

CRITIQUE OF THE INDUSTRY CODES GOVERNANCE ARRANGEMENTS

JUNE 2008

A report for Ofgem

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Contents

1	Executive Summary	1
1.1	Survey findings	1
1.2	Observations from our case studies.....	2
1.3	Points of interest from our review of other markets and industries.....	3
1.4	Operation of the code modification governance arrangements	3
1.5	Conclusions and recommendations	5
2	Introduction.....	11
2.1	Context for the critique	11
2.2	Our approach.....	12
2.3	Structure of our report.....	13
3	Overview of the GB gas and electricity industry codes.....	14
3.1	Introduction	14
3.2	Comparative review of the codes	15
3.3	BSC modification process.....	19
3.4	Observations.....	20
4	Responses to our questionnaires	22
4.1	Introduction	22
4.2	Summary of responses to participants questionnaire	22
4.3	Summary of responses to code administrators questionnaire.....	27
5	Code modification case studies.....	31
5.1	BSC Modification Proposals P136/137 (marginal cash out).....	31
5.2	BSC Modification Proposals P211/212/217.....	34
5.3	BSC Modification Proposal P213	35
5.4	UNC Modification Proposals 156, 156A, 169 and 169A.....	36
5.5	UNC Modification Proposal 88.....	38
5.6	UNC Modification Proposals 149 and 149A	40
5.7	CUSC Modification Proposal CAP047.....	43
5.8	CUSC Modification Proposal CAP158.....	44
5.9	CUSC Modification Proposal CAP148.....	45
5.10	CUSC Modification Proposal CAP131.....	47
5.11	Overall observations from the modification case studies.....	48
6	Review of industry code equivalents in other jurisdictions	51
6.1	Electricity in US electricity markets	51
6.2	The electricity industry in the Nordic region	55
6.3	Australia’s National Electricity Market (NEM).....	57
6.4	Northern Ireland energy sectors	59
6.5	The UK regulated postal services sector	63
6.6	The UK fixed-line telecommunications sector.....	67
6.7	UK rail sector	69
6.8	Summary of points of interest	73
7	Charging methodologies	75
7.1	Introduction	75

7.2	The current position	75
7.3	Comparison with the process for code modifications	76
7.4	Factors to consider	77
7.5	Conclusions	79
8	Further analysis	82
8.1	Quality of assessments delivered to Ofgem	82
8.2	Smaller players and new entrants	83
8.3	The codes	83
8.4	Efficiency of code administration and procedures	85
8.5	Accountability, cost efficiency and quality of service	86
9	Conclusions and recommendations	88
9.1	Conclusion—the “fundamental flaw”	88
9.2	Proposed reform – option A	89
9.3	Proposed reform—option B	94
9.4	Discussion	94
	Appendix I Industry questionnaire.....	96
	I.1. Questions.....	96
	Appendix II Survey of code administrators	102
	II.1. Questions we asked	102
	Appendix III Full responses	104
	III.1. Ideas for improving the governance arrangements	104
	III.2. Views on merging codes / governance arrangements	110
	III.3. Complete answers to detailed questions.....	113
	III.4. Complete administrator responses	114

1 Executive Summary

Ofgem has commissioned this independent review of the industry codes governance arrangements, to assess the effectiveness of the arrangements. For the purpose of this review we have:

- Surveyed the views of code parties via a questionnaire.
- Surveyed the views of code administrators via a second questionnaire.
- Undertaken in-depth case studies of modification proposals involving the three most prominent industry codes (BSC, CUSC and UNC).
- Surveyed practice in other liberalised power markets (Scandinavia, Australia, the US, Northern Ireland) and in other UK regulated industries (post, rail, telecoms).
- Produced a set of conclusions on the current workings of the governance arrangements.
- Created a recommended set of changes to the governance arrangements and a second set of more limited changes that would still deliver considerable benefits.

Below we summarise our findings and recommendations.

1.1 Survey findings

1.1.1 Code parties' survey

We received 20 responses to our participants' questionnaire covering a range of different types of company. Most respondents were reasonably satisfied with the code governance arrangements but devoted considerable resources (1-10 full time equivalents) to keep abreast of code developments. Perhaps because of this level of commitment, respondents found it reasonably straightforward to engage with the modification processes and understand the significance of proposed changes. Respondents generally considered that the code administrators do a reasonably good job in providing assistance but some had doubts about the accountability of some of the administrators. There was relatively little interest in including charging methodologies within the code structure, or in "rationalising" the codes relating to the electricity market.

Respondents' suggested areas for reform included: identifying "big ticket" items in advance so that they can be addressed through more flexible arrangements; introducing more self-governance; replacing independent panels with representative panels; including mechanisms for proposals to be weeded out when it is clear they will be rejected; requiring clearer timetables (including for Ofgem decisions); incorporating more effective safeguards where Ofgem effectively sponsors a modification; and instituting processes for ensuring best practices can be implemented across all the codes. In addition, particular concerns were raised regarding the workings of the UNC.

1.1.2 Code administrators' survey

Our questions to the code administrators were mostly designed to elicit information rather than views. One notable feature that emerged was that the costs associated with electricity code governance were significantly higher than those associated with gas code governance. On the other hand, over the past two years the electricity codes have attracted only half the number of modification proposals that have been raised in respect of the gas codes.. We also noted that there had been a somewhat wider range of proposers for electricity modifications over the past two years. For example, NGG¹ has only proposed under 10% of the BSC proposals (2 out of 23) but nearly 40% (67 out of 170) of the UNC modifications. Both these findings may, however, simply be due to the fact that the two sets of codes are at different stages of development.

1.2 Observations from our case studies

1. The current arrangements appear generally to work well for commercial issues which only involve incremental change. They do not work well for issues that entail major policy shifts. This is for a number of reasons:
 - In developing policy (e.g., approaches to security of supply or the promotion of renewable generation) major decisions are most naturally and most effectively approached in stages, with initial high level decisions followed by more detailed implementation. However the current arrangements do not adequately allow for any such “staging”.
 - Major policy issues will often require a number of more-or-less simultaneous changes to existing rules. These changes need to be conceived and assessed “in the round”. However the current arrangements involve changes being proposed and assessed one at a time. There is essentially no way for Ofgem to require multiple proposals to be brought forward simultaneously,² but the desirability of one change may depend significantly on other possible changes.
 - The considerations that can be taken into account, at least at the pre-Ofgem stage, are relatively limited whereas major policy shifts generally require a much more wide ranging assessment.
2. Nobody has an adequate incentive to ensure that appropriate analysis is carried out.
3. There is essentially no mechanism for ensuring that the outcome of policy reviews, such as the cash out review, is reflected in changes to the codes.²
4. There is nothing to prevent key parts of the codes, which have significant commercial implications for participants, being perpetually subject to changes.

¹ In this report NGG should be taken to mean National Grid Group or its relevant licensed subsidiary as appropriate.

² In theory, Ofgem could threaten licence modifications or Enterprise Act 2002 references to the Competition Commission, but is not a practical or realistic way forward.

5. There is no mechanism for weeding out proposals that are clearly unlikely to succeed.

1.3 Points of interest from our review of other markets and industries

1.3.1 “One bite” approach

Unlike the GB energy governance arrangements,³ several of the international markets and the other GB sectors that we have analysed only involve one body carrying out analysis and consultation. This may either be the regulator itself e.g. Australia, or an industry body (where there is a degree of self-regulation).

1.3.2 Right of initiative

The fear of the regulator acting as “prosecutor and judge” does not generally seem to be perceived as a problem and, in many instances, the regulator has some form of right of initiative. This varies from being able to start proceedings on its own initiative e.g. in the US, Norway, Northern Ireland, UK rail and UK postal services, to being able to amend or substitute proposals e.g. Australia, and Finland.

1.3.3 “Tiering” and self-governance

By “tiering” we mean a regulatory system in which the regulator prescribes high level principles, but leaves more detailed implementation to the TSO and market players. This approach is widely adopted in the Nordic countries. A similar approach is taken in the UK postal services in relation to certain industry arrangements.

The natural corollary of tiering is some degree of self-governance by industry although appeals to the regulator are generally allowed and, in some jurisdictions, the regulator can step into the process (which, arguably, means that there is not really self-regulation).

1.3.4 Codifying charging methodologies

Finally, we note that the UK postal services arrangements do, in principle, contemplate the inclusion of charging methodologies within a wide ranging code structure. However, no such code has so far been implemented so there is no evidence of how well such a structure might work.

1.4 Operation of the code modification governance arrangements

1.4.1 Quality of assessments delivered to Ofgem

From our review of case studies we conclude that the quality of assessments delivered to Ofgem is not always of a sufficiently high quality, in particular when the modification involves significant policy changes whose proper assessment requires objective, evidence-based economic and/or technical analysis. In general, no party is likely to have the right incentives to produce quality analysis. Market participants are private, for-profit firms and only in unusual or

³ Energy governance arrangements in Northern Ireland are different from those in GB.

exceptional conditions will their goals be the same as the code objectives or Ofgem's statutory duties. Moreover, private parties may not have access to the necessary data, nor hold in-house the necessary skill set (e.g., data handling, statistical analysis, cost-benefit assessments, and policy analysis) to carry out the analysis required to adequately assess a proposal.

1.4.2 The Codes

Certain features of the codes themselves unnecessarily diminish the efficiency or effectiveness of the governance arrangements. Differences between the code objectives and Ofgem's statutory duties mean that the assessment of proposals takes place against one set of criteria, while the decisions are made against a different set of criteria.⁴ Code "fragmentation" (i.e., the existence of multiple codes each with its own governance arrangements) adds a heavy layer of additional complexity to the arrangements, and must provide a barrier to participation by smaller players.

1.4.3 Efficiency of code administration and procedures

For most codes, the current arrangements involve a two stage process whereby proposals are brought forward, developed and assessed by the relevant panel, and then sent on to Ofgem for final decision. As noted above, Ofgem's decision is made against a different set of criteria than the panel's assessment. However, even leaving this defect aside there appears to be an unnecessary degree of redundancy in having both the panel and Ofgem carry out assessment of the proposal.

Apart from removing the two stage process, there are other areas where there appears to be potential to "streamline" or otherwise improve the process efficiency of current arrangements. For example, the current system can lead to excessive proliferation of alternatives within a single modification, particularly in the CUSC;⁵ the inflexibility with regard to the timetable for implementation is potentially inefficient; panels do not always respond fully or properly to points raised in consultations; and in some cases Ofgem has taken what may seem like an excessive amount of time to decide on modifications.

1.4.4 Cost efficiency and quality of service

Intuitively there seems to be a case for providing some kind of incentives for code administrators in relation to costs and/or "quality of service". However we do not recommend it, because of the significant practical difficulties: it is not clear what kind of incentives can be placed on code administrators who in some cases are non-profit bodies. In principle it might also be necessary to put in place insolvency arrangements. Setting the incentive scheme would be a

⁴ Everything that Ofgem does, including decisions on code modifications, must of course be consistent with its statutory duties. However, the relevant licence conditions, on which the mod rules are based, states that Ofgem's decision as to whether to accept or reject a mod will depend on whether, in Ofgem's view, the mod better achieves the relevant objectives. There is no mention of Ofgem's statutory duties, although of course it cannot act except in a manner consistent with them.

⁵ We note that CAP160, raised in April 2008, aims to make the CUSC processes more efficient by reducing the number of alternative proposals that will be taken through the whole assessment process.

new task for Ofgem, requiring additional resources. In addition any such arrangements might be hard to implement without going through considerable effort to unwind complex legal arrangements that were put in place at the introduction of NETA/RGTA. With regards to cost efficiency, the effort does not seem justified to obtain efficiency savings that at best would be small by industry standards, and at worst would be nugatory. With regards to service quality (i.e., how well the administrator handles the process, procures high quality input from parties, ensures effective consultation and analysis etc), although the potential reward might be higher, the difficulty of defining and measuring service quality makes us sceptical of any attempt to introduce formal incentives on it.

On the other hand, as we discuss below, it might be worth considering whether Ofgem should be able to (a) send back modification reports that it considers have not adequately addressed the relevant issues and (b) demand more expeditious progress on modifications that it considers are taking too long to progress through the various assessment stages. For such sanctions to be effective, there would need to be some form of enforcement mechanism to ensure the necessary actions were taken.

1.4.5 Network charging methodologies

We do not recommend making these methodologies subject to the same kind of governance arrangements as apply to the industry codes, despite the real advantages this would bring in terms of facilitating change, addressing the “piecemeal nature” of the current arrangements (especially if this were done in the context of reforms that allowed assessment to occur across multiple codes), and contributing to “de-fragmentation”.

Against this, however, we see strong arguments for maintaining the *status quo*. First we note that giving other parties the right to propose changes to charging methodologies could entail significant new risks for transmission owners. Changes to charging methodologies could affect not only the level of transmission revenues but also the risk profile associated with them. Second, given the potential implications for licensees such a move might be considered disproportionate. Ofgem already has potentially strong levers to influence charging proposals so as to address industry concerns about charging methodologies, via its licence enforcement and Enterprise Act powers although we recognise that such powers are relatively blunt instruments. Third, such a change could have significant resource implications for Ofgem and the industry.

1.5 Conclusions and recommendations

1.5.1 The “fundamental flaw”

Based on our review, we believe that there is a fundamental flaw in the current arrangements. They are designed to process incremental changes in a set of complex commercial contracts, and are not well suited for assessing more fundamental changes that are not incremental (in the sense that they may require multiple simultaneous rule changes across various sets of rules) and have significant implications in areas that are not purely, or even mainly, commercial but form part of public policy (e.g., security of supply, environment).

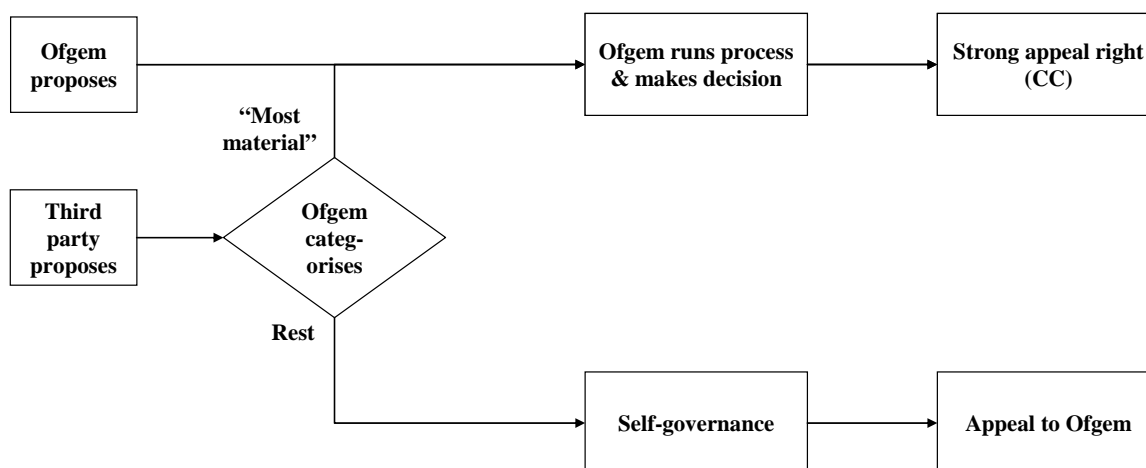
1.5.2 Proposed reform – option A

Our proposed reform responds to the finding outlined above by creating two processes. For issues that fall into the sphere of public policy i.e. are not incremental, the process would be led by Ofgem, with the addition of appropriate safeguards. If Ofgem considers that a modification proposal raises important policy issues it would “call in” the proposal: either to run the assessment of the modification itself, or to initiate a wider “Issue Review”, if it considers that the problem being addressed by the modification is too wide to be considered in isolation.

For less material or purely commercial issues, and for implementation of high-level decisions, industry participants raise modifications (as now) and the assessment process would be run by the industry through a form of self-governance. Figure 1 illustrates the proposed approach, which we describe below in more detail.

In both processes industry participants are responsible for raising the modification proposals. However, Ofgem would also have the right to initiate an “Issue Review” without a triggering code modification proposal from industry.

Figure 1: Overview of proposal



Process for governing high-level policy changes and “significant” modification proposals

We propose a process that would differ from the current arrangements in a number of ways. We envisage that most high-level changes would be considered by a full-scale “Issue Review”, in some ways similar to, for example, the cashout review, but with full leadership from Ofgem and with a formal role in the governance process.

1. An Issue Review could be kicked off either in response to a modification proposal made by a party, or by Ofgem itself if it believes that a major issue or set of issues requires addressing through code changes.
2. Even if it was triggered by a single modification proposal, an Issue Review would consider the issue “in the round”, rather than looking at individual changes in

piecemeal fashion. A package might entail multiple rule changes, possibly covering a number of different codes and charging statements.

3. Ofgem would lead the Issue Review. There is a clear logic for having Ofgem rather than industry lead a high-level, “top down” review of this nature. Specifically, this proposal would entail Ofgem, in close consultation with stakeholders:
 - Setting the agenda, to ensure that the process addressed all relevant issues.
 - Gathering necessary evidence (to the extent that it has relevant powers to do so).
 - Defining and carrying out or commissioning necessary analyses, to ensure appropriate scope, independence and technical quality.
 - Being responsible for the final output from the process.
4. The output from this process—in contrast to existing informal reviews such as the cashout review—would have legal force. Given the high level nature of the process, its output would probably not comprise specific modification proposals, but high level recommendations that would then have to be implemented by the industry.
5. Once the process was over and implementation had occurred, there would be a moratorium (with some safeguards, e.g. for security of supply) on changes in this area for a reasonable length of time.
6. Because Ofgem would lead the process, there would have to be a strong right of appeal, e.g. to the Competition Commission. Some legal issues would need resolving here, since currently an appeal is possible only when Ofgem has overruled the Panel.⁶

The outcome of an “Issue Review” would be an Ofgem policy statement of some kind. To give this legal force, an obligation could be placed on the network operator that “owns” each code to raise modifications that give effect to the Ofgem policy statements. This obligation could sit in the licence, or it could be part of the codes that relate to the modification process.

Some modifications called in by Ofgem might not require such a review – because the issues involved are limited in scope – but would have consequences that would be too material for the proposal to be left for industry consideration. In these circumstances, the process would be similar to the current governance arrangements except that the analysis and consultation would be carried out by Ofgem rather than a code panel.

Process for governing “lower-level” changes

For changes that are “lower-level”, either because they involve implementing decisions already made at high level or because inherently they do not have major implications for public policy goals or Ofgem’s statutory duties, the current governance arrangements appear disproportionate relative to the level of public interest, and in comparison with arrangements in other markets.

⁶ It may be possible to address these through changes to secondary legislation.

Note that we envisage that modifications processed under these self-governance arrangements would not engage Ofgem's wider statutory duties (e.g., with respect to the environment), either because the proposal relates to purely "commercial" matters, or because as a result of an Issue Review, the necessary trade-offs have already been made clear in an Ofgem policy statement. As a result these modifications can be effectively assessed by the industry against a set of code objectives that are narrowly focussed on "commercial" issues and are a subset of Ofgem's wider statutory duties.

In particular in light of Ofgem's Better Regulation duties, a more appropriate process for dealing with lower-level/less material changes would therefore involve:

1. Initial "filtering" by Ofgem. When a modification proposal came forward, Ofgem would apply a set of published criteria to determine whether the proposal was so material, and the circumstance such, that its statutory duties required it to act as decision maker, or whether it could be left to industry to decide.
2. For proposals that Ofgem viewed as being in the "most material" category, the modification process would be the one described above (even if the proposal did not necessarily require consideration of a broader set of changes).
3. All other proposals would be processed via industry self-governance
 - Decisions would be made by industry, without Ofgem's consent or veto.
 - Licensees would be required to enter into and operate codes that met those objectives. They would be obliged to amend them if they were failing to meet those objectives (as is the case for the STC).
 - The process for modifying the codes would be set out in the appropriate licence.
 - The industry process would involve the same code administrators as now, but with a strong element of process harmonisation ("de-fragmentation") and some streamlining (the "de-fragmentation" and streamlining proposals are discussed in more detail in section 9.3).
4. There would be strong safeguards to prevent abuse of this freedom. For example:
 - Parties could ask Ofgem to take a proposal for decision, rather than leave it to self-government. For example, there might be some kind of industry vote to endorse an Ofgem choice to leave a particular decision to industry self-governance. The voting could be set up so that relatively small groups could veto the Ofgem choice and so require it to take up the proposal for its own decision.⁷
 - Ofgem could hold periodic "retrospective reviews" where it assessed the cumulative effect of all the changes introduced by the industry over a given time period (e.g., three years) and propose any corrections it deemed necessary (e.g., via licence powers).

⁷ For example, one might have a rule that X% of any class of licence-holder (generator, supplier, shipper etc) could veto the decision to allow decision by self-governance.

5. As discussed above, all the code objectives would be changed to be as close as possible to a subset of Ofgem’s statutory duties, while recognising that in some cases this may not be possible as it would conflict with primary legislation.⁸

1.5.3 Proposed reform—option B

We have also assembled a less extensive set of proposals for more marginal reform, “option B”. These proposals take as given the fundamental parameters (a two-stage process, uniform for all types of issues) and focus on potential “quick wins” such as:

1. As under option A, “de-fragmentation” of the arrangements, so as to minimise the complexity of dealing with different administrative procedures for each code. We do not recommend merging the codes themselves (e.g., BSC with CUSC), or even the code administrators, as this would be unnecessarily disruptive. In our view it is sufficient to ensure that the different administrators all follow a uniform set of processes.
2. Again as under option A, changing all the all code objectives to be as close as possible to a subset of Ofgem’s statutory duties, while recognising that in some cases this may not be possible as it would conflict with primary legislation.
3. Give increasing prominence to policy reviews, like the cashout review, by announcing in advance that at the end of the review (with a well-defined timetable) Ofgem will consider carefully whether to require network operators to bring forward modification proposals to implement the review’s conclusions (under its existing licence/competition powers). However, in contrast to option A, Ofgem would not have a right of initiative over modification proposals, nor would it run the process.
4. Improve the quality of analysis provided to the extent possible within the existing framework, by for example:
 - Making use of existing powers to gather information when possible (e.g., via the Enterprise Act, licence conditions).
 - Routinely provide clear early guidance on the kinds of analysis required for proper decision-making.
 - Placing an obligation on the secretariat to send modifications to Ofgem only when the analysis is complete.
 - Introducing the ability to send back panel recommendations if the quality of analysis is nonetheless inadequate.
 - Consider staging assessments so that a high-level debate is carried out before discussion of implementation issues.

⁸ The statutory duties of the network operators under the Gas and Electricity Acts.

1.5.4 Discussion

The two options we have put forward above are very different. Subject to our proposals in relation to rights of appeal to the Competition Commission, both options could in principle be implemented without recourse to legislation, although this may not be straightforward. Option A would fully address the “fundamental flaw” we identify in the current arrangements. Option B would not do so, but would nonetheless deliver significant and worthwhile improvements. On the other hand, Option A may be difficult and relatively costly to implement. It would be considered as a radical change by some, and implementing it could be a long and resource-intensive process, at a time when the industry and Ofgem have many other issues and challenges to consider, not least the implications of new European targets for renewables, which might lead to major policy changes that could affect all aspects of industry arrangements.

It is clearly outside our scope to say whether the cost of implementing Option A both to Ofgem (in terms of resources and political capital) and to the industry (in terms of resources and management attention) can be justified by the potential long-term benefits, especially since not implementing Option A now still leaves it as an option for the future.

2 Introduction

This review of code governance arrangements was prepared for Ofgem by *The Brattle Group* and Simmons and Simmons. Simmons and Simmons provided legal input, but the views and recommendations in this report are entirely the responsibility of The Brattle Group.

2.1 Context for the critique

Ofgem issued an open letter to the industry on 28 November 2007 signalling its intention to carry out a review of the industry codes governance regime. Subsequently, in March 2008, it went out to tender for consultants to provide an independent critique of the current code governance arrangements as part of the scoping exercise for the review. The issues we were asked to consider can be grouped into four themes.

