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18 June 2015

Dear Maxine,

### **Joint Office to Ofgem letter regarding a Further Review of Code Governance**

I am writing on behalf of the Joint Office of Gas Transporters (JO), the Code Administrator for the gas Uniform Network Code (UNC). The JO welcomes Ofgem's further review of industry code governance and shares many of the concerns raised. This letter offers observations on where we feel governance works well in the UNC, and where there are opportunities for improvement.

We have also taken the opportunity to illustrate (please see the diagram in the Appendix to this letter) in simple terms how the process could work, drawing out where time could be saved in the governance cycle. In doing this, we recognise that some of the 'windows' are essential to provide for full and effective engagement and/or consultation with affected parties, and we have not suggested any changes to these.

We would firstly like to clarify the role of the Modification Panel (Panel), as described in the UNC Modification Rules, in overseeing UNC governance:

- Panel meets to consider UNC Modification Proposals and Requests pursuant to the Modification and Request Procedures respectively.
- Panel has no ability to determine any other matter, nor discharge any other function.
- Voting membership is currently 5 gas shipper-elected members, 5 transporter-nominated members and one consumer representative, with a non-voting Independent Chair able to exercise a casting vote unless it is an implementation vote. Following the implementation of the UK Link Replacement System, two further members will be appointed: a further shipper and an independent transporter.
- A number of places on Panel are available for non-voting members; representing independent transporters, independent suppliers, terminal operators and Ofgem. With the exception of the latter, plus an observer representing Cornwall Energy's Small Supplier Forum, non-voting members rarely attend.

For simplicity, we have broadly summarised points under the three questions in your letter.

### **Question 1: Effectiveness of CGR in improving code governance arrangements**

We believe there is insufficient evidence at this stage to draw firm conclusions as to the effectiveness of the Significant Code Review (SCR) process. In principle, the concept appears to be the right way to approach complex change, however we have concerns about the slow pace of change. For the gas Security of Supply SCR, in addition to the 44 months quoted in your letter for the SCR phase, Ofgem's 20 May 2015 direction letter indicates that the resulting Demand Side Response arrangements are likely to be implemented in October 2016, some 69 months from the start of the SCR. We consider this, if it becomes typical of SCRs, to be excessive.

The time taken in governance activity around any given code modification, in addition to the assessment activity carried out by a Workgroup, is also lengthy. Overall governance duration for a modification is fairly consistent at around 15-20 weeks, comprising:

- up to six weeks from a proposal being raised to the first Workgroup meeting (Panel consideration/direction);
- six to eight weeks for post-assessment Panel review and industry consultation, and;
- a further five weeks minimum for Ofgem decision (though typically longer for complex or high-impact modifications).

We believe the overall governance timeline could be streamlined and made more effective (see response to question 2 below and the example process diagram appended to this letter).

We next considered Self Governance and Fast Track Self Governance, agreeing that these had been an effective and welcome extension to the governance arrangements. Over the last two years, approximately one third of the UNC modifications that have progressed to the decision stage have followed a form of self governance. We have some concerns that the qualification criteria are too subjective; as a result Panel tends to take a risk-averse approach and defer to Ofgem decisions on occasions where, with clearer parameters, it might otherwise proceed on a Self Governance basis. We believe that, with the benefit of several years of experience of Self Governance, improvements could be made to the qualification criteria to encourage Panel to take more modifications through Self Governance.

Turning to the 'critical friend' role for the CA, we have considered how the JO can support industry parties, making it easier for smaller companies to understand processes and ultimately therefore reduce any barriers to entry. There are four main areas where we see a role for the JO, as set out below:

(i) Support and advice in drafting modifications

We note that the JO provides such assistance, without exception, to all parties raising modifications. The assistance provided is tailored to the needs of the party; i.e. small shippers often need help developing the Solution as well as completing the paperwork, whereas large transporters and shippers generally know what they want to achieve and need only help with the process/paperwork. This proves to be an effective service, meaning that Panel rarely has issue with the modifications presented to it in terms of clarity and completeness. We have no record of dissatisfaction from any parties in this respect. Noting that currently the JO has limited vires to withhold (or reject) a modification presented in the correct form, we think there is potential to add more value if objective entry criteria were introduced.

