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19 February 2009

Dear Mark

**Code Governance Review:
Major Policy Reviews and Self Governance
Role of Code Administrators and Small Participant/Consumer Initiatives**

This response is being submitted on behalf of the Uniform Network Code Modification Panel following a debate of the issues contained in your related consultation papers. The Panel has not set-out to answer each individual question, believing that is best left to individual parties but instead have concentrated on aspects of key interest to Panel Members.

Major Policy Reviews

Whilst not all Panel Members considered that implementing this option was necessary, there was a recognition that, provided appropriate safeguards are in place, a more co-ordinated development route for major policy issues could be advantageous.

Indications were given by the Ofgem Panel Representative that only a few issues would be suitable for development through a Major Policy Review. To assist in managing modification business and priorities, the Panel would urge Ofgem to signal as early as possible the intention to initiate a Major Policy Review. It would be helpful if, as part of the final proposals following a price control review, Ofgem could set out the Reviews expected to take place in the forthcoming price control period, and for a composite record to be included within Ofgem's Corporate Plan.

The Panel does not consider that establishing obligations under Licences is the appropriate means for ensuring that appropriate modification proposals are raised to take forward the conclusions from a Major Policy Review. There was a particular view that it would be inappropriate for any obligation to be put on the Panel to raise and in any sense sponsor a modification proposal which emerges from a Major Policy Review. Notwithstanding Ofgem's stated lack of expertise in certain matters of

detail, the Panel considered it preferable for Ofgem to be the proposer, with the same rights as any other proposer under the relevant governance process. The Panel is also concerned that the introduction of new licence obligations should not lead to an expectation that, when considering the impact of proposals on code relevant objectives, they should necessarily conclude that implementation would be advantageous.

In terms of safeguards, the Panel felt it was inappropriate for Ofgem to both raise a Proposal and be the body which decided whether or not it should be implemented. One possibility would be for the Panel to be the final body which decided whether or not an Ofgem sponsored proposal should be implemented, subject to the opportunity for any party to exercise a right of appeal. The Panel also felt it important that an opportunity for challenge should be embodied in the process before the high level principles were established - opportunity of this nature would assist in providing direction to the development of the proposal from the outset.

The importance of stability was recognised, including an option for a two year moratorium in the areas covered by Major Policy Review, other than minor “housekeeping” items. However, the Panel was concerned about the practicality of any such moratorium and would not wish to be in the position of being expected to determine whether or not a particular proposal should be allowed to proceed.

Self Governance

Whilst noting comments regarding the need for reviewing Panel constituencies, Panel Members were not convinced that any change was required in the case of the UNC. The Panel also remains to be convinced that there would be value in allowing consumer representatives to vote in Panel meetings. The Panel would emphasise that the major codes are significant commercial contracts and that it is quite proper that only those who are parties to a contract should be entitled to vote on the appropriateness or otherwise of a change.

The Panel recognised that it could be problematic if there was a tied vote regarding whether or not to implement a proposal subject to self governance. In these circumstances, the Panel considered that the Ofgem Representative could exercise a casting vote.

Status Quo

The Panel believes that in the case of the UNC the status quo operates effectively for the majority of modification proposals. The UNC Modification Rules provide for flexibility in the way that proposals are taken forward. Panel Members believe that they exercise their discretion in these matters to the benefit of the industry as a whole and that any changes to the status quo should seek to retain the ability for Panels to ensure that the rules are flexed when appropriate to do so – making the rules fit the circumstances rather than seeking to move all proposals through an identical process irrespective of the circumstances.

Code Administrator

The UNC Panel has complete confidence in the Joint Office which has provided a valuable administrative role since the inception of the UNC. In particular, the governance arrangements provide for the Joint Office to operate independently of

both the Shippers and Transporters. The Joint Office provides impartial support to the Panel regarding the modification process and Panel Members have seen no evidence that the Joint Office has sought to favour the Transporters in the way that it conducts its business. Against this background, the Panel sees no reason to change the management or funding of the Joint Office, nor the appointment process for the Modification Panel Chair.

The Panel recognises that there are occasions when the standard of analysis in UNC modification reports could be improved. The Panel accepts that it has a role to play in ensuring that reports address issues of concern to Ofgem and would happily cooperate in seeking to ensure that evident gaps are addressed when identified. However, making the code administrator responsible for systems would not be expected to address any issues which tend to relate to the difficulty of establishing behavioural responses in light of regime change as opposed to the implementation costs associated with system changes.

Small Party Initiatives

The consultation paper leaves open the question of how to define small parties and the Panel finds it difficult to provide guidance in this respect. Suggestions which have been put forward in the context of electricity tend not to be effective in the gas context. For example, based on a definition of small parties as being the big six energy suppliers plus National Grid, 60% of UNC Modification Panel Voting Members represent small parties. However, since smaller gas suppliers tend to be associated with large companies, such as the oil majors, it is not clear that they should benefit from any special treatment within the modification processes. The Panel's view is that the modification process should be open and accessible for all parties, irrespective of size.

We trust you find these comments helpful and look forward to the consultation proceeding further.

Yours sincerely

Tim Davis
Chair, UNC Modification Panel