

Governance Workstream Minutes

Thursday 21 July 2005

10 Old Bailey, London

Attendees

Tim Davis (Chair) (TD) Joint Office of Gas Transporters
Julian Majdanski (JM) Joint Office of Gas Transporters
John Bradley (JB) Joint Office of Gas Transporters
Alan Raper (AR) Transco DN
Christianne Sykes (CS) e.on UK
Collette Wheeler (CW) Gemserv
Jon Dixon (JD) Ofgem
Mick Curtis (MC) $e=mc^2$
Mike Young (MY) BGT
Phil Broom (PB) Gdf
Ritchard Hewitt (RH) Transco NTS
Stephanie Gott (SG) Gemserv

1. Minutes from Previous Workstream

The minutes from 16 June 2005 were accepted

The minutes from the Extraordinary Meeting held on 14 July 2005 were accepted

2. Review of Actions

None

3. Review of Modifications and Topics Log

3.1. Modifications

020 'Proposal to establish a review group to assess whether any changes are needed to UNC Governance in the light of the imminent introduction of the Appeals mechanism against Authority UNC modification decisions'

The Panel had accepted the review report and had agreed that the first of the two suggested proposals be sent direct to consultation (*Removal of 9.5.5 of the Modification Rules*). This would be raised on the Workstream's behalf by Transco NTS.

Discussion then took place on the second draft proposal (*Variation of Proposals in the light of a Competition Commission direction*) included within the report. JD was unable to give the Workstream much guidance on what kind of direction may come from the Competition Commission. It was more likely that the Competition Commission would give a direction to Ofgem to reconsider its decision than issue a specific direction to change. MY suggested that in the event of a direction to change, the Panel should be given an early opportunity to decide on the route to be followed.

Discussion then took place on the possibility that the result of the Appeal might require a Proposal to be varied, for example in light of a date related obligation. JD considered that such a change would normally be achieved by issuing a consent.

Where a direction had been given to reconsider, JD suggested that Ofgem would initiate its own consultation rather than ask for the Proposal itself to be subject to reconsideration. This would not necessarily prevent the Authority confirming its original decision as the direction might have been due to a reason that this consultation itself would rectify. In these circumstances, any subsequent appeal would likely be judged as vexatious. This would be an occasion where the Panel would not need to meet. JD accepted the suggestion of discussing these issues with the Competition Commission.

Action JD to discuss with the Competition Commission its views on the likely extent of directions to be given following an appeal.

It was agreed that the Workstream would await the response of these discussions prior to considering the matter further.

004 'Changes to the Network Code to facilitate the sale of gas distribution networks'

A suggestion was made that this Modification Proposal could be withdrawn. The proposer indicated that it would not withdraw the Proposal whilst the possibility of Exit Reform remained and the process for consultation was unclear. It was pointed out that this Proposal had been raised whilst Exit Reform was being discussed outside the Network Code process. This was no longer the case and more recent discussions had taken place at the Transmission Workstream. Whilst recognising this, the Proposer reiterated that this Proposal would not be withdrawn until a clearer way forward on Exit Reform consultation was identified

003 'Revision of the Modification Rules'

The Proposer indicated that he did not wish to withdraw this Proposal as there were still relevant issues to be discussed.

3.2. Topics

002Gov 'UK Link Modification Classes'

A brief update was given on the discussion that took place on 14 July 2005. This Topic would be discussed further on 8 September 2005.

003Gov Appeals Process

See above discussion on Review Group 020.

004Gov Panel processes and timings

005Gov SME roles and responsibilities

006 Production of legal text

As these items were linked, discussion encompassing the topics took place together.

TD asked for comments on the timetables that had been produced at the June Workstream. He then identified the scope for further savings. For example, where the Workstream produces a report in the Modification Report format, and that report is accepted by the Modification Panel, he suggested that the Draft Modification Report could be dispensed with. JM pointed out that the only additional part required to commence consultation may be incorporation of legal text.

This prompted TD to suggest that the inclusion of legal text could influence any decision on whether the Modification Proposal was ready to commence consultation. RH suggested that this responsibility should rest with the Proposer but this was not accepted by all the Users present – particularly where the Proposer was a small company. MY suggested that the Panel could ask for legal text at the commencement of consultation. This principle is consistent with the current position that a recommendation for the Panel to implement triggers the preparation of legal text.

For Modification Proposals that the Panel determines should go directly to consultation, TD also asked whether, in this event, any SME involvement was required. RH responded that if the Modification Report format was used for Proposals, he didn't believe that SME involvement would be required. AR suggested that incorporation of such a format would increase the likelihood of it going for development. JD saw this as a distinct benefit - the Ofgem decision would be more straightforward if the Modification Proposal was better developed.

Turning to the later steps in the process, the Workstream discussed the value of summarising representations within the Final Modification Report. One extreme would be for the Final Report not to summarise the representations but simply to append them in full along with the Panel recommendation. In support of this position, both Ofgem and Panel Members read the representations in full. Discussion then continued on whether a second consultation should take place after close-out of representations. MY expressed the view that a full second consultation was

not desirable but the present process should be retained for Panel Members to consider representations, which essentially allowed further discussion with interested parties.

As an alternative to this extreme position, where no summarising would be conducted, TD suggested a “bullet point” tabulated summary where support and other information would be summarised but the detail of the arguments in the responses would not be summarised - JD suggested this might be facilitated by requesting representations in a fixed format. This summary could be prepared by the Joint Office. This led to JD expressing the view that in the past the response of Transco to these views had been valuable to Ofgem. TD suggested that this could be achieved by allowing the Proposer to make this type of response in the Final Modification Report. If all these suggestions were taken up, there would no longer be a requirement for a SME. RH supported this, expressing concern about the requirements placed on SMEs, particularly where there were extensive responses.

CS expressed some concerns on this proposal and pointed out that a prescriptive approach was used in BSC but had not been helpful. She was unsure whether problems had been raised by following the current process. TD responded that the timescales involved with following current practice has, contrary to Panel Members request, led to more than one Panel Meeting per month to avoid long waits for Panel decisions.

TD suggested that whilst flexibility already exists to adjust consultation periods without a change to the Modification Rules, a change to the rules would be needed if a process were to be implemented which did not involve the use of SMEs.

The Workstream concluded that the Joint Office should take to Panel a proposal that a proforma for responses based on the headings already incorporated in Modification Reports should be instituted as a recommended, but not mandatory, form of response. An opportunity would then be taken to gain industry responses to this suggestion

Action Joint Office to make a suggestion on the adoption of a proforma for consultation responses to the August Panel meeting.

4. Any Other Business

The following items were discussed:

4.1. Principles of Good Governance

JD detailed the history of the development of these principles. RH suggested that the development of the Modification Rules should reflect these principles and should particularly inform the discussion of this Workstream. JD felt that developments already being discussed were consistent with some of these principles and the principles should not be the main criteria. The furtherance of the relevant objectives was the correct test. JM suggested placing the Principles of Good Governance on the Joint Office website.

Action Joint Office to place the Principles of Good Governance on its website.

4.2. Project Management

MY suggested that this Workstream or another body could take on this kind of a role for implementations consequent on Ofgem consultation and on continuing or replacing time limited changes to the UNC.

It was agreed that a body like this would be useful but no conclusion was reached on how such a body would operate.

To assist the Workstream on one of the relevant issues, JD accepted the following action:

Action JD would enquire on how Ofgem could clarify requirements, particularly date related requirements for implementing UNC Modification Proposals within its Decision Documents.

5. Next Meeting

Thursday 18 August following UNC Committee Meeting.