporters to carry out the obligations placed upon them under SSC A12 of our licence, the cost of any additional activities need to be considered prior to such proposals being implemented. The definition of "small participant" will have a significant impact on this and we have made further comments on this below.

The proposed drafting within SSC A11 9(eA) allows the Authority to demand "*the provision of any additional information or analysis as the Authority may require*". This is a very broad statement and gives the Authority unfettered power to request information. It is therefore disproportionate and unreasonable. It also appears to be a duplication of the measures proposed within SSC A11 9(fA)(v) & 15(b)(ii). The Authority has the power to request information from the Transporters via Standard Special Condition A26 when the information is necessary for the purposes of performing their duties under the Act (as amended). We acknowledge that SSC A26 does not cover requests for information for the purposes intended by this proposed drafting but believe, if this proposed drafting is required, then similar limitations on the provision of data to that in paragraphs 5, 6 & 7 of SSC A26 should be included. Such limitations should also allow for the cost and availability of information to be considered by the Authority as there may be situations where it would not be possible or appropriate for the data to be provided (and could otherwise be considered as a breach of this licence condition).

Within the proposed drafting of SSC A11 9(f) the additional text "...*including representations made by "small participants" and/or consumer representatives*" is not required as they are

already captured in the existing drafting “... or other persons likely to be materially affected were the proposal to be implemented”.

The proposed drafting within SSC A11 9(fA) places a requirement on the transporter to ensure that the network code modification procedures shall provide for “*the compliance with any [direction / request] made by the Authority*” relating to the requirements within sub-paragraphs (i) to (v) in relation to the steps contained within SSC A11 9(b)-(f). It is not clear to us what the intent or purpose is of this proposed paragraph, in particular the requirements under (i), (ii) & (iii).

Sub-paragraph (i) requires a timetable to be stipulated setting out the steps from (b) through to (f). The steps from (b) to (f) are, in part, optional steps within the modification procedures and are not bound by timescales or dates. We do not see how this would work in practice or where this was covered within the initial proposals.

Sub-paragraph (ii) requires a timetable to be provided that sets out when the steps (b) to (v) are intended to be completed. As with the previous point, this will not always be possible as the steps are not always used within the modification procedures. The same applies to sub-paragraph (iii) as this places a requirement for a statement to be issued to the Authority on the progress of (b) to (f).

The proposed drafting within SSC A11 15(iv) would result in the Final Modification Report for a Modification Proposal to include detailed reasons on why the panel recommended, or fail to recommend, its implementation. We welcome this additional step in the modification procedures and believe that this should be included within the UNC modification rules rather than within SSC A11.

The proposed new sub-paragraph 15(b)(ii) within SSC A11 would allow the Authority to “send back” to the panel a Modification Proposal when the Authority require more information / analysis in order to make a decision on whether to direct implementation. We believe that this would be a useful step within the governance process and would prevent Modification Proposals from ‘falling at the last hurdle’ when further analysis may be all that is required in order for the Authority to make an appropriate decision.

The proposed paragraph 23A in SSC A11 deals with potential transitional and/or provisional measures that would not be required if the majority of this section of the review were to be incorporated into the existing network code modification procedures.

The proposed definitions within paragraph 24 of SSC A11 deal with “small participants” and in particular define how small Shippers / Suppliers are to be identified. The definition of less than 1 million supply points is consistent with the definition used elsewhere (e.g. within the Supply Point Administration Agreement) but we would question how this has been justified as being suitable within UNC governance. Any Shipper with a market share of less than approximately 4.2% would qualify as a “small Shipper”. Out of the 52 Shippers (by licence) that have a domestic portfolio within our network, 46 of them would qualify as “small Shippers”. We do not believe that it would be appropriate for almost 90% of Shippers to be classified in this way.



The definitions for small participants also refer to the Gas Transportation Database which we do not believe is referred to elsewhere within our licence. We would suggest that any reference to supply point counts, whether it be in licence or within the UNC, make reference to the Supply Point Register as defined in UNC TPD Section G 1.9.2.

