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Dear Mark

**Codes Governance Review: Code Administration Code of Practice open letter consultation (ref: 45/10)**

Thank you for the opportunity to respond to Ofgem's open letter consultation on the Code Administration Code of Practice. This response is provided on behalf of National Grid Electricity Transmission plc (NGET) and National Grid Gas plc (NGG). NGET owns the electricity transmission system in England and Wales and is the National Electricity Transmission System Operator. It is responsible for administering the electricity Connection and Use of System Code (CUSC), the Grid Code and the System Operator – Transmission Owner Code (STC). NGG owns and operates the Gas Transmission System and also owns and operates four of the gas Distribution Networks. In association with the three other gas Distribution Network Operators it also jointly provides for the administration of the Uniform Network Code (UNC) Governance arrangements through the Joint Office of Gas Transporters.

National Grid was one of the three code administrators which drafted the original Code Administration Code of Practice (CoP) during the summer of 2009, with Ofgem's involvement, and subsequently presented the draft to the Code Administrators Working Group (CAWG) in autumn 2009. Throughout the process of developing the principles to be included within the CoP and drafting the document itself and subsequently during the CAWG meetings, it was agreed by all parties involved that the status of the CoP would be voluntary and that adherence to the CoP would be measured through some form of performance evaluation mechanism. Ofgem noted that if the results of those evaluations showed that the code administrators were not adhering to the agreed principles within the CoP, the status of the CoP may be reconsidered and adherence may become mandatory. We note that Ofgem's Final Proposals and associated licence drafting have changed the status of the CoP to make adherence mandatory from the outset.

While we support the concept of a Code Administration CoP and the general principles contained within it, we have a concern that it is not sufficiently clear from the licence drafting and the CoP whether the CoP or the relevant code takes precedence. We have included extracts from the draft CoP, issued on 31<sup>st</sup> March 2010, the indicative licence drafting issued on the same date and additional guidance circulated by Ofgem on 6<sup>th</sup> May 2010 in appendix 1 to this letter to illustrate this point.

We are also concerned that, as a licensee, we are uncertain as to the repercussions of a lack of adherence to the CoP by the code administrators, given that the requirement to be consistent with the principles set out in the CoP is now proposed to be contained within our licences. If the intention is that only the high level principles should be binding, it will be necessary to be able to identify those parts of the Code of Practice that constitute the high-level principles. Also, we do not think this intention is reflected in the licence drafting.

In summary, we consider that the proposed change in status of the CoP from voluntary to mandatory is inappropriate as it creates obligations on licensees, but does not create the procedural protections that properly accompany licence modifications under the Gas and Electricity Acts. In order to protect the code administrators, and the licensees they are acting on behalf of, from the requirement to implement changes to the Code of Practice (and therefore also the relevant code) that may not have been subject to proper consideration, it would be necessary to propose a more rigorous change process for the Code of Practice, more akin to the existing code modification processes.

With regard to the proposed Key Performance Indicators (KPIs), we are open to the introduction of Code Administration KPIs, having voluntarily introduced them for the CUSC Amendments Panel in October 2009; however we recognise the difficulty in devising meaningful KPIs which drive desired behaviours. We therefore welcome Ofgem's confirmation that it will not require targets to be set for the first year of implementation of the Code of Practice and KPIs.

We have included our responses to the specific questions posed by Ofgem in Appendix 2 to this letter.

If you wish to discuss this further, or have any queries regarding this response, please contact me, Mark Ripley on 01926 654928 ([mark.g.ripley@uk.ngrid.com](mailto:mark.g.ripley@uk.ngrid.com)) or Richard Court on 01926 656146 ([Richard.court@uk.ngrid.com](mailto:Richard.court@uk.ngrid.com)).

Yours sincerely

*[By e-mail]*

Paul Whittaker  
UK Director of Regulation

## Appendix 1: Concerns over status of Code Administration Code of Practice

Our concerns regarding lack of clarity on the status of the CoP and its precedence (or lack of) over the relevant code are based on a number of statements in different publications.

