



Making a positive difference
for energy consumers

Steven Edwards
Chair
Joint Governance Arrangements
Committee
Joint Office of Gas Transporters
Consort House
6 Homer Road
Solihull
B91 3QQ

Direct Dial: 020 7901 7015
Email: declan.toman@ofgem.gov.uk

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Dear Steven,

UNC Modification Panel Chair appointment

I am writing in response to the letter of 20 September 2013 from the UNC Modification Panel (the 'Panel') Chair, on behalf of the Joint Governance Arrangements Committee (JGAC). The letter requests our approval of Les Jenkins as independent Chair of the UNC Panel, with effect from December 2013.

Having considered the assessment and recommendation of the JGAC, I can confirm that we approve this appointment on an interim basis of up to 12 months.

We have considered the selection process undertaken and whether we are satisfied that the requirement for an 'independent' chairperson, as required by Standard Special Condition A11 (6) of the Gas Transporters licence, has been met.

The requirement for an independent UNC Modification Panel chairperson was introduced as part of Ofgem's Code Governance Review (CGR) in 2010.¹ Whilst we did not seek to prescribe how that chair should be selected, we set out that it would be for the licensee, having particular regard to the views of the Panel, to ensure that they have discharged the requirement that the chairperson be independent. No evidence has been provided to us that the views of the Panel have been sought and considered in respect of the selection process undertaken by the JGAC for the appointment of a new chair.

We also note from your letter that the JGAC has proposed continuing the current arrangement whereby the Chief Executive of the UNC Code Administrator (the Joint Office of Gas Transporters or 'Joint Office') also fulfils the role of UNC Panel Chair. We note that Joint Office members of staff, including the Chief Executive, are seconded from a Gas Transporter Licensee.

When introducing the requirement for an independent panel chairperson under the CGR, we considered that such independence would be in the best interests of consumers and the industry, as the independent chairperson would provide scrutiny over Panel actions and independent oversight of the Code Administrator.

We recognise there are provisions within the JGAA requiring Joint Office staff to act 'independently'. We also note that the current UNC arrangements for a joint Chief Executive and Panel Chair were put in place when the UNC was first established in 2006,

¹ CGR final proposals: <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-final-proposals-4310>

prior to the CGR requirements for an independent chairperson and for that chairperson to be approved by the Authority. However, we consider that the JGAC has not demonstrated in this appointment process that continuing with the current arrangements remains sufficient to achieve compliance with the relevant licence conditions introduced by the CGR, or is in the best interests of consumers and industry.

We consider that the process for appointing (and seeking Authority approval of) a new Chairperson is an appropriate time for Gas Transporters to consider this. We would have expected the JGAC to have particular regard to this given that this is the first time a new UNC chair is to be appointed post CGR and are disappointed that this does not appear to be the case, based on the information provided to us so far.

We therefore request that a review of the UNC Panel Chair appointment process is undertaken by the JGAC in conjunction with the UNC Modification Panel, to specifically consider the points we have raised above.

In the meantime, we are satisfied that the JGAC's nominated candidate undertakes the role of Panel Chair on an interim basis for up to 12 months, whilst the current arrangements are reviewed.

We expect the JGAC to make a further recommendation on the appointment of an independent chairperson in time for us to make an approval decision before the end of 12 months.

Yours sincerely

Declan Tomany
Associate Partner Legal - Smarter Grids & Governance

Cc: Tim Davies, UNC Panel Chair