We note from your letter the suggestion of the introduction of a 'change window', which we understand would be intended to encourage parties to raise similar or related modifications, within a given period, to realise potential synergies and to optimise the use of resources on a given topic. It is our experience that the gas industry tends to focus on similar, or associated, topic areas when a modification proposal reaches the assessment stage. In such cases, alternative modifications are often proposed for simultaneous assessment, which could be seen to achieve the same objective as a change window (please see also our concerns about the timeliness of alternatives, explained in Q2 part vi below). We believe, however, that a change window has some merit and is worthy of further investigation.

(ii) Understanding modifications in the governance process

Each month, the JO circulates to all industry parties a high level overview of the modifications before Panel for initial direction and for decision/recommendation. It supports this with a short conference call, aimed particularly at smaller parties including consumers or their representatives and hosted by a senior JO manager, to explain context and to capture any views expressed. The JO reports these views to Panel and can cite examples of where specific questions have been directed to the Workgroup for inclusion in their assessment. We note, however, that there is limited participation from smaller parties, and typically only when a direct interest in a particular modification exists. We believe this is a good opportunity for parties to get involved with little commitment or resource implication.

(iii) Transparency of performance

Panel notes that the JO has taken steps to increase the transparency of its activities and publishes on its website minutes of the meetings of its governing committee (Joint Governance Arrangements Committee, or JGAC) alongside a clear set of objectives.

Supporting these, the JO publishes quarterly and annual performance reports for Customer Satisfaction and Code Administration Code of Practice (CACoP) KPIs. We observe that this exceeds the minimum expectations of a CA and believe that the JGAC should continue to have the remit to manage JO performance.

(iv) Code expertise

The UNC is a large, complex code and few people in the industry have expertise across its entirety. We note that transporters are closely aligned to relevant sections of code and, together with Xoserve for supply point matters, appear best placed to provide focused guidance/support on code obligations. We consider that it would be inefficient for the JO to be resourced to provide such services. The JO already provides support on governance matters, as described here, and can put parties in contact with a larger transporter or Xoserve should they have questions about the UNC.

Finally in this section, there is not enough evidence to form a view on the effectiveness of governance relating to Charging Methodologies. There are currently several such modifications under assessment and more information might become available during the lifecycle of your review.

**Question 2: Potential further reforms to code governance arrangements**

In responding to this question, we have built on some of our observations above:

(i) Entry criteria

We believe there is merit in investigating whether the CA and/or Panel should have wider powers to restrict/defer the progress of modifications that might be seen as inappropriate to progress. We understand that this step is performed by committee in other codes, however we feel that a set of objective entry criteria could be developed to enable a simple assessment at the time a modification is first raised.

(ii) Streamlined governance process

Although we agree that, overall, the CGR has improved visibility and engagement for modifications, we have some concerns about governance duration as described in our response to question 1. We would welcome further consideration of whether a modification proposal needs to be directed to assessment by Panel. This appears to be an administrative, or planning step, unless Panel is provided with more powers to control new proposals as above. We further consider that widening the scope of Self Governance could prove beneficial in reducing governance timeframes, since this would remove some of the back-end Ofgem dependency.

(iii) Cross-code impacts

We note the recent proposed changes to the CACoP to introduce a new Principle 13 requiring CAs to coordinate changes efficiently where this impacts multiple codes. We agree that this is an efficient way forward for similar codes e.g. UNC and iGTUNC as they have a similar parties and scope. However, we believe it would be prudent to include this topic in the scope of a wider review of impacts across different fuels, as this appears to be outside the remit of the UNC Panel from a governance perspective.

(iv) Review Groups

Review Groups were a long-established process in UNC governance. A party could request Panel to establish a Review Group to assess a known issue or issues and provide a report with recommendations. The Review Group report could include draft modifications, which could be issued to consultation by Panel.

