

Governance Workstream Minutes

Thursday 22 January 2009

350 Euston Road, London

Attendees

Tim Davis (Chair)	(TD)	Joint Office
Bob Fletcher (Secretary)	(BF)	Joint Office
Amrik Bal	(AB)	Shell
Bali Dohel	(BD)	Scotia Gas Networks
Chris Hill	(CH)	RWE Npower
Chris Warner	(CW)	National Grid Distribution
Chris Wright	(CWr)	British Gas Trading
John Bradley	(JB)	Joint Office
Jon Dixon	(JD)	Ofgem
Joel Martin	(JM)	Scotia Gas Networks
Phil Broom	(PB)	Gaz de France
Peter Bolitho	(PBi)	EON UK
Richard Street	(RS)	Corona Energy
Roddy Monroe	(RM)	Centrica Storage
Simon Trivella	(ST)	Wales and West
Stefan Leedham	(SL)	EDF Energy

1.0 Introduction and Status Review

1.1. Minutes from Previous Workstream

Accepted without amendment.

1.2. Review of Actions

None

1.3. Review of Live Modifications Proposals and Topics

None

2.0 Modifications

No Modifications to review.

3.0 Topics 013GOV - Industry Codes Governance Review

Discussion focused on Ofgem's proposals on Major Policy Reviews and Self Governance which broadly offers 3 paths which a Modification Proposal may follow:

Path 1 = Major Policy Review (Ofgem decide)

Path 2 = Status Quo (Panel recommend, Ofgem decide)

Path 3 = Self Governance (Panel decide)

PBi commented that, under Path 1, it is intuitively wrong that Ofgem propose having powers in Licences to effectively direct a change to contractual terms and conditions on other parties when those parties do not have an easy option to challenge this direction. JD added that Shippers currently don't have Licence obligations to raise code modifications but this mechanism could facilitate change in the industry following high level policy reviews.

TD asked whether, rather than oblige others to raise Modification Proposals through their

Licences, it would be easier to progress the outcome of a Major Policy Review if Ofgem was allowed to raise Modification Proposals, which could then be subject to the existing change processes as appropriate. JD responded the aim is for Ofgem to identify what is going wrong or needs to be changed and request the industry identify a resolution as Ofgem may not have the expertise to direct how the issue should be resolved.

JD added that an Ofgem objective is to make the process more transparent by setting principles by which the objectives are achieved and setting the direction of reform, including target implementation dates. PBI thought it was still too strong to use licence obligations to achieve this. SL said there have been similar situations, such as entry capacity substitution, where licence changes drive change but, even if the general view may be that change is desirable, the issues and principles would benefit from more debate.

TD suggested there would be merit in Ofgem providing more detail with its instructions to develop change in the industry. If only setting high level parameters, with the industry developing the detail and as necessary, there should also be scope for challenging the high level parameters. JD agreed the process should be two way with Ofgem supporting and directing the process where required.

AB asked what Ofgem's view is as to what the UNC represents, and questioned whether the provision of high level principles is sufficient to achieve change quickly. JD commented that at times change maybe in favour of consumers rather than UNC parties and the UNC could be a vehicle to deliver the required change. AB thought that, logically, if Ofgem raise a reform proposal it should manage the process to its conclusion. JD responded that if the consultation shows this is the way forward, then Ofgem would need to commit sufficient resources to manage the process efficiently.

SL commented that the process discussed for paths 1 to 3 is similar to the UNC process currently in place – Proposals may be subject to Review, Development or be sent direct to Consultation. JD responded that Ofgem may at times want to have issues resolved quickly and the three path approach offers this flexibility. This also comes down to effective planning over a five year period which enables change to be managed in a constructive way. TD asked if issues expected to be subject to a Major Policy Review should be included in the Ofgem Corporate Plan, which JD felt would be desirable? CWr asked if Ofgem would set out its objectives at the beginning of a price control that would take it through to the next price control. JD thought that timetables could be aligned/coordinated for big industry issues regardless of code requirements.

SL was concerned that a number of issues currently managed by licence and price control change processes should not be influenced or modified by UNC changes driven by Ofgem. TD added this could potentially be managed within any new process by using the Panel as a check and balance mechanism. In addition to licence overlaps, TD asked how Ofgem envisaged the proposed process is to be managed with other parties, such as SPAA or the iGT UNC - would this review consider how cross code issues should be managed? JD confirmed Ofgem are willing to consider any suggestions of ways forward for coordinating governance processes.

SL asked if the any high level plan emerging from an Ofgem Major Policy Review would include cost estimates up front to inform subsequent development of changes. JD was hopeful any new governance process would help to improve the availability of information at an earlier stage.

