

30th October 2012

Lisa Charlesworth
Industry Codes and Licensing
Ofgem
9 Millbank
London
SW1P 3GE

For the attention of Lisa Charlesworth
Sent by email only

Dear Lisa,

Industry Code Governance Review – second phase

Inexus on behalf of Independent Pipelines Limited “IPL” and Quadrant Pipelines Limited “QPL” welcome the opportunity to respond to the above consultation. This response has been made in light of IPL and QPL’s experience as a signatory to the Independent Gas Transporters’ Uniform Network Code “IGT UNC” and active participant in its administration as a Panel member and development as a work group member. We have summarised our key views below and have responded in detail to those questions which we believe are relevant to the IGT UNC in Appendix 1.

In summary we hold the following views;

- Believe that self governance would be a beneficial addition to the IGT UNC but only where it is used for the purposes of “fast track” changes;
- Do not support “full” self governance as very few modifications would utilise self governance as would have an impact upon consumers and/or competition;
- Are supportive of send back powers being introduced to the IGT UNC;
- Do not believe that it should not be a requirement for the IGT UNC code administrator to be adopt the CACoP though there is merit in certain aspects of the CACoP being adopted on a voluntary basis;
- That there may be issues with the IGT UNC code administrator complying with principle 8 of the CACoP if made mandatory;
- Are not supportive of any changes to the Licence to mandate a critical friend role by the code secretariat as believe this places a disproportionate and unacceptable risk on IPL as a Licence holder.
- Do not believe any changes should be made or mandated until future IGT governance arrangements are known, particularly with the ongoing work around single service provision.

If you have any questions, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read "GH", with a large, stylized loop at the end.

Gethyn Howard
Regulatory Adviser, Inexus Services LTD

Appendix 1

CHAPTER: Two

Question 1: Do you consider that a “fast track” self governance process should be available in the industry codes for minor housekeeping changes?

Yes. A fast track self governance process for minor housekeeping changes would be a welcome addition to the IGT UNC governance arrangements. We also agree that unanimity should be required at the Panel. This response should be viewed in conjunction with question 3 of this chapter which is addressed below.

Question 3: Do you agree that self governance should be introduced into the iGT UNC and STC, and increased in the DCUSA?

In practice the majority of IGT UNC modifications are raised by Shippers and supported on the basis that the modification fulfils relevant objective a “*the efficient and economic operation of the pipe-line system to which this licence relates*” or objective d “*so far as is consistent with sub-paragraphs (a) to (c) the securing of effective competition between relevant shippers and between relevant suppliers*”). When reviewed against the self governance criteria it is arguable that the fulfilment of objectives *a* or *d* would have a material impact upon consumers, competition, security or sustainable development through reduced (or increased) costs that may result in impacts on competition and/or consumers. This is particularly relevant where Shippers raise changes that result in implementation costs for IGTs and IGTs therefore wish for the proposal to progress to Ofgem for final determination. As such it is likely that the majority of IGT UNC modifications will still proceed to Ofgem and would not be subject to self governance. This is likely to continue until a suitable method of cost recovery can be agreed for IGTs and we would question whether resource would be better spent in addressing this issue prior to any “full” self governance changes being made.

Question 9: Do you have any comments on Ofgem’s guidance for discharging self governance appeals (Appendix 7), and on the proposed adjustment to the BSC, CUSC and UNC appeal windows?

Within the section covering the grounds for appeal, it is stated that “*The appeal is not raised for reasons which are trivial or vexatious, and the appeal has a reasonable prospect of success.*” The difficulty with such a requirement is that it is a matter of opinion as to whether an appeal has a reasonable prospect of success and it is therefore questionable whether the drafting in its current form adds anything to the requirements. It may be worth either considering removing the “reasonable prospect of success” text or alternatively amending to read “*and the appellant believes that the appeal has a reasonable prospect of success*”.

Question 10: Do you consider that the ability to appeal a self governance determination should be consistent across all codes?

Yes, on the basis that the framework can be agreed upon between *all* parties consistency would be desirable as would help achieve consistency and transparency across codes.

CHAPTER: Three

Question 1: Do you agree with the proposal to extend the Significant Code Review process to DCUSA, iGT UNC, MRA, SPAA, STC, Grid Code and Distribution Code?

The IGT UNC has not to date been subject to a significant Code Review (“SCR”). It is plausible that it may be so in the future though it is more likely that this would be carried out in conjunction with an SCR of the UNC. It is worth noting that there are potential significant changes to be made to the IGT UNC under IGT039 which if implemented will fundamentally change how areas of the IGT UNC are governed. If IGT039 were implemented, it is likely that the main bulk of operational procedures will be covered off under the UNC rather than the IGT UNC. To avoid duplication of effort, we believe that the IGT039 work should be allowed to conclude prior to any decisions are made on whether to subject the IGT UNC to SCR procedures.

CHAPTER: Four

Question 1: Do you agree that all industry code panels (or their equivalent) should provide substantive reasons for their recommendations/decisions?

As panel members are elected representatives of their constituents, panel recommendations and decisions should be reflective of their constituents’ comments. Such approach ensures transparency of the modification process and ensures that panel members uphold the representative philosophy. Currently the IGT UNC Panel undertakes such role and the final modification report provides an overview of both panel discussion and voting decisions. From an industry perspective it would be beneficial for these principles to be set as best practice to ensure consistency across all Code Panels.

