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28th April 2016

Dear Marion,

Code Governance Review (Phase 3) Final Proposals – Consultation on Licence Modifications

Thank you for your letter dated 31 March 2016 and the opportunity to respond to the illustrative licence drafting insofar as it applies to Gas Transporters. We have already provided our response to the Code Governance Review (Phase 3) Initial Proposals which set out: (a) our key points in relation to changes to the Significant Code Review (SCR) process; and (b) our support for various other proposals. We note that Ofgem the Final Proposals are in line with the Initial Proposals and therefore the comments in this letter are restricted to the illustrative licence drafting and in particular question 1 of the three questions posed in the letter namely:

Q1. Do you consider that the licence drafting would achieve the policy proposals set out in the CGR3 Final Proposals.

General Observations

1. We fully appreciate the volume of licence and code related work which Ofgem is currently involved in and the efforts being made by all parties to meet the necessary deadlines. SSC A11 is already a complicated condition and therefore we understand the difficulties associated with drafting the necessary provisions to supplement the existing Condition to achieve the aims of the Final Proposals. Our view is that the illustrative licence drafting should be reviewed and simplified in relation to the significant code review procedure, where possible, to avoid being circular and repetitive.
2. The new paragraph numbering is confusing to follow due to the use of double letters for the first level paragraph text and then non-capitalised single and double letters for second and third level text. Unfortunately it makes cross referencing difficult to follow and understand.

Specific Points

1. SSC A11 para 9 (i) and 9(ii) – the amendment to these paragraphs by reference to 15CE extends the application of these provisions to the significant code review process (ref. 15CE(b)). We assume that this is intended but this adds to the complicated drafting under 15C (significant code review).

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2. SCC A11 para 15A(b) refers to a modification proposal made by the licensee in accordance with para 9(j). Para 9(j) does not of itself appear to provide for a modification proposal to be made rather 9(j) requires compliance with Ofgem directions setting the timetable for proposals. We suggest that this reference is re-considered because the requirement for the UNC modification procedures to provide for modification proposals made by the Authority or licensee under various paragraphs (including a significant code review by virtue of the amendment referring to 15CE) appears to be already covered in paragraph 9(i).

The text “(which fall within the scope of paragraph 15CE)” should be highlighted as new text in the mark up and at the end of line 3 the word ‘which’ should be added.

3. SCC A11 para 10 (aa) – for clarity, we consider that the reference to 15C should be to 15C(a). This paragraph does not reference any modification under 9 (i) or (j) (see point 2 above), which in turn references 15CE . Please review whether a link be made in the drafting between 10(aa) and 9 (i) or (j).
4. SSC A11 para 15 (C) – it should be made clear that any one of the six possibilities below this paragraph at sub-paragraphs (a) to (c) can apply (similar to new drafting structure at 15CA) and we therefore suggest:

“The network code modification procedures shall provide that if within twenty-eight days after the Authority has published its significant code review conclusions the Authority either.”

Sub-paragraphs (a), (b), (bb) and (c) should start with the word ‘issues’ and sub-paragraph (ba) with the word ‘raises’. The word ‘or’ should be used at the end of the penultimate sub-paragraph (15C (bb)). The use of the word ‘if’ in line one of 15C means that the word ‘then’ should be added before the final part of the paragraph namely ‘the Authority’s’ published conclusions....’.

5. SCC 15CA – add word ‘or’ after 15CA(a)
6. SCC A11 para 15CC (a)(i)(bb) – this new drafting introduces a new ‘objective’ in addition to the relevant objectives against which a significant code review modification proposal submitted by the authority should be assessed. If the wish is to introduce a new relevant objective it would seem better to amend SCC A11 1. It would be possible to amend SCC A11 1 to limit this new relevant objective to particular modification proposals if so desired.

Yours sincerely,



Steve Edwards
Director of Regulation and Commercial
Wales & West Utilities

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