### Code of Practice

The Introduction of the draft CoP (on page 3) published on 31<sup>st</sup> March 2010 states that the relevant code should take precedence over the CoP. However, this is inconsistent with the licence drafting which states that codes shall be consistent with the CoP.

*"Where differences exist between the relevant codes and this Code of Practice, the relevant code will take precedence, though it is anticipated that licensees and other code parties will take all reasonable steps to ensure the two are aligned."*

### Ofgem Guidance

However, subsequent guidance issued by Ofgem on 6<sup>th</sup> May 2010 appears to suggest that the CoP may have precedence over the relevant code:

*Question: if a modification to one of the principles of the CoP results in it being in conflict with the code would someone have to raise a modification proposal to that code?*

*Response: Yes, a modification would need to be made to the code to bring it in line with the CoP. Although, as the principles are high-level the change would have to be pretty substantial for it to influence the code. Ofgem also has to approve any such changes to the CoP and would decide whether such a fundamental change was appropriate.*

### Indicative Licence Drafting

The licence drafting, issued on 31<sup>st</sup> March 2010, makes reference to both the relevant code and the Code of Practice in the same provision, without appearing to give one precedence over the other. As an example, please see the proposed Condition C3, paragraph 4b(iv) below; this drafting is replicated in the provisions for both the CUSC (C10, para 6, b.(iv)) and the UNC (SSC A11, para 10, b.(i)):

*"(iv) for the development and consideration of any alternative modification which may, as compared with the proposed modification, better facilitate achieving the applicable BSC objective(s), [provided that:*

*- the alternative proposal is made during the [workgroup stage] of the consultation **(as described in the Code of Practice and as further specified in the BSC)**; and"*

The proposed drafting does not clarify which, of the relevant code or the Code of Practice, takes precedence in the event that the detail contained within the code provisions differs from the principle set out in the Code of Practice. While the stated intention is that the Code of Practice principle and relevant code provision should be consistent, it is possible that where a change is proposed to one document, there will be a time delay in the other document "catching up", particularly given that the documents have different owners and different change processes in place. Therefore, it would be helpful to the industry to know, where differences arise, which document takes precedence.

## **Appendix 2: Responses to questions in Ofgem consultation**

### **1. Do you agree with each of the principles listed in the CoP?**

We agree with the high-level principles set out in the CoP. We note that the licence obligations in this area refer only to the "principles contained in the Code of Practice"; our interpretation therefore is that the licence obligation is not a requirement to adhere to every suggested method of fulfilling the principles, as set out in the bullet points below the principles in the draft CoP published on 31<sup>st</sup> March 2010. The CoP started life as a guidance document and we would be concerned if, through the licence, it lost the flexibility it was designed to have in suggesting best practice. However, if it is genuinely the intention that the licence only requires adherence to the high level principles, the licence and the CoP will need to be drafted in such a manner as makes this clear and identifies clearly the elements of the CoP that constitute the high-level principles.

### **2. Is the description of the change process in the CoP sufficiently detailed?**

We have assumed that this question refers to the "Common Modification Process" set out in Annex 1 of the CoP (on page 13 of the version published on 31<sup>st</sup> March 2010), rather than the process to change the CoP itself. We consider that the description of the change process in Annex 1 of the CoP is sufficiently detailed. Given that there will be an interaction between the process set out in the CoP and in each relevant code, we would not wish there to be any more detail in the CoP as this would cause further confusion between the code modification processes set out in the relevant code rules and the processes described in the CoP.

### **3. Is there anything missing from the CoP that you feel should be covered?**

We are not aware of anything missing from the CoP.

### **4. Do you agree that the CAs should be required to report on their KPIs?**

We agree that the CAs should be required to report on their KPIs and that an annual process would appear suitable. However, we suggest that any reporting requirements should be subject to review and change once the processes have been embedded to ensure their suitability.

