

Governance

Introduction

Effective governance arrangements that satisfy the objectives of the Gas Act and GPS will be a necessary component of any solution developed through the ICD process.

This note:

- lists the relevant components of governance;
- discusses the principles that may be relevant;
- proposes evaluation criteria which Gas Industry Co will use in its assessment of any proposals; and
- sets out a possible governance structure.

Relevant components of Governance

The 'Draft Balancing Regime Checklist' developed by Gas Industry Co and tabled at the 25 September ICD meeting listed the elements of governance that a balancing regime should address. They were:

- change process;
- dispute resolution;
- funding;
- audit; and
- reporting.

All of these elements will be addressed by the Participative Regulation Option, and Gas Industry Co would also expect them to be addressed by a contracts based solution.

Governance principles

Under the current arrangement each code has its own governance arrangements. If a unified balancing regime is achieved, this fragmentation could/should be replaced by a unified governance regime. Gas Industry Co considers that it will be helpful to have some principles in mind when considering what such governance arrangements would look like.

One reference point is the code governance principles developed by the Office of Gas and Electricity Markets (OFGEM)¹. The principles state that a governance regime should:

- Promote inclusive, accessible and effective consultation;

¹ OFGEM, Review of Industry Code Governance, 28 November 2007 (ref: 284/07).

- Be governed by rules and processes that are transparent and easily understood;
- Be administered in an independent and objective fashion;
- Provide rigorous and high quality analysis of the case for and against proposed changes;
- Be cost effective;
- Contain rules and processes that are sufficiently flexible to circumstances that they will always allow for efficient change management;
- Be delivered in a manner that results in proportionate regulatory burden.

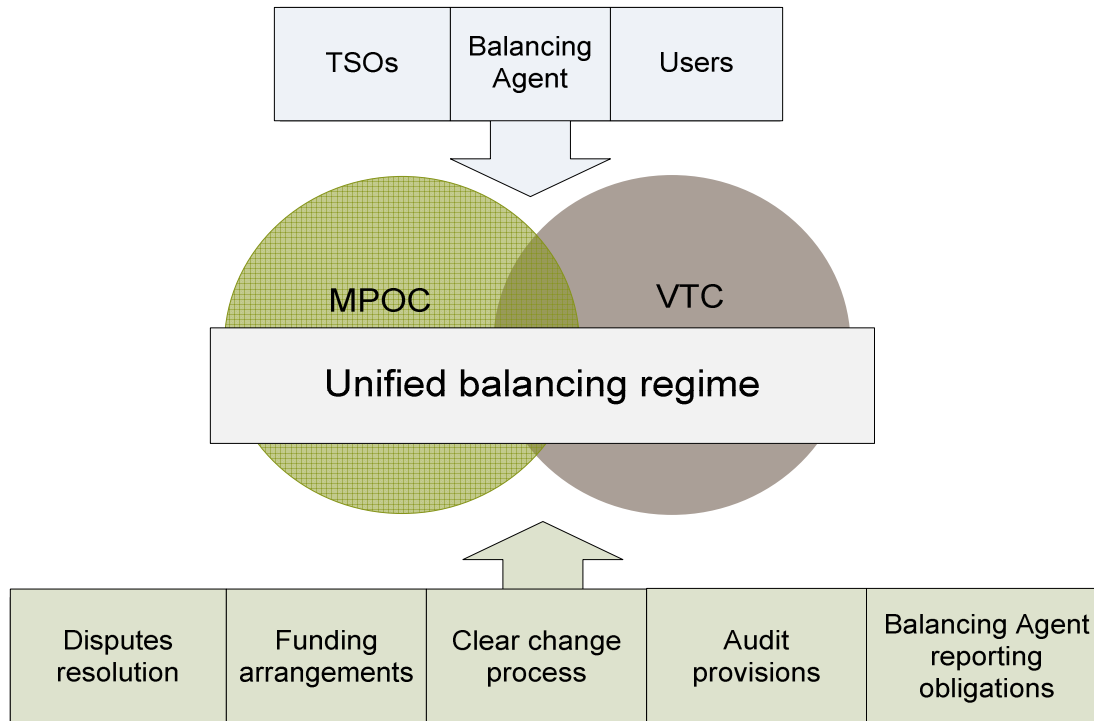
Evaluation criteria

Consistent with the Second Options Paper and broadly consistent with the Governance Principles suggested above, the criteria Gas Industry Co considers to be appropriate for the evaluation of governance arrangements are:

