

Marion Quinn
Industry Codes and Licensing
Ofgem
9 Millbank
London
SW1P 3GE

Mark Ripley
Director, UK Regulation

Mark.g.ripley@nationalgrid.com
Direct tel +44 (0)1926 654928

www.nationalgrid.com

18 December 2015

Dear Marion

Further Review of Industry Code Governance

Thank you for the opportunity to respond to Ofgem's Further Review of Industry Code Governance. This response is provided on behalf of National Grid Electricity Transmission plc (NGET) and National Grid Gas plc (NGG). NGET owns the electricity transmission system in England and Wales and is the National Electricity Transmission System Operator (NETSO). It is responsible for administering the electricity Connection and Use of System Code (CUSC), the Grid Code and the System Operator – Transmission Owner Code (STC). NGG owns and operates the gas Transmission System and also owns and operates four of the gas Distribution Networks. In association with the three other gas Distribution Network Operators, NGG also jointly provides for the administration of the Uniform Network Code (UNC) Governance arrangements through the Joint Office of Gas Transporters (JO).

We have been active participants in Ofgem's two previous Code Governance Reviews (CGRs) and have raised multiple modification proposals across the electricity and gas industry codes to implement the conclusions of the CGRs. In our role as Code Administrator for three of the electricity codes, we have also established and maintained processes to support the CGR conclusions and strengthened our role as Critical Friend, using feedback from code parties and code users. This approach is also mirrored in how the JO supports the UNC processes.

We consider that the changes introduced under the CGRs have been largely successful in improving or clarifying the code governance arrangements. We note the ideas for further consideration outlined in the consultation and look forward to engaging with Ofgem and the industry in this post implementation review. We provide further detail in our response to the specific questions posed in Ofgem's open letter in the annex to this letter.

If you wish to discuss this further, or have any queries regarding this response, please contact John Martin on 01926 656672. This response is not confidential and can be published.

Yours sincerely

[By e-mail]

Mark Ripley
Director, UK Regulation

Annex: Response to Questions

SCR Process questions

Question 1: Do you agree that Ofgem should have the ability to lead an end-to-end SCR process, including the development of code change and legal text?

We support Ofgem having the ability to lead end-to-end SCR's including the development of code change and legal text. But we would highlight that increasing the scope of the SCR will increase the duration of the SCR, which will lead to an increased period of time within which industry participants cannot raise alternative modifications which fall within the SCR scope.

Question 2: Do you agree it is appropriate to clarify that Ofgem may set timetables for the code change process under an SCR, when the existing, industry-led code development route is used?

We support the view that it is clarified that Ofgem can set the timetables, with the caveat that it is imperative for realistic timescales to be set for both the code change process and implementation phases. The timing for the code change process needs to take into account the complexity of the change being proposed and the amount of detail that is left to be determined within the modification process.

Question 3: Do you have any comments on the licence drafting set out in Appendix 3?

In terms of the proposed legal drafting, the response from National Grid is largely supportive and we would note broadly achieves the intent of the consultation. The specific response on the licence drafting has been included within Appendix 1 attached to this response.

Question 4: Should Ofgem be able to directly raise a modification proposal under the standard process (option 2A)?

We assume this is other than in the context of the SCR (we would note that the license drafting does not seem to make provision for the amendment), and we fail to see any obvious benefit in Ofgem raising Modification Proposals since it can already direct the Licensee to do so.

Also from a gas perspective, we believe that Transporters remain best placed to draft legal text for the modification process.

Question 5: Do you have any other proposals for changes to the SCR process?

It would be useful if Ofgem could provide clearer timescales and a project management approach to ensure quicker progress of the SCR process and improved forecasting of the SCR process timelines.

Where the SCR is within the phase, before a modification is proposed, more defined timescales and a clearer scope would be beneficial from the Authority.

The SCR process should be based on the more qualitative principles of the change, rather than focussing on detailed analysis based on assumptions.

Self-Governance questions

Question 1: Do you agree that requiring a positive identification of why Authority consent is needed (rather than why it is not) could result in additional modifications being developed under self-governance?

Our preference would be for the test to be left as it is at present. If the Proposal is believed to better facilitate the relevant objective regarding enhancing competition then it is likely not to be Self-governance. Panel members need to be truly independent assessors.

There is no strong evidence to support the view that by changing the approach, so that the Panel have to provide a positive identification of why Authority consent is needed, will result in significant numbers of additional modifications being developed under the self-governance route.

That said we understand self-governance has the potential to make the overall process more efficient and we support it.