### **Charging methodologies**

#### **Changes to Standard Condition 4B (SC 4B) (Options 2 and 3)**

We do not believe that it was made clear in the initial proposals that the ability for 'affected parties' to raise modifications to charging methodologies applied to both transportation and connection charging methodologies and for that reason we did not make any comment on connection charging within our response. Please accept the comments provided below as supplementary to those provided in our response to the initial proposals.

We also made reference earlier in this response to our concern around the lack of inclusion of the iGT UNC within this review and, in relation to SC 4B, the lack of engagement with iGTs. SC 4B is one of the few remaining Standard Conditions that applies equally to all Transporters (both DN and iGTs) and would require a new Standard Special Condition to be created if this was to change. As Ofgem have clearly stated that the iGT UNC is not subject to this review we do not believe it appropriate, even if accounted for in the final proposals, for SC 4B to be within scope as the iGTs would not have had sufficient opportunity to respond to the consultation. It would also be unreasonable to make changes to some Transporters obligations under SC 4B and not others, therefore this should be removed from the scope of the review until an appropriate consultation exercise is conducted.

It is also important to note that our 4B connection charging methodology contains information over and above the requirements specified with SC 4B. The 4B statement has been developed over a number of years, with considerable input from Ofgem, and we do not believe it would be appropriate for the existing arrangements to change. There has been no evidence whatsoever provided to support the premise that the existing governance arrangements under SC 4B are in any way detrimental to Shippers or any other affected parties.

As changes to SC 4B have not been discussed in any of the previous consultations, we have not carried out a detailed review of the proposed licence drafting under either option 2 or 3. We would welcome further discussions with Ofgem on this matter prior to the issuing of the Final Proposals if it was felt this would be beneficial.

#### **Changes to Standard Special Condition A5 (SSC A5) (Options 2 and 3)**

As we have stated in our previous consultation responses, we are not supportive of either option 2, 3 or 4 and believe that the existing arrangements (option 1) are the appropriate governance arrangements for our charging methodology. Since network sales the transporters have put in place the Distribution Charging Methodology Forum (DCMF) to facilitate industry discussion and consultation on transportation charging matters. The DCMF has also led to modification proposals being developed and implemented that require



transporters to publish financial information allowing Shippers to better manage future charges and the associated impacts on their organisations.

The desired changes that are proposed by option 2 allow for 'modification proposals' that are not formal modification proposals as defined in the modification procedures under SSC A11, to be proposed by affected parties. The licence drafting requires that procedures are developed to allow for the making of such modification proposals and the administration of them. These proposed procedures have the potential to create an unnecessary administrative burden on all parties and be of detriment to the existing collaborative arrangements.

We believe that transporters are best placed to decide upon the most suitable methods to ensure that charges remain targeted and cost reflective and should remain in control of this process. This does not prevent any Shipper, or affected party, from raising matters with the transporters for consideration. To allow for affected parties to raise such modification proposals will inevitably lead to proposals being put forward that are of commercial and financial benefit to a particular Shipper / Supplier. This would not be consistent with our existing licence obligations to ensure charges are cost reflective and borne by those parties that incur them (and in turn promotes effective competition).

We would welcome further discussion on these matters, both with industry participants and the Authority, prior to the Final Proposals being issued in January 2010.

**APPENDIX 1 – WWU RESPONSE TO CODE GOVERNANCE REVIEW: GOVERNANCE OF CHARGING METHODOLOGIES: INITIAL PROPOSALS**

Jenny Boothe  
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Ofgem  
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9 October 2009

Dear Jenny,

**Code Governance Review: Governance of charging methodologies: Initial proposals**

In response to this consultation we summarise our main points below and provide answers to the specific questions within the consultation document as Appendix 1.

**Governance and Cost reflectivity**

You will be aware that gas distribution network operators have developed the “Distribution Charging Methodology Forum” with the specific aim of ensuring that charging methodologies are more understandable and accessible to users. We believe this governance approach provides the appropriate accessibility and influence for users, avoiding undesired consequences of increased uncertainty, administration and regulatory cost which the consultation acknowledges options 2, 3 and 4 may bring.

