



energynetworks
association

Mark Cox
Associate Partner, Industry Codes and Licensing
Ofgem
9 Millbank
London
SW1P 3GE

12 May 2010

Dear Mark,

Code Governance Review – Licence Drafting Consultation

Thank you for the opportunity to comment on the proposals for the changes to licence conditions that are necessary to implement your proposals for the Code Governance Review. I am writing this response on behalf of ENA's Commercial Operations Group.

We have not responded directly to the detailed questions raised in the consultation but we would like to raise the following issues with you which we would like you to consider before the statutory consultation is issued.

The Settlement process is important to DNOs both in terms of DUoS charging and losses reporting, increasingly so following the DPCR5 Final Proposals. As DNOs, we are trying to increase our participation and influence in the Settlements process where we believe we can assist in improving the overall quality and robustness of the data to the benefit of all parties. With regard to the Final Proposals on Code Governance we have a number of possible concerns in respect of self governance.

There has always been an issue for distributors as BSC Parties in that the Applicable BSC Objectives do not explicitly take account of distributors' licence and other legal obligations. The workaround adopted since go live in 2001 has been to ask the Authority to take into account their wider statutory obligations when deciding the outcome of Modifications that affect distributors. The difficulty with this approach is that the BSC Modification Group and Panel assessments, on which the Authority relies, are bound by the Applicable BSC Objectives. Thus Distribution matters (for example DUoS billing) have been found to be outside the vires of the BSC and full

assessment has not been possible, which in turn results in the Authority not having the benefit of a full industry assessment before making a decision.

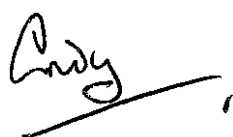
Ofgem's Governance Review Final Proposals envisage the BSC Panel taking 50% of the decisions that are currently exclusively within the gift of the Authority. Distributors might find themselves appealing decisions to Ofgem on a regular basis, which would not be satisfactory. The workaround mentioned in the previous paragraph no longer seems appropriate in the new circumstances. In order to resolve this issue, the following options are possible.

- Amend SLC C3 3(a) of NGET's transmission licence to read "the efficient discharge by all BSC Parties of the obligations imposed upon them by their licences". An alternative may be to make SLC C3 2(b)(ii) more explicit to cover distribution charging between BSC Parties, though this could be interpreted in this manner already.
- Amend SLC C3 3(b) to include reference to distribution as well as transmission.

As 50% of decisions are expected to be made by the BSC Panel, we would also seek a place for a Member with full voting rights, appointed by the distributors, mirroring the appointment of a Panel Member by the Transmission Company. This could use the same process for appointment of a distribution representative. We recognise that Panel Members are required to be impartial and cannot act as a representative but this approach would ensure that the interests of distribution companies, which will impact on customers generally, are not over looked in the decision making process. We recognise that we could propose a BSC Modification to this effect but it would be difficult to get this change through without the changes to the BSC objectives outlined above.

I hope you find these suggestions helpful and that you will be able to include these in the final statutory consultation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Andy', with a long horizontal flourish extending to the right.

Andy Phelps
Regulation Director