Question 2: Do you agree that guidance on the materiality criteria may assist industry in its assessment of whether a modification should be self-governance or require Authority consent?

We do feel that guidance on the materiality will assist Panels in their assessment of whether a modification should be self-governance or require Authority consent. Within the drafting, it would be helpful for industry to provide the basis of the legal guidance.

Question 3: Do you agree that any potential guidance is something that panels and code administrators should develop, based on experience to date of using self-governance?

The Authority would be best placed in leading on the development of guidance documentation for self-governance, as when a new modification is raised the Authority is the final arbitrator on whether the proposal is self-governance. For the codes that use the self-governance process, their experience would be helpful to support the development of the self-governance criteria. Panels and Code Administrators may experience difficulties in setting criteria, for example, materiality is subjective in terms of establishing the outcome e.g. £100,000 may be material to party A but not to party B.

Question 4: Do you have any other proposals that may improve the self-governance processes under the codes?

It would be helpful if the Authority, when completing its final decision on a modification provided feedback on whether in hindsight that modification could have been progressed through a self-governance route. This can then be used to help to develop self-governance parameters for Panels.

Code Administration questions

Question 1: Do you agree that updating the guidance in CACoP and ensuring best practice across all codes would enhance the role of the Critical Friend?

Providing additional best practice guidance in CACoP would help to ensure that there was a consistent service parameters provision by Code Administrators acting as Critical Friends.

Question 2: Please provide your suggestions as to how the Critical Friend role could be better advertised and what information each code administrator should include on its website.

Consistent links on the main Code Administrator page for the code to the critical friend service. Standard templates for new modifications could be introduced, with the flexibility to include both commercial and technical proposals.

Question 3: Could a self-governance process be introduced for the CACoP?

It is unclear presently that there is an appropriate level of requests to amend the CACoP, which would materially create a benefit case for the development of a self-governance CACoP process.

Further, it is not clear how self-governance decisions would be taken i.e. would this require approval of all Code Panels of all Codes captured by the CACoP? The Governance process for this process would need to be carefully considered e.g. aggregated panel vote, simple majority each panel etc.

Question 4: How often should the CACoP be reviewed?

Following a fairly detailed review of the timeline of the process through the work to review the CACoP principle 4, we would suggest that the annual review is an appropriate timescale to complete a review.

Question 5: Do you agree that greater visibility of the CACoP can be achieved by having clear links available on all code websites to a dedicated CACoP page?

A dedicated CACoP page would be helpful to industry participants. It would also be helpful to understand how this would be administered and funded.

Question 6: How could the quantitative metrics be improved?

The quantitative metrics should be reported under consistent parameters. The metrics should also be reported within defined timescales and published within an agreed timeframe.

Question 7: Should a single body send out one qualitative survey across all codes? If so, who would be best placed to undertake this role?

Due to the differences within the content and structure of the codes, we feel that this would be particularly challenging for one party to independently develop a qualitative survey.

If there was going to be a single body responsible for the qualitative survey across all codes then we would suggest they were an independent organisation, their questions were tailored for the individual code to receive appropriate feedback and the timing of the interviews were event driven i.e. following submission to a workgroup consultation or participating in a workgroup that had just closed.

If there was an independent organisation directed to complete the qualitative survey, it would be helpful to have further information on how they would be funded.

Question 8: Do you agree that the modification process and template should be standardised across all codes?

We support the standardisation of the modification process and templates, but we also recognise that there are inherent differences in codes which also require flexibility to recognise different needs to stakeholders provided for through the modification process and templates. This is especially true for the differences between commercial and technical codes.

We would welcome clarification of whether the intention is to replace the Modification Rules applicable to each Code with one set of Modification Rules documented in the CACoP. If this is the intention then it may be difficult to achieve consistency and one set of rules would need to guard against multiple carve outs. It is likely to require significant work to evaluate and remove detailed differences. The current CACoP contains high level principles at present therefore it is quite a task to include modification rules (this currently comprises approximately 50 pages in UNC).

We have also provided comments on two other areas included within the Consultation:

Para 4.37: Initial Proposals for Panels to create a forward Workplan

If this was implemented how would this be expected to get sign-on and how would liabilities be managed? We would question whether presently the UNC Panel has the right skill set for this and question whether it is fundamentally changing the role of the Panel. On a non mandated basis the UNC Panel and industry parties could review initial proposals from a strategic perspective to ensure overall industry effectiveness. But we would also question whether it is appropriate for the UNC Panel to effectively determine industry participants work plans.

