

Governance Workstream Minutes

Monday 04 October 2010

ENA, 52 Horseferry Road, London

Attendees

Tim Davis (Chair)	TD	Joint Office
Bob Fletcher (Secretary)	BF	Joint Office
Chris Shanley	CS	National Grid NTS
Chris Wright	CW	British Gas
Clare Cameron	CC	Ofgem
Danielle Kent	PK	SNR Denton
David Tennant	DT	SNR Denton
Joanna Ferguson	JF	Northern Gas Networks
Phil Lucas	PL	National Grid Distribution
Preeti Capildeo	PC	SNR Denton
Richard Fairholme (<i>by teleconference</i>)	RF	E.ON UK
Richard Riley	RR	National Grid
Robert Cameron Higgs	RCH	Wales & West Utilities

1 Introduction and Status Review

TD introduced the meeting and its objectives.

2 Review of Suggested Legal Text

CS provided a consolidated list of comments and issues received on the suggested text for the governance proposals. These were reviewed in turn.

2.1 0318: Code Governance Review: The approach to be taken when raising alternative Modification Proposals

CS introduced the proposal, recent amendments and suggested legal text.

TD questioned the intent of the proposal and pointed out that it conflicts with the suggested text. CS explained that the aim was to allow Workstreams to develop modifications and possible alternatives. TD advised the text excludes alternatives being raised for Proposals referred to a Workstream, which CS said was not the intention.

TD questioned whether the text should provide for a workgroup to create an alternative proposal, as set out in the Proposal. CS felt this was developing a draft only and an owner would be required to raise and progress the proposal formally. DT confirmed the workgroup is not empowered in the text to create an alternative proposal, though they are not excluded from developing such a proposal.

CS agreed to reconsider whether the intention is to allow alternatives to be created by a workgroup. CW questioned the logic of allowing the development of alternatives, which may not get adopted by an owner – the workgroup should focus on the formal proposals.

CS explained that transitional rules were required when considering in flight proposal and these would need to be developed since transitional text had only been provided for Proposal 0319.

CC felt there should be an option to allow the Panel or workgroup to consider new alternative proposals at short notice, rather than stay with a rigid notice period as set out in the text. CS agreed, and believed the proposal might need to be amended to address this.

TD believed the Proposal, as drafted, guarded against extended development periods by disallowing the production of alternative proposals shortly before the final Workgroup meeting. PC suggested the text could be amended to prevent the raising of alternatives once the workgroup report has been concluded, but TD noted that the proposal does not currently reflect this.

CC asked about the status of text for 0318A. CS advised this was being considered.

2.2 0319: Code Governance Review: Role of Code Administrators and Code Administration Code of Practice

TD questioned the role of the Code Administrator and assistance it should provide to small parties - this is not aligned to the description in the license conditions. TD pointed out a number of anomalies between the proposal and suggested text e.g. there needs to be a definition of "Assessment Work".

CC pointed out an error between the uses of "legitimate" and "particular" need of assistance for small participants in the proposal and suggested text. DT pointed out that there is no test for the use of "particular" and this may need further work to define.

TD questioned whether the intention is to allow the Panel to exclude parties from meetings, as in the text – or should this be the Chair only, as in the Proposal? CS agreed the latter was the intention.

TD asked where in the Proposal it states that an estimate of costs must be included with the proposal? There was a concern this may disadvantage non-transporter users as they will not be able to provide central systems cost information with a proposal.

TD asked if it is the intention of excluding third parties from raising a proposal – this appears to be implied? CS agreed to review the intention in the text.

TD questioned memberships, as the proposal does not require the identification of workgroup membership, though the text does. PL thought it was still a requirement to have terms of reference, which may identify attendees – the workstream concluded this was not a requirement.

CS agreed to review the suggested text for attendance at Panel meetings, as meetings should be open to all and not defined by Panel.

CC was concerned that the workgroup report should be allowed as long as 12 months to be completed - this is not inline with industry best practice which is around 3 to 6 months. CS advised an amendment sought to limit this to 6 months unless the Panel determines otherwise and Ofgem have been notified. CC was still concerned a report could be concluded in 6 months but the rules allow for the report to be held back and submitted within 12 months.

CC was concerned the text drafting does not reflect licence requirements particularly for "send back" options – i.e. the proposal is deficient. CS agreed this should be reviewed to reflect licence drafting.

TD asked why reports were described in section 9.4 when they were set out in the code of practice – should the sections be deleted?

CS agreed to review the pre-assessment sections to ensure consistency between the proposal and suggested text.

2.3 0320: Code Governance Review: Appointment and Voting Rights for a Consumer Representative and Independent Panel Chair

TD advised of an amendment required to the proposal text as it states a “customer” representative when it should be a “consumer” representative. CS agreed and suggested a variation is submitted to the Panel.