Theme 1: The quality of industry's assessment of the case for change

Ofgem's decisions⁹ on modification proposals are necessarily based in large part on the assessment carried out by industry itself, under the auspices of the relevant code Panel. If these assessments fail to provide the necessary information and analysis to adequately substantiate the case for and against change, it may generate risks and inefficiencies that may include (and may not be restricted to):

- the rejection of potentially positive changes to industry rules
- industry participants suffering from incorrect or incomplete understanding of the impact of proposals on their organisations;
- necessitating unnecessary open letters or other forms of consultation to seek missing evidence, resulting in: resources to do this diverted away from other projects unnecessarily; and avoidable differences in the evidence base that is available to us and to the industry and code Panels;
- unnecessary risk, to both consumers and industry, of sub-optimal decisions; and
- greater likelihood that subsequent modifications may be required to correct errors.

Theme 2: The relevance of the code objectives

The code objectives are largely derived from the statutory duties of the network owners. These deviate from Ofgem's statutory duties, and this deviation has progressively widened over time as Ofgem has picked up new statutory duties (for example, in relation to sustainable development and better regulation, where new duties were imposed in the Energy Act 2004).

⁹ Ofgem is governed by the Gas and Electricity Markets Authority, which determines strategy, sets policy priorities and takes decisions on a range of matters, including price controls and enforcement. The Authority's powers are provided for under the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998 and the Enterprise Act 2002. In this report we use "Ofgem" to cover both the Authority and its executive arm.

There is a risk that this mismatch may impede industry from bringing forward, or adequately assessing, proposals that might deliver Ofgem's statutory goals.

Theme 3: The status of charging methodologies

Aside from maintaining codes, network owners are also obliged to put in place various charging methodology statements that are applied by each network in deriving its connection and use of system charges. These charging methodologies may impact network users just as much as the codes do, but a network user cannot propose changes to them in the way they could propose changes to a code. Ofgem is, therefore, interested in looking at whether they should be brought under code governance.

Theme 4: Administrative, procedural and efficiency issues

The code arrangements have developed on a piecemeal basis historically and there are now fragmented arrangements, particularly on the electricity side of the market. Different codes are administered in different ways – some administrators are price controlled whilst others are not; some codes are managed in-house by network operators whilst others are outsourced or managed by independent administrators; Panel structures and approaches to discharging rules are widely varying – and the assessment of cross-code issues can be problematic. The fragmented nature of the arrangements is likely to drive administrative inefficiencies which may need to be addressed.

2.2 Our approach

Our starting point for this review of the governance of the gas and electricity industry codes was to carry out a high level review of the similarities and differences between the current arrangements for the following codes:

- **Electricity:** Balancing and Settlement Code (BSC), Connection and Use of System Code (CUSC), Distribution Connection and Use of System Agreement (DCUSA), Grid Code, Distribution Code, System Operator Transmission Owner Code (STC), and Master Registration Agreement (MRA);
- **Gas:** Unified Network Code (UNC), Independent Gas Transporters Unified Network Code (iGT UNC), and Supply Point Administration Agreement (SPAA).

We supplemented this high level review by carrying out a number of case studies of modification proposals put forward for the main commercial codes (BSC, UNC, CUSC). Our aim in these case studies was to explore how well the modification procedures had worked both in terms of process and analytical rigour. We also explored how code governance arrangements work in a number of international electricity markets and also in other GB sectors.

We solicited views on code governance from market participants via a questionnaire and from the code secretariats. In addition, the code secretariats provided data on the costs of administering the codes and on the range of market participants who had put forward proposals.

On the basis of all the foregoing information and analysis, we reached some general conclusions regarding the strengths and weaknesses of the current governance arrangements. (We separately considered the issue of whether charging methodologies should be included within the

2.3 Structure of our report

The remainder of this report is structured as follows. Section 3 summarises the results of our high level comparative review of the codes whilst Section 4 summarises the responses to our questionnaires. (More detailed information on the questionnaire responses can be found in the appendices to this report.) The results of our case study analyses are reported in Section 5 whilst our findings in respect of other jurisdictions and sectors are presented in Section 6. We consider whether charging methodologies should be included within the code governance arrangements in Section 7. Our further analysis is reported in Section 8 whilst our conclusions and recommendations are set out in Section 9.

3 Overview of the GB gas and electricity industry codes

3.1 Introduction

Our main work in gaining a high level understanding of the similarities and differences between the various electricity and gas codes is summarised in a set of comparative tables which focus on the following topics:

- How is the code established, who has to be a signatory to it and who administers the code;
- What type of members are on the code panel, in what capacity do they serve, how are they elected;
- Who can propose changes to the code;
- Who finally decides on code changes and what appeal mechanisms are in place;
- What are the objectives against which the panel (and respondents to modification consultations) must judge proposed changes; and
- What rules are in place regarding how proposals are treated (including arrangements for urgent modifications, withdrawal or amalgamation of proposals and for the introduction of alternative proposals).

3.2 Comparative review of the codes

Table 1: General information

	BSC	CUSC	DCUSA	STC	UNC	IGT UNC	MRA	SPAA	Grid Code	Distribution Code
Established	Under NGG Licence Condition	Under NGG Licence Condition	Under Distribution Licence Condition	Under Transmission Licence Condition	Under Transmission and Distribution Licence Condition	Under Transporter Licence Condition	Under Distribution Licence Condition	Under Condition 34A of the Gas Suppliers Licence and Condition 14 of the Gas Transporters Licence	Under NGG Licence Condition	Required under the distribution licence condition 9
Parties	Generators, NGG, Distribution Network Owners (DNOs), Independent Distribution Network Owners (IDNOs), Suppliers, Interconnectors	Generators, NGG, Distribution Network Owners (DNOs), Independent Distribution Network Owners (IDNOs), Suppliers, Interconnectors	Distribution Network Owners (DNOs), Independent Distribution Network Owners (IDNOs), Suppliers, Distributor Generators	NGG, SP Transmission, SHEL	NGG, Gas Distribution Network Owners (DNOs), Shippers (suppliers)	IGT Transporters, Shippers (suppliers)	Distributors and Supplier	Gas Suppliers and Transporters	NGG, Generators, Large connected customers	Distribution Network Owners (DNOs), Large Connected Customers, Embedded Generators
Secretariat	BSCCo (Exelon)	NGG	The Panel appoints the Secretariat	NGG	Joint Office of Gas Transporters	The Panel appoints the Secretariat	MRA Service Company Ltd (each Party to the MRA holds 1 share)	The SPAA EC appoints the Secretariat	NGG	The DNOs appoint the secretary.

Table 2: Code Panels

	BSC	CUSC	DCUSA	STC	UNC	IGT UNC	MRA	SPAA	Grid Code	Distribution Code	
Panel	BSC Panel consists of 11 or 12 impartial voting members (Chairman appointed by Ofgem, up to 5 nominated by Trading Parties, up to 2 from energywatch, NGG, 2 independents appointed by Chairman, possibly 1 licence exempt representative if no other on Panel)	Amendments Panel consists of 11 or 12 impartial voting members plus non-voting Chairman appointed by NGG [excc. Director of NGG] (up to 7 appointed by Parties, 2 appointed by NGG [but only 1 vote between them], 1 from energywatch and an optional Ofgem appointee)	DCUSA Panel consists of 6 members (2 from DNO Parties, 1 from IDNO Parties, 2 from Supplier Parties, 1 from DG Parties). Ofgem may appoint an additional member if it deems that a category or interested party is not adequately represented. Chair is elected from the Panel members and does not have a casting vote.	Committee consists of up to 2 representatives from each Party	Modification Panel consists of up to 10 representative voting members (up to 5 transporter and up to 5 User representatives) plus non-voting Chairman and representatives from Terminal Operators, consumer representatives (2), independent suppliers, and independent transporters	The Panel consists of up to 6 representative voting members. 3 represent the Pipeline Operators and the Pipeline Users: Consumer, supplier, and large transporter representatives (non-voting) may be invited to attend meetings.	MRA Executive Committee (MEC) consists of 4 representative voting Members (1 elected by the Distribution Businesses, 2 elected by the Suppliers, 1 appointed by the BSC - who only votes when resolutions affect the BSC). Energywatch has a standing invitation to attend MRA Panel meetings	Executive Committee consists of 8 representative voting members (2 representing I&C suppliers, 2 representing large domestic suppliers (>1 million supply points), 1 representing small domestic suppliers, 2 representing large transporters (>1 million supply points on its network), 1 representing small transporters). One of the EC members is elected Chairman by a vote of the EC members. Energywatch may attend (but not vote at) meetings of the SPAA Forum.	Grid Code Review Panel consists of 20 representative voting members (Chairman, with a second casting vote, and 4 members from NGG, 3 persons representing generators with Large power stations of a capacity of > 3GW, 1 person representing generators with Large power stations of a capacity of < 3GW, 1 person representing generators with Medium or Small power stations, 1 person representing generators with Novel Units, 2 persons representing Network Operators in E&W, 1 person representing Network Operators in Scotland, 1 person representing Suppliers, 1 person representing Non-Embedded Customers, 1 person representing the BSC Panel, 1 person representing Externally Interconnected System Operators, 1 person representing each of the Relevant Transmission Licensees.	Distribution Code Review Panel consists of 13 representative voting members (Chairman, with a second casting vote, and 4 DNO members one of whom must be an E&W DNO and sit on the Grid Code Review Panel and another of whom must be a Scottish DNO and sit on the Scottish GCRP, 2 persons representing embedded generators who are BM participants, 2 persons representing other embedded generators, 2 persons other than Suppliers representing Users without Generating Plants, 1 person representing customers. One of the members from the final 4 categories must represent a user of the Distribution System in Scotland. In addition, there is a non-voting member from Ofgem.	
Panel election	Members appointed for 1 year at a time, list of nominees voted upon with 1 vote per Energy Account held by a Trading Party. Votes list first, second and third preference.	Members appointed for 2 years at a time, list of nominees voted upon with 1 vote per User. Votes list first, second and third preference.	Members are appointed for 2 year periods to ensure continuity of membership. Members are elected by Parties and each Party or Category of Parties may cast one vote.	N.A.	Transporters' and Users' representatives appointed for 1 year at a time, no time limit for other representatives. No specific election rules other than the fact that the Users' representatives are appointed by the secretary of the Gas Forum. Transporter a	Every two years, AIGT run a process to select the Operator representatives and the Gas Forum do the same for the Shipper representatives.	Appointed for 1 year at a time. Voting for each category is done on a weighted basis by all parties within that category: suppliers weighted by number of metering points subject to a limit of 20%, small (<0.75 million) distribution businesses by percentage of metering points, large distribution businesses split the remaining share equally between them)	Appointed for 1 year at a time. Voting for each category is done on a weighted basis by all parties within that category: weight is determined by nos of associated meter supply points, subject to a limit of 20%	Appointed for 1 year at a time. For representative members of the Panel, where there are more nominations than slots, a unanimous vote of all the relevant Parties who can be contacted within 7 days is required otherwise Ofgem decides.	Appointed for 1 year at a time. For representative members of the Panel, where there are more nominations than slots, a unanimous vote of all the relevant Parties who can be contacted within 7 days is required otherwise Ofgem decides.	For representative members of the Panel, where there are more nominations than slots, a unanimous vote of all the relevant Parties who can be contacted within 7 days is required otherwise Ofgem decides. Each year 4 or 3 (alternates by year) voting Members (other than the Chairman & the DNO representatives) who have been the longest in appointment are subject to retirement by rotation (although they can be reappointed)

Table 3: Relevant objectives

	BSC	CUSC	DCUSA	STC	UNC	IGT UNC	MRA	SPAA	Grid Code	Distribution Code
Objectives (amendments should better facilitate)	(a) The efficient discharge by the licensee of the obligations imposed under this licence (b) The efficient, economic and co-ordinated operation of the GB transmission system	(a) The efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence	(c) the efficient discharge by the licensee of the obligations imposed on it under this licence (a) the development, maintenance and operation by the licensee of an efficient, co-ordinated and economical distribution system	(a) efficient discharge of the obligations imposed upon transmission licensees by transmission licences and the Act (b) development, maintenance and operation of an efficient, economical and co-ordinated system of electricity transmission	(c) so far as is consistent with (a) and (b), the efficient discharge of the licensee's obligations under this licence (a) the efficient and economic operation by the licensee of its pipeline system (b) so far as is consistent with (a), the co-ordinated, efficient and economic operation of (i) the combined pipe-line system, and/or (ii) the pipeline system of one or more other relevant gas transporters	(c) so far as is consistent with (a) and (b), the efficient discharge of its obligations under this licence (a) the efficient and economic operation by the licensee of its pipeline system (b) so far as is consistent with (a), the co-ordinated, efficient and economic operation of the pipeline system of one or more other relevant gas transporters	the development, maintenance and operation of an efficient, co-ordinated and economical system for the supply of electricity and for the purpose of facilitating competition in electricity supply	(d) so far as is consistent with (a) to (c), the efficient discharge of the licensee's obligations under this licence (a) the development, maintenance and operation of an efficient, co-ordinated and economical change of supplier process	(a) to permit the development, maintenance and operation of an efficient, co-ordinated and economical system for the transmission of electricity	(a) to permit the development, maintenance and operation of an efficient, co-ordinated and economical system for the distribution of electricity
	(c) Promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity (d) Promoting efficiency in the implementation and administration of the balancing and settlement arrangements.	(b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.	(b) the facilitation of effective competition in the generation and supply of electricity and (so far as consistent therewith) the promotion of such competition in the sale, distribution and purchase of electricity (d) the promotion of efficiency in the implementation and administration of the DCUSA arrangements.	(c) facilitating effective competition in the generation and supply of electricity and (so far as consistent therewith) facilitating such competition in the distribution of electricity (e) promotion of good industry practice and efficiency in the implementation and administration of the arrangements described in the STC (d) protection of the security and quality of supply and safe operation of the GB transmission system insofar as it relates to interactions between transmission licensees	(d) so far as is consistent with (a) and (b), the securing of effective competition (i) between relevant shippers; (ii) between relevant suppliers; and/or (iii) between DN operators (who have entered into transportation arrangements with other relevant gas (f) so far as is consistent with (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or uniform network code (e) so far as is so consistent with (a) to (d), the provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards (within the meaning of paragraph 4 of the standard condition 32A - 'Security of Supply - Domestic Customers' of the standard conditions of Gas Suppliers' licences) are satisfied as respects the availability of gas to their domestic customers.	(d) so far as is consistent with (a) to (c), the securing of effective competition between relevant shippers and between relevant suppliers (e) so far as is so consistent, the provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards (within the meaning of paragraph 4 of the standard condition 32A - 'Security of Supply - Domestic Customers' of the standard conditions of Gas Suppliers' licences) are satisfied as respects the availability of gas to their domestic customers.		(b) the furtherance of effective competition between gas suppliers and between relevant agents (c) the promotion of efficiency in the implementation and administration of the supply point administration agreements	(b) to facilitate competition in the generation and supply of electricity (and without limit to the foregoing) to facilitate the GB transmission system being made available to persons authorised to supply or generate electricity on terms which neither pre (c) subject to (a) and (b), to promote the security and efficiency of the electricity generation, transmission and distribution systems in Great Britain taken as a whole.	(b) to facilitate competition in the generation and supply of electricity

Table 4: Modification procedures

	BSC	CUSC	DCUSA	STC	UNC	IGT UNC	MRA	SPAA	Grid Code	Distribution Code
When an Amendment Proposal is raised	Panel can amalgamate, send to Definition Procedure, assessment procedure or report phase	Panel can amalgamate, send to a working group or send to consultation	Panel can send to definition procedure or assessment phase	Committee can amalgamate, send to evaluation, send to assessment and report	Panel can send to review, development, consultation, to a workstream or defer for further discussion	Panel can send to review, development, consultation or defer for further discussion	They are always sent to industry parties for consultation, and then voted on at MDB	Voting on amendments only occurs on certain fixed days in the year. Each Party that has a legitimate interest in an amendment has to write to the Change Control Administrator stating how it intends to vote (plus any comments) and the collated information of all such Parties is then circulated.		Majority resolution by the Panel determines whether it is sent out for consultation. Mods are subject to a materiality test
Urgency	NGG, BSCCo or Proposer can ask for an amendment to be treated as urgent but Panel makes recommendation to Ofgem who makes the decision	Any Party can ask for an amendment to be treated as urgent but Panel makes recommendation to Ofgem who makes the decision	Proposer can specify whether an amendment should be treated as urgent	Any Party can ask for an amendment to be treated as urgent. Ofgem makes the decision in consultation with the Committee	One or more of the Transporters' or the Proposer can ask for amendments to be treated as urgent. Ofgem makes decision on urgency in consultation with the Transporters.	Requested by Proposer but granted by Ofgem	Where any change is proposed to the Agreement which MEC decides is of an urgent nature; and is a change which should be accepted, MEC may decide to reduce the timescales set out in the MRA accordingly	EC decides whether an amendment is urgent and can reduce the normal timescales accordingly.	No arrangements	No arrangements
Withdrawal of amendments	Only up to the time it is first considered by the BSC Panel	At any time	At any time	At any time	At any time before FMR sent to Ofgem	Proposals are in the control of the Proposer who can withdraw them up to the Panel deciding to recommend (or otherwise) its implementation	By the proposer, at any time prior to voting at MDB	Change proposals can be withdrawn at any time up to the vote.	No arrangements	No arrangements
Maximum time in working group/ definition/ evaluation/ development	Definition - 2 months Assessment - 3 Months both subject to extension with the Authority's approval - Panel can refer back to modification group if ToR not met	3 months, subject to extension with the Authority's approval - panel can refer back to work group if ToR not met	60 working days (includes consultation period) - extendable upto a maximum of a further 40 working days (subject to Authority approval) - Panel can refer back to working group if ToR not met	Evaluation - up to 2 months - Panel can refer back to work group. Assessment - up to 5 months (each Party to submit its own analysis and assessment)	At workstream - max 6 months, Development phase - max 12 months - Panel can refer back	Timings of Consultation are defined in the Code. No limits on Review or Development Groups - Panel are in control of the Working and Review Groups. Proposer retains ownership of the proposal throughout the process.	No limits, though MDB will usually define how many Working Groups should be necessary to consider a particular issue, and will continually monitor progress of working groups and the Issue Resolution Expert Group (IREG).	No guidelines. Change Proposals will only be presented at the Change Board for voting when the raising Party puts it forward. Typically development work is done before the Change Proposal if formally raised (draft change and SPAA issues process).	Informal WG's can be set up	Informal WG's can be set up
Alternative Amendments	Mod Group may develop an alternative modification. Maximum of one can be developed. Should be considered to better facilitate objectives with respect to the defect identified in the original	Working Group can raise alternatives - no limitations on numbers. Alternative should be considered by the WG to better facilitate objectives with respect to the defect identified in the original. Any party can raise alternative in response to consultation	Individual Working Group members may propose working group alternatives - limited to one per member	Each party may propose one or more alternatives at any time before the proposal is submitted to the assessment phase	Any party (other than Proposer) may propose an alternative within 5 business days of the Panel determining it should proceed to the Development Phase or Consultation, or if a proposal is granted urgency.	Any Pipeline User, Pipeline Operator or Third Party Participant may propose an alternative within 5 business days of the Modification being published.	Alternatives may be considered at the Solution Pre-Assessment stage (equivalent to a BSC Draft CP). However, once a formal Change Proposal is raised, there is no facility for alternative amendments.	If the SPAA Change Board (all Parties with a legitimate interest in an amendment) unanimously agrees and the Proposer is present, then the amendment can be altered by the Proposer to reflect the agreed changes within 4 working days of the Change Board mee		
Status of alternatives	No requirement for alternative to be submitted from beginning of mod process - it is defined and reported from whatever stage the process has reached.	No requirement for alternative to be submitted from beginning of mod process - it is defined and reported from whatever stage the process has reached. I.e. a WGA is reported in the WGR and taken forward from that stage, a CAA is reported in the next consultation document and taken forward from that stage (see reporting documents)	Alternative variations can be issued for consultation and voting with the same status as standard change proposals. All the standard processes apply.	Alternative amendment must be submitted in the same form as an original amendment	Although they progress alongside the original proposal, they are treated as an independent modification proposal and so, for example, continue on their own merits if the original is withdrawn.	Alternatives are required to be submitted from the beginning of the modification process. Although they progress alongside the original proposal, they are treated from a process perspective as an independent modification proposal.	The SPAA does not specify a process for dealing with alternative Change Proposals. Under the SPAA, typically the original Change Proposal is modified or an independent Change Proposal is raised.			
Reporting Documents	Modification Proposal Form, Initial Written Assessment, Modification Group Report (if applicable) - with details of any WGA, Consultation Document, WGA, Draft Modification Report upon which panel undertakes its recommendation vote, Final Modification Report	Amendment Proposal Form, Working Group report (if applicable) - with details of any WGA, Consultation Document, Consultation Alternative - Consultation Document (if applicable) - with details of any CAA, Draft Amendment Report - upon which Panel undertakes	Change Proposal, Initial Written Assessment, Change Report (including details of any alternatives, and details of consultation carried out by a working group (if applicable), Notice detailing the outcome of the industry vote	Proposed Amendment, Evaluation report (if applicable), Proposed Amendment Report which includes details of impact assessments conducted by the parties and details of all amendments, including alternatives. Amendment Report (Final)	Modification Proposal, Workstream/Development Work Group Report (if applicable), Draft Modification report (for consultation), Final Modification Report. Each Modification, including alternatives are treated as independent proposals and generate an indivi	Modification Proposals and Draft Modification Reports are issued for consultation. Draft Final Modification Reports are published for the Panel to consider implementation. Final Modification Reports are produced for the Authority. Work Group reports are p	No documents other than amendment proposal	18 working days before a Change Voting Date, list of Proposed Changes/Draft Proposed Changes circulated. 5 working days before a Change Voting Date the Collated Comments are circulated (Parties with a legitimate interest have to provide comments/indicatio		

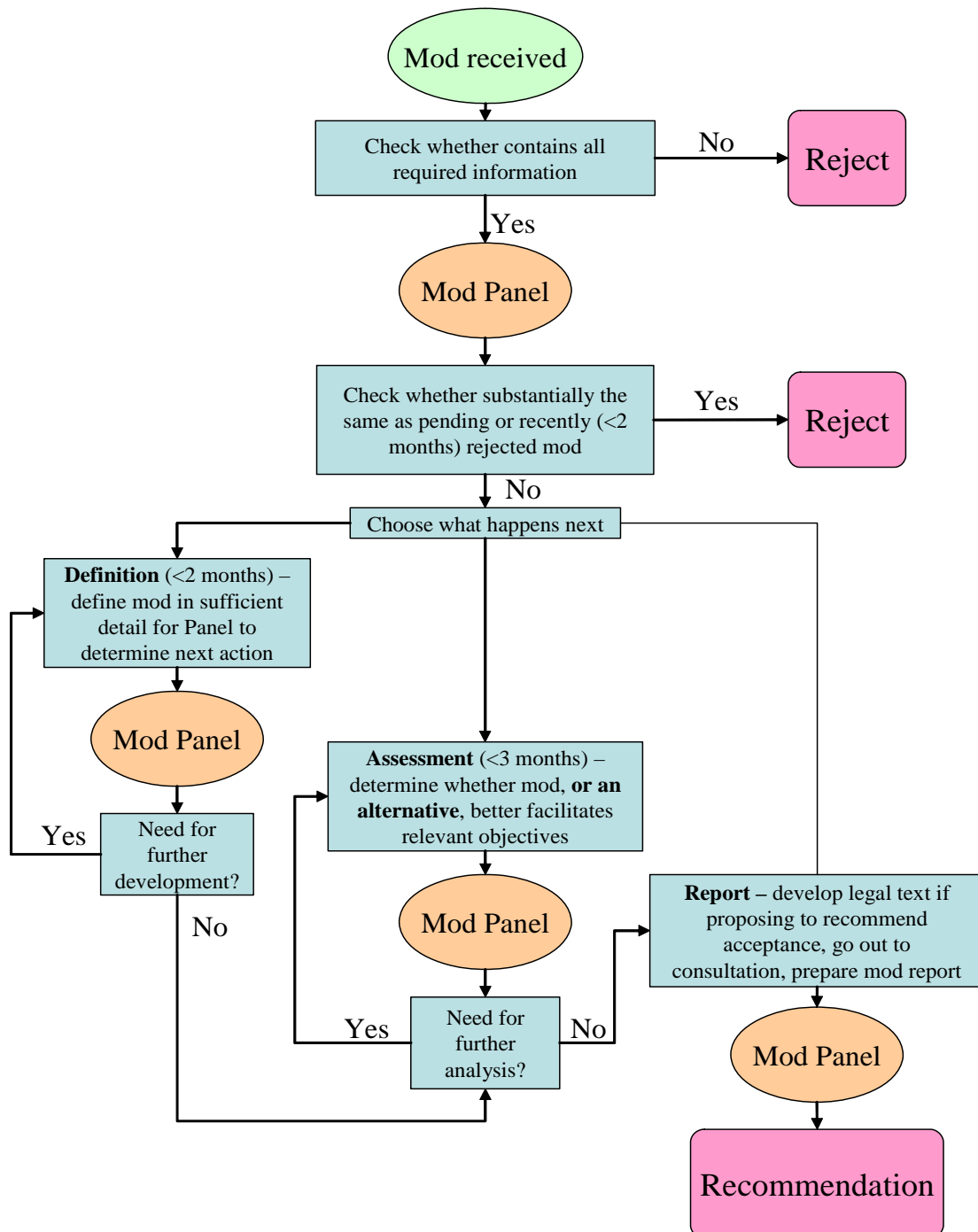
Table 5: Proposers, decisions and appeals

