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Dear Declan

**Industry Code Governance Review – second phase (ref: 60/12)**

Thank you for the opportunity to respond to Ofgem's "second phase" Code Governance Review consultation. 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.

We have addressed the questions posed in your consultation in the appendix to our letter. We have made specific comments in relation to the industry codes that we are involved with, whether as signatory or code administrator. Due to the differences that exist between the industry codes, we have split our comments between the electricity CUSC, Grid Code and STC and the gas UNC.

If you wish to discuss this further, or have any queries regarding this response, please contact me or Alex Thomason on 01926 656379.

Yours sincerely

*[By e-mail]*

**Paul Whittaker**  
**UK Director of Regulation**

## **Appendix: Responses to questions in Ofgem letter**

***Question 1: Has the requirement on code panels to provide rationale for their recommendations been effective in improving analysis to support code changes?***

**CUSC response:**

Detailed records of individual Panel Members' votes have been recorded in CUSC Modification Reports since November 2009, so the revised obligation has not made a noticeable difference.

**UNC response:**

The reasons for a Panel recommendation on whether or not a Modification Proposal should be implemented are now recorded in the Final Modification Report. The Panel's reasons for their recommendations are based on the Relevant Objectives. We believe this change has ensured the Panel recommendations are robust and transparent.

***Question 2: Has the concept of "critical friend" been effectively embraced by the Code Administrators (i.e. an obligation to assist interested parties, particularly smaller participants/ new entrants and consumer groups)?***

**CUSC response:**

As Code Administrator, we feel that we have embraced the "critical friend" concept and implemented the Code Administration Code of Practice (CACOP) principle. We regularly seek feedback from users of our service through National Grid's customer survey and on an ad-hoc one to one basis and we try to implement improvements identified by users of our service.

**UNC response:**

In respect of the Joint Office of Gas Transporters, we consider that the concept of "critical friend" has been effectively embraced.

Following National Grid's sale of four regional gas networks in 2005 the UNC was introduced to mitigate the need to have each network operating under the terms of its own network code. Previously National Grid acted as the code administrator but the governance process for the UNC was changed to introduce a new code administrator, the Joint Office of Gas Transporters (Joint Office). The Joint Office is independent of all players in the gas market and is constituted in accordance with the gas transporters' licence conditions.

The heart of the role of the Joint Office is the efficient administration and governance of the processes for modifying the commercial regime which underpins the GB gas industry. They do this by publishing industry information, primarily through their web site, and by hosting industry meetings. While this service is provided on behalf of the major Gas Transporters, they seek to provide a professional and even handed service to all parties with an interest in the gas industry. The Joint Office continually seeks to improve the service they provide and value any feedback received.

We believe that the implementation of the CGR has further enhanced the accountability of the Joint Office in terms of their quality of service and ensured all market participants are able to engage in the UNC modification process. In particular the Joint Office has provided assistance to proposers of a number of UNC Modifications.

***Question 3: Do you support the Code Administration Code of Practice being implemented under all industry codes, to aid convergence and transparency in code governance processes?***

**Grid Code:**

Following implementation of the original CGR, National Grid undertook a review of the CACOP principles in respect of the Grid Code. We identified a number of improvements to the Grid Code

processes which are summarised in two papers to the Grid Code Review Panel (GCRP) (pp\_10/39, December 2010<sup>1</sup>; pp11/01 February 2011<sup>2</sup>).

The papers aimed to enhance and streamline the GCRP meetings and governance processes and many of the recommendations made in the papers were adopted. A third paper, (pp\_12/17, March 2012<sup>3</sup>), summarised the changes considered and provided the GCRP with a summary of the Grid Code governance process as Appendix 1.

Given the discussions at the GCRP, National Grid does not consider it necessary to fully adopt the CACOP at this stage, however we will continue to keep this under review and propose further changes to the Grid Code governance to the GCRP as we feel appropriate.

#### **STC:**

For the STC, a similar exercise to the Grid Code was undertaken and an initial paper presented to the STC Committee in June 2011. The paper concluded at a high-level that there was no requirement to establish an administrative body called a "code administrator" or recognise the existence of the CACOP within the STC as many of the duties and functions of the "code administrator" were being completed by the STC Committee Secretary.

National Grid presented an updated paper in October 2011 which suggested that, following a review of the CACOP principles, some areas could be further considered. This resulted in National Grid raising a Proposed Amendment for changing some STC terminology to be consistent with other codes and to enable a further consultation on revised text which has had substantial changes made to it (CA048).

National Grid will continue to keep the CACOP under review to identify further areas of best practice which could be implemented. At this point, we do not see a need for the CACOP to be fully implemented for the STC.

#### ***Question 4: Is the self governance criteria introduced by the CGR appropriate and has the implementation of self governance been effectively achieved in BSC, CUSC and UNC?***

#### **CUSC response:**

Since implementation of the self-governance arrangements in January 2011, 20 CUSC Modification Proposals have been raised, of which 3 have progressed through the self-governance route. We therefore feel that implementation of self governance has been effectively achieved in the CUSC, although we note that the percentage of CUSC Modification Proposals to follow this route is below the level originally anticipated in Ofgem's Code Governance Review Final Proposals<sup>4</sup>.

