

Governance Workstream Minutes
Thursday 07 May 2010
Ofgem, 9 Millbank, London SW1P 3GE

Attendees

Tim Davis (Chair)	TD	Joint Office
Bob Fletcher (Secretary)	BF	Joint Office
Chris Shanley	CS	National Grid NTS
Chris Warner	CWa	National Grid Distribution
Chris Wright	CWr	British Gas
Gareth Evans	GE	WatersWye
Gerry Hoggan	GH	ScottishPower
Jon Dixon	JD	Ofgem
Joanna Ferguson	JF	Northern Gas Networks
Julie Cox	JC	AEP
Peter Bolitho	PB	EON Energy
Richard Hall	RHa	Consumer Focus
Ritchard Hewitt	RHe	National Grid NTS
Richard Street	RS	Corona Energy
Shelly Rouse	SR	Statoil
Simon Trivella	ST	Wales & West Utilities
Stefan Leedham	SL	EDF Energy

1.0 Introduction and Status Review

TD welcomed attendees to the meeting.

1.1. Minutes from Previous Workstreams

1.2. Not discussed at this meeting.

1.3. Review of Actions

Not discussed at this meeting.

2.0 Review Proposal 0267 – Review of UNC Governance Arrangements

2.1. Proposed Modification Process (as set out in Code Administration Code of Practice (CoP), Annex 1, page 13)

TD introduced the proposed modification process diagram and how the terminology currently used is likely to change. In the pre-proposal stage topics are now called issues, and this pre-proposal issue stage replaces review groups.

It has been suggested that Modification Proposals should simply be called Modifications, reflecting that most refer to them simply as “Mods”. All Modifications will use new templates, based on the Elexon models discussed at previous meetings. For consistency, all meetings will be described as Workgroups. This would replace the title Workstream or Development Work Group in the UNC context, as well as replacing Modification Groups under other Codes. SL asked why Workstreams have been removed when the code administrators review thought they should be rolled out across all Codes. TD clarified that it was only the naming convention that was to

change, and the process envisaged general Workgroups being arranged to discuss a range of actual or potential Modifications.

PB wondered how Alternatives would be managed, as he did not consider the existing process suitable. How are Modification assessments to be made if an alternative is raised? TD explained that an Alternative to a Modification could not be raised once a Modification is issued for consultation in the new process, with the idea being that all Alternatives should be assessed to the same degree as an original Modification. PB was in favour of all Modifications going for assessment, though there may be a need for the process to be flexible for Self Governance Modifications, which may not require this aspect.

TD advised that the CoP required provision of a standard template for consultation responses, though using the template was not mandatory. SL asked if there were two consultation processes proposed i.e. Workgroup consultation followed by Panel consultation. TD clarified there is only one required consultation stage. Workgroups may recommend whether or not consultation is appropriate, but Panels would decide. SL asked if the template should be modified to ensure accurate recording of User Pays aspects of the Modification. TD agreed this is likely to be required and the format allows for additional information and specific Code objectives to be included in the templates for each Code.

CWr asked if charging methodologies should be raised as standard Modifications and can a Code User use this process to request consultation on charging methodologies. TD confirmed the licence requirements envisage this happening. RHe agreed this is proposed, though it will require an initial Modification to bring the methodologies within the scope of the Code. JF added that a pragmatic approach to implementation dates was likely to be required in order to keep charging methodology changes to once per year and for the existing notice periods to be provided. TD advised that Modifications to charging methodologies may need to be raised individually for each DNO – 6 in total – since they have separate methodologies. CS asked if it was likely the methodologies will move into the Code itself rather than being ancillary documents – TD indicated that this would depend on the precise Licence drafting, but his interpretation of the draft changes was that they required the methodologies to become part of the UNC rather than ancillary documents.

SL thought that it would be useful if DNOs develop a common charging methodology to help reduce the complexity of the consultation process. RS suggested it may be useful if the group write to Ofgem asking if the charging methodology process could be reviewed prior to its inclusion in the licence to avoid complexity. SL felt that most Shippers would be happy with a single transporter charging methodology. ST advised that this is not allowed in the current drafting as each company has to produce its own methodology.

CWr was concerned that work needs to commence urgently to change Code if the charging aspects need to be in place by 1 November 2010. CS advised that initial assessments were being undertaken to consider the required changes and impacts. ST advised the draft licence changes document had been amended, though this has yet to be sent out to a wider audience. JC was concerned that there were different versions of the Ofgem consultation document issued and industry participants may be providing comments on different versions.

JD advised that the amended drafting in the Licence consultation can be circulated to

a wider group. Revised drafting had been issued in an effort to be helpful, but was sent to the licence drafting workgroup since only attendees would understand the background to the changes made. The group had been advised that while possible amendments were being made, these would be subject to responses received on the published previous drafting. JD advised that Ofgem's view is there should not be an issue with Charging Methodologies as these are likely to be common, with the few elements that are transporter specific being included in network specific appendices – similar to the electricity industry approach. RS asked for clarification on the consultation approach to ensure the change process is not overly complex. JD confirmed it is not Ofgem's intention to make the process complex and rigid. PB felt that short form network codes were always envisaged to be light in structure to ensure processes were not duplicated unnecessarily and that inclusion of the charging methodologies in these would be inappropriate.