	BSC	CUSC	DCUSA	STC	UNC	IGT UNC	MRA	SPAA	Grid Code	Distribution Code
Who can raise Amendments?	Parties, energywatch, third parties designated by Ofgem, the BSC Panel on the recommendation of the BSCCo	CUSC party, Energywatch, BSC party.	Parties, energywatch, NGG or a person designated by Ofgem	Parties or a person designated by Ofgem	Transporters, Users, Third Parties (as designated by the Authority) can only raise amendments relating to the publication of operational and market data	Signatories to an IGTs Individual Network Code. A Third Party Participant can raise Modifications against Part K, Appendix K1 (Operational Data).	Any party to the MRA, except that the BSC Agent can only propose amendments to the Priority Provisions	Any party or energywatch	Ofgem, or any User or any Relevant Transmission Licensee can submit an amendment to NGG for consideration by the Panel	Only Panel Members can raise mods
Who decides on Amendments?	Ofgem, but self-governance for defined subsidiary documents	Ofgem	Part 1 Matters (those which impact on the interests of consumers, or on competition in one or more of generation, distribution, supply of electricity or commercial activities related to generation, distribution or supply, or discriminate between parties, or affect the safety or security of a distribution network, or concern the governance or change control measure) are decided by Ofgem, Part 2 Matters are decided by weighted votes: each DNO has its own vote but the IDNO, Supplier and DG Party Groups only get one vote per group	Ofgem, but self-governance for defined subsidiary documents	Ofgem	Ofgem	MEC (responsibility devolved to MRA Development Board (MDB)), There is a list of clauses changes to which require consent of Ofgem. Any party can appeal a decision of MEC and the process then goes to a weighted vote at the MRA Forum (as described in the MRA). There is then a right of appeal to Ofgem if the Party does not accept the Forum decision.	Mostly SPAA Change Boards, on the basis of the volume weighted votes of Parties (as for Executive Committee election voting) with a legitimate interest in an amendment, list of clauses changes to which require consent of Ofgem	Ofgem	Ofgem except in the case of Appendix 2 Standards (national electricity standards that have a material effect on Users but are not implemented as Distribution Code requirements) where the Panel reaches a unanimous decision, in which case the DNOs will approve the standard without reference to Ofgem
Appeals	CC appeal if Ofgem disagrees with Panel recommendation, unless Ofgem decides an appeal would be likely to have "a material adverse effect on the availability of gas or electricity to meet the reasonable demands" of GB consumers	CC appeal if Ofgem disagrees with Panel recommendation, unless Ofgem decides an appeal would be likely to have "a material adverse effect on the availability of gas or electricity to meet the reasonable demands" of GB consumers	Under consideration for designation for CC appeals		CC appeal if Ofgem disagrees with Panel recommendation, unless Ofgem decides an appeal would be likely to have "a material adverse effect on the availability of gas or electricity to meet the reasonable demands" of GB consumers	Under consideration for designation for CC appeals	CC appeal if Ofgem disagrees with Panel recommendation, unless Ofgem decides an appeal would be likely to have "a material adverse effect on the availability of gas or electricity to meet the reasonable demands" of GB consumers	Change Board decisions can be appealed to the SPAA Forum. CC appeal if Ofgem over-rules a change proposal, unless Ofgem decides an appeal would be likely to have "a material adverse effect on the availability of gas or electricity to meet the reasonable demands" of GB consumers		
Recommendations to Ofgem	Recommendation made by the BSC Panel	Recommendation made by CUSC Panel	Recommendation on basis of voting	Recommendation made by STC Panel	Recommendation made by UNC Panel	Recommendations made by the Panel	Recommendations made by the MEC, when consent of Ofgem required.		Recommendation made by NG	

3.3 BSC modification process

For the BSC we have also summarised the modification process in the form of Figure 2.

Figure 2: BSC modification process



3.4 Observations

Our review indicates that overall there are more similarities than differences between the codes, particularly with regard to process and relevant objectives. However, there are a number of important differences between the codes and/or the gas and electricity industries which we highlight below.

3.4.1 Fragmentation

The electricity codes are noticeably more fragmented than the gas codes: there are 7 electricity codes but only 3 gas codes. Essentially, the UNC in gas covers all the areas that in electricity are split between the BSC, the CUSC, the Grid Code, the Distribution Code and the DCUSA. These differences appear to be largely a result of historical accident i.e. where the industry started from, rather than reflecting any fundamental differences between the industries.

3.4.2 Representative versus independent panels

Most of the code panel members act as representatives for a particular sector of the relevant industry but two codes (BSC and CUSC) have panels whose members are meant to act in an impartial manner, without regard to the views of their company or sector. Moreover, the BSC Panel has two independent members, who can be drawn from completely outside the industry e.g. academia.

3.4.3 Role for consumer representatives

Three of the codes (BSC, CUSC and UNC) have consumer representatives on their panels but the remaining seven do not. Consumer representatives can propose modifications to any part of the BSC, CUSC, DCUSA, and under the UNC and the iGT UNC, consumer representatives can raise modifications in relation to the publication of operational data.

3.4.4 Self governance

Under the two codes that relate to consumer switching and metering (SPAA and MRA), there is a limited degree of self-governance – Ofgem only determines whether modifications should be approved in matters that are likely to affect competition, the change control procedures, market participants' voting rights or the composition of the Panel. Furthermore, Part II matters under the DCUSA are decided by self-governance, as are changes to certain detailed subsidiary documents ("procedures") under the BSC and the STC.

It can also be argued that the Distribution Code incorporates self-governance in relation to changes to national electricity standards that are not Distribution Code requirements. However, this very circumscribed right of self-governance is further curtailed by the requirement that the Distribution Panel reaches a unanimous decision in relation to the change.

3.4.5 *Alternative proposals*

Under several of the codes (UNC, iGT UNC, CUSC, DCUSA, STC) there is no limit on the number of alternative proposals that can be put forward during the modification process.^{10, 11} Whilst, in theory, this should ensure that the best solution to a particular problem is found, it can lead to confusion and increased regulatory burdens when many competing proposals are in play. By contrast, the BSC only allows for one alternative to be taken forward for general consideration, although many may be discussed by the modification development group. Under the SPAA, the original proposal can be amended (but only with the unanimous support of the SPAA Board and the proposer) but this is somewhat different to allowing alternative proposals to be considered.

Of course, even under codes where the number of alternative proposals that can be raised is restricted, there is nothing to stop Parties raising subsequent modifications that are in effect alternatives.

¹⁰ Under the UNC and iGT UNC any alternatives have to be raised within 5 business days of the original proposal being sent out for consultation.

¹¹ CAP160, raised in April 2008, aims to make the CUSC processes more efficient by reducing the number of alternative proposals that will be taken through the whole assessment process.

4 Responses to our questionnaires

4.1 Introduction

In order to ensure that we understood the views of interested parties, we produced a questionnaire for market participants to fill in, which was advertised by Ofgem. We also sent a separate questionnaire to the code administrators seeking both their views on the governance arrangements and data on costs, frequency of modifications and variety of proposers. We briefly outline the responses that we received in the remainder of this chapter. More details are provided in the appendices

4.2 Summary of responses to participants questionnaire

Respondents

We received 20 responses to the questionnaire, covering most sectors of the industry as shown in Table 6.

Table 6: Breakdown of responses

Respondent	Responses
NGG	1
DNO	4
GDN	2
Large VI*	5
Large generator	2
Small supplier	1
Large producer/shipper	2
Large customer	1
Industry/customer association	2

Notes

*Here VI includes vertically-integrated players with large domestic supply businesses.

Resources devoted to code governance

Table 7 shows the level of resource devoted to the code governance process. Note that for NGG the response includes resources used for operating the governance arrangements for the Grid Code, CUSC, and STC.

Table 7: Resources

Respondent	FTEs	Cost (£k per annum)
NGG*	36	>500
DNO	3	100-500
GDN	1-10	100-500+
Large VI**	>10	>500
Large generator	1-3	100-500
Small supplier	2	200
Large producer/shipper	2	100-500
Large customer	<0.5	50-100
Industry/customer association	1	-

Notes

* Includes resource for code administration.

** Some but not all of the VI players own electricity and or gas distribution businesses.

** Here VI includes players with large domestic supply businesses.

In some cases we have used judgement to produce what we think is a "typical" response, not necessarily a straight average.

General questions

Before asking about individual codes, we asked respondents whether charging methodologies should be brought within the code governance arrangements, whether there was scope for defragmenting the code arrangements on the electricity side, and whether impartial panel members acted impartially. Table 8 summarises the responses.

Table 8: General questions

Responses	Include charging methodologies?	Defragment electricity codes?	Impartiality of panel members?
NGG	No	No	Completely
DNO	No	No	Mixed view
GDN	No	No	To some extent
Large VI*	Most no	Merge admin.	Yes / mixed
Large generator	Split	Yes / maybe	To some extent
Small supplier	Yes	Merge codes	Completely
Large producer/shipper	No	Don't care	To some extent
Large customer	Yes	No	Completely
Industry/customer association	Split	No / maybe	Completely

Notes

*Some but not all of the VI players own electricity and or gas distribution businesses.

*Here VI includes players with large domestic supply businesses.

In some cases we have used judgement to produce what we think is a "typical" response, not necessarily a straight average.

There was little interest in including charging methodologies from those respondents that have network businesses. Indeed, only one large party plus a few of the smaller parties thought that this would be beneficial. Many respondents thought that merging the codes themselves would be impractical, and/or could be harmful if it meant that parties were obliged to take on additional commitments (through, in effect, having to accede to more codes). However the vertically integrated players tended to say “yes” to merging the administrators.

Most respondents thought that independent panel members behave independently, but some respondents (see below) felt that the current panel arrangements do not work well.

Improving code governance

We asked respondents to suggest their “top 3” proposals for changes to the governance arrangements. The full text of the responses is in Appendix III, but in the following paragraphs we summarise the ideas that seemed to us most interesting, and group them into themes.

1. The “big ticket” issues should be identified in advance, so that they can be developed at working level and solutions fleshed out. The current arrangements work well for incremental change but more flexible arrangements are needed to deliver big changes, e.g., those which cut across codes or include charging arrangements. Current practice does not work well for this—eg, the exit capacity substitution arrangements, which were developed through the TPCR, were not well enough thought through and were rushed.

2. There is a mismatch between Ofgem statutory duties and code objectives which is not helpful and leads to regulatory uncertainty. It is not clear that the code objectives can be broadened given current licence duties on networks to be efficient and economic.
3. It should be clear when modifications are effectively being raised by Ofgem, and why Ofgem wants to see them implemented. In such cases there need to be effective safeguards. Ofgem involvement must be timely, and it should indicate when it thinks broader reform (e.g., across several codes) is needed. Broad guidance would be better than Ofgem being involved in initiating individual proposals. Ofgem should be involved in development workstreams so that industry doesn't have to guess what Ofgem wants.
4. Panel "independence" may not mean much because experts necessarily are influenced by their experience; transparency of allegiance may be better than "independence", and panels should have adequate and balanced representation. Panel members sometimes represent their wider group interests rather than the interests of the sector of the industry that they represent (e.g., shippers or gas transporters with affiliated supply businesses) — sometimes suppliers without network affiliates are disadvantaged as a result. The BSC Panel arrangements less "democratic" than those of some other codes e.g., the DCUSA. Smaller parties should have "equal representation". Parties can feel excluded from the assessment process, including the process for generating alternatives.
5. DCUSA self-governance arrangements work well and could be used elsewhere; self governance without Ofgem involvement could be used for simple changes, especially if there is unanimous support from the Panel (in this case might need to reform Panel membership and rules to make voting more legitimate).
6. There should be a clear timetable defined from the start of the modification process, including for the Ofgem decision.
7. Sometimes it is obvious from the start that proposals will be rejected, but the full process has to be gone through anyway. There should be a requirement for a minimum level of support for a proposal to advance through the process, or a "pre-qualification" step to ensure that all proposals are adequately worked up before the start of the industry process.
8. "Best practice" on various aspects of the governance arrangements could be observed in one code and applied to the others (although unfortunately no examples were given).
9. It is difficult for smaller parties to engage. One possibility would be for code administrators to go to external forums to seek information/views.
10. Sometimes there is insufficient transparency over Ofgem's decisions, e.g. when rejecting a modification that has been recommended by a panel.

In addition to these general points, some parties also commented specifically on individual codes, particularly the UNC:

- the Joint Office should be funded by transporters and shippers, and Joint Office staff should draft amendments (the implication is that transporters currently have undue influence);

- Parties have influence over how BSC changes get grouped and released, but there is no equivalent in relation to the UNC — parties should have more influence over xoserve.
- There should be a single common UNC, e.g. to solve problem of the NExAs between distribution network owners (DNs) and independent gas transporters (iGTs), which are not transparent for final users.

Finally, some respondents thought that more alternatives should be allowed under the BSC.

4.2.2 Detailed questions on each code

We asked the same set of detailed questions about each code, giving respondents the opportunity to answer in respect of any of the codes of interest to them.

Engagement and ease of understanding

Most respondents are “actively engaged”, and most found it “reasonably straightforward” to engage with the process and understand the significance of modifications. It is of course possible that others who did not respond to the questions on a particular code because they are less engaged would find it more difficult to engage with the process.

There seemed to be a small difference between gas and electricity codes, with electricity arrangements being somewhat more difficult to understand/engage with, particularly the Grid Code.

The secretariats

Most respondents found the help from the secretariat (in engaging with the process and in understanding modifications) “OK” or “good”. Respondents generally felt that administrators were sufficiently accountable, although some had concerns in relation to the CUSC, BSC, UNC and DCUSA.

Costs

The annual costs of engaging with the codes ranged from £100–500k for the UNC and BSC (big players) to £10–100k for the other codes/parties.

Quality of analysis and recommendations

Most respondents said that the quality of analysis was “above average”, across all of the codes, and the quality of the final recommendation generally received a higher score than the analysis. However, some pointed out that it was not the secretariat’s role to assist with technical analysis of proposals.

Panels and voting

Although we did not ask specific questions about this, a number of respondents made comments which suggest that there is some confusion or difference of view about the role of the panels and panel members. Although most respondents said that independent panel members acted independently, others thought that they acted in the interests of their employer. Some respondents complained that voting was sometimes biased in favour of commercial interests, with

votes tending to favour the interests of the supply or generation parts of vertically-integrated companies, rather than the interests of the network sector as a whole. Finally, one respondent commented that the governance arrangements for the SPAA were not equally open to all, being biased in favour of ERA members.¹²

Comments from secretariats (see Appendix II) suggest that some explicitly see panel members as representing sections of the industry.

4.3 Summary of responses to code administrators questionnaire

4.3.1 Resources and costs

Table 9 shows the resources that code administrators devote to governance arrangements whilst Table 10 provides a more detailed breakdown of each administrator's costs.

Table 9: Costs for governance arrangements

Code	FTEs	Cost (£k)	Cost per mod
BSC	9	1,300	£17k, £1k for subsidiary document changes.
DCUSA and SPAA	2		
CUSC	2	150	25 person days
Grid Code	2	150	15 person days
STC	2	100	4 person days
IGT UNC	4		3+ person days
MRA		875	1.5 person days
UNC	6	600	£7k

Notes

Cost refers only to the governance arrangements (not implementation).

The BSC (only) has significant additional costs (£4m) for analysis of mods.

Table 10: Breakdown of administrators' costs

Code	BSC				DCUSA and SPAA		CUSC		Grid Code		STC		IGT UNC		MRA		UNC	
	FTEs (excl. overhead)	External costs (£k)	Overheads (£k)	Staff costs (£k)	Total cost (£k)	FTEs (excl. overhead)	Costs (£k)	FTEs (excl. overhead)	Costs (£k)	FTEs (excl. overhead)	Costs (£k)	FTEs (excl. overhead)	Costs (£k)	FTEs (excl. overhead)	Costs (£k)	FTEs (excl. overhead)	Costs (£k)	
Governance	9		526	815	1,341	2		2	150	2	150	2	100	4	875	6	600	
Change assessment	22	656	1,286	1,992	3,934													
Implementation	23.5	413	1,374	2,128	3,915				100		50		0		270			
Operation	46.5	18,156	2,719	4,210	25,085	3												
Total	101	19,225	5,905	9,145	34,275	5			250		200		100		1,070			

Finally, Table 11 overleaf gives the secretariat answers to some descriptive questions about the modification process.

¹² The members of the ERA (Energy Retail Association) are the six large vertically-integrated suppliers.

Table 11: Summary of administrators' answers to descriptive questions

Code	BSC	DCUSA	CUSC	Grid Code	STC	IGT UNC	MRA	SPAA	UNC
Administrator	Elexon. Owned by NGG, but run by Panel. Panel chairman appointed by Ofgem.	ElectraLink	NGG	NGG	NGG	Gemserv	Gemserv	ElectraLink	Joint Office
Role	Both operating the code (and subsidiary documents) and supporting the change process.	ElectraLink administers code including change process; industry provides expertise and analysis. ElectraLink provides administrative support to industry Working Groups.	Chair, secretary and administrative support, including documentation and legal drafting.	Chair, secretary and administrative support, including documentation and legal drafting.	Secretary and administrative support, including documentation and legal drafting.	Secretariat plus Panel chair and deputy.	Secretariat	Administrative support	Administrative support
Who pays?	Market participants, in proportion to electricity generated or consumed.	Suppliers and distributors in proportion to number of meters.	System users through BSUoS, but capped under NGG's internal GBSO incentives.			IGTs in proportion to number of meters.	Suppliers (two thirds) and distributors, in proportion to number of meters.	Suppliers, based on number of meters.	Transporters, in proportion to number of networks owned.
External analytical support?	On occasion, but usually analysis done in-house. On 4 occasions relating to transmission losses commissioned external advice on cost-benefit.		Analytical support provided in-house by NGG. Occasional external legal advice.	No	No		Twice, legal advice.	No	No
All mods analysed	Yes		33%	50%	20%	Yes	Yes		No - proposer does analysis.
Type of analysis	Focus is on "BSC systems and processes". In some cases Elexon has been asked to provide wider (ie, cost-benefit) analysis if industry hasn't done this.		In addition to analysis performed by NGG as code administrator, it also performs analysis as a code party. Figures above refer to analysis (sometimes quantitative) of impacts.			Sufficient to provide the legal drafting.	Costing changes, and other qualitative analysis.	Industry provides expert advice / analysis.	
Procedure for "housekeeping" mods	Anyone can raise but in practice usually the Panel on advice from Elexon.	Parties raise housekeeping changes.	Stored by administrator for subsequent "batch" processing.				No separate arrangements	Parties raise.	Parties identify.
Improvements	Streamline process for minor changes. Allow all BSC Committees to raise modifications. Ofgem to add "wider issues" to the Modification Group's terms of reference in cases where it thinks that analysis will otherwise be incomplete.	Maybe make greater use of the self-regulation provisions. Testing changes against code objectives is sometimes artificial - maybe better to allow some that are "neutral" but attract industry support.	More flexible / different approach for "big picture" changes. More transparency on Ofgem decision-making reasoning. Self-governance for low-level changes.					Extend self-regulation. Re-evaluate voting rights of small transporters. Reconsider concept of I&C participation in the SPAA.	Ofgem provide guidance earlier in process. Increase self-governance. Avoid "serial" processing.

Comments from administrators

There is already a 2-tier process under the BSC: changes to the 141 subsidiary documents do not require Ofgem approval. Elexon provides extensive analysis of change proposals, although it isn't required to do so (under the BSC). Process generates too much paperwork, and respondents sometimes reluctant to engage early on or provide quality input. Respondents may wait until Ofgem RIA consultation rather than engaging with Modification Group or Panel consultations. BSC "issues" process has only been partially successful - basically Mod process doesn't work for big issues (eg, cashout).

4.3.2 Modification statistics

Based on data from the last two years, Table 12 shows some descriptive statistics about the typical number of modifications, how much effort was involved in processing them, and their outcomes.

Table 12: Modification statistics (annual averages)

Code	BSC	DCUSA	CUSC	Grid Code	STC	IGT UNC	MRA	SPAA	UNC
Number of modifications per year	12 plus 40-60	17	17	8	6	30	18	58	85
Recommended for approval	50%	60%	97%	100%	100%	30%		90%	70%
No recommendation	0%	0%				55%	0%		0%
Unanimous	60%	50%	55%	100%	100%	65%	70%	65%	38%
Ofgem disagreed	4%	30%	15%	10%	15%	0%	0%	5%	20%
Cost per mod for assessment (not implementation)	£17k, £1k for subsidiary document changes.	10+ person-days	25 person days	15 person days	4 person days	3+ person days		1.5 person days	£7k
Most expensive mod	£203k for P98		100 person days (CAP131)	90 person days (H/04)	10 person days (CA021)	7 person days	2 person years (ECOES)		
Number of responses	7 (13 for subsidiary document changes).		7	7	<1	4	15		11
Time from proposal to recommendation	4 months	98 days	100 days	270 days	120 days	95 days	6 weeks	35 working days (55 with appeal)	72 days

Table 13 provides a breakdown of the types of parties that have raise modifications over the past two years.

Table 13: Breakdown of modification proposers (last two years)

Code	BSC	DCUSA	CUSC	Grid Code	STC	IGT UNC	MRA	UNC
VI players	6	8				16	2	69
NGG	2		24		11			67
Small supplier	5	1						
Shipper								18
Large generator	2							
Small generator	2							
DNO/GDN	1	11						15
IDN/IGT		1				9		
energywatch	1							1
Panel / Secretariat	4						11	
Total	23	21	34	15	13	25	13	170

Notes

Where information was given, excluding housekeeping changes.

4.3.3 Observations

The cost of administering the electricity arrangements seems to be higher than on the gas side. In particular, although there is no requirement on it to do so, the BSC administrator carries out a significant amount of analysis (presumably of the impact on central systems), which is expensive. NGG carries out some analysis in relation to CUSC, Grid Code, and STC modifications, although it is not clear how much of this is done in its role as code administrator,

and how much in its role as a party to these codes. None of the other administrators carries out analysis of modification proposals.

Several of the codes operate a “two-tier” system. For example, the DCUSA has self-governance arrangements for some parts of the code, and the BSC has numerous “subsidiary documents”, to which changes can be made without reference to Ofgem.

Respondents identified the need for a new process for “big-picture” changes, thought that there was scope for greater use of self-regulation, and wanted to see Ofgem input earlier in the process.

One respondent felt that it was sometimes artificial to try to promote a change as helping to “better achieve” relevant code objectives, and suggested that it would be beneficial to be able to accept modifications that had industry support as long as they were no worse than the status quo.

The secretariat responses indicated that at least some view the panel members as representing parts of the industry, but it is not clear how this view sits with the concept of independence.

5 Code modification case studies

This section examines a set of case studies comprising specific modification proposals to the three codes where governance issues appear to have the most material impact on outcomes and — ultimately — consumer welfare: the BSC, UNC and CUSC. The case studies were chosen (in conjunction with Ofgem) to focus on two specific areas of particular relevance to the review: the quality of analysis produced through the current governance processes, and process issues that might be a barrier to achieving effective and efficient management of the codes when examining major policy issues.