The CGR required each Code to attempt to standardise naming conventions for processes or documents and Reviews were changed to Requests to align with other Codes. We observe that no Requests have been raised for consideration since that time. Instead, a number of wider ranging workgroups, e.g. European or Performance Assurance, have been established to consider common topics, however these have been underpinned by a series of modification proposals.

We question whether the introduction of the Request process has resulted in additional governance overhead since it appears that industry parties believe that a modification is now required to provide the focus for change assessment. We believe that the introduction of a change window supported by the establishment of a Review Group could improve the efficiency of the process by focusing on the development of change principles and allow parties to focus on related changes.

(v) Extending consumer-related assessment

We observe that the ability for the consumer voice to come through strongly enough during the assessment phase of a modification is limited by the complexity of the Code and the availability/involvement of a cross-section of consumers. We further note that Panel has provision for up to two Consumer Representatives, however only one of these places is currently taken up (by a representative from Citizens Advice). Panel's Consumer Representative provides an effective checkpoint for key consumer-related issues that arise in modifications and we believe there is great benefit to be gained from greater involvement throughout the governance process. We would encourage wider consideration of how consumer participation might be achieved on a more consistent and holistic basis.

One example of where this could be made more explicit would be to include a mandatory assessment of consumer impacts within each modification report. This section should explain, in plain English, how consumers would be directly and indirectly impacted or, where there are no such impacts, the reasons for this.

(vi) Alternative Modification proposals

We observe that one effect of a lack of early change consideration (see iv above) is that a difference of opinion on a given change can result in multiple modifications, often identified as formal alternatives. These tend to extend the length of the assessment phase (as they might only occur at a late stage) and increase the complexity of the consultation, since respondents are asked for individual views on each alternative. They also increase costs across the industry as additional workgroups / legal text etc are required. We do, however, recognise that there is a place for healthy debate on alternative views.

We think that the introduction of a Change Window might go some way to preventing late alternatives delaying change. However, we would encourage any review of governance to consider whether it is appropriate to have multiple alternatives progressing through *all* stages of governance, or whether it would be better for Panel to make early decisions on what should, and shouldn't, be fully assessed.

(vii) Strategic view of industry change

We note the comments in your letter relating to this topic, however we consider that, for the gas industry, strategic oversight is already provided by the Change Overview Board (COB). We observe that COB was recognised in Ofgem's 2015/16 Simplification Plan as aiming "...to provide strategic industry Change portfolio planning and prioritisation". The Plan goes on to say that "COB has been effective in raising awareness of the scale and scope of challenges...". We believe that there is adequate coverage and coordination, via co-membership, between Panel and COB at present.

**Question 3: Other areas to consider**

(i) Complexity of UNC

We note that much of the complexity in the UNC is a result of its broad scope, the continuous evolution of commercial requirements, external drivers such as European Codes, and the necessity for equal treatment of all parties. We acknowledge that there would be benefits to be realised if Code were to be simplified, perhaps by moving to a more purposive approach to the Code, rather than the very rules-based system that we have now. However, we also recognise that this would appear to be a difficult and costly project to complete. We would welcome further consideration of the benefits that could be realised from simplification.

(ii) Simple and consistent modification rules

We note that the CACoP has gone some way to aligning Code modification rules, however we think that there may be merit in having a single set of straightforward modification rules that apply regardless of Code. The benefits of having one way of doing things would need to be carefully considered against the disbenefits of the inevitable compromises that would have to be made and the additional complexity of achieving changes to the rules.

I want to thank you for the opportunity to provide views in this way. If you require anything further, or would like to discuss the issues in this letter, please do not hesitate to let me know.