2.2. Alternative Proposals (National Grid NTS presentation)

RHe gave a presentation on the alternative proposals process used in CUSC, emphasising how this is different to UNC. Alternates must be raised during the development/workgroup stage; alternates cannot be raised after the Panel has sent a proposal to consultation. RHe confirmed that the workgroup could suggest an alternative(s), and these are owned and developed by the workgroup initially. PB supported this, although the original stays in the ownership of the proposer. CWr asked if this process aligns with the suggestions in the code governance review. RHe responded that this is a presentation on CUSC so it may not align to the requirements set out in the review, and it is possible the CUSC process will change in future.

TD confirmed that any alternate developed by a Workgroup would need to have a proposer - the Workgroup couldn't own the alternate at the end of the process.

SL asked if there is a requirement to demonstrate your competence to be member of a CUSC Workgroup. This was believed to be the case, with the intention being to ensure proposals are developed for the best interests of the industry. PB confirmed it is not difficult to become a member of the CUSC workgroups and attendance at meetings is open to non-members. SR asked about the purpose of the CUSC Workgroup consultation. RHe indicated that it is possible to amend a proposal based on the initial workgroup consultation prior to the Proposal being presented to Panel. SL confirmed CUSC Workgroup voting is restricted to members only and that they have to attend a specific number of meetings to be eligible to vote.

RS felt a weakness in the UNC process is the restriction on raising alternates until a proposal has been sent to consultation. RH advised that this was initially developed at the time when only a Transco raised Proposal could be amended, with no ability to amend a Shipper Proposals once raised. Hence an Alternate had to be raised either once a proposal is sent for development or consultation (within 5 Days in each case).

RS was concerned about the resource requirements for a process similar to CUSC being adopted in UNC – smaller suppliers may not be able to attend all the meetings required to develop the potential alternates and so be eligible to vote. SL felt the process could be responsive and helpful to smaller suppliers as it ensures alternates are developed in open forum prior to consultation. TD added that the CoP only requires votes to be taken and recorded at Panel, any voting at Workgroups is “unofficial” and the concept of Workgroup membership was diminished since all were to be open to all.

RS asked if Ofgem are able to make decisions quicker because the CUSC workgroups review the issues in more detail than UNC groups. JD felt decisions are easier to make as they are engaged in the process and the analysis is more detailed. He added that reports tend to ask for decisions by specified dates, which Ofgem look to meet. JD also advised that it is intended, to ensure priorities are met, that decisions should be made when needed rather than what is next on the list.

SL was concerned about variations in the UNC since Proposals can be varied right up to the date it is sent to Ofgem, when it is not possible to raise an alternate. PB felt a variation is a sign the proposal is not fully developed and the situation will be improved by a process which allows an assessment of the proposal to ensure it is fully developed before going to consultation.

RS considered one of the strengths of the UNC regime is that other parties can raise alternates, whereas CUSC only allows this in workgroups. PB did not agree as the CUSC process allows the time to raise alternates, which are then fully developed alongside the original proposal.

TD pointed out that an aim of the Ofgem review is to make the process easier, particularly for smaller parties. RH commented that CUSC does this to a point by being as complex as is needed to ensure development is sufficient to allow consultation to take place in an informed way. JD agreed, advising the main objective is to have rules that are common across all industry codes.

TD listed a number of potential modifications (at least 10), which may be required to implement the recommendations of the industry codes review. This is a complex task on its own and asked if Ofgem have an implementation date in mind. JD felt the review explained that changes should be in place by 1 November. However due to the number and complexity of modifications it may be necessary to phase the changes. PB suggested that if there were any burning issues, these should be raised by parties sooner rather than later to allow a chance of meeting the required timeline. CWa hoped it would be possible to coordinate the changes required to prevent a piecemeal approach to implementing changes required by the licence amendments.

TD advised that for proposal 0267 the Joint Office has published a matrix of issues based on the requirements of the code review and this could be used to illustrate how aspects could be packaged to meet any required timelines. TD asked the group if they were happy for the JO to package the issues for initial discussions with Transporters, as the Licence holders? PB thought it would be beneficial to do this, though discussion within the group will be required sooner rather than later.

Action GOV1051: JO to develop 0267 issues matrix descriptions to match potential modification rules changes.

2.3. Implications for Modification Rules of Ofgem's Industry Codes Governance Review Final Proposals (*including Self Governance and Significant Code Reviews*)

Discussed under 2.4

2.4. Modification Panel Constitution and Voting Arrangements

CWr introduced UNC0294 proposing changes to the constitution of UNC Panel. CWa asked why the weighting is structured as proposed - it appears that voting can be

mismatched if parties vote against their particular constituency and he would like to see some examples. GE asked for Gas Forum member views on the election process and if they had similar views to the proposer. PB felt the recent changes to the Gas Forum managed election process make it more open and flexible so the issue is not as significant as previously.