Table 14: Code Modification Case Studies

Modification Proposals	Why Looked At
<i>Balancing and Settlement Code</i>	
P136 - Marginal definition of the “main” Energy Imbalance Price	Analysis and process
P137 - Revised calculation of System Buy Price and System Sell Price	
P211 - Main imbalance price based on ex-post unconstrained schedule	Process
P212 - Main Imbalance Price based on Market Reference Price	
P217 - Revised Tagging Process and Calculation of Cash Out Prices	Quality of analysis
P213 - Facilitating micro-generation (Optional Single MPAN)	
<i>Uniform Network Code</i>	
149/149A - Gas Emergency Cashout Arrangements	Quality of analysis
156/156A/169/169A - Transfer and trading of capacity between ASEPs	Process Issues
88 – Extension of DM service to enable Consumer Demand Side Management	Quality of analysis
<i>Connection and Use of System Code</i>	
CAP158 - Provision of interim response volume information	Analysis and process
CAP047 - Competitive Process for Mandatory Frequency Response	Analysis and process
CAP148 - Deemed Access Rights to the GB Transmission System for Renewable Generators	Analysis and process
CAP131 - User Commitment for New and Existing Generators	Process

Table 14 lists the specific modifications that we have examined as case studies. The rest of this chapter comprises the case studies themselves, and a final section that summarises some key lessons drawn from them. In writing the case studies we have focused on the specific issues most relevant to the Review, eschewing detailed descriptions that might distract from the key messages. Full details of the modifications, assessment processes, consultation responses, decisions etc. are of course available on the websites of the relevant secretariats.

5.1 BSC Modification Proposals P136/137 (marginal cash out)

The key element of modifications P136 and P137 (both introduced in Aug 2003) was a change to the mechanism used to calculate the “main” imbalance prices from the weighted average of what the System Operator (SO) has paid to procure balancing energy in the relevant

period, to the marginal price it has paid.¹³¹⁴ Underlying these proposals was a general debate about “resource adequacy”, i.e., whether the arrangements introduced with NETA would ensure that enough generation capacity would be in place to ensure security of supply. Switching to marginal pricing would, it was argued, give much stronger incentives to market parties to avoid being short of electricity, and therefore increase demand for power at times of peak demand and so stimulate higher levels of investment in plant to serve peak demand (“peaking capacity”).

5.1.1 Comments on the assessment process

P136 and P137 addressed the same issue, and were processed in parallel in a way that seemed to work well in largely avoiding duplication. In terms of the quality of analysis and debate, P137’s proposer (Barclays Capital, “Barcap”) provided a companion paper (“Promoting Efficiency and Security in the NETA Pricing Arrangements”) that provided a clear “big picture” overview and high quality analytical framework, focusing on the fundamental issue of resource adequacy and putting it in the broader context of overall market design. Neither Barcap nor any other party provided quantitative analysis — for example, no attempt was made to estimate what imbalance prices would have been if marginal pricing for imbalances had been the rule over preceding winters. Doing so would have been a major enterprise for most if not all parties (NGG and Elexon being better placed than others).

The Terms of Reference that Elexon proposed for the assessment included a long list of assessment issues and identified numerous interactions with other parts of the power market, technical implementation issues etc. The list was probably useful in being rather comprehensive. However—and this is probably inherent in the existing framework, and so should not be interpreted as a criticism of Elexon—it may also have made it difficult for parties to “see the wood from the trees”. In particular there was little reference to the impact on security of supply despite this being the major rationale for these proposals. Although Elexon identified a set of issues, it did not provide detailed guidance as to the kinds of evidence and analysis would be most useful for assessing the modifications. It did however note that “[i]f required, appropriate quantitative analysis may be performed in order to assess the likely range of outcomes, for example, cash-out [i.e. imbalance] prices, forward markets, etc”. Consultation responses raised some additional issues and perhaps highlighted others, but generally the level of input was rather thin considering the materiality of the issues raised.

The modification report itself took the level of analysis a little further, identifying the possible advantages and disadvantages of the proposals in terms of the Relevant BSC Objectives. However it is largely a summary of the positions taken by the members of the group that carried out the assessment, and does not provide any real analytical insights into how to assess and trade

¹³ If for example a generator contracts to deliver 50 MWh in a given half hour, but in fact delivers only 45 MWh so that the system is short of 5 MWh overall, then the System Operator (SO) makes up the difference by buying energy from another generator (or paying a user to consumer less). The price that the SO charges to the generator that is short 5 MWh is (in this example) is called the “main imbalance price”.

¹⁴ Both proposals also had other significant elements.

off the different factors identified as relevant. On that basis it can only have been of limited value in helping Ofgem come to a rational, soundly-argued and evidence-based decision.

Ofgem rejected both proposals. However it recognized that the issue merited further consideration, and, to that end, initiated a “cashout review” (and as part of that review, commissioned quantitative analysis of the impact of marginal imbalance prices). The review proved to be a lengthy process and is still on-going. As a result of the review a number of new cashout modification proposals have been brought forward, some of which are discussed below. In the context of this discussion, it is worth mentioning P194 which involved “chunky” marginal prices i.e. rather than using just the most extreme price, an average is calculated over the most extreme 100 MW of accepted trades. It was submitted by NGG in August of 2005, and approved by Ofgem in March 2006.¹⁵

5.1.2 Observations

The choice between average and marginal imbalance prices is part of a fundamental set of decisions about the design of a liberalized power market. It was considered extensively during the design phase of NETA. One might therefore question two aspects of the code modification process as shown in this case study:

- Given that the issue of how imbalance prices are calculated interacts with a number of other fundamental decisions (e.g., choice of an energy-only, dual cashout mechanism), considering it in isolation may not be an efficient or effective way of proceeding. In this instance, Ofgem undertook the cashout review so as to address the broader set of issues in a more “joined-up” way. However the current governance arrangements do not provide a mechanism for the review to produce a single package of proposals that can then be assessed and decided on together.
- The proposals illustrate that the flexibility of the governance mechanisms means that even the most fundamental aspects of market design are, in principle, open to change at any time. The potential for “permanent revolution” is of course limited by Ofgem’s control over the process, as well as the safeguards of due process (judicial review, the doctrine of “legitimate expectations”, etc). Nonetheless this flexibility can raise questions of regulatory certainty, and also of resource efficiency. It might be the case that parties would contribute more effectively to a larger debate that took place within a clearly delimited timeframe.

Although the issue is a “big picture” one, the current process does not provide any mechanism for a “staged approach”. It would seem more natural first to consider at high level the question of marginal versus average pricing along with other fundamental issues such as single versus dual cashout, and then move on to examine related but more detailed issues such as the exact rules for calculating imbalance prices, as well as implementation details such as the expected cost to Elexon of making the necessary systems changes. Assessing all these questions simultaneously is arguably inefficient in terms of promoting appropriate analysis focused on the

¹⁵ Modification P205 subsequently modified the capacity of accepted trades included in the average.

fundamental issues. However, the current governance mechanism does not allow for such “staging”, and the assessment process devoted significant resources to analysis of technical details of the specific proposals, none of which appeared to be relevant to Ofgem’s final decision.

In terms of quality of analysis, it may not be realistic to expect market participants to produce the kind of quantitative analysis that would ideally feed into a decision on this issue. For most of them this would be rather expensive — perhaps a small number of large players would have at hand the necessary data and expertise to undertake the analysis at relatively low cost, and even then it would probably be a matter of many tens of thousands of pounds (whether procured internally or via consultants) to provide robust quantitative analysis of the impact of the modification on investment incentives and on the ability and incentives of players to engage in manipulation. Moreover, the best kind of evidence would include market parties’ commercially sensitive internal calculations concerning, for example, the impact of marginal pricing on investment incentives for peaking plant.

5.2 BSC Modification Proposals P211/212/217

These three proposals are all intended to address the same perceived problem: so-called “system pollution”, whereby actions taken by the SO to address locational constraints and other “system balancing” problems feed into cashout prices, whereas it is the intention of NETA that, to the extent that the distinction is meaningful, only “energy balancing” actions should set imbalance prices.

- P211 was raised by EDF Energy on 16 April 2007. It would determine the main cash out price on the basis of a hypothetical calculation of the actions the SO would have taken if there had been no system constraints but the same set of bids and offers in the BM.
- P212 was raised by Bizz Energy on 29 April 2007. It would radically alter the setting of the “main” cash out price. Under P212, the cashout price would be set at a market rate plus 5%, independent of the cost of any balancing actions taken by the SO.
- P217 was raised by RWE npower on 19 October 2007. It would change the calculation of the “main” cash out price by having the SO flag each action as “system” or “energy”. The cash out price would then be calculated on the basis of the energy actions only.

Ofgem considers “system pollution” a significant defect in the current arrangements. Because of the importance of the issue, it undertook an Impact Assessment (IA) of P211 and P212, which was published on 20 December 2007. However the timing of the proposals meant that the IA could not examine P217. Ofgem also published on 20 December 2007 an open letter to Elexon urging it to accelerate the P217 timetable so that Ofgem could decide on it in conjunction with its P211/212 decision. On 29 February 2008 Ofgem rejected P212 and simultaneously announced that it was delaying its decision on P211 so as to allow it to consider it in conjunction with P217.

5.2.1 Observations

This case study further illustrates and reinforces a number of the points made above concerning BSC modifications P136/137:

- The “piecemeal” nature of the modifications process may not be appropriate for considering fundamental changes. In particular, P212 went well beyond the issue of “system pollution” and would have affected every aspect of cashout prices and, hence, investment incentives and security of supply. Any major change to cash out has to be analysed in terms of its overall effects, and it may be more appropriate to do so in the context of a fundamental review, like the cashout review, rather than through the current modification process.
- Again the proposals illustrate the potential for “permanent revolution”, with fundamental change possible at any time, in any aspect of the arrangements, raising questions about both efficiency and regulatory certainty.

5.3 BSC Modification Proposal P213

P213 was raised in order to encourage the uptake of micro-generation by reducing the transaction costs associated with metering such sites. E.ON UK raised the modification in April 2007 following work on the issue carried out through the Electricity Networks Strategy Group (ENSG), an industry group set up to provide advice on the transition of the electricity networks to a low-carbon future that is jointly chaired by the Department of Business, Enterprise and Regulatory Reform (DBERR) and Ofgem. The issue is that micro-generation, such as domestic-scale wind, solar, or combined heat and power, sometimes generates more electricity than there is on-site demand. Excess electricity is exported onto the distribution network, but in order to be able to sell that electricity the exports have to be “registered” separately from imports with the data-collection system through which demand is allocated to electricity suppliers to customers without half-hourly meters. Otherwise any excess generation is “spilled” onto the network, meaning that the generator sees no value, and the accuracy of allocating aggregate non-half hourly demand is reduced.

It was felt that the transaction costs associated with separate registration of exports were inhibiting micro-generators from registering their exports. P213 would have allowed imports and exports, separately metered, to be submitted to the settlement systems under the same registration number (“MPAN”). P213 envisaged that suppliers could choose either the existing dual MPAN arrangements or the new single MPAN arrangement. However, during the assessment process an alternative proposal was added, under which the single MPAN arrangements would be compulsory.

5.3.1 Comments on the assessment process

P213 was intended to work by reducing transaction costs: as a result, suppliers would be more likely to register exports from micro-generators in settlement, and, in consequence, settlement would be more accurate and suppliers would be able to offer the generators more money for their exports. Because suppliers would be able to pay more for the excess output, micro-generation

uptake would increase. However, no evidence on transaction costs was presented by the proposer or developed by the working group: although the working group did set out qualitatively how the proposal would simplify processes such as change of supplier, the impacts were not quantified. Moreover, some respondents to the consultation process suggested that costs might actually increase, implying that there was not even a qualitative consensus as to the actual effect of the proposal.

Since there was no evidence on transaction cost changes, there could be no quantitative analysis of whether the proposal or the alternative proposal would increase the uptake of micro-generation.

These issues were identified by the panel in its report to Ofgem. Ofgem's decision agreed with the panel recommendations, and neither the proposed nor the alternative modification were approved.

5.3.2 Observations

The assessment process seems to have worked well in that the consultations and the modification report identified concerns that the proposal would not work as intended. However, it should have been obvious from the start of the assessment process that the modification could not be approved by Ofgem unless there was convincing evidence that it would reduce transaction costs. The failure to provide any such evidence (or to commission analysis to produce such evidence) effectively meant that the whole modification process was largely a waste of effort.

We also note that the alternative proposal would have forced suppliers to use the new single-MPAN arrangements. Both the panel and Ofgem felt that this would restrict competition (micro-generators would have to have a single supplier for both import and export). This restriction meant that the alternative was even less likely to be approved by Ofgem than the original proposal but there was no mechanism to prevent it being rejected at an early stage. Instead, it was subject to the same consultative and analysis process as the original proposal.

5.4 UNC Modification Proposals 156, 156A, 169 and 169A

UNC modification proposals 156, 156A, 169 and 169A were brought forward in response to the requirement imposed on NGG NTS as part of its 2007-12 transmission price control to facilitate the transfer of unsold capacity and trade of sold capacity between entry points. All the modifications are temporary in nature in that they were only intended to enable transfers and trades of entry capacity for winter 2008 (October 2007 to March 2008). These were not the first modifications that had been raised in this area but the previous modifications (133, 150/150A, 151/151A) had been withdrawn (133) or rejected by Ofgem.

All four modifications were granted urgent status because they were not raised until July 2007 (156/156A) or August 2007 (169/169A) and yet were intended to take effect from October 2007. Following the normal modification timetable would have meant that this was impossible. The differences between the modifications were relatively limited:

- 156 involved one single round auction for the whole winter period;
- 156A had a single round auction for October capacity and a separate two round auction for the remaining months i.e. November 2007 to March 2008;
- 169 was identical to 156A (and raised by the same party – E.ON) except that the auction of October capacity was dropped (on the grounds that there was no longer time for this auction to be held); and
- 169A was the same as 169 except that it added an additional step in the capacity allocation process (so that entry capacity at a particular entry point would first be allocated to users requesting capacity at that point and only then to other entry points within the zone in which it fell rather than the initial allocation being on a zonal basis).

At the same time as the various trade and transfer modifications were being raised, a separate exercise was being carried out under NGG's charging methodology governance arrangements to develop a "transfer and trade methodology" statement. An initial consultation was issued by NGG NTS on 10 May 2007 and was followed by a second consultation on 30 July. NGG NTS submitted its proposed statement to Ofgem on 31 August 2007 and it was approved on 6 September 2007 i.e. on the day prior to Ofgem's decision on Modifications 156/156A/169/169A.

The UNC panel recommended that Modification 156A should be approved (there were 8 out of 9 votes in favour of 156A and 7 in favour of 156) and, subsequently, that Modification 169 should be approved (there were 9 out of 10 votes for 169 and only 2 for 169A). Having considered all four modifications together, Ofgem directed that Modification 169 should be implemented but noted that, by the time the later modifications came to it for a decision, Modification 156A was no longer a feasible option because of the timetable it contained.

5.4.1 Comments on the assessment process

Due to the urgency attached to these modifications, there was no assessment process. Instead, the modifications were sent out directly to consultation, and interested parties had only 7 days (169/169A) or 10 days (156/156A) to respond. However, these were not the first modifications to be raised on this issue and trade and transfer mechanisms had been discussed at a number of Transmission Workgroup meetings. Accordingly, it can be argued that the discussion of the relevant issues that had taken place before these modifications were raised was sufficient to make the need for further analysis and assessment unnecessary for modifications that were only intended to be temporary in their effect.

Moreover, had any assessment process been undertaken it would not have been possible to put in place transfer and trading arrangements for winter 2008 given the late stage at which the modifications were raised. Most respondents to the consultations took the view that it was more important to ensure that some trading/transfers took place for winter 2008 than to insist on a full

assessment process but only on the understanding that a full review would be undertaken before any enduring arrangements were put in place.

5.4.2 Observations

These four modifications illustrate a number of problems with the UNC governance procedures. First, the panel had to consider separately 156/156A and 169/169A and was not able to express an overall view on which of the four modifications best facilitated the relevant objectives.

Second, the only reason that Modification 169 had to be raised was because the timetable incorporated in Modification 156A was no longer possible and it could not be adjusted. It would have been more efficient to adapt Modification 156A so that its timetable was still viable rather than to have to raise a completely new modification. We note that adapting Modification 156A might, as under Modification 169, have required the dropping of part of the modification (the October auction) so that the required adjustment would have been more significant than simply changing dates. On the other hand, this might not have been necessary since the expected Ofgem decision date for Modification 156/156A was 10 August, a month earlier than the decision date for Modification 169/169A.

Finally, the fact that the transfer and trading methodology statement had to be developed separately from the modifications was a cause of uncertainty and concern to several of the respondents to the consultations on these modifications. However, most of the comments by respondents in this area related to transparency and facilitating understanding rather than to the possibility that changes in charging methodologies could significantly affect participants' assessment of the merits and likely impacts of a modification. (This contrasts with the problems that arose in assessing CAP148 – see below – where it was considered that there was the potential for consequential changes to charging methodologies to obliterate any benefits from the modification but nothing was known about what changes were likely to be proposed and/or approved.)

5.5 UNC Modification Proposal 88

The key element of Modification 88 (introduced in June 2006 by Total Gas and Power) was a proposal to increase the frequency with which data for consumers without traditional daily meters could be entered into the central systems and, thus, used in calculating imbalance costs. Developments in metering technology have now made it cost-effective to offer frequent, even daily, automated meter reading (AMR) services to a much wider range of industrial and commercial (I&C) consumers than used to be the case. (The costs associated with traditional daily metering - £600 setup costs, £800/year running costs – are too high to make this a realistic option for smaller I&C consumers.) The idea was that more frequent reading would allow consumers and/or their suppliers actively to manage their gas consumption which could, in turn, enhance the security of gas supplies and ensure greater market efficiency.

5.5.1 Comments on the assessment process

A major problem with the assessment process undertaken in the development workgroup was that no analysis was carried out regarding the number of customers who were likely to switch to

AMR or how likely it was that such customers would actively manage their gas consumption in response to daily pricing signals. At the same time, there were indications that costs of implementing the proposal might be quite high.

The result was widespread support for the idea of facilitating the use of AMR in principle but considerable scepticism regarding the specific modification that had been raised. In particular, several respondents to the consultation commented that the modification had not been developed sufficiently for them to make a detailed assessment. This led to requests for Ofgem to undertake an IA so as to look at all the likely consequences of the modification rather than just those related to the UNC.

The only quantitative analysis that was available during the assessment process was an indicative central system development cost (£290,000-£500,000) which only covered part of the likely costs. The estimate only considered the impact of the modification on a sub-set of the central systems and was based on the assumption that there would be no need to expand the central systems to cope with additional daily meter reads. Consequently, the estimate did not provide much certainty regarding the likely overall level of system costs.

One respondent to the consultation (National Grid Distribution, NGD) did provide some further analysis as part of its response to the consultation process but this could not be taken into account by other respondents since the consultation process is the last stage before the panel reaches its decision. NGD estimated that, looking over a 10 year period, the modification would only provide a net benefit if at least 82 customers who would otherwise have become normal daily metered consumers elected instead to switch to daily meter readings via AMR. Whilst useful, this analysis did not go to the heart of the problem since it did not provide any evidence as to how many customers could in fact be expected to make the switch. (Consumers who might opt for daily metering via AMR would be unlikely to do so if they had to follow the normal daily metering route because the costs of doing so are relatively high). NGD also provided some indicative analysis of the possible level of demand side respond from the type of consumers who would be likely to switch to AMR. However, this analysis was only based on a sample of 100 customers and 3 days and so cannot be considered particularly reliable (a point NGD acknowledged).

Despite the fact that a majority of respondents to the consultation (8 out of 11) gave wholehearted or qualified support to the modification, the UNC panel did not recommend its acceptance (indeed only 2 votes out of a possible 9 were cast in favour of its acceptance). Ofgem rejected the modification on the grounds that *“some aspects of the proposal have been not sufficiently explained and justified (compared to alternative measures that could be taken) and in other areas important information, against which the proposal could be judged, is missing”*.

5.5.2 Observations

The lack of quantitative analysis to support this modification was particularly disappointing because Ofgem wrote to the development group outlining the questions that it considered needed answering and the type of analysis that it thought would be required to reach a decision on the

modification. At a recent seminar devoted to industry code governance,¹⁶ a number of speakers and questioners from the floor suggested that any inadequacies that Ofgem was finding in the analysis presented in modification reports could be addressed by Ofgem indicating to the relevant modification group what information it was likely to require to reach a decision. While in principle this approach would seem an obvious way forward, Ofgem's experience with this modification suggests that it may not work in practice unless there is a stronger incentive to provide the analysis that Ofgem requests.

We agree with Ofgem that it is not possible to properly assess the modification on the basis of the information provided through the assessment process. For example, no attempt was made to estimate the number of consumers who would be likely to opt for daily metering via AMR and how this compared to the number of additional daily meter readings that the central systems could accommodate without the need for them to be expanded (which would substantially increase the system costs associated with the proposal). Moreover, the fact that NGD was able to arrive at some indicative estimates of how many of its potential AMR consumers would be likely to provide demand response suggests that it should not have been too difficult to arrive at a more general estimate. Finally, we note that there were several references in the modification report and in respondents' comments to the fact that a similar result could be achieved without the need to amend the UNC. Such an option would seem to be the natural benchmark against which to compare this modification, but this was never fleshed out and so no comparisons were possible.

5.6 UNC Modification Proposals 149 and 149A

UNC modification proposals 149 and 149A were brought forward following a series of workgroups organised by Ofgem to look at the gas emergency arrangements.

Both Modification 149 (introduced in May 2007 by NGG NTS) and its alternative, Modification 149A introduced by E.ON, proposed keeping the on-the-day commodity market (OCM) in operation for market participants during a Stage 2 or beyond National Gas Supply (Gas Deficit) Emergency¹⁷. Prior to these modifications, the OCM would have been suspended under a Stage 2 or beyond emergency. The proposers of the modifications were of the opinion that this shut off a possible route to market for non-UK gas supplies i.e. LNG and pipeline imports. The difference between Modification 149 and Modification 149A was that under Modification 149, the emergency cash out arrangements would have been changed so that instead of the imbalance prices being frozen at the level prevailing prior to the declaration of a Stage 2 emergency, they would have taken into account the prices at which subsequent actions (between market participants) took place. Shippers who were long gas i.e. put more gas into the system than they took out, would be paid the volume weighted average of all the OCM trades on the day whilst

¹⁶ *Powering the Energy Debate – the code governance review*. February 28th 2008.

¹⁷ Such a Stage 2 emergency is called when NGG considers that there is likely to be insufficient supplies of gas to meet demand and the following actions have already been taken: (a) storage use has been maximised, (b) use of linepack has been maximised, (c) emergency specification gas has been utilised, and (d) all interruptible contracts have been interrupted. Under a Stage 2 emergency, the use of beach supplies is maximised using a command and control approach.

shippers who were short gas would have paid the price of the most expensive trade on the OCM that day.

Of only 12 respondents to the consultation on these modifications, the majority were not in support of either proposal. One respondent (the proposer) supported the original proposal with two more respondents offering qualified support. The respondents who offered only qualified support did so because they were concerned that there would be potential for market manipulation under Modification 149. Two respondents supported the alternative proposal and two offered qualified support (of whom one, NGG NTS, offered unqualified support to the original proposal). Three of the respondents only offered comments. When it came to the panel, there were 6 (out of a possible 10) votes in favour of Modification 149A and only 3 for Modification 149. Consequently, the panel recommended the acceptance of Modification 149A.

Ofgem decided in favour of implementing Modification 149A i.e. keeping the OCM open but with cash out arrangements unchanged, largely because the alleged benefits of changing the cash out arrangements had not been quantified in any way during the modification process. This is despite the fact that, in principle, Ofgem supports the move to more dynamic cash out arrangements in an emergency.

5.6.1 Comments on the assessment process

Those respondents to the consultation who were sceptical about both modifications expressed the view that the fact that a gas emergency had been declared meant, by definition, that the market had failed and so they queried whether keeping the OCM open would really lead to additional volumes of non-UK gas being made available. They also argued that they did not see how a market could successfully operate alongside command and control measures. Given that there has never been a gas emergency, it is clearly difficult to draw any robust conclusions on these points but they may, in any case, not be very significant since the costs associated with keeping the OCM open appear to be negligible.

The more serious failing in the assessment process was a failure to analyse fully the potential impact of changing to dynamic cash out arrangements under gas emergencies. For example, in the considerations reported in the modification report, the emphasis of the (qualitative) analysis of the benefits of Modification 149 was on what would happen when a Stage 2 emergency was first declared. No consideration appeared to be given to what might happen towards the end of a Stage 2 emergency where the alleged advantages of the dynamic cash out arrangements could become disadvantages.