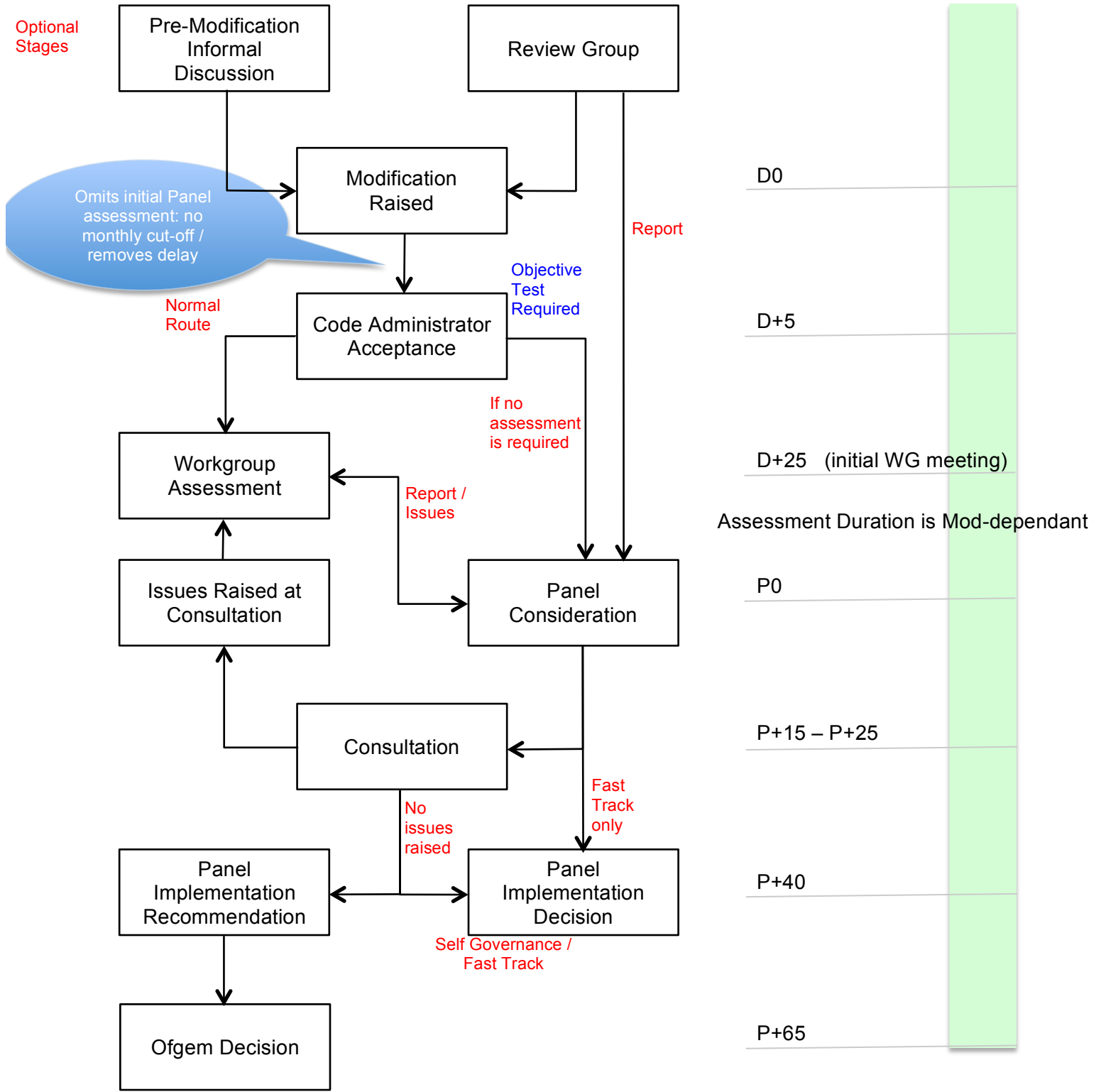
Yours sincerely,

Les Jenkins (*via email*)

Chief Executive, Joint Office of Gas Transporters

# Appendix: Potential Unified Modification Process

Indicative Timeline  
Business Days (max)



**Note:**

- Straightforward modification proposal route only shown in the diagram.
- Overlays are required for Alternatives and for Variations raised post Panel Consideration