The network operator has a Licence obligation to ensure that charges are cost reflective. Network operators have a very good understanding of their own cost bases and cost drivers and accordingly are aware of the costs of undertaking certain activities. The network operator is in a unique position to impartially determine appropriate charging to reflect underlying cost.

**Stability and predictability**

A key message from the Charging Methodology Forum is that users value stable, predictable and transparent charges. Options 2, 3 and 4 will, in our view, introduce uncertainty for charges by user category.

**Qualitative and Quantitative Analysis**

We believe that the cost benefit analysis provided within the consultation is subjective and inconclusive and in particular makes an inappropriate assumption that reductions in capex expenditure will follow changes in charging methodology.

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

Yours sincerely,



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## **Appendix 1**

### **CHAPTER: THREE – INITIAL QUALITATIVE AND QUANTITATIVE ANALYSIS OF IMPACTS**

#### **Question 1: Do you agree with the output from the assumptions made within the quantitative analysis undertaken?**

The analysis does not specify how the savings will be achieved other than to make the assumption that the network users will target their investment in areas which impose the lowest cost to the network owners, resulting in lower charges to them and reduced capital expenditure to the network owners.

Our charges are based on the network as a whole. We do not produce charges for individual locations within the network. Locational charging cannot currently be achieved as we do not collect costs that align to this methodology.

We therefore do not see how the analysis and conclusions drawn regarding implementation of options 2, 3 or 4 are applicable to WWU's circumstances.

#### **Question 2: Are there any factors that you believe should have been considered in this analysis?**

Giving users the ability to propose changes to the charging methodologies of network operators that may potentially, whilst not the aim of the consultation document, result in charges that are less cost reflective than currently used introduces additional financial risk to networks not currently reflected in network WACC. If mechanisms were introduced, there should be safeguards to prevent methodologies that are not objectively cost reflective.

### **CHAPTER: FOUR – FURTHER PROPOSALS**

**Question 1: Which governance Option do you consider is the most appropriate for charging methodologies?**

We strongly recommend that for gas distribution we retain the status quo. For gas distribution there has been no evidence provided of how the current regime is detrimental to Users or customers or any quantitative or qualitative evidence to show benefits of the other options.

**Question 2: Do you agree that we should initially focus on gas and electricity transmission charges, with gas distribution potentially to follow as a second phase?**

Each energy sector has evolved from a different start point and has different challenges. We do not believe any change from the status quo is supported within gas distribution. We acknowledge the different challenges in the different sectors and therefore understand and agree the focus in the other sectors.

**Question 3: Do you agree that annual/biannual change and implementation windows are the most appropriate mitigation measures to progress going forward for all the options?**

Any move from the status quo could potentially lead to a flurry of modifications which would place a significant burden on the networks and the central agency. In view of the time taken to consult with our customers, and the possible requirement to carry out impact assessments, we would prefer an annual change. The feedback we have received from users indicates a preference for annual changes to charges, where possible, to reduce volatility to them and the end consumers.

We stress again, that we believe the arrangements within gas distribution provide appropriate arrangements for participants to discuss with us any issues and concerns they have regarding any methodology changes. We encourage this debate and we make every effort to provide them with the information they require to make informed decisions.

**Question 4: Do you consider a 3 or 4 month window to be sufficient time to consider modification proposals? Please indicate your preference for either 3 or 4 months.**

Our preference would be for a 3 month window although, as stated earlier, we feel we have sufficient processes in place to ensure that the status quo is the most efficient way of managing methodology changes.

**Question 5: Do you agree with our approach to defining "affected parties" who would be entitled to raise modification proposals?**

We agree that those parties affected by the charging methodologies should have the right to challenge and debate with us their concerns regarding any issues arising from those methodology changes. As stated earlier believe we have the appropriate forums and processes in place to achieve this. We are not supportive of "affected parties" raising modification proposals predominantly because those "affected parties", by their very nature, will not be impartial bystanders and may well pursue measures which promote their causes to the disadvantage of other users. The network owners are impartial to the way in which charges are levied. We simply have allowed income which has to be recovered in the most cost reflective manner in accordance with the requirements laid down by Ofgem.