We accept that, in general, quantitative analysis would have been very difficult since there has never been a gas emergency and so there are no data on which to base such analysis. However, it would have been straightforward to consider a number of “what-if” cases to work through all the possible consequences of the proposed changes. Indeed Ofgem in its decision letter outlined three such cases. Working through such cases, with illustrative numbers, would provide confidence that the modification was unlikely to give rise to unintended consequences. Such an approach would have been particularly pertinent in the case of Modification 149 because the issue of credit arrangements under gas emergencies had been raised by Ofgem as a potential concern in the gas emergency workgroups. Consequently, exploring whether the proposed

changes to the cash out arrangements might be likely to give rise to insolvency problems was clearly an area that needed to be addressed.

5.6.2 Observations

Modification 149 provides another example of a lack of quantification of the benefits of a modification proposal rendering it very difficult for Ofgem to arrive at a decision in its favour. However, since we have highlighted this problem in relation to a number of other modifications, it is more instructive in this instance to focus on three other problems that the modifications highlight. First, at the pre-Ofgem stage modifications can only be considered within the context of the market governed by the code under which the modification is raised, even if they have the potential to affect energy markets more widely. For example, given the number of gas-fired power plants on the GB system, the gas and electricity markets are inevitably strongly interconnected. Consequently, changes to the emergency arrangements in one market could have unintended consequences for the other market. This was a point made by two respondents to the consultation – specifically, they argued that it would be unfair for gas-fired generators required under an electricity supply emergency to generate to have to buy gas at extremely high prices without any compensation mechanism in place. However, it is only Ofgem who can consider such issues since they fall outside of the relevant objectives for each code.

Second, there is no requirement under the UNC (or other industry codes) for any attention to be paid to the points raised by respondents to a modification proposal. For example, several respondents raised relevant concerns about the dynamic cash out proposal under Modification 149 but these were never addressed. (The concerns related to the fact that (a) small volume actions could lead to unrepresentative marginal prices that could bankrupt shippers/suppliers who were short gas through no fault of their own, (b) the arrangements could deter participants from purchasing gas made available at a high price, even if it would ameliorate the emergency, because this could increase their imbalance exposure¹⁸ and (c) marginal pricing could lead to opportunities for market manipulation that would be extremely difficult to detect and/or prove given the unusual supply-demand situation inherent in an emergency.)

Third, it is notable that neither of the modifications reflected the work performed by the industry workgroups on gas emergencies relating to cash out arrangements, nor did the assessment process appear to draw on that work.¹⁹ There is, of course, no obligation on industry parties to bring forward proposals that reflect review processes. However, these modifications highlight the piecemeal nature of the governance processes and the lack of any direct mechanism to ensure that policy decisions are reflected in modification proposals.

¹⁸ This objection only applies where the volume of gas available is insufficient to cover a participant's entire short position.

¹⁹ The workgroups analysed a number of different options for changing the cash out arrangements in a gas emergency: keep the OCM open and set imbalance prices as normal; make NGG NTS, as the National Emergency Co-ordinator, buyer of last response with imbalance prices set by reference to NGG's marginal cost of buying gas; link emergency cash out prices to a basket of foreign market prices; or appoint a committee to determine an administered cash out price.

5.7 CUSC Modification Proposal CAP047

Generators are required to offer “frequency response” services to the system operator as a condition of connecting to the transmission network. CUSC amendment modification CAP047 was raised in order to change the way that generators are paid for providing the service. Previously they had been obliged to charge the system operator prices that reflected the costs they incurred in providing the service. CAP047 sought to remove the obligation to charge cost-reflective prices, the idea being that the then current arrangements restricted generators from competing fully with one another, and might risk them being unable to recover their costs in some situations. During the assessment process an alternative amendment (A) was proposed by the working group, but this was effectively a refinement of the original, from which it differed only in rather minor details. NGG proposed a second alternative which was substantially different: NGG felt that a market for frequency response would not work effectively because the system operator would be a forced buyer and there would be insufficient competition on the supply side. It argued that prices would inevitably rise if they were market-based rather than cost-based, so it proposed an alternative (B) which would retain the cost-reflective requirement but would allow prices to rise slowly over time. NGG recommended that Ofgem approve its alternative amendment.

In the event, Ofgem approved alternative A, removing the cost-reflective requirement, because it felt that the market for frequency response would work effectively. It is noteworthy that Ofgem took over one year to make the decision.

5.7.1 *Comments on the assessment process*

The main issue in assessing CAP047 alternatives A and B was whether or not a market for frequency response would work effectively or not. The working group report gave an indicative concentration index (HHI) of 1,400 to justify the proposal. NGG showed figures suggesting that the market might be somewhat more concentrated than this²⁰, and that the market might not be sufficiently deep to ensure that companies would behave in a competitive fashion (by comparing volumes that might be available with the volume it was likely to have to buy). NGG also offered an estimate of the impact on its procurement costs under the alternatives, but the estimate in fact seems to have been no more than an assumption (the impact on costs was derived from an assumption that prices would increase by 50%–100%, but no justification for this price increase was given).²¹ When Ofgem decided to accept alternative A, it justified its decision with reference to an estimate of a concentration index for the frequency response market, which it provided itself in its decision letter, and an opinion that barriers to entry should be low. There was thus no disagreement about the facts, but there was limited analysis of them in the assessment. For example, NGG’s assumption of a 50%–100% increase in prices seems unlikely to be consistent

²⁰ The working group’s figure was an HHI of 1,400. Ofgem’s figure was an HHI of 1,338 for 2003/4. NGG’s was that the CR4 was “nearly 70%” in 2002/3, which is consistent with a wide range of HHIs (1,225 up to almost 5,000). If NGG thought that the market was significantly more concentrated than Ofgem’s figures suggested, presumably it would have said so explicitly.

²¹ CAP047 Amendment Report, Annex 7, paragraph 14, NGG.

with a moderately concentrated market unless the original prices were in fact below cost. This was not discussed in the amendment report.

It is not clear from the amendment report what, if any, input the panel had on the proposal. There is no reference to a vote by the panel but only on NGG's views. Subsequent to CAP047 the CUSC has been modified (through an amendment proposal in the normal way) so that the final amendment report must record the panel's view on the options in addition to NGG's recommendation.

5.7.2 Observations

NGG seems to have a somewhat privileged position in the CUSC amendment process in that it writes the amendment report, and is able both to raise modifications and to suggest alternatives. The CUSC panel seems, in contrast, to have taken relatively little part in the proceedings (no panel members responded to the NGG consultation). Under the current arrangements the panel must now vote, but NGG still writes the report and makes the recommendation.

In this case NGG suggested an alternative to the original amendment proposal that was almost entirely the opposite of the original suggestion (and came close to maintaining the status quo). It made the alternative suggestion as a response to a consultation document that it had itself written, consulting with the industry on the original proposal and alternative A. No respondents commented on NGG's alternative B – it was published only four working days before the close of the consultation period.

The assessment of alternatives came down to a relatively narrow question of whether the frequency response market would be competitive or not. All sides seem to have agreed on the evidence (a moderately concentrated market) but to have disagreed about whether the evidence suggested that the market would work effectively or not. However, there was very little detailed analysis of the point - for example, no-one provided any kind of market simulation - even though the modification was potentially very material (NGG was spending about £80m per year on frequency response, and it expected its costs to rise by £45m over two years as a result of the proposal).

5.8 CUSC Modification Proposal CAP158

CAP158 was raised in order to make available more rapidly information about the use of mandatory frequency response capabilities by the system operator. The previous arrangements had been that on the 9th business day of each month the system operator would publish the volumes it had used in the previous month. CAP158 required the system operator to use reasonable endeavours to publish the information by the third business day of the month. During the assessment process an alternative proposal was made that would have additionally required the system operator to publish volumes of commercial frequency response used — information that had not before been made available. The panel unanimously agreed that the original proposal was better than the status quo, but only two panel members thought that the alternative was better than the original proposal. Ofgem agreed with the panel, saying that a reasoned case would have to be made for publishing information that had previously been confidential, and that the amendment report did not contain adequate information or analysis of the costs and benefits of

the proposal. In the absence of such evidence, Ofgem could not support the alternative amendment.

5.8.1 *Comments on the assessment process*

The amendment report contained no analysis of the alternative proposal, and, as a result, Ofgem was unable to support it. However, this may have been due to the fact that even those participants who supported the alternative proposal in principle thought that it should be given effect via a mechanism other than the CUSC.

5.8.2 *Observations*

CAP158 seems to be a non-contentious modification for which the existing arrangements worked well. The change had no costs, was expected to make the market work marginally better, and was not obviously detrimental to the interests of any market participants. It therefore did not represent a challenging case: it was a sensible proposal that could be implemented easily

5.9 CUSC Modification Proposal CAP148

The original CAP148,²² proposed by Wind Energy (Forse) in April 2007, was designed to give priority connection and access to new renewable generators. Eligible generators would be guaranteed connection and access to the transmission network within 3 years of receiving a connection offer or obtaining all the necessary planning consents (whichever is later) even if the wider transmission reinforcement works have not been completed. In addition, during the period between being connected to the grid i.e. the local works being completed, and the full reinforcement works being completed, eligible generators would receive priority access to the grid in the sense that they would be the last generators to have their output curtailed when plants had to be constrained down or off due to the lack of the transmission reinforcement work. Under the proposal, payments to generators for such constraints would be administered (rather than market based as is normally the case) and their costs would be recovered via TNUoS charges (rather than BSUoS charges as is normally the case).

During its development phase, the working group for CAP148 came up with no fewer than 24 alternatives to the original proposal. All the alternatives differed from the original proposal in that there would be no priority access for eligible generators, only priority connection. The differences between the alternatives related to: (i) what plants would qualify as eligible generators e.g. would dual-fired generators burning biomass qualify, would all low carbon generators qualify etc., (ii) the maximum time for a connection to be completed (some alternatives included a 4 year connection time rather than the original 3 year period) and (iii) how the risks associated with the wider reinforcement works would be allocated. Of the 24 alternatives, the working group only voted upon 5 and these, together with the original proposal, then went out to consultation. In the

²² A proposal similar to CAP148 had earlier been submitted as CAP147 but was withdrawn after the CUSC Panel decided to seek guidance from Ofgem and the DTI over whether the proposal was compatible with NGG's transmission licence, and whether the licence was compatible with the Renewables Directive. When Ofgem and the DTI (open letter, April 17th 2007) gave their view that there was in neither case an incompatibility, CAP147 was resubmitted as CAP148.

final modification report, only one of these proposals – one that limited eligibility to renewable generation other than co-firing of biomass, included a connection period of 3 years and precluded NGG from obtaining compensation for delays due to planning problems – was fully worked up with a draft legal text provided.

The panel voted unanimously to reject all five of the options put to it, and NGG recommended that none of them be made. The CAP148 amendment report was submitted to Ofgem in December 2007, and Ofgem is currently preparing an impact assessment on the modification.

5.9.1 Comments on the assessment process

NGG recommended that the various options be rejected because it did not think that the discrimination associated with the proposals was justified, and because it thought that the increased operational costs (constraint payments) would not be efficient. However, NGG went on to say that if the proposals were nevertheless implemented, it would expect to make cost-reflective charges for the new “deemed access” product, and that it expected the charges to be so high that renewable generators would be worse off as a result. This suggests that it would not make sense to consider approving CAP148 without, at the same time, addressing the charging issues. However, this was not done. While charging methodologies are outside the scope of the codes, in other cases NGG has provided analysis of the impact of code modifications on charging.

The point of CAP148 is to provide additional support for renewable generators. It does so at the cost of introducing some discrimination. The assessment documents, however, make little attempt to quantify what the impact of CAP148 might be on either dimension: the amendment report did estimate the impact on constraint payments, but it made no attempt to estimate the impact on other relevant factors, such as the volume of renewable electricity generated. It did not even attempt the much simpler analysis of estimating the impact on revenues per kW of a typical eligible generator.

5.9.2 Observations

Considerable time during the assessment process was spent discussing the legality of CAP148 in general and of a CUSC working group assessing it in particular because of the discriminatory nature of the proposals. Indeed, despite having discussed the matter with the DTI (now DBERR) and Ofgem, the CUSC panel went as far as obtaining its own legal advice on the issue. The fact that these discussions were necessary highlights the problems that can be created by Ofgem’s statutory duties being different to the relevant objectives of the various codes. This point is reinforced by the fact that some respondents to the consultation explicitly commented that they would have supported a different option if they had been making an assessment against Ofgem’s wider statutory duties rather than the narrower CUSC objectives.

CAP148 raises fundamental policy issues in relation to whether, and how, to provide additional support to renewable generators, and thus in relation to tradeoffs between policy objectives (and Ofgem statutory duties) on promoting competition, protecting consumers’ interests, and the environment. It seems that the CAP148 process, in which these issues are raised at the same time as working on detailed implementation of the proposals, is unlikely to be an efficient or effective way of making the difficult policy judgments required.

The fundamental issue at stake in CAP148 is a difficult policy trade-off, which is qualitatively different from the more technical issues addressed in most modification proposals. It seems unlikely that the same process could efficiently and effectively be used for both types of issue. As discussed in relation to previous case studies, it would seem more appropriate for the policy issues to be decided first, through the normal consultation process that Ofgem uses to generate its policy decisions, and then for the policy to be implemented as necessary through a process more focussed on technical detail.

5.10 CUSC Modification Proposal CAP131

CAP131 was raised by NGG in order to reform the rules governing generators' liability if they cancel a connection agreement or request a reduction in entry capacity. Under the current rules, generators that cancel a connection agreement are liable for all of the transmission network connection and reinforcement costs triggered by their connection request that have actually been incurred by the cancellation date. CAP131 proposed an alternative mechanism under which a generator's liability would be a function of the time between the original request and the agreed completion date. The function would initially be the same for all projects (a fixed £/kW figure), but in later years it would be a function of the transmission charge in the relevant connection zone. The total amount secured was set such that in aggregate NGG would expect to secure 50% of the costs incurred in undertaking connection and reinforcement work.

The reason given for introducing CAP131 was that, due to the large volume of connection requests currently being processed and the significant transmission reinforcement required in consequence, under the current arrangements some projects could be liable for very large reinforcement costs if they happened to be the project that triggered a large "deep" reinforcement,²³ and the project subsequently cancelled its connection agreement. A second, very similar, project requesting connection slightly later in the connection queue might have a much lower liability because the reinforcement would already have been triggered.

During the assessment process a large number of alternatives were suggested, both by the working group and by consultation respondents, such that there were in total 32 alternatives in addition to the original proposal. The panel supported two of the 32 alternatives, and NGG recommended that a third alternative be implemented.

5.10.1 Comments on the assessment process

At both the working group and subsequently at the consultation stage, a large number of alternative proposals were suggested. At least some of these were significantly different both from each other and from the original proposal. It may be a sign of inefficiencies in the process that these different views were not flushed out and addressed as part of the working group process itself, rather than having to wait to the consultation stage. The result is that the final amendment report had to cover a lot of different proposals, and it is not clear to what extent industry views are split (for example, an option having the support of just under half of the

²³ Although GB has a shallow connections policy, payments for cancellation are on a "deep" basis.

working group would be given the same amount of attention as an option supported by just one member).

The amendment report attempts to quantify NGG's total possible exposure to unsecured liabilities as a result of CAP131. However, this is an upper bound rather than a realistic worst case scenario. There was no attempt to quantify the *expected* level of exposure — i.e., the unsecured liability weighted by the probability of projects being cancelled.

The report gives little rationale in support of the proposal to reduce from 100% to 50% the overall proportion of investment that is secured. In fact the level of interest in new connections almost certainly means that a smaller proportion of investment would be stranded on cancellation of a connection than would have been the case in the past, but the amendment report gives only the historic figure for “asset re-use” (14%, England and Wales only), and does not indicate how a prospective figure for GB as a whole might differ.

5.10.2 Observations

An important issue which was only touched on in the amendment report was the proportion of the total network costs that should be “secured” by generators seeking connection. The issue is that the greater the proportion of securitisation, the lower is the risk of stranded assets that would eventually be paid for by consumers. However, full securitisation might be a financial barrier to some e.g., renewable generators. This issue was not analysed in detail in the amendment report, yet it seems to be a different issue to that addressed in the rest of the modification. It would perhaps have been cleaner to have addressed a generic liability methodology, distinct from the current project-specific one, separately from the question of what proportion of the total network costs should be secured (currently 100%). Furthermore, the magnitude of the unsecured liabilities seems to be significant: about £10m per project on average, for projects cancelled two years before the completion date. The change to securing only 50% of costs seems, therefore, to be a significant change in risk allocation (away from new generators, towards customers), yet this point was hardly touched on in the assessment.

CAP131 addressed two related but separate issues: first, liability for network costs in case of cancelling a request for connection/access, and second, the notice that existing generators have to give before they can reduce their entry capacity requirements (and hence pay lower charges). The second issue split the alternative proposals into two groups — showing that it would have been more efficient to address the two issues in separate modifications. The large number of alternative proposals made the consultation process and amendment report unwieldy and may have made it difficult for respondents to focus on the issues at the heart of the proposals.

5.11 Overall observations from the modification case studies

Bringing together the various observations we have made on each case study, we have reached the following general observations (which are listed in decreasing order of importance):

- 1. The current arrangements appear generally to work well for commercial issues which only involve incremental change. They do not work well for issues that entail major policy shifts.** This is for a number of reasons:

- Major policy shifts (e.g., approaches to security of supply or the promotion of renewable generation) are normally best approached in stages, with initial high level decisions followed by more detailed implementation. However the current arrangements do not allow for any such “staging”.
 - Major policy issues will often require a number of more-or-less simultaneous changes to existing rules, possibly involving several codes and/or charging methodologies. These changes need to be conceived and assessed “in the round”. However the current arrangements involve changes being proposed and assessed one at a time. There is no way for Ofgem to require multiple proposals to be brought forward simultaneously (to one code or to multiple codes and/or charging methodologies), but the desirability of one change may depend significantly on other possible changes.
 - The considerations that can be taken into account, at least at the pre-Ofgem stage, are relatively limited whereas major policy shifts generally require a much more wide ranging assessment. For example, a change to the gas market may have significant implications for the electricity market but this cannot be taken into account. Even within the same industry, changes to the wholesale trading arrangements may require changes to the broader charging methodologies but, again, these cannot be taken into account even if they have been assessed (which may not be the case).
2. **Nobody has an adequate incentive to ensure that appropriate analysis is carried out.** To some extent it can be argued that the proposer of a modification has an incentive to provide the necessary analysis since this will make it more likely that the proposal is accepted. However, if a proposer was required to provide a complete set of analysis this would act as a barrier to smaller participants and customer representatives making proposals, which would be undesirable. It is notable, however, that the code administrators have little obligation in respect of providing analysis, except (to some extent) in respect of the implementation and on-going costs of the central systems for which they are responsible.
 3. **There is no mechanism for ensuring that the outcome of policy reviews is reflected in changes to the codes.** A policy review, such as the cash out review or the review of the transmission access regime, may culminate in a set of clearly defined high level recommendations, so helping to address the lack of “staging” discussed in point 1 above. However Ofgem has no power to ensure that these recommendations are given effect through the necessary code changes.
 4. **There can be “death by a thousand cuts”.** There is nothing to prevent the codes being perpetually subject to small changes, which cumulatively have significant commercial implications for participants. This potential for endless tinkering increases the regulatory risks faced by participants and, in the extreme, might have adverse implications for system security. (Participants might be unwilling to undertake investments whose profitability depends on the way in which the market currently operates). To some extent this problem may be largely hypothetical because

Ofgem's role in approving almost all modifications should ensure that the codes only develop in a consistent, predictable manner.

5. **There is no mechanism for weeding out proposals that are clearly unlikely to succeed** e.g. because they run counter to established Ofgem views or they are obviously inferior to other proposals being considered at the same time. The same time and effort have to be devoted to modifications that have no realistic prospect of being approved. This increases the regulatory burden across the board for no good reason. It may also make it more difficult for market participants to make a sensible assessment of the issues at the heart of the proposals if there are too many competing alternatives to consider.
6. **There is the potential for a number of “marginal” improvements to the efficiency and effectiveness of the current arrangements, such as:**
 - Limits on the number of alternatives that can be put forward, or a better system for filtering them
 - More flexibility with regard to the timetable for implementation (to avoid the problem see in UNC Modifications 156/156A/169/169A)
 - An obligation on panels to respond properly to points raised in consultation
7. **There can sometimes be significant delays (of a year or more) in Ofgem's decision making processes.** Under the current arrangements Ofgem has a target of making 70% of decisions within 25 working days. However, this means that it can still leave a small number of difficult decisions pending for very long periods of time. While we recognise that some decisions may be particularly difficult, and taking time may help improve the decision making process (e.g., when additional consultation steps are added part-way through the process). Nonetheless we see a strong case for adopting firm limits on the overall timetable. At a minimum, Ofgem's own target should include a time limit that would apply to 100% of decisions (e.g., “70% of decisions within 25 working days, 95% of decisions within 50 working days, and 100% of decisions within 100 working days”).

6 Review of industry code equivalents in other jurisdictions

In this section of our report we briefly examine some other liberalised energy markets and also other UK industry sectors to see how they deal with issues that are the same as or analogous to those addressed in the GB gas and electricity industry code arrangements. The aim is to focus on points of particular interest for our review, so we do not attempt to provide a comprehensive account of arrangements. We end with some observations about points of interest for the review.

6.1 Electricity in US electricity markets

Independent system operator (ISO) markets and Regional Transmission Operator (RTO) markets²⁴ cover about half of the US, and generally represent the markets where the liberalisation process has proceeded furthest.²⁵ An ISO/RTO market typically covers the service territories of several vertically-integrated utilities and also involves a number of merchant generators. In addition to being the system operator, the ISO leads the system planning process. They are non-profit entities with a governance structure that allows their various stakeholders to be represented. The organisation and activities of ISOs are regulated by the Federal Energy Regulatory Commission (FERC).²⁶

The ISO New England (ISO-NE)²⁷ is governed by a board, and the board members are elected by a committee of representatives of generators, suppliers, transmission companies, “alternative generators”, and end-users. There is no explicit “domestic consumer” representation, but the State regulator also has a representative on the election committee. The ISO itself must be free of financial interest from any market participant. The ISO board is advised by a number of committees on which the various industry and end-user groups are represented.

There is not an exact mapping between the content of industry codes in the UK and particular areas of legislation or other rules in the US. However, the general approach is that the technical and commercial rules governing the way in which market participants interact with the transmission network and the wholesale market are contained in the ISO Transmission, Markets & Services Tariff (“transmission tariff”). To avoid confusion, note that the “tariff” is by no means

²⁴ The distinction between an ISO and an RTO is small, and can be ignored for the purposes of this report. The two terms tend to be used together.

²⁵ We describe the regulatory arrangements equivalent to GB gas and electricity codes by reference to the arrangements in place at the New England ISO, but the principles are general.

²⁶ The main piece of secondary legislation being FERC Order 2000. Further description of the regulation of ISOs/RTOs can be found in a recent *Brattle* report for the Australian Energy Market Commission (*International Review of Transmission Planning Arrangements*, AEMC October 2007).

²⁷ The governance arrangements are set out in the “participants’ agreement”: *Participants Agreement among ISO New England Inc. as the Regional Transmission Organization for New England and the New England Power Pool and the entities that are from time to time parties hereto constituting the Individual Participants*.

a simple price list, but a long and complex document that contains detailed rules on many issues.²⁸

6.1.1 Proposing changes to the transmission tariff

In general, the process for changing any part of the tariff is that either changes are proposed to the FERC by an ISO, or the FERC itself initiates proceedings. Changes proposed by an ISO introduce an extra level of governance because the ISO has a process that allows its members to analyse, discuss, and comment on proposed tariff changes, prior to filing with FERC. The proposals subject to the ISO process can be made either by the ISO itself or by a market participant.

ISO proposals are discussed by the advisory committees, which have the power to request more analysis or to amend proposals by a two-thirds majority vote. In the case of a proposal from a market participant, the ISO is obliged to file the proposal with FERC if it receives a two-thirds vote at the advisory committee. In the case of an ISO proposal, the ISO is obliged to file a tariff change with FERC that contains the ISO's proposal if the ISO and the market participants' committee have agreed on it, or, alternatively, the ISO proposal plus the industry participants' committee proposal if there is no agreement and the latter receives two-thirds support.

