

Governance Workstream Minutes

Thursday 29 July 2010

AEP, Regents Street, London

Attendees

Tim Davis (Chair)	TD	Joint Office
Bob Fletcher (Secretary)	BF	Joint Office
Clare Cameron	CC	Ofgem
Chris Shanley	CS	National Grid NTS
Chris Warner	CWa	National Grid Distribution
Chris Wright	CWr	British Gas
Gareth Evans	GE	Waters Wye
Joanna Ferguson	JF	Northern Gas Networks
Joel Martin	JM	Scotia Gas Networks
Peter Bolitho	PB	E.ON UK
Phil Lucas	PL	National Grid Distribution
Ritchard Hewitt	RH	National Grid NTS
Simon Trivella	ST	Wales & West Utilities
Stefan Leedham	SL	EDF Energy
Steve Gordon	SG	ScottishPower
Steve Mulinganie	SM	Gazprom

1 Introduction and Status Review

1.1 Minutes from the previous meeting were approved.

1.2 The actions from previous meeting were deferred to the next meeting.

2 Code Governance Review Proposals

CS provided an update on progress to date and advised amended versions of the proposals have been provided for discussion today with the exception of 0323, which had generated a significant number of comments (an updated version was provided during the meeting). The proposals in general seek to reflect the licence requirements and not to bring forward new ideas beyond the codes governance review proposals.

PB asked if it is proposed that elements of the modification rules are taken out and reflected in the code of practice for the code administrator. CS confirmed this was proposed, though they were minor aspects. TD provided an example where the Chairman's Guidelines could be removed from the modification rules since all the requirements are included in the code of practice.

The Workstream asked for guidance for the preferred implementation date, should this be 1st November as planned or would 31st December be more appropriate in line with licence changes?

Action GOV1056: CC to consider if the UNC Code Governance changes should be implemented before or at the same time as the licence changes.

- **0318: Code Governance Review: The approach to be taken when raising alternative Modification Proposals**

CS advised the aim of this modification is to change the windows in which alternative proposals can be raised, which would be limited to the Workgroup (Assessment)

phase. Car asked if it is expected there will always be a Workgroup referral for a modification. CS advised a modification can still be issued directly to consultation, and there would be no opportunity for an Alternative to be raised in these circumstances.

SL was of the opinion that the only modifications likely to go to consultation are transporter modifications, since only transporters have access to all the required information. GE expressed a view that the Panel may come under pressure not to issue a modification to consultation, as other parties may constantly raise potential alternatives that could not be formally accepted unless the original proposal was referred to a Workgroup. PB wondered if there should be a minimum time window to allow alternatives to be considered and raised to ensure all ideas are reviewed before a modification is issued to consultation. CWr was concerned that modifications are not delayed by alternatives, especially if the differences are not material.

SL was concerned that no delay is placed on a modification that is ready for consultation simply to allow an alternative to be raised, which may take time to develop. SM thought there was adequate time for alternatives to be raised if a modification is sent to a Workgroup, but the rules could allow the Panel an opportunity to accept alternatives in the (rare) case that a modification is issued straight to consultation.

PB emphasised that it is essential to allow, especially smaller, parties the opportunity to review a modification fully by ensuring it is sent to a Workgroup prior to being issued to consultation.

TD summarised the discussions. There are risks around modifications being delayed by alternatives. If alternatives cannot be raised once a Proposal is issued to consultation, free standing alternatives may be raised – and the process may be delayed by waiting for this Proposal to catch-up. If all modifications have to go to a Workgroup, bureaucracy would be increased for housekeeping changes, delay will be created and more parties may seek urgency.

GE considered it was difficult to get a modification straight out to consultation, Panel Members are very challenging and only a small number of modifications go straight to consultation. He still had concerns that alternatives can be raised, which can slow the process and potentially be used as a means of delaying a modification going to consultation. ST did not think this was an issue as currently a modification could be raised which is not an alternative and the authority waits to consider related modifications prior to making a decision.

