

# Review of the Governance Arrangements regarding the Appointment of an Independent UNC Modification Panel Chair

## **Introduction**

This report sets out the background and rationale for the proposal by the gas transporters to appoint the Chief Executive of the Joint Office of Gas Transporters as Chair of the UNC Modification Panel.

It also reports the views of interested parties about the governance arrangements for the Panel Chair, as provided in an open consultation held during January and February 2014, and the next steps the gas transporters propose to take as a result.

## **Background**

The Joint Office of Gas Transporters (JO) is the Code Administrator for the Uniform Network Code (UNC), which sets out the terms of common transportation arrangements for the gas industry in England, Scotland and Wales. Each transporter is required under their Licence arrangements to cooperate in the establishment, operation and oversight of the JO.

In September 2013 the Joint Governance Arrangements Committee (JGAC), who oversee the activities of the JO and upon which all transporters are represented, notified Ofgem of the imminent change of Chief Executive of the JO. Consistent with the practice of the previous seven years, the new Chief Executive was subsequently nominated to the role of Chair of the UNC Modification Panel, which required Ofgem approval.

In November 2013 Ofgem approved, on an interim basis, the nominated Panel Chair appointment for a period not longer than twelve months to allow time for a review of the arrangements taking into account the outcome of Ofgem's Code Governance Review in 2010.

Subsequently the JO, on behalf of the transporters, held an open consultation for a period of four weeks up to 10<sup>th</sup> February 2014, which sought views from interested parties on the governance arrangements relating to the appointment of the Panel Chair.

## Governance Arrangements

The transporter Licences require that an agreement is put in place, the Joint Governance Arrangements Agreement (JGAA), to establish the roles, responsibilities, funding etc. for the JO. The JGAA is reviewed annually and any changes are approved by Ofgem, the most recent being published in August 2013. As prescribed in the JGAA, all roles in the JO are currently resourced from within National Grid and ratified by JGAC; no further Ofgem approval is required here.

Since the establishment of the UNC in 2006, the JO Chief Executive has also performed the role of the UNC Panel Chair. The JGAA prescribes the confidentiality and compliance arrangements that are in place to ensure that the individuals employed in the JO, and particularly its Chief Executive, act independently and without influence from their employer.

Ofgem's Code Governance Review introduced a series of revisions impacting all industry codes within its remit. Final Proposals in 2010 proposed to retain the requirement that each code had an independent chair, but did not prescribe how that chair should be selected. Ofgem indicated that it was for each licensee, having particular regard to the views of the relevant panel, to ensure that they have discharged the requirement that the chair is independent.

Transporters, in a letter to Ofgem in October 2013 explaining why they believed that extending the existing arrangements met their Licence requirements, described the existing arrangements as economic and efficient. They also said that the independence of the JO and the Panel Chair had been clearly demonstrated in practise, and welcomed by all parties. The letter went on to confirm that the incumbent would not be involved in any other industry role whilst occupying the joint responsibilities of JO Chief Executive and Panel Chair, further reinforcing the necessary independence.

Ofgem, in approving the proposed appointment for a limited duration, indicated that it considered that transporters had not demonstrated in this appointment process that continuing with the current arrangements remained sufficient to achieve compliance with the relevant Licence conditions, or that it was in the best interests of consumers and industry.

To facilitate a further decision by Ofgem on the future Panel Chair, an open consultation was conducted by the JO on behalf of the transporters. The consultation, published on the JO website and open for a period of four weeks to allow any interested party to respond, asked four questions:

1. What criteria do you consider to constitute an independent Chair?
2. Do you consider that the Joint Office Chief Executive, appointed from a Gas Transporter business, fulfils the Transporter's Licence obligation to appoint an independent chair, and why?
3. Do you have any views on the *process* of appointing the Independent Chair in this way?
4. Are there any further examples or evidence you can provide to support the points made?

## Consultation Responses

Responses were received from the following parties:

Winchester Gas  
Tim Davis  
EDF Energy  
RWE npower

British Gas Trading Ltd  
Energy UK  
Scottish Power Energy Management  
I&C Shippers and Suppliers (ICoSS)

All representations are available on the JO website:  
<http://www.gasgovernance.co.uk/ChairConsultation%20>

### Summary

#### 1.) What criteria do you consider to constitute an independent Chair?

Most respondents agreed on several points:

- The Chair should act impartially and demonstrate objectivity, allowing equal voice for all Panel members.
- It would be beneficial if the Chair had industry experience.
- The Chair should be truly independent of any party with a vested interest in the UNC; some respondents felt this applied for the duration of the assignment, whilst one respondent believed that it also applied for previous employment.

In addition, some respondents felt that a fixed term was appropriate with, subject to an open review, an option to reappoint.

#### 2.) Do you consider that the Joint Office Chief Executive, appointed from a Gas Transporter business, fulfils the Transporter's Licence obligation to appoint an independent chair, and why?

Respondents generally felt that, given the criteria they had identified in answer to question 1, the transporters had not demonstrated that the appointment had fulfilled their Licence obligation, although some respondents noted that it was ultimately a matter for Licensees (transporters) and Ofgem. Other views included observations that, ultimately, the demonstration of the criteria in Q1 was an appropriate measure of independence of the individual, although this should be subject to an open and transparent appointment process in the first place.

#### 3.) Do you have any views on the *process* of appointing the Independent Chair in this way?

Respondents agreed on several principles:

- There should be a formal, rigorous and transparent appointment process.
- Panel endorsement of the preferred candidate was preferable.
- Other energy industry codes had established independent Chairs, therefore learning points from these should be considered.
- Industry consultation on the appointment process would be appropriate, to include such things as eligibility criteria and the selection process and criteria.

Some respondents felt that the appointment process should also take account of succession planning and delegation (in the event that the Chair is absent). Other respondents

believed that Ofgem should take more of a lead role in appointing an independent Chair, even to the extent of potentially appointing and funding it. One respondent felt that this would be a good opportunity to establish how the performance of the Chair could be monitored and assessed.

**4.) Are there any further examples or evidence you can provide to support the points made?**

Respondents made reference to the appointment of independent Chairs for the Connection and Use of System Code (electricity), the Balancing and Settlements Code (electricity), the Distribution Connection and Use of System Agreement (electricity), the Master Registration Agreement (electricity) and the Smart Energy Code (both).

## **Next Steps**

The representations made in this consultation were considered at a JGAC meeting on Thursday 13<sup>th</sup> February 2014. Members believed that the consultation was robust and independent and, as a result, that it's outcome should be shared with Panel members and Ofgem at the next Panel meeting on 20<sup>th</sup> February 2014. Subsequently the report should be published on the JO website.

JGAC members agreed that the responses did not evidence industry support for the appointment of the JO Chief Executive to the role of UNC Modification Panel Chair. It was further agreed that a process should be defined that would recruit, effective from the end of the current interim appointment at the latest, an external, non-affiliated, candidate for the Panel Chair taking into account the views expressed in this consultation.