An alternative interpretation is that the intention is that industry parties would share their horizon planning/priorities with the Code Administrator/Panel would simply publish which may be a preferable approach.

Para 4.38 Extended scope of Panel to pro-actively manage industry change for large projects (Project Nexus is quoted as an example)

Whilst this may be appropriate for large scale projects effective criteria (and funding arrangements) would need to be determined. We would question whether this efficient for UNC Panel to take on. The additional resource would be substantial and would likely require at least 1 FTE to cover. The UNC Panel role is voluntary and this would greatly increase role/responsibility and introduce

requirement for specific skill sets that may limit the breadth of experience held by UNC Panel members.

Question 9: Is it appropriate that all panel chairs be completely independent of industry?

We appreciate the principle of introducing an independent Chair in terms of the perceived benefits of transparency and impartiality.

For CUSC and UNC there are currently independent panel Chairs; who act impartially on issues and ensure that the Panel acts efficiently in carrying out its duties within code.

For Grid Code and STC these are chaired by National Grid. Within the independently administered customer satisfaction surveys, no specific issue has ever been identified by industry participants on the National Grid Chairmanship (for either the Grid Code or the STC).

The reservations that National Grid hold for independent Chairs being recruited for the Grid Code and STC are detailed below:

- Significant challenge to recruit an independent candidate, who has the inherent technical knowledge.
- Consideration would also need to be given to the additional costs incurred as a result of mandating an independent panel chair for industry codes where this is not currently the case.

Question 10: Is it appropriate that all panel members are required to be impartial, i.e. not to represent the interests of their company?

Yes we support the view that all panel members should act impartially, but we also recognise that this is a challenge, especially for participants who have a specific commercial or technical perspective due to their industry background.

For large code panels a constituency based membership can also be extremely helpful to ensure good representation across industry parties.

UNC Modification Panel members are currently required to represent a market sector or representative interest to convey the "views of that Member's appointor (or appointors)".

Question 11: Should DCUSA voting be undertaken by panel, rather than all parties?

On the basis that the question is not about Transmission and CUSC; as National Grid is not directly involved in this process we do not provide an opinion to this question.

Question 12: Should code administrators provide a chair for workgroups?

CUSC Workgroups currently have chairs who act independently and impartial on issues and focus on the administration of the workgroup to (CUSC 8.20.4). For the Grid Code and STC if this was prescribed as a licence requirement then the role of an independent workgroup chair would need to be defined.

UNC Workgroups are chaired by a representative of the UNC Code Administrator and are required to operate in accordance with the CACoP.

Consideration would also need to be given to the additional resources incurred as a result of mandating an 'independent chair' for certain codes where this is not currently the case. For example Workgroup chairs for the Grid Code tend to be provided by National Grid (though not in their role as Code Administrator), or from industry participants with appropriate technical knowledge.

Question 13: Would including a consumer impacts section on each change proposal form help to ensure consumer interests are discussed and published?

Including a consumer impacts section on each proposal form would be beneficial in ensuring that the workgroup discussions were directed and then recorded on the consumer impacts of a proposed modification.

It would be beneficial to undertake more engagement with Consumer representatives on the Panels however the impact on end consumers is more for shippers / suppliers / Ofgem to determine. This would be a substantial academic exercise each time for every Modification Proposal. National Grid Gas' contractual relationship is with shippers and to determine how the charges are passed on would vary based on each shipper/supplier.

Question 14: Do you agree with the housekeeping changes we have proposed?

The proposed housekeeping changes are accepted by National Grid and we do not have any specific queries.

Charging methodologies questions

Question 1: Should all 'material' charging modifications proceed through pre-modification processes and demonstrate some initial evidence against the relevant charging objectives prior to being formally raised?

When the timeline for a 'material' charging modification allows, then we would support the requirement for a pre-modification process as this allows early industry participation and potential refinement of the proposal. The caveat that we would put on this process is that sometimes an urgent 'material' charging modification may need to go directly to Panel due to the timescales of the modification implementation.

On this basis, we would suggest that subjecting a change proposal to the pre-modification should be a 'guidance principle' as opposed to a mandatory requirement. We believe that this may represent a more efficient approach.

From a CUSC perspective; if all new charging modifications (subject to the "urgent" point above) were mandated to be presented at the Transmission Charging Methodology Forum, it would allow industry participants to discuss the modification prior to it being proposed to the Panel. This would allow the proposer to receive feedback that may help them to refine the modification drafting and also increase industry participation levels when the modification progresses to the workgroup and consultation stages.