CC advised that Ofgem aim to consider each modification and any alternatives at the same time and on the merits of whether or not they better facilitate the relevant objectives as against the baseline and each other. This becomes more difficult if what would have been an alternative is either raised as a separate modification, or somehow follows a different timescale so that the original modification reaches Ofgem for decision in isolation. In those situations Ofgem could decide on the original in isolation and then subsequently decide on the related modification as against a new baseline if the original was implemented.

CS asked if it would be worth considering a window after the Panel decision to issue a modification to consultation, to allow parties to reflect and decide if there should be an alternative raised. SG was concerned about a regime that generates multiple alternative modifications, and how this could be described as an efficient or effective process - alternatives should be infrequent and well thought out. ST suggested an approach might be to allow parties to raise alternatives up to the workgroup report submission date.

CS advised the modification anticipates the workgroup will detail when it is going to submit its report and if alternates are going to be raised, this should be a minimum of 5 days prior to a workgroup's next meeting. Terms of reference could specify the window for alternatives within a workgroup.

SL asked how transition will be managed – how will in flight modifications be treated following implementation of this and other related modifications? CS agreed this would need to be considered.

The group discussed a number of changes to the wording of this (and the following modifications) that were captured on screen and provided to National Grid NTS to consider and reflect in the next version.

- **0319: Code Governance Review: Role of Code Administrators and Code Administration Code of Practice**

CS introduced the modification - 80% of the changes to the modification rules originate from this modification.

SL asked how User Pays costs would be reflected in the new templates. TD advised the new templates don't specifically prevent the inclusion of the User Pays details though they don't specifically ask for them. Additional questions could be added to the text of the templates as prompts for the information. CC requested parties to provide feedback on possible changes to the templates, but conceded it may not be possible to include User Pays sections in the template as other codes do not have these requirements. ST was concerned that User Pays is not forgotten, as it is the only way to create new services and their associated charges.

ST asked how Reviews would be managed in future as the modification proposes the procedures being removed. RH advised that parties would be able to raise Modifications to discuss the issue and identify if changes are required. TD clarified that the CoP refers to issues being discussed in a pre-change process, which he saw as a replacement for Reviews. ST was concerned there would be a loss in industry engagement to discuss issues without the use of a formal Review Group – for example, topics in Workstreams are not given the priority currently afforded to Review Groups.

ST asked if the requirement for Panel members to provide recommendations for implementation applied to all Panel members. CS confirmed this was so, as the licence does not differentiate between Panel member types.

TD asked how the suggestion of Ofgem consulting about Urgent Modifications would be managed within the restrictions on calling Panel meetings at short notice. PB advised the process used in BSC is useful for this aspect and may provide a model.

PL asked if the consultation starts from the Panel determination and whether legal text will in future be required prior to this decision, CS confirmed this was proposed. PL asked when the instruction for text would be issued. TD explained his understanding was that there would be a Panel vote as to whether text was required prior to a vote being taken on whether the modification should be sent to consultation – the opposite order to the present situation. The Panel would review the text at a subsequent meeting before the modification is issued to consultation. SL felt this would be a benefit as, at times, drafting legal text indicates an amendment is required to the modification.

JF was concerned that a requirement to draft text earlier in the process may lead to

errors or changes in the text due to amendments in the modification prior to the end of the process. PB wondered why the code administrator isn't procuring the text the way Elexon does? CWa was more concerned that the process should deliver clear business rules to facilitate the drafting of text rather than providing poorly draft text earlier in the process.

CS felt there might be a requirement to put in place SLAs and rules about when the text is procured and whether this should be by the administrator. RH considered it to be the role of Panel to decide when text is required, and its drafting can be managed by transporters.

ST asked if transporter costs should refer solely to central system costs in order to be consistent with the CoP. CS agreed this aspect should be defined and reflected in the modification. SL asked if the Chairman's Guidelines had been removed – this was confirmed as the requirements are reflected in the CoP, which can be found on the Ofgem website.