We have also found the criteria to be appropriate to allow Modifications to use the self-governance route, although the criteria are drafted in such a way that they could still be open to a certain degree of interpretation.

From a Code Administration perspective, we think it would be helpful if Ofgem could publish its "guidance on appeal of self-governance decisions" so that the industry has clarity on how to raise an appeal, should the situation arise, including the potential requirement to submit an application form and pay a fee.

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<sup>1</sup> [http://www.nationalgrid.com/NR/rdonlyres/687DDB09-0823-41AD-8D49-4DBAB25CDAF8/44422/pp10\\_39GCRPMeetingGovernance.pdf](http://www.nationalgrid.com/NR/rdonlyres/687DDB09-0823-41AD-8D49-4DBAB25CDAF8/44422/pp10_39GCRPMeetingGovernance.pdf)

<sup>2</sup> [http://www.nationalgrid.com/NR/rdonlyres/6E1B26D6-1661-43D3-8B21-CB07AFA96E7F/45260/pp11\\_01GovernanceofGCRPmeetings.pdf](http://www.nationalgrid.com/NR/rdonlyres/6E1B26D6-1661-43D3-8B21-CB07AFA96E7F/45260/pp11_01GovernanceofGCRPmeetings.pdf)

<sup>3</sup> <http://www.nationalgrid.com/uk/Electricity/Codes/gridcode/reviewpanelinfo/2012/21st+March/>

<sup>4</sup> 1.10. Our suggestion that around 50% of all proposals could follow this path was based on a retrospective assessment of the proposals put to us in a recent 12 month period. (This did not include proposals dealt with under existing self governance mechanisms.) We consider that there is considerable merit in the self-governance process even if the number of modifications that go through this route are lower than set out in our impact assessment.

**UNC response:**

The criteria for assessing what should and should not be considered as a self governance proposal would benefit from further clarity to aid consistency in its application in the UNC. A lack of clarity and consistent application of the arrangements has occasionally led to confusion for both Modification proposers and the UNC Panel Members in regard to how the CACOP and UNC rules should be applied to these proposals.

Whilst further clarity on the criteria would be beneficial, we also see merit in amending the UNC voting rules regarding Self governance proposals so that if a Panel Member (or a constituency – DNOs or Shippers or National Grid Transmission) considers that the proposal will have a material impact on themselves or their customers then the proposal should not be classed as self governance. We would then expect the Authority to review the Panel decision and, where it felt the proposal met the self governance criteria, use their powers to make the proposal self governance.

***Question 5: Do you consider that introducing or increasing self governance in the codes would be beneficial?***

**Grid Code:** As part of the review of the CGR mentioned above, National Grid considered the self-governance arrangements, but concluded in its March 2012 GCRP paper (linked above) that it would not be beneficial to implement a self-governance route into the Grid Code due to the differences in the governance process. In addition, the number of Grid Code issues which require the Grid Code to be modified which may be considered to be self-governance has been typically one or two per annum.

**STC:** The STC review of CGR arrangements in June 2011 suggested three potential options for implementing a form of self-governance but concluded that as only 2 Modifications had followed the CUSC self-governance route at that point, it would be prudent to wait until the process had been fully embedded within the other codes. National Grid considered that STC Amendments should be monitored to see what potentially could have gone through a self-governance process and a cost benefit analysis should be completed prior to making any changes to introduce self-governance.

**UNC/other gas codes:**

The Joint Office KPIs for 2011 provide the following statistics:

- 70 modifications were raised
- 23 (33%) modifications were accepted for self-governance<sup>5</sup>

Given our concerns expressed above and that the self governance arrangements have only been applied to a small number of proposals to change the UNC, we believe it is premature to consider extending these arrangements.

***Question 6: Has the SCR process met with your expectations thus far, in terms of frequency of SCRs, timings and process?*****UNC response:**

In terms of the UNC, the main change made was to prevent a SCR related non-urgent Modification Proposal being raised during an associated SCR period. We feel that these changes are working effectively.

It has always been envisaged that an SCR would be initiated to resolve a major industry issue and therefore we expected that only a limited amount of SCRs would be undertaken at any one time.

We have the following comments to make in relation to the gas Security of Supply SCR:

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<sup>5</sup> The first self governance UNC modification proposal was raised in March 2011, so the arrangements were not in effect for a full year.

- The SCR process initially adopted by Ofgem has been improved to provide greater involvement from the industry;
- The initial proposed SCR timescales have been shown to be very ambitious. Additional time would have allowed for more detailed analysis to be performed and a detailed implementation plan to be produced. That said, we also believe that the final proposals should be implemented as soon as possible to ensure the benefits are realised at the earliest opportunity. Therefore, realistic but challenging timescales need to be set.

***Question 7: Do you consider that Ofgem's guidance in respect of SCRs has been sufficiently clear and detailed?***

**UNC response:**

Yes. The consultation reports clearly explain Ofgem's views and their thoughts on potential solutions. The corresponding workshops have also been open and allowed a good level of debate.