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Monday 16th September 2019

Consultation on reforming the energy industry codes

Dear Colleague,

I am writing to you on behalf of the Joint Office of Gas Transporters.

The Joint Office of Gas Transporters (Joint Office) welcomes the BEIS and Ofgem consultation on Reforming the Energy Industry Codes and the opportunity to provide our views. The response provided is based on the areas highlighted within the Consultation, although we have not responded to each of the questions raised.

Background

The Joint Office is the Code Administrator for the Uniform Network Code (UNC).

The Uniform Network Code (UNC) is the hub around which the competitive gas industry revolves, comprising a legal and contractual framework to ship and transport gas.

It has a common set of rules which ensure that competition can be facilitated on level terms. It governs processes, such as the balancing of the gas system, network planning, and the allocation of network capacity.

The Joint Office was created in 2005 during the sale of four of National Grid's gas distribution networks. As part of the sale, Ofgem placed a licence condition, Standard Special Condition A12 (Joint Governance Arrangements) (SSpCA12)¹ on the retained and sold networks.

SSpCA12 requires gas transporters to work together to establish, develop and operate joint governance arrangements for the implementation and administration of the UNC and other common matters.

In accordance with SSpCA12, the gas transporters entered into a joint agreement, the Joint Governance Arrangements Agreement (JGAA). This agreement, amongst other things, describes how the Joint Office is established, governed and funded.

In order to ensure the Joint Office is governed effectively, the gas transporters provide oversight and direction through the Joint Governance Arrangements Committee (JGAC). JGAC meets regularly throughout the year and is comprised of representatives of each of the Gas Transporters and Chief Executive of the Joint Office.

Setting the scene

Whilst funding for the Joint Office is provided for under the terms of the JGAA, all matters relating to the administration of the Uniform Network Code reside with the Chief Executive of the Joint Office. Crucially, the Joint Office operates independently of the gas transporters in order to maintain impartiality and avoid perceived or real discrimination between UNC parties.

We are a small team of nine, committed, direct employees, who are highly skilled in the efficient administration of the Uniform Network Code and who are dedicated to effective, good governance and this is reflected in feedback received from stakeholders.

The Joint Office avoids undue discrimination or preference across the gas industry. We are trusted to impartially, support, facilitate, educate and where necessary challenge all parties as a critical friend.

We work closely with the Uniform Network Code Modification Panel to manage the governance arrangements which facilitate change within the gas industry.

As part of Ofgem's energy Code Governance Review a Code of Practice (CACoP)² was developed by industry to facilitate convergence and transparency in code modification processes and to help protect

¹ <https://epr.ofgem.gov.uk/Content/Documents/Standard%20Special%20Condition%20-%20PART%20A%20Consolidated%20-%20Current%20Version.pdf>

² <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/industry-code-governance/code-administration-code-practice-cacop>

the interests of small market participants and consumers through the adoption of key code administration principles.

The Joint Office of Gas Transporters is committed to operating in line with the Code Administration Code of Practice (CACoP) and we regularly report performance data to the Authority.

For the purposes of this Consultation we have included the Joint Office expenditure for the last five years.

Year	Joint Office Expenditure
2018/2019	£1,059,527
2017/2018	£853,776
2016/2017	£694,290
2015/2016	£592,948
2014/2015	£581,865
2013/2014	£504,698

During the period 01/09/2018-01/09/2019 Joint Office held 287 Workgroup Meetings and a total of 445 meetings comprising both of Workgroups and Committees.

We have also undertaken a specific Joint Office analysis exercise for the period 31 May 2017 – 31 May 2019. This is summarised as follows:

Area	N
Number of modifications (including alternatives and requests, but excluding withdrawals) completing their full life cycles (culminating in either a UNC Panel or Authority decision)	66
Average number of calendar days that each modification required to complete the journey “(birth – death)”	222.59
Average number of business days that each modification required to complete the journey “(birth – death)”	156.26

Providing Strategic Direction

The Joint Office agrees with the need for a new strategic function.

We believe that any new function should provide the industry with a coherent vision for change that enables and supports the industry to deliver a smarter, more sustainable system that protects the needs of customers.

In relation to the several potential options for where this function could sit, we do not believe that the role should be undertaken by either Ofgem or the Electricity System Operator.

We do not agree that Ofgem should undertake the role of the strategic authority. Ofgem should work with the strategic authority to support and help deliver the strategic plan and where necessary use its powers to enable delivery.

In addition, we do not agree that the Electricity System Operator should undertake the strategic function. We believe that the expansion to the present remit of the Electricity System Operator would be too great and would present several conflicts of interests. Furthermore, we do not agree that any structural changes to accommodate gas codes would be beneficial. We believe that there are important and significant differences between the electricity and gas sectors and having a strategic body that resides within the Electricity System Operator that could lead to sub-optimal whole system prioritisation to the detriment of customers and achievement of UK climate change objectives.