When the ISO and its committees are developing proposals, they do so within the objectives of the ISO. These are quite detailed, but are firmly sub-ordinate to and consistent with FERC's "just and reasonable" criterion (see below). They are:²⁹

- a) to assure the bulk power supply system within the ISO's Control Area conforms to proper standards of reliability;
- b) to create and sustain open, non-discriminatory, competitive, unbundled, markets for energy, capacity and ancillary services (including operating reserves) that are
 - i. economically efficient and balanced between buyers and sellers, and
 - ii. provide an opportunity for a participant to receive compensation through the market for a service it provides, in a manner consistent with proper standards of reliability and the long-term sustainability of competitive markets;
- c) to provide Market Rules that
 - i. promote a market based on voluntary participation,

²⁸ For example see the New England ISO tariff, available at <http://www.iso-ne.com/regulatory/tariff/index.html>. It is very detailed, containing several thousand pages in total. The section on calculation of locational marginal prices, for example, runs to around 30 pages (section III.2) and includes specifying the software tool used to calculate prices.

²⁹ Quoted from the ISO-NE participants' agreement. The parties also agree that the detailed objectives "do not create an independent cause of action" separate from the "just and reasonable" criterion.

- ii. allow market participants to manage the risks involved in offering and purchasing services, and
 - iii. compensate at fair value (considering both benefits and risks) any required service, subject to the Commission’s jurisdiction and review;
- d) to allow informed participation and encourage ongoing market improvements;
 - e) to provide transparency with respect to the operation of and the pricing in markets and purchase programs;
 - f) to provide access to competitive markets within the ISO’s Control Area and to neighbouring regions; and
 - g) to provide for an equitable allocation of costs, benefits and responsibilities among market participants.

6.1.2 Approval/rejection of changes

The tariff is approved by FERC, and changes to the tariff can only be made following FERC approval. The legal framework gives FERC broad discretion: under the *Federal Power Act*,³⁰ subject to the restriction that all rates must be “just and reasonable”.³¹ In practice the interpretation of this test is guided by precedent and by established FERC policy. At present, for example, rulings such as Order 2000 make it clear that FERC is strongly in favour of promoting competition in wholesale markets, and of using market-based mechanisms.

When the ISO itself files applications for a new tariff (i.e. requests a change), FERC applies the just and reasonable standard, but neither it nor intervening parties have the right to propose better solutions if they find that the requested tariff is just and reasonable—in effect, this means that even if the proposal is not the best possible solution to an identified problem it must be approved if, in FERC’s judgement, it is consistent with the just and reasonable standard.

The US regulatory process is very much centred on quasi-judicial processes, rather than the more administrative ones used in GB. Thus although the FERC can approve filings directly, in difficult or contentious cases it will hold formal hearings at which various parties will be represented, and evidence given. In some cases, a settlement process overseen by an Administrative Law Judge is established to give the various parties an opportunity to reach a negotiated agreement.

Although there are no formal rules to this effect, the expectation is that a proposal on which broad agreement has been demonstrated through the ISO governance arrangements is more likely to be approved directly by FERC without formal hearings.

³⁰ The relevant provisions being sections 205 and 206 of the *Federal Power Act*.

³¹ Section *Federal Power Act* 205(a) reads: “All rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.”

6.1.3 Example: reforming the capacity market

The ISO-NE area has a “capacity market”, set up to help ensure that there is an adequate generation margin. The design of the capacity market has been controversial and subject to a number of reforms in recent years. In 2003, in response to a number of requests to approve “must run” agreements with generators located behind transmission constraints, FERC ordered the ISO-NE to institute a broader market-based mechanism to ensure sufficient generation resources, rather than relying on “must run” agreements with individual generators.³²

In 2004 ISO-NE proposed a “locational capacity market” to satisfy FERC’s concerns, and following further rounds of deliberation and clarification, FERC approved the proposal in 2005. However, a number of market participants and State representatives opposed the FERC decision because they felt that the solution adopted might not deliver adequate generation investment. FERC delayed implementation of the locational capacity market, and requested the various parties to seek a solution through a formal process presided over by a judge. After some thirty meetings an agreement was reached that was supported by around three-quarters of the market participants represented. FERC finally approved the agreed approach in 2006. ISO-NE then developed the necessary detailed implementation rules (through changes to the tariff) which were accepted by FERC in 2007. Thus, in this case, the final decision was reached only after four years and significant resource expenditure on all sides.³³ Note that even after this extended process, at least one market participant (unsuccessfully) appealed the outcome.³⁴

6.1.4 Observations

We consider the following observations as potentially relevant to our review:

- where there is industry-led analysis prior to regulatory review, the analysis is carried out within the same framework as that which will be applied in the final decision;
- no change can occur without regulatory approval;
- the regulator has a broad right to initiate proceedings;
- all changes take place through the same process;
- when examining a change requested by a network the regulator must apply an absolute standard (i.e., not judge the utility’s proposal relative to better alternatives, but just judge whether it is “just and reasonable”)

³² See 115 FERC ¶61,340, Docket Nos. ER03-563-030 and ER03-563-055.

³³ For example, the penultimate ISO-NE filing in this case contained 200 pages of proposed text for the tariff to implement the capacity market agreement, and around 750 supporting pages (ISO New England Inc., February 15th 2007, *Filing Containing Revisions to Market Rules Implementing FCM Settlement Agreement*, Docket No. ER07-____000).

³⁴ See 122 FERC ¶ 61,171.

6.2 The electricity industry in the Nordic region

6.2.1 Norway

The Norwegian energy regulator is the Norwegian Water Resources and Energy Directorate (NVE). The NVE can issue and amend “Regulations” at its own initiative covering a range of issues that more or less approximate the scope of the GB industry codes.³⁵ However, in practice an important difference between NVE Regulations and the industry codes is that the Regulations are much less detailed. For example, the Regulation that covers imbalance charges says only that “[p]ayment obligations or credit balances shall be based on the prices in the regulating power market”.³⁶ The concrete rules for determining imbalance charges are written by the national TSO, Statnett, which has been designated by the NVE as the authority responsible for settlements.³⁷ They are not subject to any formal review or approval by the NVE, but must comply with the NVE Regulations.

There is no formal process for a market player other than Statnett to propose a change to the Regulations or to the detailed rules described above. When the NVE wishes to change its Regulations (by issuing amendments) it must follow a process determined by the general principles of public administration in Norway. This means that it must hold stakeholder consultations and publish cost-benefit analysis, to an extent that is proportionate to the importance of the proposed changes.

There is no right of appeal against new Regulations, as such, but NVE decisions in any particular case can be (and on occasions are) appealed to the Ministry.

6.2.2 Sweden

The Swedish approach to code governance is radically different from that in GB. The Swedish TSO, Svenska Kraftnät, is organised as a Public Utility, which is a kind of public authority. As such, it decides on its own how to organise the markets for the services it provides, albeit in accordance with the annual instructions given by the Government (these are high-level instructions that set the framework for the TSO, e.g. specifying priority areas on which to focus). Under the Swedish constitution, public authorities may not scrutinize each other’s activities unless specifically mandated to do so by legislation. Consequently, there may be areas where the regulator has no right to scrutinize the activities of the TSO. However, its transmission activities fall under the supervision of the Swedish regulator (the Energy Markets Inspectorate). In addition, the regulator does have powers under the Electricity Act to review rules such as those pertaining to balancing. Svenska Kraftnät proposes balancing rules, which have the legal form of

³⁵ The competences are listed in Section 7.1 of the Energy Act Regulation (Reg. no. 959, 7.12.1990). They include (but are not limited to) financial and technical reporting, market access and tariffs, impartial behaviour, coordination of grid and grid services, metering, settlement and invoicing, and “marketplace”. Note that all references in this section to Norwegian legislation are based on the (unofficial) translations into English, provided on the NVE website.

³⁶ Section 4-2, Reg. no. 301 (11.15.1999).

³⁷ These rules can be found (in Norwegian only, “Vilkår for regulerkraft”) on the Statnett website.

bilateral contracts between Svenska Kraftnät and each "balance responsible party". It submits a Standard Contract to the regulator, who must approve or reject the methodology (there is some ambiguity as to the distinction between "methodology" and the detail of the contract). Regulatory decisions can be appealed to Swedish Administrative Courts.

6.2.3 Finland

Under the Finnish system many of the matters dealt with under the BSC and CUSC in GB are contained in bilateral contracts between the TSO Fingrid (which is privately owned, with the state as a minority shareholder) and its connectees. For each service, e.g. connection, transmission services, balancing, the TSO is required to put forward a "model contract" for approval by the Finnish regulator (the Energy Market Authority). In practice (although without any legal obligation) the TSO proposals are developed in consultation with stakeholders before being submitted to the regulator. The regulator then undertakes a formal consultation exercise, seeks the TSO's views on the replies to the consultation, and then issues its decision. In making its decision the regulator has the right to alter parts of the model contract should it wish to do so. The TSO can appeal the regulator's decision to the Market Court (although this has never happened).

The criteria by which the regulator must decide on the proposal are contained in legislation, and are very general ("fair and reasonable", "non-discriminatory", "cost-reflective" etc). Provided the proposal meets these criteria the regulator cannot reject it, even if it believes that different arrangements would be superior. Parties other than the TSO can ask the regulator to make changes but have no ability formally to start the change process. As a matter of law, changes can occur only when the TSO comes forward with a new proposal (which occurs every few years) or at the initiative of the regulator, but the latter can happen only if there has been a major change in circumstances since the agreement was approved.

6.2.4 Observations

A general observation is that the Nordic arrangements vary considerably across the three countries. To date this does not seem to have been a significant obstacle to the development of the Nordpool market. With regard to the individual countries, the situation in Sweden is so different to that in GB that it is hard to draw any real lessons. From Norway and Finland, we consider the following observations as potentially relevant to our review:

- The Norwegian system is "tiered", with the NVE prescribing high level principles while leaving more detailed implementation to the TSO and market players, but subject to the potential for NVE veto and/or more detailed intervention.
- The regulators in Norway and Finland have a "right of initiative". In Finland the right of initiative is very limited, but the regulator has the right to amend proposals brought

to it. However the right of initiative is balanced in both cases by a stronger right of appeal on regulatory decisions.³⁸

- There is no formal mechanism for parties to propose rule changes or to participate in the drafting of proposed changes, except for the TSO's role in drafting agreements.
- In all the Nordic countries, the underlying philosophy is to avoid detailed regulation where possible, intervening only when the regulator believes the market parties have not, or will not, arrive at a satisfactory outcome. The result is clearly less formal than in the GB, and involves a lower regulatory burden. High level rule changes are rather infrequent. However it is not clear how well such an approach would cope in the context of the GB market, which arguably has a more contentious/litigious culture.

6.3 Australia's National Electricity Market (NEM)

The legal/regulatory structure in the NEM is relatively simple: the primary legislation (National Electricity Law) sets out the powers of the regulatory bodies, and secondary legislation (National Electricity Rules)³⁹ sets out the detailed technical and commercial rules. The scope of the Rules, together with various subordinate procedures and guidelines, is essentially equivalent to the combined scope of licences and the industry codes in GB.

Australia has two national regulatory bodies for the NEM that together cover approximately speaking the roles of Ofgem and the various code secretariats. The Australian Energy Market Commission (AEMC) is the "custodian of the rules", combining the role of secretariat and final decision-maker on proposed modifications (as well as other functions that are less relevant to this report). The Australian Energy Regulator (AER) is the second body, which monitors and enforces compliance with the Rules (this includes setting price controls for transmission companies).

6.3.1 Proposing a Rule change

A Rule change can be proposed by any market participant, the Ministerial Council on Energy,⁴⁰ or any stakeholder more generally.⁴¹ The SO, the AER, the State regulators (who operate the price control process), and a Reliability Panel - which advises the AEMC and comprises representatives of generators, transmission networks, wholesale market customers, end users, and an AEMC Commissioner - can also propose changes. Proposals coming from these

³⁸ In Norway the appeal is to the ministry, which in a UK context would be incompatible with the commitment to independent regulation. Clearly one could create a system with a more independent appeals body, but it might be thought that a body without detailed specialized knowledge would be reluctant to overturn a regulator's decisions on grounds of substance, so that this would be weaker than an appeal to the ministry.

³⁹ *National Electricity Rules Version 19*, March 2008, available at <http://www.aemc.gov.au/pdfs/rules/rulesv19.pdf>.

⁴⁰ The AEMC reports to the Ministerial Council on Energy, which includes the federal and state-level energy ministers, and which has the power to direct the AEMC to undertake market studies.

⁴¹ There is a certain amount of funding available to help end consumers and their representatives undertake advocacy relating to the operation of the NEM.

bodies can be “fast-tracked” if the body in question has already operated its own standard consultation procedures prior to making the proposal.

The AEMC has only a very limited right of initiative: it can make changes that correct minor errors, changes which are non-material, changes that are consequent on other rule changes, or changes which relate to certain matters prescribed in secondary legislation. In practice the AEMC’s role is limited to proposing “housekeeping” changes.

All rule change proposals must include:

- A statement of the nature and scope of the issue(s) in the existing Rules that give rise to the proposal, and how this is to be addressed by the proposed change;
- An explanation of how the proposal would or would be likely to contribute to the achievement of the national electricity objective; and
- An explanation of the expected benefits and costs of the proposed change and the potential impacts of the change on those likely to be affected.

The proposal does not have to contain drafting for the new or modified Rule.

6.3.2 Rule-making test

The rule-making test is that a Rule must contribute to facilitating the National Electricity Objective which is to “promote efficient investment in and efficient use of electricity services for the long term interests of consumers of electricity with respect to (a) price, quality, reliability and security of supply of electricity; and (b) the reliability, safety and security of the national electricity system.”⁴² In addition to this objective, AEMC must have regard to any “Statement of Policy Principles” made by the Ministerial Council on Energy. However, to date the Council has made no such statement.

6.3.3 The AEMC assessment

The AEMC operates a four-stage assessment process.

At Stage 1 the AEMC checks that the proposal contains all of the necessary information and is well-founded (not “mis-conceived or lacking in substance”). Importantly, the AEMC is able to “consolidate” similar proposals: if a proposal seems to cover the same issues as another proposal already under consideration, the new one can be subsumed into the existing process. Equally, if a proposal relates to the same issues as a rule change that has been made in the preceding twelve months, or a proposal for a rule change that was rejected in the preceding twelve months, it can be rejected at this initial stage. There is no consultation in stage 1.

Stage 2 is an initial consultation of at least one month on the rule change proposal. At this stage the AEMC does not have to publish its thinking on the proposal but it may hold hearings.

⁴² *National Electricity Law*, s. 7.

Stage 3, which by default must happen within ten weeks of the end of stage 2, is the point at which AEMC publishes its view on the proposal, in the form of a draft Rule Determination. If the draft decision is that a Rule will be made, AEMC must also publish a draft of the Rule. The draft Determination must include full reasoning, including the AEMC's analysis of how the Rule will contribute to achieving the National Electricity Objective, and, if relevant, how the AEMC has had regard to relevant Ministerial Council on Energy policy principles. AEMC must consult for at least six weeks at this stage, and interested parties can request an oral hearing (AEMC must give reasons if it refuses any such request).

Stage 4 consists of the AEMC publishing a final determination, which must include reasoning (as at stage 3). At stage 4 the AEMC can decide to substitute its own proposal (a "more preferred Rule"), which addresses the same issues, but which it considers will better achieve the National Electricity Objective than the original proposal. In this case it has to go back to stage 2 of the process.

In the case of non-controversial or urgent proposals, AEMC may short-cut the process such that it takes only six weeks in total. However, market participants have the right to object to this accelerated procedure.

In the case of proposals on which other bodies have already held consultations, AEMC may skip stage 2.

There is no right of appeal on AEMC decisions, other than Judicial Review.

6.3.4 Observations

We consider the following observations as potentially relevant to our review:

- The AEMC is essentially in control of the whole consultation / analysis process
- All of the relevant rules are subject to the same modification process;
- There is a direct link between overall statutory objectives of the AEMC and its assessment of rule changes;
- The AEMC is able to "consolidate" similar proposals, and there is a moratorium on proposing changes when the same issue has been recently examined; and
- AEMC cannot initiate rule changes (apart from "housekeeping" changes), but once the rule change process has been initiated it can decide to substitute its own proposal if it addresses the same problem and gives a better solution.

6.4 Northern Ireland energy sectors

The basic regulatory framework for the Northern Ireland (NI) energy sector is set out in the Gas (Northern Ireland) Order 1996 ("the Gas Order") and the Electricity (Northern Ireland) Order 1992 ("the Electricity Order"). It is similar to that for the GB energy sector. Both sets of legislation prohibit the carrying out of certain activities without a licence or exemption. Broadly the same activities are licensed in NI as in GB. However, NI legislation does not include a licensable activity of gas shipping, but does include a licensable activity of "market operation"

(essentially managing financial settlements in an electricity pool) which does not exist in the GB context. Licences are granted, modified and enforced by an independent regulator, Ofreg.

Ofreg is subject to certain overriding statutory duties which govern the exercise of its functions under the Gas and Electricity Orders in a similar manner to Ofgem's statutory duties under the Gas Act 1986 and the Electricity Act 1989. It is also subject to the requirements of the IME2 and IMG2 Directives, and more generally to EU law. A further feature of the regulatory framework for electricity in NI is that a single "All Island" market has been established for wholesale electricity ("the SEM"), which encompasses a structure for joint regulation by Ofreg and its Irish counterpart, the Commission for Energy Regulation (CER), although legally all regulatory decisions taken in respect of NI licensees remain decisions of Ofreg. Different statutory duties apply to the exercise of Ofreg's functions in relation to SEM matters which reflect the all island nature of the market. The Gas Order and the Electricity Order set out statutory duties for gas conveyance and electricity transmission licensees similar to those which apply to gas transporters and transmission licensees in GB.

The legislation does not require industry participants or Ofreg to establish industry codes or standard terms of dealing. However, Ofreg has a wide discretion as to the conditions it can include in a licence, and has looked to precedent in other regulated sectors, particularly GB energy, in introducing industry-wide codes through licence conditions to govern relationships between operators within the sector.

Ofreg and the CER have the power to propose modifications on their own initiative. Their ability to act as "both prosecutor and judge" was considered fairly controversial at the time of the establishment of the SEM. The regulators thought that it was crucial in the early stages of the market to enable them to fine-tune arrangements, particularly given the influence of larger players on the market, such as ESB and Viridian. In this respect, it should be noted that the TSC was introduced through scheming legislation, rather than a consensual or Competition Commission process.

6.4.1 The Codes

Gas network codes

All gas conveyance licensees are required by their licences to establish network codes which have similar objectives and cover similar issues to the UNC. As a result of the introduction of postalised charges, all network codes across NI were harmonised through a statutory scheme. There is no licence obligation to comply with these network codes.

Electricity trading and settlement code

The SEM initiative established a mandatory gross electricity pool, through which all wholesale electricity on the Island of Ireland is traded (subject to certain de minimis arrangements). The trading and settlement code ("TSC") sets out the governance arrangements for the pool. All electricity licensees in Northern Ireland and the Republic of Ireland (apart from a small number of exempt small generators, who do not trade through the pool) are required by their licences to adhere to and to comply with the terms of an electricity trading and settlement code.

6.4.2 Governance arrangements under the Codes

Gas Network Codes

All gas conveyance licensees are required by their licences to establish procedures for the modification of their network codes with the following features:

- Modifications can be proposed by Ofreg, the licensee or a gas supplier;
- Modification proposals are assessed by whether they better fulfil the Relevant Objective, which is set out in the licence. The Relevant Objective is based on the licensee's statutory duties (the operation of economic and efficient pipeline) and on furthering the licensee's licence obligations. Subject to these, it also requires promotion of effective competition between gas suppliers using the relevant network. There is no explicit reference to Ofreg's statutory duties in the Relevant Objective (other than promotion of competition) or its other legal duties;
- The licensee is required to notify proposals to all gas suppliers, and anyone else who requests a copy of the proposal. It is then required to prepare a modification report for Ofreg including:
 - Where the proposal is made by a gas supplier, details of any alternative proposal which it wishes to put forward in relation to the same subject matter;
 - Details of comments or objections received in relation to both proposals; and
 - An opinion as to whether the modification should be made, with reasons and any other supporting information.
- Ofreg then judges whether the proposal is to be implemented, on the basis of whether it better achieves the Relevant Objective than the code in its current form.

Note that the relevant gas conveyor is in control of the modification proposal as used to be the case for the Network Code in GB, when Transco used to control the modification proposal.

To the extent that a licensee's network is part of the overall "postalised" network in NI, the following additional elements are required by its licence to apply to modification of its network code so as to ensure it remains in harmony with the network codes of the rest of the postalised network:

- The Relevant Objective must include a requirement for the network code to further the efficient and economic operation of the postalisation arrangements;
- All other postalised network operators and all suppliers who use any part of the total postalised network (whether or not they use that part of the network operated by the licensee) must be consulted on modifications to the code;
- The licensee must have regard to potential impacts on other postalised codes when proposing or reporting on any modification proposal;

- Where there are interactions between modifications proposed for more than one of the postalised networks, a joint report must be produced.

There have been relatively few modifications to the postalised network codes, and most of these could be characterised as house-keeping modifications. This may reflect the much smaller size and relatively immature nature of the market. What is interesting to note is that Ofreg has made very little use of its power to propose modifications. The modifications required to implement postalisation appear to be the only instance in which the power has been used.

Electricity trading and settlement code (TSC)

Unlike in the gas sector and also in GB, the “sponsors” of the TSC are the two market operators (“MOs”) in that the requirement to administer and maintain the TSC in force is contained in the two MO licences rather than in a transmission owner/operator licence. Currently, this is only a theoretical distinction because the two MOs are the two transmission owner/operators, but this need not necessarily be the case.

The TSC has the following objectives, which set the parameters for any code modification proposal:

1. To facilitate the efficient discharge by the Market Operator of the obligations imposed upon it by its Market Operator Licences;
2. To facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner;
3. To facilitate the participation of electricity undertakings engaged in the generation, supply or sale of electricity in the trading arrangements under the Single Electricity Market;
4. To promote competition in the single electricity wholesale market on the island of Ireland;
5. To provide transparency in the operation of the Single Electricity Market;
6. To ensure no undue discrimination between persons who are parties to the Code; and
7. To promote the short-term and long-term interests of consumers of electricity on the island of Ireland with respect to price, quality, reliability, and security of supply of electricity.

These objectives neither mirror Ofreg’s statutory duties nor those of the TSOs, although they reflect certain of the objectives of both. It is interesting to note that environmental matters do not feature explicitly in the above list.

The licences set out very limited requirements for modifying the TSC. They simply require all modifications to be approved by the two regulators (there are structures for ensuring co-ordinated decision making), and for the regulators to have the power to propose modifications.

The modification rules themselves are very similar to those of GB codes (there is a modification committee with general industry representation, although only suppliers and generators can vote, a process for urgent modifications, a process for alternative modifications). One notable difference, however, is that anyone can propose a modification, not simply signatories to the Code or the regulator.

6.4.3 Appeal process

There is no statutory appeal process against any of Ofreg's modification decisions in relation to either the postalised network codes or the TSC. At the time that the SEM was being introduced a number of industry players lobbied fairly hard for a right to appeal to the Competition Commission against TSC modifications, on a similar basis to that provided under the Energy Act 2004. This was not incorporated into the legislation, however, because of the cross-border nature of the TSC.

6.4.4 Observations

We consider the following observations as potentially relevant to our review:

- The governance arrangements for the NI industry codes borrow heavily from GB precedent.
- Perhaps the greatest area of divergence is that they include a right on the part of the regulator to propose modifications, in circumstances where the regulator also approves the modification. This right has been used sparingly in the gas sector.

6.5 The UK regulated postal services sector

The postal services regulatory framework in the UK is set out in the Postal Services Act 2000. It is similar to that for gas and electricity, in that it prohibits the carrying out of certain activities without a licence or exemption. Licences are granted, modified and enforced by an independent regulator, Postcomm.

Postcomm is subject to certain overriding statutory duties which govern the exercise of its functions under the Postal Services Act 2000 ("PSA") in a similar manner to Ofgem's statutory duties under the Gas Act 1986 and the Electricity Act 1989. In addition, Postcomm is also subject to certain legal requirements under the Postal Services Directive. It should be noted that the legislation does not impose statutory duties on any operator in the postal services sector. Here "operators" means Royal Mail, other end-to-end operators and access operators (equivalent to shippers).