GE asked how Shippers who have no supply business stand in the process as the proposal asks for shipper to identify their constituency as LSP or SSP. CWr said they still have to declare which constituency they wish to stand for. GE was concerned that parties are being forced to declare which supplier they contract with by notifying which constituency they wish to represent. RHa was concerned how a business would decide if it had a balanced portfolio, whether this is by market share, profitability. Or could they offer candidates for both constituencies.

RS asked if the constituencies could be clarified to recognise the different Users who are not strictly LSP or SSP suppliers. CWr did not believe the proposal fetters the commercial interests of any party, though he would be willing to consider reviewing the proposal to reflect the discussions, including revisiting the existing requirement for Panel members to vote in the best interests of the industry should that obligation need to be strengthened.

It was suggested that Shipper representatives might be 2 LSP, 2 SSP and 1 other from any group. CWr hoped that the spirit of the proposal is not to distort the process but ensure there is balance. The designated person will validate parties declaration for either SSP or LSP and any discrepancies can be sent to Panel for a view.

GE asked why consumer representatives were given 5 votes rather than 6. CWr felt this was more in alignment with Shipper than Transporter representatives. RH did not think the choice of 5 or 6 votes was an issue for Consumer Focus. GE was concerned that balance of Panel may be difficult to achieve should parties not be able to attend a meeting and quoracy may need to be considered further.

Voting Arrangements

PB asked about significant code reviews in the context of qualified voting and proposals driven by strategic review recommendations – his concern was ensuring safeguards to prevent a party or regulator being able to unduly force implementation of a proposal and for appeal rights to be restricted. Qualified voting could safeguard this; alternatively it may be an instance where a proposer should not be allowed to vote.

TD mentioned that concerns had been raised more widely around the balance of Panel votes when consumer representatives are allowed to vote and the consequent impact on appeals. One approach would be a requirement that a Panel recommendation would need at least one Transporter, User and Consumer representative voting in favour.

JD explained the recommendations in the Code Review that sought to provide the safeguards that PB recommended. Ofgem would, however, consider on their merits any proposals to introduce qualified voting for proposals arising from significant code reviews. RHa explained that he understood the concerns raised that Panel structure should not fetter a parties right to appeal – in his view the right of appeal was the right of any party and not just code signatories.

TD asked if votes in favour and against should be counted and abstentions allowed. PB wanted to restrict consideration for Significant Code Reviews to positive approval only, not to the management of negative votes – these should be discussed as a separate issue. He wanted to ensure there was a right of appeal for code signatories whether consumer representatives vote or not. RS would be in favour of any process, which made appeals easier and agreed there should, at minimum, be no eroding of rights for parties to appeal. SL was in favour of setting higher hurdles for strategic review proposals and qualified voting might satisfy this. RHa made an observation that it may be easier to change the statutory instrument, which impacts appeals across all codes, rather than seeking to change each Code.

SL was in favour of counting positive and negative votes in order to ensure the flavour of the Panel decision and reasons are clear. ST was concerned if this approach is not adopted, a proposal may not be recommended due to disinterest rather than opposition. RS felt that Panel members should be voting on the best interests of the industry and meeting relevant objectives and should be able to make a decision.

GE felt the current process works for decisions that are referred to Ofgem, though he was concerned self-governance proposals could be blocked by lack of interest in the proposal. ST did not believe this would be an issue - any self-governance proposal that has significant issues should not be in the self-governance process.

PB raised tied votes - he did not want to see a process, which included a casting vote that makes decisions to implement, or not. This should be down to the decision made by Ofgem. TD advised that casting votes for chairs has been removed as a requirement and JD confirmed this was the case, though it was still an option which could be included in modification processes.

RS suggested rather than have abstentions, these could be described as a no vote and not included in the total number of votes needed for a decision.

The group agreed that the rules need to deliver an outcome, e.g. as now, no positive result means the proposal/decision fails and the consequence is always clear.

PB indicated that he is considering raising a proposal to develop changes to voting requirements, particularly for significant code reviews.

3.0 Any Other Business

CS asked if the group had any views on the timing of legal text provisions, which the Review suggested should be earlier than the present UNC obligations. GE suggested the Transporter should discuss legal text with the proposer at an early stage. SL felt the appropriate process is dependant on the complexity of the change. RS did not have any major concerns with the present arrangements and suggested there was an element of trust in the process as well as dialogue between the relevant parties.

GE asked if a Modification proposed creation of a UNC related documents, was the content of the proposed document part of the legal text that the Transporters were required to draft. TD was of the opinion that the content of these was part of the Proposal rather than part of the text.

4.0 Next Meeting

20 May 2010, 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 (RH)	Carried Forward
GOV1048	21/01/10	3.2.2	Provide a view on the possibility of adopting a process for a cost pass through mechanism for marginal User Pays charges.	Ofgem (JB)	Carried Forward
GOV1049	18/02/10	2.3	National Grid NTS to consider the comments received and amend UNC 0281.	National Grid NTS (RH)	Carried Forward
GOV1050	30/03/10	2.1	Present views on panel constitution and voting	Waters Wye (GE)	Carried Forward
GOV1051	07/05/10	2.2	Develop 0267 issues matrix descriptions to match potential modification rules changes	Joint Office (BF)	Pending