

Industry Codes & Licensing
Ofgem
9 Millbank
London
SW1P 3GE

23 November 2012

Dear Sirs,

Re: Code Governance Review (Phase 2) Proposals

Please find below NGN's response to the above consultation. As a Gas Transporter, NGN has already seen significant change as a result of the initial Code Governance Review programme and consider that the extension of this to other codes is a logical next step.

The main impact to us from phase 2 is the proposal to move the governance of the Agency Charging Statement (ACS) into the Uniform Network Code. We believe that this is possible, but careful consideration of how the current non-code services, which are also included within the existing statement, are managed going forward. It is also possible, given the current Ofgem driven Funding Governance and Ownership review of Xoserve, that the ACS will need to undergo change to facilitate the outcome of that review and it would be efficient to carry out any change of governance in this area in a single stage.

Please let me know if you would like any clarification of any aspect of this response. Please note that our response can be regarded as non-confidential.

Yours sincerely



Joanna Ferguson
Network Code Manager

Chapter Two – Self-Governance

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

Yes, having now used the Uniform Network Code (UNC) self governance process for some time it has become apparent that the existing Consent to Modify process seems disproportionate. A fast track self governance process would enable bring minor housekeeping changes in-line with the rest of the governance procedures and allow such changes to be processed quickly and efficiently without the need to go through the longer Modification process.

We would like to see a smaller template made available for small modifications to the code to keep the administrative process as light as possible.

Question 2: Do you agree that the Agency Charging Statement should fall under the governance of the Uniform Network Code, rather than the Gas Transporter licence?

We are happy in principle to see the Agency Charging Statement (ACS) methodology brought into the (UNC) and believe that it would suitably sit in Section Y of the Transportation Principle Document (TPD).

However, we would like to take this opportunity to stress that it is the methodology alone that we are happy in principle to see brought into the UNC and that the annex to outline prices and products should remain sitting separate as it needs regular updating and should be more akin to the Transporter pricing statement.

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

While not party to the above codes, we believe the CGR principles have worked well within the UNC and we believe similar benefits could be found if it is brought to other codes.

Question 4: Do you consider it appropriate to apply the same governance principles to the Grid and Distribution Codes as are applied to the “commercial” codes?

As above, NGN are not party to the Grid and Distribution Codes, but believe that all codes have commercial implications, especially from change, and we can see no reason why a good governance framework should not apply to all in principle. As we are not party to these codes, we have not responded to the subset of questions specifically relating to them below.

Question 5: Do you consider that both the Distribution Code and the Grid Code should be modified to allow for an open governance framework? In particular, allowing code users to raise code modifications; enabling code panels to have a more formal role in evaluating and recommending code changes; and the governance procedures brought into the codes? Are there any other areas of governance that you consider could be improved in the Distribution Code and Grid Code?

N/A

Question 6: Should MRA modifications be subject to a materiality test, to determine whether Authority approval of changes is required?

N/A

Question 7: Do you consider that it is appropriate to obligate non-domestic gas suppliers to accede to the SPAA?

NGN are neutral to this but believe that as more is governed by SPAA a mechanism to ensure that it is inclusive would be beneficial.

Question 8: Do you agree that SPAA modifications should be subject to a materiality test, to determine whether Authority approval of changes is required?

Yes, materiality tests will ensure that the change process is proportionate to the impacts of the change.

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?

NGN does not support the change to the appeals process outlined in Appendix 7. The current 15 days is consistent with many industry appeals and we have seen no evidence that needs to be reduced. It is also unclear in the proposal how "from publication" is defined as the start point of the appeals window.

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

Yes, consistency across codes where practical makes it easier for parties to operate within multiple codes, particularly smaller parties with smaller administrative capabilities.

Chapter Three – Significant Code Reviews

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?

Significant Code Reviews (SCR) that can encompass more than one code would be beneficial for topics such as smart metering, where there are consequential impacts across both gas and electricity and the multiple codes within them. The SCR principles which restrict the ability of Users to raise Modifications while an active SCR is operating ensures that a stable environment is kept for programmes of major change.

Chapter Four – Code Administration

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

Yes, better accountability and more transparency in the decision making process will enable better referencing in the future when past decisions come under scrutiny in ascertaining the intent of the decisions or when subsequent proposals build on or revive older proposals.

Question 2: Do you agree that the MRA should contain objectives against which code modifications are assessed?

N/A

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?

Yes, it is important Ofgem reserve the power to send back final modification reports (FMRs) where a deficiency or flaw is identified that could be rectified with additional analysis or comment, rather than simply to reject the whole proposal, which slows the process up considerably. Sending back a report allows issues to be address at the next workgroup instead of forcing the proposer to resubmit a new modification proposal to go through the entire modification process again.

However, we believe that the process would be best served if Ofgem, as an attendee of modification workgroups and panels, highlights what they believe to be any deficiencies or flaws in the report as it is being finalised, to allow any concerns to be addressed before it reaches the Authority.

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?

Yes, consistency in governance makes it easier for all parties to be engaged in the change processes, especially smaller parties.

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?

To the extent that it is not disproportionately burdensome the critical friend role can be of assistance to smaller parties. This could be addressed within the codes themselves without the need for it to also be a licence requirement, but should all codes not have taken this approach a licence obligation will ensure consistency across the codes is sought.

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 are generally supportive of the Authorities statement in Appendix 2, 2.14 that simplification and convergence of code processes is beneficial but that individual differences between codes may remain relevant as long as common high level principles are adhered to.

As such we are satisfied with the amendments proposed to the CACoP and support the view that they will better aid reporting. We are also supportive of them having a guidance status at this stage, as the Authority will still have the option to make them mandatory in the future should they feel they are not working as they would like.

Chapter Five – Timetable

5. Way forward and timetable

Question 1: Do you agree with the timetable proposed?

The timetable proposed is challenging to produce and take Modification Proposals through the governance for July 2013. Code changes often require at least six months from receiving clarity on the requirements in the form of an Ofgem direction. The Modifications will need to

be assessed by the relevant workgroup and panel, with a full industry consultation. NGN would suggest that given the complexity of some aspects such as moving the Agency Charging Statement governance to the UNC, a target of October would be more realistic, enabling full and detailed discussions to be had to ensure that the solution not only achieves the Licence condition, but is implemented in a manner that is practical operationally.