Question 3: Do you agree that the Authority should be able to “send back” final modification reports in all codes, where a deficiency/flaw in the report is identified?

Consistent participation by Ofgem in industry work groups may negate the need for such send back powers as this will enable Ofgem to identify any deficiencies or flaws before the final modification report is sent to Ofgem. Send back powers however may be a useful addition to the modification process as a fall back process in the event that Ofgem are not able to attend all industry modification meetings. Send back powers would therefore be a useful addition as will negate the need for a modification to be rejected purely on the basis of a deficiency and allow it to be further developed in order that Ofgem can make an informed decision.

Question 4: Do you agree with the proposal to require all codes to have regard to and, to the extent relevant, be consistent with the CACoP principles?

Where possible the IGT UNC Code Administrator follows the principles set out in the CACoP and has been undertaken on a voluntarily basis. We view this as a successful addition to IGT UNC governance and that it has been successfully undertaken to date. Should there be a requirement for all codes to be consistent the CACoP principles, there may be issues for the IGT UNC code administrator to comply with principle 8 which requires *“implementation costs to central systems to be produced and consulted on prior to a modification being recommended for approval”*. The main difference between the IGT UNC and UNC is that there are currently 6 IGT parties that would provide costs to implement a change under the IGT UNC compared to 1 under the UNC. Prior to any potential Single Service Provision being in place for IGTs it will be difficult for parties to provide costs in a consistent way that will enable Ofgem to make an informed decision. This would only be possible with a uniform IGT approach to cost provision underpinned by clear guidance on the methodology to be used. We would therefore suggest until the future regulatory landscape is known, more specifically around single service provision, that all codes are not required to adhere to all CACoP principles. In the interim, Code Administrators may wish to voluntarily comply with

the CACoP where it is practical to do so and confirm to Ofgem which areas are being adopted.

Question 5: Do you consider that a requirement on code administrators to fulfil a “critical friend” role should be set out in the relevant licence?

No, we believe that placing Licence obligations for code administration requirements to place an unacceptable risk on Licensed entities. Such an approach will require formal consultation with impacted Licensees and we believe that this would be an inappropriate use of resources when the impacts are taken into consideration. The issue with any Licence requirement approach is that it ultimately places an obligation on a Licensed entity which can only be fulfilled by a 3rd party. Compliance with the requirements of the Code of Practice would then be a matter of interpretation. Should a party believe there to be non-compliance by the Code Administrator, though the corrective action would be on the code administrator, the direct result would be a breach of Licence by the Licensee. Thus, the suggested approach would appear to place disproportionate and unacceptable risk for Licensed entities.

As Code administration is largely a commercial activity it may be in the interests of current Code Administrators to undertake such role voluntarily. The requirement to fulfil a “critical friend” role may therefore be better laid out as a best practice guideline and Code parties can then make arrangements for Code administrators to undertake this. This approach holds a number of benefits when compared to the alternative solution of enshrining the requirements under Licence;

- reduces the administrative burden of amending the requirements of a “critical friend”;
- displaces the risk on the Licence holder.

With regards to the IGT UNC, the code administrator successfully undertakes the role of “critical friend” on a voluntary basis. We see no reason for there to be any changes to mandate such compliance under Licence.

Question 6: Do you agree with the amendments to the CACoP (Appendix 2) and do you consider that the standard process and templates described by the CACoP should have the status of guidance (rather than being mandatory) at this stage?

We have the following comments on the amendments to the CACoP;

Code Administration KPIs

We agree that detailed KPIs should not be set out at this stage.

Standard Templates

We are supportive of the use of standard templates being for guidance only.

Standard Modification Process

We would draw attention to the work group meeting under IGT046DG which is looking at harmonising the UNC and IGT UNC change process. We view this as a positive step in achieving a standardised change process (albeit one that only applies to the gas sector).

Pre-modification Process

There is no formal requirement for a pre modification process under the IGT UNC. The IGT UNC does however host a work group meeting every 6 weeks where Code issues can be discussed. Should a particular area of the Code require a modification, the group may act as a forum for the development and discussion of such modification. On the basis that it is

unlikely a pre modification process will be mandated, we are of the view that this approach is sufficient to fulfil an informal pre-modification process.

CACoP Review Process

We believe that there should be an opportunity for all codes administrator to feed into a review of the CACoP and believe a cross-code forum would be the most suitable approach to achieve this. This would ensure representation of all relevant parties and a formal cross-code forum would provide transparency to such review.

With regards to the status of the CACoP, on the basis that the requirement to comply is not enshrined across all relevant Licences it would seem sensible for the CACoP to hold the status of guidance rather mandatory. This is important as noted in our response to chapter 4, question 4, the IGT UNC would have difficulties in complying with principle 8.

CHAPTER: Five

Question 1: Do you agree with the timetable proposed?

With regards to the IGT UNC, we are of the view that this consultation may be premature due to the current ongoing work and change in the industry. As previously highlighted, IGT039 if implemented will significantly change the regulatory landscape in which IGTs operate. IGT046DG are also analysing the IGT UNC and UNC change processes with an aim of amending the IGT UNC approach to match that of the UNC. As such, we believe that any potential changes to the IGT UNC regarding the Code Governance Review should be delayed until such work has progressed to a stage where it is clear how the IGT UNC will be affected.