- **0320: Code Governance Review: Appointment and Voting Rights for a Consumer Representative and Independent Panel Chair**

TD highlighted the changes to the previous version, in particular the changes which allow Panel members to be able to vote against or abstain. TD asked if attendees were in favour of this aspect since it extends the CoP requirements. SL was in favour, though he questioned if appeal rights might be removed if the vote is passed on a casting vote. PB asked if a 5-5 vote would prevent a party seeking an appeal. CWa advised the statutory instruments determines whether parties can or cannot appeal any Panel decision. CS clarified casting votes only apply to self-governance since tied votes need to be resolved. TD confirmed a casting vote is only relevant if the voting rules are changed.

GE did not consider it an advantage to change the current voting arrangements, questioning what it adds in terms of benefits to the process and understanding Panel decisions. CC was concerned that non-implementation decisions should have a positive vote in the same way implementation decisions require – the current process does not capture the reasons why you are not in favour and why the modification does not meet the relevant objectives. This could be facilitated by a casting vote for the chair.

- **0321: Code Governance Review: Approach to environmental assessments within the UNC**

CS advised this modification remained unchanged from the previous version.

- **0322: Code Governance Review: Inclusion of the NTS Transportation and Connection Charging Methodologies within the UNC**

CS advised NTS will be publishing the annexes which accompany this modification as part of the next version.

- **0323: Code Governance Review: Self-Governance**

CS ran through the changes to the modification, which were received during the meeting. TD asked whether the voting should be unanimous to approve a modification following the self-governance path. ST felt this was essential. However, PB was concerned this would be placing too high a test, particularly when the initial

review aspirations were for 50% of modifications to follow this route. CC supported ST and PBs views, adding that Panel would have to have good reasons why a modification doesn't satisfy the self-governance criteria. Noting that Ofgem would be monitoring the process, but didn't want to end up in the position where no self-governance statements are ever made.

CWr asked if a proposer would be able to choose whether a modification is self-governance, subject to the Panels approval. CWa raised a point that a modification to CSEP NExA annex A for example, could be self-governance but iGTs may have a different view and they are not represented at Panel to influence the decision.

CS explained the Authority could accept or reject a self-governance statement or change the status of a modification to self-governance, so a modification can flip from one status to another.

CS outlined the proposed appeals process and asked whether the rules were sufficient. A number of points were raised - how does an appeal work; does the appealing party have to be in attendance; if an appealing party does not attend, does the appeal fail; does the Panel need to vote again should an Authority determination overturn the original decision? CS agreed to reconsider the section and redraft the Proposal based on comments received. This may include allowing Panel to go out to consultation to seek further views on whether an appeal should be upheld or rejected.

CC advised Ofgem is considering providing guidance on how they will manage appeals and how/what the Panel/respondent need to provide to Ofgem to enable them to consider the appeal and make a decision.

- **0324: Code Governance Review: Significant Code Reviews**

CS explained the modification and recent changes. There is a restriction to prevent the raising of related modifications during an SCR and hence the Proposal envisages the Panel checking a modification is not within the scope of an SCR. TD asked if Panel require criteria to determine if a modification is in scope of an SCR? CWr did not think this was required. CWr asked if a proposer can withdraw a modification if it is in scope or delayed to be included in an SCR? CS confirmed this is an option for the proposer. The Workstream agreed the Code Administrator should not reject modifications if they consider it is in the scope of an SCR.

PB was concerned that an SCR should not unduly delay the process and put an indefinite delay on a modification progressing – what checks will be put in place to prevent this? CC advised that with a SCR Ofgem would be committing resources and setting out the proposed timetable and aiming to stick to that, if they did need to extend the timetable they could then review whether it would be appropriate for any of the subsumed modifications to proceed or remain subsumed.

PB asked if the alternative process is impacted by SCRs. CWr felt it conflicts to say an alternative can be raised at any time during development – yet the SCR stops/suspends other modifications. Equally it could be an issue if an SCR modification is issued to consultation without development, preventing alternatives being raised.