The Joint Office is supportive of the establishment of a new independent body. The body should ensure that it has the appropriate funding, and resources who have the right capabilities and authority to ensure that the energy industry is able to deliver not only the Government's vision for the energy industry but also wider market developments. The strategic function should co-ordinate and prioritise all code changes that benefit consumers as well as considering the impacts any changes could have on areas such as vulnerable consumers.

The strategic function should be fully accountability, with full representation to include consumer representatives, industry representatives, academics, the regulator, government and code managers. The strategic function should work and fully engage with parties such as Government, Ofgem, Consumers, Code Administrators/Managers, academics, consumer groups and the energy industry when setting the strategic direction. The development of the strategic plan should provide the industry with a coherent vision of change, providing a balance of content and efficient processes.

The communication of the strategic direction should be published every year. Code Managers and the industry should then work to prioritise change against the requirements of the strategic direction. The strategic plan should then develop into a framework for code changes.

We believe that the mechanisms to ensure the implementation of the strategic direction requires further clarification and consideration. In order to deliver that direction, we believe that any framework would need to place obligations on parties such as industry participants and Code Managers

The Joint Office of Gas Transporters is supportive of Model 1 – Separation of the Strategic Body and Code Manager function.

Empowered and accountable code management and independent decision making

In relation to the Code Manger function, we agree that this function could, where appropriate, have responsibility for carrying out analysis and legal text provision. If these additional responsibilities were required, then appropriate funding would be needed to support the changes. We also agree that the Code Manager function should be able to make recommendations to the strategic body.

We do not agree that the Code Manager should make decisions in relation to prioritising how changes are progressed. We are of the view that the strategic body, the Code Manager, energy industry and the UNC Modification Panel all have important roles to undertake in the decision-making process.

In terms of the establishment /choosing of the Code Manager, we believe that there should be several Code Managers operating across the energy industry. We do not agree with one party having sole responsibility and accountability for the Code Manager function within the energy industry. We are of the view that where there is a commonality of approach, having more than one Code Manager would allow for the benchmarking of performance.

We do not agree that all codes should be consolidated into one – unified single code (Option A). Furthermore, we do not agree that codes should be consolidated by industry activity type – dual fuel, retail, wholesale and networks (Option B). Of the code options put forward, we could see some potential benefits in the partial consolidation by industry activity type - partially consolidated by industry activity type, partially consolidated. (Option C).

In relation to the gas industry, we believe that the consolidation of the Uniform Network Code and IGT Uniform Network Code could bring about efficiencies. Furthermore, we believe that there should be only be one Code Manager for the gas industry and that the Code Manager should work closely with but remain separate from the System Manager.

The process relating to the selection, appointment and terms of engagement of the Code Manager is an area that we believe requires greater clarification from BEIS and Ofgem.

In relation to how to ensure that the Code Manager function offers value for money, this area requires further consideration. However, of the options presented, we are supportive of budget scrutiny rather than price control.

We agree that licensees should not be able to exercise control of the Code Managers. Whilst the Joint Office is funded by gas transporters, under the terms of the JGAA, all matters relating to the administration of the Uniform Network Code reside with the Chief Executive of the Joint Office, which operates independently of the transporters.

The funding of the Code Manger function requires further consideration. However, we would like to draw to the attention of parties to, the funding arrangements within Xoserve through the FGO model, in place since 2017.

In relation to how and whom the Code Manager could be held accountable, we believe that further work is required in this area before we are able to provide a response.

We also believe that care and consideration should be given to the Human Resources matters that any changes may bring. The industry should be mindful of the potential for a loss of valuable expertise.

Code simplification and consolidation

We acknowledge that the Uniform Network Code is a significant document.

As stated, the Uniform Network Code (UNC) is the hub around which the competitive gas industry revolves, comprising a legal and contractual framework to ship and transport gas.

It has a common set of rules which ensure that competition can be facilitated on level terms. It governs processes, such as the balancing of the gas system, network planning, and the allocation of network capacity.

We would welcome views as to how parties believe improvements could be made to the UNC in relation to rationalisation, simplification and digitalisation and further how any such improvements would be funded and implemented.

We do not agree with the view put forward that certain areas of the codes should move to principle-based approach and that this could be facilitated through a code consolidation exercise as fundamentally the UNC is a contract with associated rights, responsibilities and liabilities.

Monitoring and compliance

We are supportive of the need for effective monitoring and compliance to ensure that market arrangements work effectively.

The UNC has in place the Performance Assurance Committee (PAC) with the aim of reviewing and developing performance assurance matters and solutions.

We believe that the PAC and Code Manager would benefit from the inputs of the strategic body and the regulator where matters of non-compliance are found to be having a detrimental impact against the interest of consumers and competition. Further, where matters of non-compliance are identified, it should remain the responsibility of the regulator to take or put in place appropriate sanctions.

Timescales

We agree with BEIS and Ofgem that any reforms will take several years, and we look forward to working with all stakeholders involved in the governance of the detailed rules in which the GB energy market operates.

In the meantime, if you wish to discuss any of the matters detailed in this response, please do not hesitate to contact me.

Yours sincerely

By email

Penny Garner

Chief Executive of the Joint Office of Gas Transporters