Question 2: Could the current pre-modifications processes for charging code changes be applied more effectively in line with CACoP Principles 5 and 6?

The Transmission Charging Methodology Forum for the CUSC and the NTS/DN Charging Methodology Forums for UNC; provide pre-modification routes for charging modifications in line with the provisions envisaged within CACoP Principles 5 and 6.

Question 3: Should panels develop forward workplans for charging modifications in line with agreed priority area(s) to provide a more robust approach to managing modifications?

We do not view the implementation of forward workplans for charging modifications as being our preferred approach for managing modifications. If an industry member wants to propose charging changes they can raise them to the relevant industry Panel, who will independently assess the modification and have it discussed through workgroups.

Requiring the Panel to have a forward workplan; could be interpreted as fundamentally changing the role of the Panel. Moving the Panel from a body that ensures the modification process is efficient, to a body that is keeping the code under review. On a non mandated basis the CUSC Panel and industry parties could review initial proposals from a strategic perspective to ensure overall industry effectiveness.

Question 4: Do you agree that charging modifications which are 'not material' (in line with self-governance criteria) should be progressed through the self-governance route?

Yes we support the development of charging modifications through the self-governance route, if they meet a pre-determined criteria.

But we would highlight that in certain instances we believe that having prescriptive rules for materiality would be difficult to manage. Any guidelines would need to allow flexibility as materiality is subjective and will vary by the party viewing the change.

Question 5: Do you agree that bringing all current charging methodologies forums under DCUSA governance could help to improve stakeholder engagement and increase the consistency of processes for charging modifications?

On the basis that the question is not about Transmission and CUSC; as National Grid is not directly involved in this process we do not provide an opinion to this question.

Question 6: Do you agree that having a panel sponsor would help the DCUSA Panel better understand the origins of charging modifications and the DCUSA Panel would be more accountable for, and engaged with, efficiently progressing them?

On the basis that the question is not about Transmission and CUSC; as National Grid is not directly involved in this process we do not provide an opinion to this question.

Question 7: Please set out any other proposals you may have for improving the governance for charging methodologies under open governance arrangements.

It would help if the National Grid Electricity Transmission licence was amended, so that there were not three different sets of applicable CUSC objectives. This can be especially challenging for charging modifications, as a proposal could update one section of the CUSC and then as it progress's through the workgroup stages it becomes apparent that other sections of the CUSC require amending and these come under a different set of CUSC objectives and require another CUSC modification to be raised.

The multitude of CUSC objectives makes it additionally complex for new participants, especially if they are looking to actively participate within the CUSC modification proposal process i.e. by raising a modification proposal or participating on a Panel or workgroup.

The Panel are presently looking at some innovative methods of updating the modification proposal forms; so that proposers can choose multiple objectives, but simplifying and amalgamating the number of CUSC objectives would improve the governance process for charging methodologies.

Appendix 1

This is response to Question 3 in the 'SCR Process Questions' section, the question is 'Do you have any comments on the licence drafting set out in Appendix 3?'.

In terms of the proposed legal drafting, the response from National Grid is largely supportive and we would note broadly achieves the intent; please find the detailed comments below:

- In 4AA given 4AA(a) assumes 4(b)(iii) has been completed, would like to clarify the intent of 4AA(b)
- At 4AA (e) (i) and (ii) for clarity and consistency with 4(c) add ref to fact it's a direction issued under 4(ae)(iii).
- Should 4AA (d) also be as directed under 4(ae)(iii).
- It would be helpful to confirm the practical interaction between what is done in the initial SCR process by Ofgem and what is completed in the industry workgroup phase, particularly in terms of reporting and consultations. This will need to be considered prior to any code changes.
- 4BA purpose of this is to catch any mods in flight when SCR raised?
- We note there is no corresponding provision to 4(b)(vii) or have something similar to 4(f)?
- At 4C (a) for consistency add "and shall treat the significant code review phase as ended"?
- At 4C(bb) – the "b" has been incorrectly deleted.
- At 4D is (a) necessary given (b) includes 4C(a) to (ba) and as this is continuing the review phase post conclusions do you need to refer to 4C(a) to (b) at all?
- 13F(b) clearer to say "is in respect of" rather than "relates to"?
- Re consultation para 2.33 – the ability for the Authority to raise mods is limited by 13F though consultation text suggests provides for authority to also raise a mod through standard process?
- At definition of SCR, is the ref to 4BA at (a)(ii) correct?