CS explained the principles around Panel majority and the Chair’s casting vote. TD questioned the text setting out how to capture voting outcomes - should for, against and abstentions be recorded in order to be in line with the Proposal? CS agreed the proposal intends this but the text doesn’t. DT agreed to review the suggested text in this respect.

CW asked if an alternative/Deputy Panel Chair could be appointed and, if the Panel Chair is unable to attend, do the Chair voting rights extend to the Deputy. PC confirmed this was the intention.

2.4 0321: Code Governance Review: Approach to environmental assessments within the UNC

CS explained the recent amendments and guidance referred to in the proposal. PC explained the definition of “emissions” was obtained from the Gas Act and there may need to be amendment to ‘greenhouse gases’ to bring it in line. CC asked if the definitions would be amended should the Gas Act versions change. DT confirmed the general sections of UNC clarify the latest versions always apply.

TD questioned why the proposal allows a proposal to be voted upon for suitability to go to consultation prior to understanding the environmental impacts. PC agreed to consider amending the drafting.

2.5 0322: Code Governance Review: Inclusion of the NTS Transportation and Connection Charging Methodologies within the UNC

PL explained the comments received and how these apply equally to Proposal 0325. PL explained the charging methodology current at the time the proposal is implemented would be the version included in UNC.

TD was concerned the text does not specifically identify the methodology to be included, and this is an unusual approach to legal drafting. JF advised that there might be some changes to the methodology prior to this proposal’s implementation. CC requested any methodology amendments be provided to Ofgem prior to the charging proposals being implemented so they can be considered at the same time.

CC asked if it is possible to include a sunset or sunrise clause to close off potential methodology changes. PL felt the changes could be included in the transition document with the enduring terms coming into force once the methodology and proposal are aligned.

CW asked why the proposal indicates who can attend charging forums – should

this be removed, as meetings are open to all? CS was concerned that the meetings should be held for the benefit of those materially affected. JF felt it is useful to allow the Panel to send proposals to change the methodology to more than one workgroup, not just DCMF/TCMF, to allow the modification as much exposure as possible or appropriate.

CC asked why there are no references to licence condition 4b. PC agreed to consider and amend the drafting if required.

TD raised a number of issues where the proposals and suggested text are inconsistent and the text places additional obligations on Panel not required by the proposals. CC asked if the proposals could be clarified to ensure licence conditions are met. PL was concerned there was a requirement to amend the proposals to suit the text rather than the other way round. CC felt this was desirable to ensure the proposals meet the required licence obligations.

2.6 0323: Code Governance Review: Self Governance

The workstream meeting was declared non-quorate at this time and an informal meeting continued.

CS explained the comments received and how these may impact the suggested text/proposal. CC asked if notification of the determination date could be given at least 7 days in advance of notification to Ofgem. CS agreed to consider an amendment for this aspect.

CS asked the workstream to consider if User Pays proposals could be self-governance, particularly those that are identified as zero cost. TD did not recall Ofgem excluding them from self-governance.

TD considered the self-governance variation process unnecessary as any variation is treated as a new proposal and would need to be considered on its own merits for meeting the self-governance criteria by the Panel. TD was concerned that additional details have been set out in the suggested text to those within the proposal and its intention. CS agreed it should be reviewed.

CC was concerned that where an appeal has been made to Panel and implementation is still directed, Panel should consider the appeal window as a party may wish to consider appealing to the authority.

TD asked why there is no requirement to issue an implementation/non implementation notice, should the text be amended to follow the standard route except for submission to Ofgem.

CC asked where there is a "shall" on the authority - this should be changed to a "may", as it is not appropriate for the UNC to place obligations on Ofgem.

CC asked that the FMR should not be amended once the Panel has reached its decision; Panel determination is a recommendation to implement and should not be modified once Ofgem make their decision.

2.7 0324: Code Governance Review: Significant Code Reviews

TD raised a number of anomalies between the proposal and the suggested text. CC raised a point that a proposal may be given permission by the authority to continue, even though it is an SCR related proposal.

TD highlighted that the Panel Secretary cannot accept a variation unless permission has been given by the Authority. For clarity, a proposal, which has been raised though not directly affected by an SCR, can be withdrawn or amended, as it is not an SCR proposal.

CS confirmed he intends to amend the proposal based on the comments received.

2.8 0325: DN Transportation Charging Methodology and Change Governance

See comments for 0322.

3 Any other business

CS explained the consolidated text document and its use as an aid to support the consultation process. However, some thought was needed on how the suite of Proposal could be introduced to deliver the intended outcome as set out in the consolidated text. TD explained how similar processes have been used before and how the text could be updated based on the order of implementation and use of consents. CS intends to discuss the process around the implementation of the proposal and the implementation of text.