GE asked if the modification rules would prevent parties raising modifications during an SCR. TD confirmed this was in the proposal. CC confirmed a modification could be stopped by Ofgem at different stages in its development e.g. workgroup stage or consultation stage. GE wanted to know how to approach Ofgem to get a modification exempt: this has still to be defined by Ofgem.

Action GOV1057: CS to consider the comments received and amend the modifications as required.

- **0325: DN Transportation Charging Methodology and Change Governance**

PL explained the modification and the changes made to the previous version. The Workstream discussed whether there will be one or more DNO charging methodologies – it was not clear if a common methodology would comply with the licence. Shippers were supportive of a common methodology. CC did not see an issue with a common approach which clearly defines the transporters it applies too. ST noted there could be divergence if a DNO seeks a change but others don't, though this is not envisaged in the foreseeable future.

TD questioned the role of the Charging Methodology Forum (CMF) since this was defined as a Transporter forum and so sat outside the modification process. PL confirmed it is proposed that a CMF is held within x days of a proposal to modify the methodology being submitted, to ensure parties have sufficient time to review the Transporter proposals. Shippers considered this was a minimum requirement. PB felt all modifications should be issued to a workgroup for at least one meeting before being sent to consultation. However, the view in the Workstream was mixed, as not all changes to a methodology will require further development.

PB asked who can raise a modification, and sought clarification regarding which parties in which circumstances can i.e. can Consumer Focus raise a modification in all circumstance or is it restricted to charging methodology changes only. RH did not consider it would be possible for Consumer focus to raise, for example, a modification which bridges different elements of UNC for which they may have no right to raise a modification.

Action GOV1058: PL to consider the comments received and amend the modification if required.

2.2 Modification Proposal 0281 - Introduction of an Implementation Timeframe for Modification Proposals

CS explained the proposal and recent amendments. CWr asked what is changing in the UNC - parties can do what is proposed already. CS explained this proposal sets out a mandatory date format, and requires justification and benefits for meeting a specific timeline or timeline options.

Though the proposer can set a timeline in the proposal, these may not be met if the transporter does not think the proposals can be implemented in the timeline. RH felt the UNC model will need to change if it is expected the proposer puts in binding dates, as these will need to be agreed by Transporters as part of a development group. TD advised that any date provided as part of a DCA is not automatically put into proposals at present. RH added that Daces are often avoided as these costs are charged to Users, and this proposal will not change that situation.

JF agreed implementation would add consistency across codes, but suspected it is a process that is likely to be avoided on implementation – most implementation dates will be left blank.

CWr challenged how the proposal could be judged against the relevant objectives since it is not changing current processes. CS advised that implementation dates could only be submitted in the revised format, so there would be a change. CWr and PB suggested the proposal should be withdrawn and a guidance/best practice document would be more acceptable to the industry.

PB would like to see the dates in the proposal amended to reflect industry debate rather than just a proposer's view – this would add more value to all.

The Workstream considered the draft report and provided comments to populate the impacts. The general view was the impact on UNC is nugatory, but the Panel should be recommended that the proposal was sufficiently developed to proceed to consultation.

3 Any other business

No other business raised.

4 Diary Planning for Workstream

Next Meeting

19 August 2010, ENA, following the UNC Committee meeting.

Action Ref	Meeting Date(s)	Minute Ref	Action	Owner*	Status Update
GOV1047	21/01/10	3.2.1	Amend the draft guidelines document based on comments received for presentation to the Governance Workstream.	National Grid NTS / Wales and West Utilities (RHe/ST)	Carried Forward
GOV1054	17/06/10	2.3	Seek a view from Ofgem's lawyers on the definition of rights of appeal and what amounts to a majority vote at Panel.	Ofgem (JD)	Carried Forward
GOV1056	29/07/10	2.0	Consider if the UNC Code Governance changes should be implemented before or at the same time as the licence changes.	Ofgem (CC)	Pending
GOV1057	29/07/10	2.0	Consider the comments received and amend the modifications as required.	National Grid NTS (CS)	Pending
GOV1058	29/07/10	2.0	Consider the comments received and amend the modification if required.	National Grid Distribution (PL)	Pending