Category	Criterion	Meaning	Ways to promote in balancing regime
Governance	Transparency	ensure transparency and non-discrimination	<ul style="list-style-type: none"> • Increase transparency of: <ul style="list-style-type: none"> ○ design ○ transactions ○ operations ○ disputes ○ compliance actions
	Adaptability	ensure arrangements able to adapt to future circumstances	<ul style="list-style-type: none"> • Provide clear processes for promoting and implementing changes
	Enforcement	ensure effective compliance and dispute resolution	<ul style="list-style-type: none"> • Provide arrangements which allow for compliance and dispute to be addressed promptly and in a consistent manner
	Balance	ensure balance between stakeholder interests	<ul style="list-style-type: none"> • Minimise areas of instability such as preferential treatment of users
	Stability	ensure stability of regime	<ul style="list-style-type: none"> • Minimise areas of instability in regime

Other assessment criteria, such as cost, may also be relevant if they emerge as significant factors in the final proposal.

Possible governance structure



Dispute resolution

At present both transmission codes contain provisions for dispute resolution. Gas Industry Co considers that there are several possibilities for a disputes resolution regime for a contractual unified balancing regime- through the codes (as at present), or under an independent body such as through Gas Industry Co's compliance regime. These are outlined below.

Code-based dispute resolution

Gas Industry Co considers that balancing disputes could be handled by the codes as long as the processes were aligned and there were provisions that protected against 'double jeopardy' where participants could dispute the same issue under both codes. Alternatively, if it is decided that the MPOC is extended across both pipelines for balancing arrangements, then we would presume these parties would adopt the dispute resolution arrangements under the MPOC.

Independent dispute resolution

The other possibility would be for the industry to have disputes be handled by an independent body. The natural solution would be for the industry to adopt Gas Industry Co's compliance regime. MDL has previously expressed interest in this.

Funding arrangements

We consider funding of the regime would occur as at present, through pipeline tariffs. How amounts are allocated between TSOs would be up to them to decide, but users should have a clear understanding of how the amounts are calculated and each is attributable to.

Clear change process

Like disputes, there will be several possibilities when establishing a change process. Each option is outlined below.

Code-based change process

Gas Industry Co is not aware of any major deficiencies in the current code change processes. Gas Industry Co's role in both code changes processes provides assurance that an independent body is determining the final outcome for MPOC changes and in the case of the VTC, if parties appeal the change.

If the solution is identified to extend the MPOC balancing arrangements across the transmission system, the natural solution would be to adopt the current MPOC change process. However, if arrangements are retained in both codes, then we consider that the current change processes would be retained. If a suggested change in one code impacted on the other code or arrangements, all users of balancing services should have the ability to submit on the change.

Gas Industry Co code change process

There is a possibility that all code changes could be handled by Gas Industry Co (similar to how the MPOC change process works at the moment). This option would entail all proposed changes being sent to Gas Industry Co, who would then handle the consultation process, analysis of submissions and determine the final outcome.

Audit provisions

Gas Industry Co considers it necessary that the ability to audit the Balancing Agent is included in the regime. Strict provisions for the circumstances in which an audit can be pursued, including what parties can pursue one should be clearly identified.

Balancing Agent reporting obligations

The Balancing Agent, as a service provider to TSOs and ultimately users, should be responsible for regularly reporting on its contractual obligations to provide balancing services. Gas Industry Co considers that the reports should identify the Balancing Agent's level compliance with its obligations under its contract and within the code(s). Given users ultimately pay for the Balancing Agent's services, these reports should be available to them.