**APPENDIX 2 – WWU RESPONSE TO PROPOSED LEGAL TEXT FOR ENVIRONMENT  
AND CODE OBJECTIVES AND FOR THE “TIMING-OUT” OF CODE MODIFICATION  
PROPOSALS**

Mark Feather  
Director, Industry Codes and Licensing  
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29<sup>th</sup> July 2009

Dear Mark,

**Review of Industry Code Governance – Environment and Code Objectives**

Thank you for the opportunity to comment on your letter published 16 June 2009 that sets out Ofgem’s proposals to issue formal licence modification consultations relating to code objectives and the inclusion of the assessment of environmental impacts of modification proposals.

This response reflects the views of Wales & West Utilities Ltd and we are responding in our role as a Gas Distribution Network (GDN) that is party to the Uniform Network Code (UNC). Our comments are made predominately in relation to the UNC unless otherwise stated.

We responded to the Ofgem consultation issued in November 2008 and our position on this matter has not changed. We agreed with Ofgem that the existing legal framework, namely the provisions within Standard Special Condition (SSC) A11 of the gas transporter licence and the provisions within the Uniform Network Code (UNC) Modification Rules, are already sufficient.

Both SSC A11 and the UNC Modification Rules enable, and in our opinion require, industry participants and UNC Panel members to take account of the impacts of the implementation of Modification Proposals on Green House Gas (GHG) emissions.

We also agree with the Ofgem view detailed in the Final Guidance document; that we have the ability to assess the economic impact of GHG emissions by placing a financial value on it using mechanisms such as the shadow price of carbon under the European Union Greenhouse Gas Emission Trading Scheme (EU ETS). This financial impact is then considered along the existing relevant objective of "*the efficient and economic operation of the pipe-line system*" (SSC A11(1)(a)&(b)).

The existing framework does not limit the impact of UNC Modification Proposals to WWU or to the gas industry. Industry participants are required to take into account "*the implications of the implementation for other relevant persons...*" and is in no way limited to UNC signatories. Therefore if a UNC Modification Proposal has a direct environmental impact this obligation already requires consideration of those issues on a wide basis, rather than just being limited to the licensee.

As with GHG emissions, there are very few, if any, examples of where a UNC Modification Proposal will have "broader environmental impacts". For example, there may be occasions when a UNC Modification Proposal relates to a gas facility that, during construction or operation, may have such impacts. However, it is unlikely that these impacts will be as a direct result of the actual Modification Proposal and we would expect these matters to be considered by the appropriate local / national planning and environmental regulations.

Although we do not envisage many, if any, future Modification Proposals requiring such environmental impact analysis, we do recognise that the appropriate mechanisms need to be in place should the need arise. This matter has been discussed at the UNC Governance Workstream and several options for how this could be achieved have been considered. We believe, as this is already a requirement on UNC parties, that the modification process should enable such analysis to be incorporated. This could be achieved by simply amending the UNC Modification Proposal template to include any environmental impacts that have not been included in the assessment against SSC A11.1(a)&(b) of our gas transporter licence. In summary, we do not believe that a licence modification is appropriate and that this matter should be resolved within the UNC governance framework.

We would also like to take this opportunity to raise our concern that when considering this matter Ofgem have chosen to ignore the iGT UNC and the corresponding Standard Licence Condition 9 of the gas transporters licence. In this case we do not believe these proposed changes are necessary for either gas code but see no reason for the exclusion of the iGT UNC from this process.