### **5. Do you agree that those KPIs should be set out in the CoP?**

Given the change in status for the CoP from voluntary to mandatory, we suggest that it should be clear what status the KPIs have during the initial period of development and reflection on the suitability of those KPIs. As National Grid represents a number of the impacted licensees, we need to ensure that we are able to fulfil our licence obligations which, in certain cases, for the Code of Practice will be undertaken by the code administrators on our behalf.

### **6. Should the results of the KPI reporting influence future revisions to the CoP?**

We consider that the KPI reporting would influence, to a certain extent, future revisions to the CoP. However, in line with our response to question 4 above and comments we made at the Ofgem April workshop, we consider that a period of embedding will be required for the KPIs and that refining them will need to be an iterative process. It could be that the initial results of the KPI reporting do not require a change to the CoP principles, except for changes to the KPIs themselves.

### **7. Do you have any comments or suggestions on the proposed KPIs?**

We raised a number of issues on the proposed KPIs, published on 31<sup>st</sup> March 2010, at Ofgem's Code of Practice workshop on 29<sup>th</sup> April 2010. For ease of reference, we have reproduced them below. As code administrator for the CUSC, we welcome the opportunity to discuss the KPIs with Ofgem and the other code administrators and affected parties, in order to develop a set of meaningful and measurable KPIs. We recognise that this will be an iterative process and therefore we welcome the comments made by Ofgem at the April workshop, and subsequently in the notes circulated on 6<sup>th</sup> May 2010, that the concept of setting targets would be deferred for a year following implementation of the Code of Practice and the KPIs.

## **Quantitative Measures**

### **Quality of Assessment**

- We agree that the number of reports "sent back" by the Authority would be a useful measure, although it would be useful if the figures were accompanied by a summary of reasons for the sending back;

- We are not certain that the "number of final decisions in line with panel recommendations" should be a quantitative measure; rather it would be better for there to be some commentary on why the final decision and the panel recommendation did not match. We think this would provide more meaningful guidance to the industry. There may be a good reason why the two decisions were different (the Authority's wider statutory duties, for example) which would not be reflected were this merely a quantitative measure.

#### ***Effective Communication***

- We do not consider that "number of respondents to consultation" should be subject to an "upwards" target. It is not always easy for code administrators or proposers of code modification proposals to encourage large numbers of responses, for a variety of reasons. This was explored during Ofgem's April workshop and it was noted that certain modification proposals will naturally attract more interest than others where they have a wide potential impact across the industry; other changes, for example, "housekeeping" changes, are often not considered to be worth taking the time to produce a response as they are straightforward. Some potential respondents are put off submitting a response as they feel that it will not make a difference to the final outcome and others are simply not able to submit a response due to time or resource constraints.
- It was commented during the Ofgem April workshop that introducing a measure requiring a reduced "percentage of bounced or unsuccessful emails" could result in a perverse incentive on code administrators which encourages deletion of unsuccessful email addresses from their distribution lists, without spending time investigating the reason for the bounceback. We understand this concern and agree with other comments made at the workshop that the proposed measure does not place any incentive on interested parties to play an active role in keeping the code administrator informed of changes to their contact details, as suggested in Annex 2 to Ofgem's consultation document

#### ***Efficient Administration***

- We agree with proposed KPIs in this area. For information, we note that the CUSC Amendments Panel, in reviewing its own recently-established KPIs in this area, requested that measures of average lead times relating to the code modification processes were designed such that they measured each stage of the process. For example, from the date of raising the proposal to the date the final report is submitted to the Authority; from the date the report is sent to the Authority to the date a decision is received; and from the decision date to the date of implementation.

#### **Qualitative Measures**

##### ***Critical Friend***

We agree with comments made at the April Ofgem workshop that the qualitative measures would usefully be expanded, in favour of the quantitative measures, to give the industry a better idea of what works well within code administration processes and what could be improved. This could then inform the review process for the Code of Practice.