SL asked how Path 3 is expected to work - does it require changes to Panels, would it mean the code governance administrator briefing independent attendees prior to meetings? JD considered the Panels should contain sufficient expertise to manage the process and this may at times require briefing by the code administrators to ensure the process is robust. JD also added that Panel constituencies within various codes are likely to be different as the interested parties will be different, though this does not preclude similar operating structures.

PBi asked how the numbers of proposals would map across the 3 Paths. JD thought that a small number (1 or 2) would fit into Path 1 and the remainder would be equally split across Paths 2 & 3 - this could be further discussed at Ofgem's seminar on 11th February.

PBi thought paths 2 & 3 could be implemented quickly and in isolation of Path 1 and it may be advisable to move this way rather than wait for Path 1 to be developed. JD advised that Ofgem's current plan is to implement the governance changes by April 2010 (this is likely to require changes to licences). TD asked if the group preferred the self governance approach to direction by Ofgem. While generally favouring self governance, not all thought this was the way forward for all changes and suggested that more involvement and direction by Ofgem at an earlier stage was desirable for some proposals.

AB asked how appeals would be managed on Ofgem directed changes. TD suggested Ofgem raised Proposals could go through the self governance route, avoiding Ofgem both sponsoring and deciding on the merits of a Proposal, although JD was not convinced this was a concern. SL felt any appeals process should be easier and cheaper than the current process to enable smaller parties to be more involved. PBi suggested there could be a blocking facility if sufficient licensees object to a proposal.

AB questioned Ofgem's role as he had concerns around them controlling the code process rather than requesting the parties to the contract to investigate an issue and identify a solution - this may require persuading, rather than directing, parties to sponsor a change on Ofgem's behalf. ST considered this was a way forward; however it didn't resolve the issue where Ofgem wanted a change that was, for example, in the consumer's interest but not wanted by UNC parties.

In the context of self governance, it was suggested that it may help to create a voting Panel with an odd number of members to reduce the prospect of tied decisions. ST suggested Ofgem could have a casting vote, in much the same way as the BSC Chair holds a casting vote. SL thought that most split votes were along Shipper/Transporter lines so an Ofgem casting vote may not be an improvement on the existing process where Ofgem currently direct implementation.

CWr asked if a policy decision in a particular area had been discussed and implemented under Path 1, should it not be reopened for, say, 2 years. JD advised the intention was to give direction and a level of stability following a major change which allows the new change time to bed in and the industry to undertake a post implementation review. RS asked if there was a commitment from Ofgem to undertake post implementation reviews. JD thought this was more likely for major changes, though not for every change, and it would expect the industry to undertake its own for Path 2 and 3 changes.

RS asked if Ofgem would consider including a benefits analysis test where they demonstrate to their external managers the reasons for wanting a Path 1 change. JD advised that Ofgem currently has a rigorous internal review and governance process for these reasons.

TD asked if those present had any comments on the code administrator's Consultation paper. CWr was unsure about the provision of additional analysis by code administrators and thought Ofgem should manage this aspect. JD was concerned how decisions could be made by Panel Members without full analysis being available to them at the time.

TD asked if the code administrator should have sufficient resources available to provide analysis. SL asked what Ofgem wanted from the analysis. JD replied that it is essential that sufficient information is available to ensure the correct decision is made particularly where there are alternatives or variations to consider - it should be considered a good discipline and best practice. In addition, Ofgem shouldn't be doing impact assessments where these should have been done as part of the decision making process prior to referral to Ofgem.

SL was concerned that commercially confidential information would not be made available other than to Ofgem through confidential responses during consultation, which may impact the viability of a User Pays service and reduce the accuracy of impact assessments.

TD asked who should be asking for more analysis – the code administrator or the Panel. PBi advised that the BSC panel requests additional information. JD added sufficient analysis goes hand in hand with self governance.

TD asked if there were views on the definition of a small party. There were concerns expressed on the definition of a small party and PBi highlighted there should be the right of access to all parties. TD added that the consultation document highlighted small parties should be given special access and appeal rights, though no one present could identify who this definition would apply to in the gas industry.

ST asked who is presently entitled to attend Panel meetings. TD replied that, in addition to Ofgem, Shipper and Transporter Representatives who regularly attend, the terminal Operators had recently appointed a Member. Provisions also exists for Small Supplier, Customer and iGT Representatives, although these are in a non voting role. JD advised that Customer Focus may want to take a more proactive role.

4.0 Any Other Business

None

5.0 Next Meeting

22 February 2009, following the UNC Committee meeting.

Action Log – UNC Governance Workstream 22 January 2009

Action Ref	Meeting Date(s)	Minute Ref	Action	Owner*	Status Update