***Suggested legal text***

The proposed licence modification to paragraph 15 of SSC A11 of our gas transporter licence seeks to insert an additional sub-paragraph to 15(a)&(b). The letter states that:

*"the licence modifications are intended to clarify the position that panels and industry, where relevant are required to take into account the impact a code modification may have on the level of GHG emissions in the environment, when assessing such modification against the relevant code objective governing efficient and economic network operation."*

The proposed insertion of the new paragraph 15(a)(iv) is:

*"including an assessment of whether and if so the extent to which a modification proposal would better facilitate the achievement of the relevant objectives, such assessment to include, where applicable, an assessment of the financial impact of green house gas emissions on society;"*

The proposed legal text does not seem aligned with the intent of the letter. The relevant code objective governing the efficient and economic operation of the network is contained within paragraph 1(a) of SSC A11 and, in our opinion, all Ofgem seek to do is to clarify that GHG emissions assessment should form part of this.

The proposed sub-paragraph inserts a new, and potentially duplicated, requirement for transporters to include an assessment of whether, and if so the extent to which, a modification proposal would better facilitate achievement of the relevant objectives within the notice given

to the Authority under paragraph 15(a). The Final Modification Report, issued by the Joint Office on behalf of the Transporters, will summarise the proposer's view, and any views received within representations, relating to whether the proposal will better facilitate achievement of the relevant objectives.

We hope that this response is helpful to you and would welcome any further discussion on this matter. In the meantime, if you have any questions that we can assist you with then please either contact me or Simon Trivella (contact details below).

Yours sincerely,



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**WWU response to proposed legal text for the “timing-out” of code modification proposals**

Mark Feather  
Director, Industry Codes and Licensing  
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9 Millbank  
London  
SW1P 3GE

26<sup>th</sup> June 2009

Dear Mark,

**The “timing-out” of code modification proposals**

Thank you for the opportunity to comment on your open letter published 13 May 2009 that set out Ofgem's proposals for the “timing-out” of code modifications. This response reflects the views of Wales & West Utilities Ltd and we are responding in our role as a Gas Distribution



Network (GDN) that is party to the Uniform Network Code (UNC). Our comments are made predominately in relation to the UNC unless otherwise stated.

We have set out in our response our comments on the issues raised in your open letter, our views on the 3 options and have given comments on the proposed changes to Standard Special Condition A11 of our gas transporter licence.

### **Flexibility to address problems early in the process**

We agree with the respondents to the November 2008 consultation that stated Ofgem can already influence the implementation timescale of a modification proposal. The majority of UNC modification proposals are discussed within industry meetings and specifically by the modification panel. The development and implementation timescales are often included within the modification proposal and the suitability of them discussed (although they are not binding).

If at anytime during the process the proposer, a Code party, or Ofgem have concerns about meeting the suggested timescales there is the opportunity to address this. Issues are often resolved by either amending the proposed timescales or, where this is not possible, additional ad-hoc workgroup or modification panel meetings can be arranged. We believe that the current UNC modification rules are sufficiently flexible to address problems early on in the process.

### **Incentives on the Authority to make timely decisions**

As the UNC modification process does not have decision by dates, or have set implementation dates for modification proposals, we do not believe it would be appropriate, or possible, to give the Authority extra powers in this area. We also recognise that the Authority does have a Key Performance Indicator for making modification proposal decisions and believe that this is a sufficient measure. The Authority has recently begun to publish indicative timescales for making modification proposal decisions. We welcome this initiative as we believe it adds a degree of additional transparency and efficiency to the modification process.

### **Increased regulatory risk and uncertainty**

Although a number of respondents to the previous consultation had concerns in this area we do not believe it to be such an issue. A UNC modification proposal does not contain a set implementation date (unless the date forms part of the legal text) and we do not believe this presents any code party with significant regulatory risk or uncertainty. Implementation dates are notified by the Transporters and a number of factors are taken into account when formulating such dates.

Where a change has system implications for the Transporters (e.g. UK Link) or for a User (shipper) then the development and implementation of such changes need to be considered. For UK Link related changes the modification proposal will be discussed by the UK Link Committee and, in most cases, a decision on implementation is agreed upon.

Where a modification proposal has no impact on systems, and is not related to a date specific event, the implementation date will usually be within a matter of days following the direction from the Authority to implement the modification proposal.