The UK postal services sector was fully liberalised in 2006. The legislation does not require industry participants or Postcomm to establish industry codes or standard terms of dealing. However, Postcomm has a wide discretion as to the conditions it can include in a licence, and has looked to precedent in other regulated sectors, particularly energy, to seek via licence conditions to introduce industry-wide codes to govern relationships between operators within the sector.

There is a single licensable activity under the PSA of conveying letters. This activity incorporates the activities of Royal Mail, as universal service provider, as well as its competitors,

whether they operate on an end-to-end basis like Royal Mail or compete by outsourcing final mile delivery to Royal Mail through regulated access arrangements. Most operators who compete with Royal Mail do so by sub-contracting final mile delivery to Royal Mail, so as to avoid the need to replicate Royal Mail's extensive downstream delivery network, although there is no legal restriction on offering an end-to-end service. For example, TNT is in the process of trialling an end-to-end service in Liverpool. However, the emergence of a full downstream delivery network with similar coverage to Royal Mail's is considered likely to take some time to emerge. Therefore, competition to Royal Mail is most likely to come from access operators for the medium term.

6.5.1 The Codes

Currently, two common industry codes operate within this sector:

- The Common Operational Procedures code of practice ("COP Code"), which provides for common arrangements for the handling of misdirected or miscollected mail and complaints within the context of the liberalised postal services market in the United Kingdom (for example, it includes arrangements for circumstances where a customer uses two operators and one operator collects post contracted to the other operator by mistake) ; and
- The Mail Integrity Code, which sets out arrangements aimed at protecting mail from theft, loss, damage and interference.

Royal Mail is obliged by its licence to offer terms for access to its downstream delivery network. Its licence also makes provision for the introduction of a code ("Access Code"), similar in nature to the UNC, setting out standard terms for access to Royal Mail's downstream delivery network by customers and competitors. This is presented in the licence as an alternative to regulated bilateral contracts, and the choice as to which option to adopt is left to Royal Mail. Thus far, Royal Mail has chosen to offer access to its network on the basis of regulated bilateral contracts.

6.5.2 Governance arrangements under the Codes

Common Operational Procedures Code of Practice

It is a condition of all postal services licences, including Royal Mail's, that the licensee must be a party to, and to comply with, the COP Code unless relieved of that obligation by Postcomm (see Condition 4 of the standard operator licence). The COP Code itself is annexed to the licence, and therefore forms part of the licence (it is effectively a licence condition). Licensees are required, unless Postcomm otherwise consents, to give effect to the COP Code by entering into the Postal Common Operational Procedures Agreement ("COP Agreement"). Whilst the Code sets out high level principles, the Agreement provides for more detailed arrangements.

There are no provisions outside the standard statutory licence modification procedures for modifying the COP Code. However, the COP Agreement can be modified via the following process:

- Modifications can be proposed by any party to the COP Agreement, but no one else;
- The proposal is notified to Postcomm for approval. Postcomm is required to consult before deciding whether to direct the modification to be made but there is no modification panel;
- In a similar manner to that provided for in the GB energy codes, modification proposals are judged by whether they better fulfil the Code Objectives, which are set out in the COP Code. These are based loosely on some, but not all, of Postcomm's statutory and other legal duties. In practice, and similarly to Ofgem, Postcomm cannot approve a modification unless such approval is also compatible with its statutory duties;
- Proposals are required to be in writing, providing legal drafting, the rationale behind the proposed modification and an explanation as to why the proposed modification would enable the COP Agreement better to fulfil the Code Objectives.

So far there have been no proposals for the modification of the COP Agreement (which came into existence in 2006). Compared with the more important energy sector codes, the COP Agreement is a fairly straightforward and uncontentious document.

Mail Integrity Code

All licensees are required to comply with the Mail Integrity Code. The Mail Integrity Code is annexed to all licences and there are no provisions outside the standard statutory licence modification procedures for its modification.

Access Code

Part 2 of Condition 9 of Royal Mail's licence sets out the basic framework for the modification of any Access Code established by Royal Mail, should it choose to bring forward such a code. It is based upon the framework for the modification of the UNC set out in the NTS and DN licences (approval of modification proposals by Postcomm against a set of "Relevant Objectives"), although there are some differences. In particular:

- The Access Code is required to include not only standard terms and conditions for access, but also charges for access (i.e., it is the equivalent of the UNC bundled with the relevant Charging Methodologies);
- Modification proposals (including in relation to charges) can be made by Royal Mail, Postwatch (the postal services consumer council), or "another person";
- The Relevant Objectives are based fairly closely on Postcomm's statutory duties (although do not refer to its duties under EU law).

Bilateral access agreements

Part 1 of Condition 9 of Royal Mail's licence requires Royal Mail to enter into good faith negotiations with anyone seeking access to its postal facilities with a view to agreeing terms which are based on a reasonable cost allocation and are not discriminatory. If Royal Mail and the applicant cannot agree, the licence provides the applicant with the right to ask Postcomm to determine the terms of the agreement between them. Postcomm must consult before making such a determination.

In the first negotiation for an access contract, the applicant asked Postcomm to make a determination in April 2002. Postcomm consulted on a proposed determination in May 2003. Subsequently Royal Mail and the applicant settled heads of agreement in December 2003 and entered into a formal contract in February 2004 without Postcomm making a determination.

Since the first access agreement negotiation, Royal Mail's licence was modified to require it to issue guidance to applicants, approved by Postcomm, on negotiating access terms. Royal Mail produced draft guidance, which was consulted upon and, after revision, approved by Postcomm. To date there have been no further requests for an access determination.

6.5.3 Appeal process

There is no statutory appeal process against any of Postcomm's modification decisions in relation to either the COP Agreement or the Access Code (other than judicial review).

6.5.4 Observations

We consider the following observations as potentially relevant to our review:

- The COP Agreement is a fairly straightforward document, which has so far not required to be modified. Its modification processes, therefore, remain untested.
- The mail code governance structures are drawn heavily from the UNC structure.
- Royal Mail's reluctance to bring forward an Access Code may stem from the fact that its charging provisions would have to be included in the code, and a wide range of parties would be permitted to bring forward modifications to the Code. To a degree the need for an access code has been reduced by the establishment of the guidance for access negotiations, and the precedent provided by the first access agreement.
- The impetus for an access code for post has come from the regulator who wishes to encourage access competition and from some access applicants. To date there has been less need for common access arrangements for technical and operational reasons in post than in the energy sector, although as access becomes more popular and "entry capacity" more constrained a greater need for a more co-ordinated approach may develop.
- The Code and Agreement framework, with a high-level Code and more detailed rules in the Agreement, provides a means of creating two tiers of decisions.

6.6 The UK fixed-line telecommunications sector

The fixed-line telecoms sector can be thought of as including a network, part of which is a natural monopoly analogous to the power and gas transmission networks, together with competitive service providers that serve customers (providing telephony, broadband etc) using third party access to part of the network.⁴³ We focus here on the interaction between the network and competitive service provider parts of the industry, and look at a specific example of changes to the service-level agreements between BT Openreach (which owns the monopoly fixed-line network, and is, therefore, in some respects equivalent to the gas and electricity network operators) and its customers, i.e., service providers in the competitive part of the market (approximately equivalent to generators/shippers/suppliers).

The overall regulatory framework for the telecoms industry is rather different to that in the energy sector. The main mechanism for controlling the behaviour of the monopoly part of the industry is section 45 of the Communications Act 2003, under this Ofcom can impose conditions on the behaviour of a market participant that has “significant market power”. Consequently, Ofcom has a broad ability to control the behaviour of BT Openreach by giving Directions in relation to matters to which the section 45 condition relates.

In the UK telecoms sector there is an established “self-governance” mechanism for addressing certain technical matters at industry level, without the direct involvement of Ofcom. BT Openreach and its service provider customers have agreed to take part in a scheme whereby they negotiate agreements with the help of an independent party, the Office of the Telecoms Adjudicator² (OTA2).⁴⁴ This process covers issues which, to some extent, parallel the content of some parts of the energy sector industry codes (e.g., the CUSC). In relation to end-user issues such as local-loop unbundling, the scheme covers:⁴⁵

- Product functionality — the technical characteristics of services to be offered by Openreach, and the publication of key performance indicators;
- Process specification — which includes agreeing quality standards, service levels, and service level guarantees (i.e., compensation payments in case standards are not met);
- Change management and implementation plans for delivering new services; and
- Monitoring of progress.

Importantly, the scheme does not cover tariffs or charges. It does, however, include setting service standards and compensation arrangements (for example, late provision or late fault repair

⁴³ Unlike in the energy sector, competition is possible in respect of many of the services provided by means of BT’s network: BT’s fixed line network competes with cable and wireless networks, whereas NGG has no competitor for transmission.

⁴⁴ So-called because it evolved from an earlier incarnation.

⁴⁵ *OTA2 scheme, memorandum of understanding*, March 2007 (available at <http://www.offta.org.uk/mou.htm>).

in relation to wholesale line rental). In addition, OTA2 publishes a large number of performance indicators relating to, for example, fault repair times and local loop unbundling.⁴⁶

6.6.1 Example: service standards and compensation arrangements

Service providers (Openreach customers) had been unsatisfied with the service standards and compensation arrangements offered by Openreach. They therefore attempted to negotiate improvements. In principle, this was an issue that could have been dealt with through the OTA2. However, negotiations stalled and Ofcom was forced to intervene whilst expressing disappointment at the outcome.⁴⁷ Ofcom imposed a solution by giving Directions to Openreach to modify its service level agreements,⁴⁸ finding that the existing compensation arrangements were cumbersome and onerous and, thus, that they favoured large customers, such as BT's retail arm, at the expense of smaller players.⁴⁹

6.6.2 Observations

We consider the following observations as potentially relevant to our review:

- There is no direct equivalent of the energy sector industry codes in the telecoms sector. This may reflect a deliberately different approach or it may have more to do with the nature of the sector, which has been undergoing substantial technical change leading to less reliance being placed on third-party access to a natural-monopoly network. This has allowed a roll-back of the scope of economic regulation;
- In general (OTA2 being an exception) Ofcom makes little use of formalised industry-led processes and structures, and it is able to change the detailed rules governing the relationship between Openreach and its customers directly; and
- Self regulation is less likely to work well on commercially material issues, where the interests of the various parties are not well aligned, whereas it may work better for more technical matters such as defining and measuring performance indicators, which is what it is primarily used for in telecomms.

⁴⁶ See <http://www.offta.org.uk/charts.htm>.

⁴⁷ *Ibid.*, paragraph 2.11.

⁴⁸ *Service level guarantees: incentivising performance—Consultation document*, Ofcom December 2007.

⁴⁹ *Ibid.*, paragraph 1.10.

6.7 UK rail sector

The Office of Rail Regulation (“ORR”) was established by the Railways and Transport Safety Act 2003 as an independent statutory body. The ORR is led by a Board, the members of which are appointed by the Secretary of State for a fixed period of up to 5 years. The regulatory framework for the railway industry is set out in the following statutes:

- The Railways Act 1993 (RA 1993), which sets out the ORR’s principal regulatory functions;
- The Railways Act 2005, which sets out the ORR’s safety functions and amends the RA 1993;
- The Health and Safety at Work Act 1974 (HWSA 1974), which sets out additional safety functions; and
- The Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, which appoints the ORR to be an enforcing authority for the purposes of the HWSA 1974.

The ORR also has concurrent powers alongside the Office of Fair Trading to investigate potentially anti-competitive behaviour with respect to the provision of railway services under the Competition Act 1998.

The ORR has two main roles, acting as both the health and safety regulator and the economic regulator of the railway industry. The legal framework for the ORR’s health and safety regulatory functions is provided by the HSWA 1974. The main aim of these functions is to ensure that the railway system operates safely and that both passengers and railway workers are protected from any health and safety risks arising from the operation of the railway system.

In terms of its role as economic regulator of the railway industry, the ORR’s functions relate principally to the regulation of Network Rail, which owns and operates the national rail network infrastructure under a network licence issued by the Secretary of State and enforced (and amended) by the ORR. The ORR also licences the operators of railway assets and approves agreements to grant operators access to track, stations and depots. The ORR’s statutory powers in relation to Network Rail are provided by the RA 1993. Its powers in relation to operator contracts and licences are set out in the RA 1993 and the Railway (Licensing of Railway Undertakings) Regulations 2005.

Under the RA 1993, the ORR is subject to a number of statutory duties to which it must have regard when exercising its functions in a similar manner to Ofgem’s statutory duties under the Gas Act 1986 and the Electricity Act 1989. The above legislation does not require industry participants or the ORR to establish codes.

6.7.1 *The Network Code*

The rail industry’s Network Code is a common set of rules applying to all parties to regulated track access contracts with Network Rail. These rules were formerly known as the Railtrack Track Access Conditions. Each operator with access rights to the railway network has a bilateral

The Network Code governs industry procedure in respect of the following:

- Regulating change (e.g. change to the network, to timetables, to vehicles specified in track access contracts, to computer systems and to the Network Code);
- Establishing procedures relating to environmental damage;
- Establishing a performance monitoring system; and
- Establishing procedures in the event of operational disruption.

The Network Code is, therefore, a contractual code over which the separate safety objectives relating to the operation of the railway system take priority.

The Access Dispute Resolution Rules, which are annexed to the Network Code, provide a framework for the handling of disputes which arise under access agreements and the access conditions/code. It should be noted that these provisions solely govern rail disputes in relation to access.

6.7.2 Governance arrangements under the Code

Part C of the Network Code sets out the procedure for modification of the Network Code and the Access Dispute Resolution Rules, which are annexed to the Network Code. Modifications are either made by means of a democratic process or by the ORR, following consultation.

Democratic process

The main features of the democratic process are as follows:

- Under this process there are no objectives as such specified in the rules pursuant to which modifications are to be judged, although the Network Code states that it is subject to the paramount duty to ensure safety within the network;
- Modifications can be proposed by any party with a regulated track access agreement (essentially, those bound by the Network Code), anyone who proposes in good faith to accede to the Network Code and ORR;
- Network Rail undertakes the secretariat function in respect of modifications and is required to bear the costs of undertaking this function;
- Proposals must be made in writing to Network Rail, providing proposed legal drafting, a suggested timetable for the implementation of the proposal and an explanation in reasonable detail of the reasons for the proposed change. Proposers are also required to comply with all reasonable requests for further clarification of the proposal from Network Rail;
- Proposals are assessed by a Committee, which consists of members elected by each of four interest groups, known as Classes, for which class protection is provided:

Network Rail, franchised passenger Train Operators, non-franchised passenger Train Operators and non-passenger Train Operators. The largest of these groups are further divided into Bands to reflect their size, nature and respective members. Train Operators can only belong to one class, and their assignment to a particular class is determined by the type of railway services in respect of which they pay the greatest part of their Track Charges.

- The Committee has the power to consider and approve proposals for modifying the Network Code. It also establishes the procedural rules for Committee Meetings, which can be objected to by the ORR and, in some circumstances, Class Members or proposed parties to Access agreements. There are a total of 8 Class Members on the Committee and 6 of these must normally vote in favour of a modification for it to take place. Network Rail and any two of the Class Representatives from the Franchised Passenger Class can veto a proposal to modify the Network Code.
- Network Rail is then required to notify the relevant interested parties of the proposal and initiate a consultation process. Changes to the proposed modification can be proposed during the consultation period or by the Class Representatives at the Committee Meeting. Any material change to the modification must receive the unanimous approval of the Class Representatives to be approved. Otherwise, Network Rail must put the proposed material change out to consultation. If the Class Representatives cannot agree unanimously as to whether a change to a modification is material, it will be treated as material.
- Once the Committee has approved a modification it is submitted to the ORR, together with certain information as required by the Network Code. The ORR then gives notice to Network Rail as to whether it approves or rejects the modification and Network Rail notifies the relevant parties of the change and updates the text of the Code.
- The ORR has power to determine complaints regarding any procedural irregularities occurring during this modification process.

Modification by the ORR

Alternatively, the ORR can directly propose a modification to the Network Code and Access Dispute Resolution Rules. The ORR must consult with the Secretary of State, Network Rail, the Class Representative Committee (and Class Members) and other relevant persons in relation to its proposed modification, and take into consideration any representations put forward by the consulted parties.

The modification must satisfy the following conditions set out in Condition C8 of the Network Code:

- The modification is, or is likely to be, reasonably required in order to promote or achieve the objectives specified in section 4 of the RA 1993 (the ORR's statutory duties); and

- If the modification were not made, unfair prejudice would arise to the interests of relevant persons, and this prejudice would not be outweighed by any prejudice caused by the making of the modification.

There is also a procedure whereby modifications by the ORR will not have effect if they would affect certain rights of Train Operators and other parties as set out in Condition C8.3. The procedure for challenging the ORR's modifications under this condition is determined by an arbitrator under the Access Dispute Resolution Rules.

6.7.3 Appeal

Where a relevant group has exercised its veto against a modification to the Network Code proposed under the democratic process, an appeal procedure is available under Condition C6.5 of the Network Code. The ORR has the power to determine such appeal and its decision is final and binding on all parties to access agreements.

6.7.4 Observations

We consider the following observations as potentially relevant to our review:

- The Network Code underwent a period of review in the 2003-2005. As part of that process, the modification rules were assessed to see if improvements could be made. The outcome of that review was that the overall structure outlined above should be retained, but consideration should be given to improving its efficiency, in particular, by introducing tighter time limits for decision making. A proposal to this effect was approved and implemented in March 2006.
- ORR has the power under both processes to propose modifications;
- The democratic process has features in common with those under GB energy codes (only a limited class of persons can propose changes, proposals are assessed by a nominated committee, ultimate approval rests with the regulator). However, there are also subtle differences which make for a more industry led process. In particular, the role of the Committee is less one of advisor to ORR and more one of a screener of modifications. In principle, only those modifications which it approves are then presented to ORR for approval. There is an appeal process which can be invoked in circumstances where a proposal has not obtained relevant committee approval. However, ORR has no power to intervene itself if a modification of which it approves has been rejected.
- This more restricted role is counterbalanced by ORR's right to introduce modifications under Condition 8. It is interesting to note the criteria by which such changes can be introduced by ORR, namely its statutory duties.

6.8 Summary of points of interest

6.8.1 “One bite” approach

Unlike the GB energy governance arrangements, several of the international markets and the other GB sectors that we have described only involve one body carrying out analysis and consultation. This may either be the regulator itself e.g. Australia, or an industry body (where there is a degree of self-regulation).

6.8.2 Right of initiative

The fear of the regulator acting as “prosecutor and judge” does not generally seem to have been perceived as a problem and in many instances the regulator has some form of right of initiative. This varies from being able to start proceedings on its own initiative e.g. in the US, Norway, Northern Ireland, UK rail and UK postal services, to being able to amend or substitute proposals e.g. Australia, and Finland.

6.8.3 “Tiering” and self-governance

By “tiering” we mean a regulatory system in which the regulator prescribes high level principles, but leaves more detailed implementation to the TSO and market players. This approach is widely adopted in the Nordic countries although the regulator is able to over-ride detailed implementation approaches. A similar approach is taken in the UK postal services: the high level principles are contained in the licences, with the more detailed rules being spelt out in the code.

In some respects the US system can work in a similar way: FERC is able to make policy statements, in line with which it will make future determinations, and it can order networks to develop their tariff in a certain way (for example, FERC ordered ISO-New England to develop a locational capacity market).

The natural corollary of tiering is some degree of self-governance by industry although appeals to the regulator are generally allowed and, in some jurisdictions, the regulator can step into the process (which, arguably, means that there is not really self-regulation). For example, most of the detailed rules in Norway’s electricity market are determined by negotiation between market participants, but changes can be vetoed by the regulator. In Sweden the TSO is in some respects like a regulator in its own right. In UK fixed-line telecoms, industry negotiation has been used to try to reach consensus on important features of access agreements between service providers and the network owner—on failure to reach agreement, the regulator stepped in to impose its own solution.

In UK rail the industry part of the process has a slightly stronger role than gas and electricity: the industry process can “screen out” proposals—a proposal that does not attract support will not be presented to the regulator for decision (although there is an appeal process).

6.8.4 Codifying charging methodologies

Finally, we note that the UK postal services arrangements do, in principle, contemplate the inclusion of charging methodologies within a wide ranging code structure. However, no such

code has so far been implemented so there is no evidence of how well such a structure might work.

7 Charging methodologies

7.1 Introduction

Network operators' charging methodology statements are currently governed directly under the operators' licences and changes to the charging methodologies can only be brought forward by the licensee. We understand that from time to time certain industry players have questioned whether it is appropriate that they cannot propose modifications to the methodologies, given that most other material aspects of the relationship between system operators and their customers are subject to the code governance arrangements.

Ofgem has asked us as part of our review to consider whether these methodologies should be made subject to the same kind of governance arrangements as apply to the industry codes, in particular giving greater scope to industry to bring forward proposals and thus act as an instrument for change which otherwise might occur only through the application by Ofgem of its regulatory enforcement powers. This section considers some of the advantages and disadvantages of this alternative approach.

7.2 The current position

Most of the commercial terms relating to access to GB electricity transmission and distribution systems and gas transportation and distribution systems are governed by the industry codes, and subject to the code governance arrangements. However, the arrangements determining and modifying the methodologies under which network operators determine certain of their charges are provided for in those operators' licences. For example:

- Electricity Transmission Charges
 - Use of system charges (Standard Conditions C4, C5 and C13)
 - Connection charges (Standard Condition C6)
- Electricity Distribution Charges
 - Use of system charges (Standard Condition 4)
 - Connection charges (Standard Condition 4B)
- Gas Transportation Charges
 - Fixed prices and auction reserve prices (Standard Special Condition A5)

The governance arrangements for modifying all of these charges conform to a standard model. Under this model, the licensee is obliged to keep the relevant charging methodology under review so as to ensure that it continues to meet the “relevant objectives” (or “relevant methodology objectives”) and to make the necessary remedial modifications to the methodology if, from time to time, it falls short of those objectives.

In the case of modifications to the methodologies for electricity transmission charges and gas transportation charges referred to above, before making any such modifications, the relevant licensee is required to consult those who will be subject to the relevant charges (e.g. the relevant shippers in the case of gas transportation charge methodologies, CUSC Users in respect of the electricity transmission charge methodologies) and generally to make a copies of the proposed modification available on request. It is then required to submit a report to Ofgem setting out:

- The terms of the original modification;
- Details of any third party responses to the proposal,
- Any changes made to the proposal in light of those responses,
- An explanation of how the final proposal furthers the relevant objectives, and
- The proposed timetable for its implementation.

Ofgem then has 28 days from receipt of the report to veto the modification, or if it wishes to carry out an impact assessment of the change, 3 months.

The above procedure is simplified for the modification of the electricity distribution charging methodologies referred to above, in that there is no requirement to consult customers or to make available the modification proposal. Otherwise, it follows the above model.

7.3 Comparison with the process for code modifications

There are many similarities between the modification processes outlined above and those for code modifications, particularly in relation to the processes for modifying the electricity transmission and gas transportation methodologies. In particular, like the code modification processes, the latter require a proposal (from the relevant licensee), consulted upon with industry, the results of this consultation then being set out in a report to Ofgem, and upon which Ofgem must make a decision as to whether to permit such a modification as being better furtherance of the objectives of the relevant methodology.

There are a number of key differences, however. In particular:

- only the licensee can bring forward a formal proposal for change. There is no right for those subject to the charges to initiate a modification process. We understand that certain industry players from time to time have questioned whether this is appropriate, given that most other material aspects of the relationship between system operators and their customers are subject to the code governance arrangements. They argue that they are not able to have any direct input into charging methodologies at present with the result that in certain circumstances the interests of certain customers may be discriminated against. While Ofgem may not agree with the substance of individual complaints as to discriminatory methodologies, we understand that it has some sympathy with a model which gives greater scope to industry to bring forward proposals and thus act as an instrument for change which it might otherwise have to prompt itself through its regulatory enforcement powers.

