

Modification proposal:	<b>System Operator ("SO") – Transmission Owner ("TO") Code ("STC") CM050: Code Governance Review (Phase 2) - Self-Governance and Appeals</b>		
Decision:	The Authority <sup>1</sup> directs that this modification be made <sup>2</sup>		
Target audience:	National Grid Electricity Transmission PLC (NGET), Parties to the STC and other interested parties		
Date of publication:	06 November 2013	Implementation Date:	20 November 2013

## Background to the modification proposal

Ofgem's Code Governance Review<sup>3</sup> (CGR) sought to update and improve the industry code governance arrangements to ensure that they could effectively meet the challenges facing the industry, and to reduce complexity to ensure transparency and accessibility for all industry participants.

The CGR concluded in March 2010 with final proposals focusing primarily on the Balancing and Settlement Code (BSC), the Connection and Use of System Code (CUSC) and the Uniform Network Code (UNC). In April 2012, we initiated a second phase CGR (CGR Phase 2) with the aim of extending governance arrangements introduced through the CGR to other industry codes, including the System Operator-Transmission Owner Code (STC).

Following a consultation on initial proposals in September 2012,<sup>4</sup> we published final proposals for CGR Phase 2 in March 2013.<sup>5</sup> Licence modifications giving effect to these final proposals came into force on 5 August 2013.<sup>6</sup>

The CGR Phase 2 final proposals included a requirement for the introduction of a self-governance process into the STC governance arrangements. The self-governance process would allow the STC Modification Panel to decide on STC modifications that meet the self-governance criteria.<sup>7</sup> An appeal route to the Authority would be available to eligible parties that disagree with the Panel's decision provided that the grounds for an appeal are met.

## The proposed modification

National Grid Electricity Transmission (NGET) ("the proposer") raised modification CM050 in June 2013. The proposal seeks to incorporate into the STC governance arrangements

<sup>1</sup> The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

<sup>2</sup> This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

<sup>3</sup> CGR Phase 1 final proposals: <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-final-proposals-4310>

<sup>4</sup> CGR Phase 2 initial proposals: <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-2-consultation>

<sup>5</sup> CGR Phase 2 final proposals: <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-2-final-proposals>

<sup>6</sup> CGR Phase 2 licence modifications: <https://www.ofgem.gov.uk/publications-and-updates/modification-gas-and-electricity-licences-implement-code-governance-review-phase-2-final-proposals>

<sup>7</sup> The self-governance criteria are set out in B12 (16) of the Electricity Transmission Licence.

the CGR Phase 2 licence changes on the introduction of the self-governance process that include, amongst other things:

- a proposer of an STC modification to justify self-governance status for the modification based on the self-governance criteria,
- the STC Panel to consider and agree whether the self-governance criteria are met so that the modification may proceed along the self-governance route ending in a Panel decision. The Panel would require a 65% vote in favour of self-governance,
- the Authority to 're-route' the modification to the standard modification route (whereby the Authority would make the decision) at any point prior to the Panel making a self-governance decision. The Panel may also withdraw any self-governance statement before making a decision,
- the appeal of a self-governance modification to the Authority.

### **Responses to the STC Modification Panel<sup>8</sup> consultation**

The STC Modification Panel issued a consultation on CM050 on 30 July 2013. No responses were received.

### **STC Modification Panel recommendation**

The STC Modification Panel voted unanimously to recommend approval of the modification at its meeting on 25 September 2013.

### **The Authority's decision**

We have considered the Final Modification Report (FMR)<sup>9</sup> for CM050, including the proposed legal text, submitted on 2 October 2013. We have considered and taken into account the assessment of STC parties which are included in the FMR. We note there were no consultation responses.

We have concluded that implementation of the modification proposal would better facilitate the achievement of the STC Applicable Objectives.<sup>10</sup>

### **Reasons for the Authority's decision**

We consider that this modification better meets the requirements of SLC B12 (6) and facilitates the STC objectives below. We consider that the modification has no impact on the other STC objectives.

*(a) 'efficient discharge of the obligations imposed upon transmission licensees by transmission licences and the Act'*

The recent licence modifications made to introduce the self-governance process to the STC governance arrangements are now in force. The relevant transmission licensees therefore must ensure that these licence provisions can be efficiently discharged by

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<sup>8</sup> The STC Modification Panel is established and constituted from time to time pursuant to and in accordance with section B6 of the STC.

<sup>9</sup> STC modifications appear here: <http://www.nationalgrid.com/uk/Electricity/Codes/sotocode/Modifications/>

<sup>10</sup> The STC Applicable Objectives are set out in Standard Licence Condition B12 of the Transmission Licence.

reflecting them in the STC. The changes proposed by CM050 will ensure that the transmission licensees can discharge their obligations relating to the self-governance process efficiently and effectively. We therefore consider that this modification better facilitates this objective.

*(e) 'promotion of good industry practice and efficiency in the implementation and administration of the arrangements described in the STC'*

We consider that CM050 will ensure that a more efficient process for dealing with certain STC modification proposals is incorporated in the STC governance arrangements. In our view, enabling modification decisions to be made by the Panel, where such modifications have no material effect in line with the self-governance criteria, will promote good industry practice and increase efficiency in the STC arrangements. We consider that the ability to appeal to the Authority a self-governance modification decision made by the Panel provides an appropriate safeguard to industry parties. For these reasons, we consider that CM050 better facilitates this objective.

### **Legal drafting**

7.2.6B.1(b) in the legal drafting indicates that the Authority would not be issued with a copy of the self-governance statement (as required under the licence) where an Ofgem representative attended the Panel meeting. Such a statement would, however, be issued to STC parties. We do not consider this to be sufficient. Where a self-governance statement is prepared, in whatever form determined by the Panel/Code Administrator, it should be sent to the Authority in all cases.

We further note that, to be consistent with the licence, the 'STC modification self-governance report', as described in the legal text at 7.2.6B.6, should be required to contain a detailed explanation of the reasons for the Panel's assessment of the modification as to whether it would or would not further the relevant STC objectives.

The Panel should revisit the issues above to ensure consistency with the licence.

Finally, we note at 7.2.6B.14 that the right of appeal against self-governance modification decisions is extended to 'Materially Affected Parties', which is a newly defined term in the STC. This differs to the appeal rights set out in the licence (which refers to STC parties and other such persons or bodies as the STC may provide can raise modification proposals). The rationale for this is not set out in the FMR. This is therefore another area which we consider the Panel should revisit to ensure consistency with the licence. In the meantime, we consider that any person who may raise modification proposals in accordance with the STC shall be a materially affected party.

### **Decision notice**

In accordance with Standard Condition B12 of the Electricity Transmission Licence, the Authority has decided to direct that proposed Modification STC CM050 '*Code Governance Review (Phase 2) - Self-Governance and Appeals*' should be made.

**Lesley Nugent**  
**Head of Industry Codes and Licensing**

Signed on behalf of the Authority and authorised for that purpose