The Uniform Network Code Committee (UNCC) meets on a monthly basis and has a standing agenda item “implementation matters”. Any issues arising in relation to implementation dates can be discussed at this meeting in an attempt to find a suitable resolution. Although they are not a committee member, the Authority is invited to, and participates in, each UNCC meeting. This is an opportunity for the Authority to provide any necessary guidance whilst also providing comfort to code parties that any concerns are addressed and thus reducing the potential for regulatory risk.

***The validity of the industry analysis***

The occasions where Authority decisions on modification proposals take an excessive period of time are very rare. We therefore do not believe this is of great concern in relation to the UNC. If industry analysis does need to be re-assessed we do not believe that this would create a significant burden on the industry and is unavoidable if the decision to be taken by the Authority is reliant upon it.

***Previous Authority decision on modification proposal P93***

As this relates to a BSC modification proposal we have no additional comments to make on this.

***Consultation***

As the UNC modification process does not utilise the concept of decision dates we do not believe this is, currently, an issue for UNC parties.

***Interaction with the Codes Governance Review***

We have concerns that this matter appears to be being progressed in isolation to the Codes Governance Review (CGR) proposals for “sending-back” and “calling-in” modification proposals. As the issue around “timing-out” is not currently a ‘gas’ related issue we have concerns that the proposed licence changes contained within your letter will not have fully been considered by UNC parties. If there is the potential for further proposed changes to SSC A11 as a result of the CGR then it would seem more sensible to progress these as a single consultation.

***Ofgem’s proposals – Options A, B & C***

As we have set out above, the concept of “timing-out” does not exist within the UNC modification process. We do not see that any of the 3 options that you have set out in your letter are appropriate for inclusion within the UNC.

For information, the process for establishing Implementation Dates (the date from which a modification becomes effective) is set out within paragraph 9.7 of the UNC Modification Rules (as set out below).

*9.7 Modification*

- 9.7.1 *The Transporters shall modify the Uniform Network Code or, as the case may be, the Relevant Transporter shall modify the relevant Individual Network Code in accordance with each consent given and each direction made by the Authority.*
- 9.7.2 *The Transporters shall, as soon as reasonably practicable, notify each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any) of each Modification. Each such notice shall specify the text of the Modification and the date upon which the Modification shall become effective and may provide (for the purposes of information only) an explanatory note (which note should not be relied upon) in respect of the Modification. Each Modification shall become effective upon the date specified in the relevant notice. Having so notified each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any), the Transporters may, with the agreement of the Authority, notify all Users, all Transporters, Members, each Third Party Participant and Non-Code Parties (if any) of any amendment to the date specified in the earlier notice, and the date specified in any such notice shall be the date upon which the relevant Modification shall become effective.*

These rules set out the process for the Transporters to notify industry participants **after** a direction has been given by the Authority. It also allows for an implementation date to be amended, subject to the agreement of the Authority, if necessary. We believe these arrangements offer the appropriate level of governance for implementation dates and should not be altered without suitable discussion and consultation within the UNC framework.

We would also like to raise our concern that this “timing-out” issue has been considered across the BSC, CUSC and UNC without much consideration for the differences in the current arrangements. We appreciate that it can be advantageous to have consistent arrangements across certain codes but this should only be when it is appropriately justified.

We are also concerned that when considering such matters that Ofgem have chosen to ignore the iGT UNC and the corresponding Standard Licence Condition 9 of the gas transporters licence. In this case we do not believe these proposed changes are appropriate for either gas code but see no reason for the exclusion of the iGT UNC in this process.

***Suggested legal text***

The suggested licence modification to paragraph 15 of the SSC A11 requires the creation of a defined term “Implementation Related Dates”. This new definition relates to any date that is set out within a notice (this is usually the Final Modification Report) given under paragraph 15 from the Transporters to the Authority. As explained above, the implementation dates relating to a modification proposal are not confirmed within a notice until after the Authority decision has been made. Therefore this proposed definition would be meaningless within SSC A11. The associated proposed changes with paragraph 15 would therefore not address the issues that have been raised in this open letter or in the previous consultation.

We would welcome further discussion on this matter and if you have any questions that we can assist you with then please either contact me or Simon Trivella (contact details below).

Yours sincerely,



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