

## **Workgroup 0623 Governance Arrangements for Alternatives to Self-Governance Modification Proposals 21<sup>st</sup> August 2017**

Specific areas that the Workgroup needs to address

### **Mixed modifications**

- 1) Do they agree with the proposals for “mixed modifications” namely that they are all treated as following the “highest” governance route so Authority trumps Self-Governance trumps Fast Track Self-Governance.

### **Self-Governance Alternate Deadlock**

- 2) Should panel have an option to send back a workgroup report where they believe this may produce consensus. Currently Mod Rules 7.2.4 allows Panel to make a determination or postpone discussion. 8.5.1 (ii) allows Panel to refer the Workgroup Report back to the workgroup for revision or further work but doesn't allow panel to “suggest” that the proposers come up with a consensus or risk none of the Alternatives being implemented which may well be what is required.

It seems sensible to combine 8.5.1 into 7.2.4 because they essentially cover the same area.

7.2.4 Where the Modification Panel discusses a Modification Proposal together with the relevant Workgroup Report the Modification Panel may:

- (a) make a determination in accordance with paragraph 7.2.3(b); or
- (b) determine that any further discussion of the Modification Proposal should be deferred to a subsequent meeting of the Modification

### **8.5 Discussion of Workgroup Report**

8.5.1 Having:

- (a) discussed the Workgroup Report; and
- (b) allowed any person who attended and participated in the relevant Workgroup (in attendance at the meeting of the Modification Panel) to express any views on the substance of the Workgroup Report or the conduct of the consideration of the Modification Proposal by the Workgroup, the Modification Panel shall determine:
  - (i) that the Modification Proposal shall proceed to Consultation in accordance with paragraph 7.3; or
  - (ii) to refer the Workgroup Report back to the Workgroup for revision or further work; or
  - (iii) to continue to consider or to consider further the Workgroup Report at a subsequent meeting of the Modification Panel.

- 3) Views on the proposals on panel voting in the event of a tie. Is the additional complication proportionate to the benefit?
- 4) Views on the proposal not to amend the appeal procedures. The alternative would be to allow an appeal if the Panel failed to make a determination but the concept of an appeal of a non-decision is strange. The option would be then to refer the decision to Ofgem. Workgroup members are welcome to provide evidence of how this works in other industry agreements.

13.1 No later than fifteen (15) Business Days after the Self-Governance Modification Proposal Determination Date, a User, Transporter, Independent Gas Transporter, Materially Affected Party (if any) or Third Party Participant may make an Appeal by giving written notice of the Appeal to the Secretary, such notice to identify the Self-Governance Modification Proposal which is the subject of the Appeal, any representations which the Appealing Party wishes to make in support of the Appeal and evidence supporting the Appealing Party's view that it will be unfairly prejudiced by the modification proposed in the relevant Self-Governance Modification Proposal.

**"Appeal Criteria"**: the following criteria in respect of an Authority Appeal:

- (a) the Authority Appeal has been made within the time specified in these Rules;
- (b) in the opinion of the Authority;
  - (i) the Appealing Party is, or is likely to be, unfairly prejudiced by the implementation or non-implementation of the Self-Governance Modification Proposal;
  - (ii) the Authority Appeal has been made on the grounds that the Appealing Party reasonably believes that:
    - (1) where the Modification Panel has made the determination to implement the proposal, the proposal does not better facilitate the achievement of at least one of the Relevant Objectives; or
    - (2) where the Modification Panel has made the determination not to implement the proposal, the proposal does better facilitate the achievement of at least one of the Relevant Objectives;
- and
- (iii) the Authority Appeal has not been made for reasons that are trivial, frivolous or vexatious; and
- (iv) the Authority Appeal has a reasonable prospect of success;