- there is no third party right of appeal to the Competition Commission against a decision by Ofgem in relation to a charging methodology decision. The only right of challenge is currently through judicial review. Arguably it is already open to DBERR to designate decisions in relation to charging methodology modifications as capable of challenge under section 173 Energy Act 2004. That fact that such a designation has not yet been made may be explained by the fact that only the relevant licensee has the power formally to bring forward a modification proposal, and so Ofgem's only formal role is to approve or veto that change and not to impose a change against the will of the proposer. This is not a complete explanation, however. In addition, it begs the question of whether it is appropriate only for the licensee to have the ability to propose modifications.
- the “relevant objectives” against which charging methodology modifications are judged are different to those for code modifications. Although these differences exist, these are probably a lesser concern. In particular, the “relevant objectives” of the charging methodologies include a requirement (insofar as this is consistent with the facilitation of effective competition amongst its customers and with cost reflective charging) for charges properly to take account of developments in the relevant business in respect of which the charges subject to the methodology are to be levied. This means that, subject to the overarching considerations of facilitation of competition and ensuring cost reflectivity, the relevant charging methodologies ought to develop in harmony with changes to codes. This is an important point to bear in mind.
- Unlike the codes, licensees have a licence obligation to bring forward a remedial proposal to modify its charging methodology where it is at risk of no longer meeting its “relevant objectives”. This means that a licensee who fails to bring forward such a modification, or who puts forward a proposal for change which fails to meet the relevant objectives, risks being in breach of its licence and subject to enforcement proceedings by Ofgem, including financial penalties. We discuss the leverage this gives to Ofgem below.

7.4 Factors to consider

We consider below, however, some factors that may be relevant to decision as to whether charging methodologies should be brought under the code governance rules.

There is some precedent for charging arrangements to be incorporated into industry codes, although such an arrangement is, for obvious reasons, not popular with the operator who levies the charges. In particular, Royal Mail's licence requires any industry code for downstream access to include provisions setting out Royal Mail's charging methodology for such services. The licence also provides for governance arrangements which would allow customers (or indeed any person) to propose modifications to that charging methodology. It should be noted, however, that Royal Mail has chosen so far not to bring forward such a code, but to contract on the basis of bilateral contracts with its customers (which it is permitted to do under its licence). Its reticence to promulgate a code may well be attributable to the governance arrangements for changes to its charging methodology.

Any such change, or any change to the current arrangements which allowed customers to propose modifications, would require licence modifications. The provisions which would require amendment are set out in standard licence conditions and therefore subject to the modification procedures for standard licence conditions: in other words, unanimous consent of all relevant licensees is not required, although Ofgem would require the consent of licensees who together accounted for at least 80% of the relevant market. In practice, therefore, NGG is likely to have a veto in respect of most if not all of the relevant modifications. In the past, NGG has strongly resisted any attempt to change the current charging methodology governance arrangements, and in particular any attempt to move them under codes. The argument put forward is that charging methodologies can impact on recoverability of regulated revenue, and that therefore it is inequitable that they should not have a right of sole initiative over any changes to those methodologies. This is not a legal point as such, although it may have some influence over the Competition Commission. Ofgem would need to be able to demonstrate why, notwithstanding this argument; it is proportionate to take this step. In doing so, it would need to demonstrate how other levers for influencing charging methodologies currently available to it (see below), fall short of protecting the public interest. We would anticipate that NGG would not be prepared to concede this issue, and that the likelihood of a consensual licence modification impacting on NGG is slim. For such a change successfully to be imposed on NGG it would be for Ofgem, therefore, to demonstrate that the current system operated against the public interest.

Ofgem already has potentially strong levers to influence charging proposals, so as to address industry concerns about charging methodologies. For instance, where a charging methodology no longer fulfils its “relevant objectives”, the licensee has a licence obligation to bring forward a proposal to address that shortcoming. Ofgem has the possibility of using its licence enforcement powers, therefore, to prompt a change to the methodology in a particular direction if it considered that this was necessary in order to bring it in line with its objectives. In addition, and where circumstances permit, it also has powers under the Enterprise Act 2002 and in respect of licence modifications to make references to the Competition Commission, and powers to enforce competition law where that might be engaged. These levers are, of course, fairly confrontational. However, they are available to influence change, albeit indirectly.

It could be imagined that any move towards empowering customers to bring forward charging methodology change proposals is likely to result in a large number of such modifications being brought forward. Ofgem would need to consider the resourcing implications of this, and whether it would be appropriate in some way to limit the number of modification proposals. One way to do this would be to have an “open” and “closed” period for bringing forward proposals. Another alternative may be to limit the number of modifications any one customer could bring forward in a year. Similar issues in relation to the quality of proposals and reporting on such proposals would arise as for code modifications.

Both the IME2 and IMG2 Directives require third party access tariffs, or the methodologies underlying those tariffs, to be approved prior to their entry into force by the relevant regulatory authority (e.g. Ofgem). If the charging methodologies were made subject to the code governance arrangements they could not be made subject to any “self-governance” arrangements. Any modification would still have to be approved by Ofgem.

Regulation EC 1775/2005 on third party access to gas transmission networks also sets out additional requirements for tariffs for third party access and for gas balancing charges that Member States are required to ensure are met. Although the regulation does not necessarily require formal approval by the regulator, clearly it is easier to ensure that the requirements of the regulation continue to be met if such they are subject to such an approval process.

Code modifications often necessitate subsequent modifications to charging methodologies and a true picture of how a code modification will impact can only be seen once it is understood how that would affect the network operator's charging methodology. Under the current arrangements, however, there is no obligation for the relevant licensee to table its proposals for changes to the charging methodology which it would envisage likely to be required in response to a modification. It only has an obligation to bring forward such a proposal after the relevant modification has been adopted.

Whatever view is come to on the governance arrangements for charging methodologies, however, it may be worth considering whether to introduce some form of licence or code obligation to require the relevant licensee, on request from Ofgem, to indicate honestly how it would propose to amend its charging methodology in the light of implementation of a particular code modification proposal. The licensee would still be subject to an obligation to ensure that its charging methodology fulfilled the relevant objectives come what may. Therefore, it could not be stopped from bring forward a different charging methodology modification proposal if, after the code modification was adopted, it considered that there was a better means of modifying its charging methodology to meet the relevant objectives than what it proposed when the code modification was being considered. However, we would suggest that the licensee is subject to an enforceable obligation (e.g. a licence condition) to indicate to the best of its ability at the time the changes it considers it would need to make to its charging methodology. If subsequently it brought forward a different proposal, it should be required to justify the reasons why, or face enforcement action.

One way of ensuring that customers had greater input into the charging methodology process would be to give them a right of appeal over Ofgem decisions in relation to charging methodology modifications. This would not require a licence modification (and therefore would not raise any of the consent issues referred to above. It would require DBERR to make an appropriate order under section 173 of the Energy Act 2004. Whilst this would fall short of providing customers with a direct right of initiative over modification proposals, it would allow them to apply greater pressure if they considered that a particular proposal unduly prejudiced their interests.

7.5 Conclusions

Given our views on the piecemeal nature of the current arrangements there would be obvious advantages to bringing the charging methodologies into a single framework, especially if this were done in the context of reforms that allowed assessment to occur across multiple codes. We recognise moreover that this kind of change would increase the accountability of the network owners, and potentially facilitate reform in areas where the charging methodologies are currently in need of improvement. It could also contribute to “de-fragmentation” of the current arrangements, again especially if accompanied by other reforms that entailed some degree of

harmonisation or merging of governance arrangements across codes. Moreover, arrangements in the UK postal industry provide a precedent of sorts, since as discussed earlier, Royal Mail's licence foresees the establishment of an Access Code that would include Royal Mail's charging methodologies, allowing for modification processes similar to those that apply to the GB energy industry codes (recall however that to date Royal Mail has entered into negotiated access agreements and so avoided the need for an Access Code).

Against this however we see strong arguments for maintaining the *status quo*. First we note that giving other parties the right to propose changes to charging methodologies could entail significant new risks for transmission owners. Changes to charging methodologies could affect not only the level of transmission revenues but also the risk profile associated with them. While it might be relatively easy to deal with changes in the level through some kind of "clawback" mechanism at successive price controls, this in itself could add complexity and new regulatory risks. Ofgem could establish a principle that changes must be neutral in their effect on expected revenue, but such an approach could be difficult to apply in practice, and in any case would not deal with the potential changes in revenue risk profile (e.g., a shift toward a more commodity (MWh transmitted) rather than capacity (MW capacity booked) charging system might be neutral on average, but increase vulnerability to fluctuations in demand arising from changes in e.g., weather or the overall level of economic activity).

Second, given the potential implications for licensees such a move might be considered disproportionate. Ofgem already has potentially strong levers to influence charging proposals, so as to address industry concerns about charging methodologies although we accept that these are relatively blunt instruments. For instance, where a charging methodology no longer fulfils its "relevant objectives", the licensee has a licence obligation to bring forward a proposal to address that shortcoming. Ofgem has the possibility of using its licence enforcement powers, therefore, to prompt a change to the methodology in a particular direction if it considered that this was necessary in order to bring it in line with its objectives.

In addition, and where circumstances permit, Ofgem also has powers under the Enterprise Act 2002 and in respect of licence modifications to make references to the Competition Commission, and powers to enforce competition law where that might be engaged. While we recognise that the licence enforcement/Competition Commission reference is a cumbersome route to effecting change, and may not be best suited to delivering particular and more detailed policy objectives, on balance we think that it is difficult to make the case for moving away from the status quo. Ofgem already has strong powers to make changes: the safeguards in place make initiating change relatively costly, but that is not necessarily unreasonable given the proportionality considerations outlined above.

Third, such a change could have significant resource implications for Ofgem and the industry. While effecting change in charging methodologies can already be resource intensive under the current arrangements, the effect of a change of this kind could be to greatly increase the resource requirements. It can be imagined that any move towards empowering customers to bring forward charging methodology change proposals is likely to result in a large number of such modifications being brought forward, some of which would be highly material and contentious (e.g., concerning locational pricing).

Finally, bringing charging methodologies under the current arrangements would do little to address—and might even exacerbate—what we have identified as fundamental flaws in those arrangements (as discussed in section 9 of this report).

8 Further analysis

8.1 Quality of assessments delivered to Ofgem

Our case studies demonstrate that the quality of assessments delivered to Ofgem is not always of a sufficiently high quality.⁵⁰ This is particular true when the modification involves significant policy changes whose proper assessment requires objective, evidence-based economic and/or technical analysis.

This conclusion should not be entirely surprising, for at least three reasons. First, in general no party is likely to have the right incentives to produce quality analysis. Market participants are private, for-profit firms and only in unusual or exceptional conditions will their goals be the same as the code objectives or Ofgem’s statutory duties. They may, therefore, have insufficient incentives to spend significant resources on producing the requisite analysis. Moreover, when they do produce, or commission, analysis there will at least sometimes be potential concerns about objectivity. Finally, parties’ incentives to produce appropriate analysis for important decisions are further weakened because they know that under the Sustainable Energy Act Ofgem is in any case required to perform its own Impact Assessment (IA) for such decisions. In this context it is interesting to note the comment from one of the code administrators responding to our survey, that respondents may wait until the Ofgem IA consultation rather than engaging with the Modification Group or panel consultation.⁵¹

Second, private parties may not have access to the necessary data. For example, assessing the likely level of competition in provision of ancillary services might require knowledge of the capabilities of all major generators in GB. Even when they do have access to useful data, it may be too confidential to use in published documents (e.g., it would be useful in assessing the impact of changes to electricity cashout prices to know the effect on plant investment decisions, but modelling that for any given generator would risk revealing potentially commercially sensitive information).

Third, we note that producing detailed economic analysis, especially if it is evidence-based and quantitative, requires a specific set of skills such as data handling, statistical analysis, cost-benefit assessments, and policy analysis. One might expect a market participant to have some, but not all, of these skills available “in-house”. While they can be out-sourced via consultancy, this can be an expensive route. Smaller players may find the cost of obtaining expert consultancy is unaffordable, and/or may lack the necessary background to be a knowledgeable purchaser of consultancy services.

⁵⁰ In fairness we should note that—based on our questionnaire findings—the code administrators do not agree with us on this point.

⁵¹ “with a process which involves 3 basic fora for debate / decision (i.e. Modification Group consultation, BSC Panel consultation, and Authority RIA consultation) there is a risk that BSC Parties will conserve resources and keep their “powder dry” by focusing effort on the more senior body”, Elexon response to code administrator survey.

For most of the codes, the main work of analysing modification proposals is carried out by industry participants, not by the secretariats. Recognising this, one possibility for improving the quality of analysis could be to place a greater obligation on modification proposers to ensure that the necessary analysis is carried out. For example, the secretariat/panel could be required to certify that each modification proposal sent to Ofgem includes the necessary analysis, and they could be required to extend the industry part of the process for any proposals for which the necessary analysis has not been carried out.

8.2 Smaller players and new entrants

Ofgem has asked us to consider the potential to facilitate understanding and participation by smaller players and new entrants. We accept that the code governance arrangements do create difficulties for smaller players, in particular in light of the complexity of the arrangements and the poor levels of analysis which may make understanding the issues unnecessarily opaque. We believe that the recommendations we make later in this report would help smaller players by reducing complexity, streamlining the procedures, and improving the quality of analysis.

However, these recommendations do not include any measures specifically aimed at smaller players. With regards to such measures, we note that in Australia⁵² central funding is available to help end customers and those representing their interests to engage with the electricity market rules. Projects eligible for funding include those that “relate to the development, design or policy behind the national electricity market or the Rules [the equivalent of the GB gas and electricity codes]”. The level of support is around AU\$2m per annum. A similar scheme could perhaps be adopted to support smaller parties wishing to engage with the GB codes, to the extent that Ofgem believed that it would further consumer interests and/or its other statutory objectives.

Finally, we recognise that placing an obligation on proposers to ensure that proper analysis is carried out, as discussed above, could have the effect of making it harder for smaller parties to raise effective modifications. An alternative would be to place the obligation on secretariats to carry out the analysis, but to do so would bring the risk of wasting resources on analysing ill-thought out proposals. A solution might be to place the obligation on the proposer to carry out the analysis, or to persuade others to assist with it, but to mitigate the additional burden on small players by requiring the secretariat to help them fund the analysis, subject to the secretariat’s discretion as to the value of so doing (in relation to furthering the code objectives). Alternatively, the funding route discussed above could be used to support the necessary analysis.

In both cases, it would be important to give careful consideration to how “smaller players” and/or new entrants are defined. For example, it would not seem appropriate to assist new entrants who are already large players in another market.

8.3 The codes

There are at least three features of the codes themselves that unnecessarily diminish the efficiency or effectiveness of the governance arrangements. First, differences between the code

⁵² See the website of the funding administrator, <http://www.advocacypanel.com.au>.

objectives and Ofgem’s statutory duties mean that the assessment of proposals takes place against one set of criteria, while the decisions are made against a different set of criteria.⁵³ We have seen no parallel in any other country or industry that we examined in our review.⁵⁴

If one were designing the system now from a blank slate, it seems clear that one would choose the code objectives to be either the same as Ofgem’s or more likely a subset of Ofgem’s duties, leaving out the more policy-oriented objectives (e.g., fuel poverty). In this way the Ofgem assessment would either be against the same criteria as the industry one, or it would add only a few additional criteria as opposed to a wide set of additional criteria as is currently the case. We recognise that changing the code objectives may not be easy in practical terms.⁵⁵ However, the current arrangements do not work well in some cases (as shown by the confusion over CAP148). Furthermore, while it seems reasonable to expect industry experts to be able to assess the impacts of modifications on industry participants in commercial terms, and on the operation of the system (security of supply), it seems less reasonable/legitimate to expect industry experts to make the value judgements that are inherent when Ofgem takes decisions that engage its wider customer protection, environmental, and sustainable development duties. For this reason, and subject to the constraints imposed by current primary legislation, our preferred solution would be for the code objectives to be a subset of Ofgem’s statutory duties.

If there were a shift towards a more self-governing approach to code governance, as discussed later in this report, then there would be a case for requiring the code objectives and Ofgem’s statutory duties to be aligned more closely so as to reduce the risk that a decision taken under self-governance might not be consistent with Ofgem’s duties. However, under our proposal this risk is anyway small because we recommend that the decisions taken under self-governance should be those that are inherently more commercial in nature, so that Ofgem’s wider duties are less likely to have material implications for the decision. We therefore believe that even under our self-governance proposals it would be safe for the code objectives to correspond to a “commercially focused subset” of Ofgem’s statutory duties.

The second issue relates to code “fragmentation”, i.e., the existence of multiple codes, particularly in electricity, each with its own governance arrangements. Clearly this adds a heavy layer of additional complexity to the arrangements, and must constitute a barrier to participation by smaller players.

Finally, although the codes embody high level policy decisions, those decisions are not formally recorded in the codes or elsewhere and are therefore not themselves open to formal

⁵³ Everything that Ofgem does, including decisions on code modifications, must of course be consistent with its statutory duties. However, the relevant licence conditions, on which the mod rules are based, states that Ofgem’s decision as to whether to accept or reject a mod will depend on whether, in Ofgem’s view, the mod better achieves the relevant objectives. There is no mention of Ofgem’s statutory duties, although of course it cannot act except in a manner consistent with them.

⁵⁴ We note, however, that Northern Irish energy codes follow the GB precedent in this regard.

⁵⁵ In particular, because some of the code objectives mirror the statutory duties of the network operators under the Gas and Electricity Acts, and would probably have to continue to do so.

proposals for modification. The rules that make up the codes lay down in great detail the workings of many aspects of the GB energy industry arrangements. They reflect many high level choices, including fundamental decisions in market design and public policy, but these choices are not formally laid out in the codes (the code objectives can be viewed as giving some guidance, but in practice they are too general to have much effect on these choices). For example, although the BSC contains rules that represent a specific version of marginal cashout, there is no high-level statement within the code or any other formal document that stipulates marginal cashout in general as a policy.

This last issue relates to the point about “staging” made earlier. In the absence of formal high-level statements there is no locus to discuss high-level changes. Someone who believes there should be a return to cashout prices based on average costs can only create the necessary debate by bringing forward a specific proposal for a specific change to cashout rules, and any general debate about cashout principles risks getting caught up in details of the proposal.

8.4 Efficiency of code administration and procedures

8.4.1 Two Stage Process

For most codes, the current arrangements involve a two stage process whereby proposals are brought forward, developed and assessed by the relevant panel, and then sent on to Ofgem for final decision. As noted above, the decision is made against a different set of criteria than the panel’s assessment. However, even leaving this defect aside there appears to be an unnecessary degree of redundancy in having both the panel and Ofgem carry out assessment of the proposal.

Clearly under current arrangements it is important for industry to carry out an effective assessment. And in some cases, particularly where the proposal does not have a major impact on consumers or competition, Ofgem may be happy to rely largely on the panel’s assessment (or be obliged to do so due to lack of resources), and the degree of redundancy is then likely to be small. This raises the question of whether Ofgem need be the decision-maker in such cases. We discuss the potential for self-governance later in this report.

For the most significant modifications however Ofgem will need to carry out its own assessment, in general to properly carry out its duties and in particular to meet its obligation to conduct Impact Assessments of all important decisions. In those instances it is not clear what purpose is served by the panel assessment.

We note that in our comparative review we found that, with the exception of the United States, no other country or industry that we looked at has adopted a similar system of double assessments.

8.4.2 Potential for streamlining

At a less fundamental level, as with any arrangements there are a number of areas where processes could be streamlined or otherwise improved. For example, we noted in summarising the results of our case studies that: the current system can lead to excessive proliferation of

alternatives within a single modification, particularly in the CUSC;⁵⁶ that the inflexibility with regard to the timetable for implementation is potentially inefficient; that panels do not always respond fully or properly to points raised in consultations; and that in some cases Ofgem has taken what may seem like an excessive amount of time to decide on modifications.

8.5 Accountability, cost efficiency and quality of service

Respondents to our open survey generally felt that administrators were sufficiently accountable, although some had concerns in relation to the CUSC, BSC, UNC and DCUSA. However, the responses did show some confusion or difference of view as to the concept of “independence” of panel members, and the extent to which panel members are supposed to “represent” the views of sections of the industry. Panel members perform a very valuable role in the current modification process. However, we think that it will always be difficult to persuade others that a particular vote reflects a “personal” view rather than the interests of the member’s employer, and respondents to our survey highlighted instances where this was the case. Under current arrangements this issue is probably not highly significant because of the limited role for self-governance. If the role of self-governance were much larger in future, the issue would become significant and Ofgem would have to take steps to ensure that panels deliver balanced representation for all sections of the industry.

Administration of the codes takes from 2 to 9 full-time equivalents. The most expensive code is the BSC with 9 staff and annual costs of £1.3m.⁵⁷ The rather wide range of costs probably reflects the range of code complexities (particularly in terms of changes to IT systems that are required to implement some modifications). Respondents to our survey did not in general complain that secretariats are inefficient. Nevertheless, intuitively there seems to be a case for providing some kind of incentives for code administrators in relation to costs and/or “quality of service”. In some cases, this can already be achieved indirectly through the periodic tendering for the administrator service. However we see significant practical difficulties with imposing direct performance incentives on secretariats generally. It is not clear what kind of incentives can be placed on code administrators that in some cases are non-profit bodies. In principle it might also be necessary to put in place insolvency arrangements to deal with the practical issues of transferring duties to, and funding, a successor organisation. Such arrangements would have to cope with the diverse legal set-ups of the different administrators. Setting the incentive scheme would be a new task for Ofgem, requiring additional resources. In addition any such arrangements might be hard to implement without going through considerable effort to unwind complex legal arrangements that were put in place at the introduction of NETA/RGTA. All told, the effort does not seem justified to obtain efficiency savings that at best would be small by industry standards, and at worst would be nugatory.

⁵⁶ We note that CAP160, raised in April 2008, aims to make the CUSC processes more efficient by reducing the number of alternative proposals that will be taken through the whole assessment process.

⁵⁷ The BSC administrator is the only one to spend significant sums on analysing modification proposals (£4m per annum).

Service quality (i.e., how well the administrator handles the process, procures high quality input from parties, ensures effective consultation and analysis etc) might be a more material issue. In particular, if administrators were able to improve the quality of analysis provided for important modification proposals then there could be significant payoffs to industry and consumers in the shape of better rules being adopted more rapidly. However, again we see considerable difficulty: in addition to the practical problems in setting up incentive regulation for the administrators described above, we note that quality of service is inherently “soft” and hard to quantify. While performance indicators are a valuable tool, in this case it would be hard to define and measure them.

We therefore do not recommend the adoption of incentive schemes for code administrators — on balance it seems too costly and arguably unlikely to be very effective. We note, however, that two of our later recommendations may be of some help. One concerns the issue of “fragmentation” — we recommend that processes be harmonised across the different administrators, and as a side-effect this would facilitate some element of benchmarking across administrators that might be useful even if used only for “name-and-shame” purposes. The other concerns the introduction of a greater element of self-governance: giving the industry greater “ownership” of the code administrative bodies through self-governance might have the side-effect of increasing pressure from the industry on code administrators for cost efficient, high quality service.

9 Conclusions and recommendations

As described in the previous chapter, our review has identified a number of problems with the current code governance arrangements including poor quality of analysis in industry assessments, excessive and inefficient process including the duplication inherent in having industry and regulator successively assess proposals against different criteria, and an incremental and “bottom-up” approach to change that is not appropriate when the underlying intent of a modification proposal is to achieve a major shift on a matter of public policy. In addition, the excessive “fragmentation” and diversity of arrangements across different codes creates an unnecessary burden for participants.

Below we draw on these findings to describe what we view as a fundamental flaw in the arrangements. We then describe two options for reform. The first (“option A”) is a set of changes that we believe would appropriately address the main weaknesses we have identified. The second (“option B”) is a less extensive set of reforms that would improve the current arrangements but would not fully address the fundamental flaw. We briefly discuss the choice between these options. We believe that neither set of reforms would require primary legislation.

9.1 Conclusion—the “fundamental flaw”

The industry codes are complex sets of rules that lay down in great detail the workings of many aspects of the GB energy industry arrangements. These rules reflect many high level choices, including fundamental decisions in market design and public policy. For example, the lack of any kind of capacity payments derives from a basic policy choice concerning security of supply. The requirement for non-discriminatory access for all types of generation, and therefore the lack of priority access for renewables, reflects a policy choice (albeit to some extent an implicit one) for relying on market-based instruments such as the Renewables Obligation to promote renewable generation.

In the context of this review it is important to reiterate that:

1. The high-level policy choices themselves (on matters such as capacity payments and priority grid access for renewables) are not formally laid out in the codes or elsewhere. Although the code objectives can be viewed as giving some guidance, in practice they are too general to have much effect on these choices.
2. Although the codes *embody* high level choices, they actually comprise highly detailed rules that inevitably also embody many lower level choices. These lower level choices generally do not have material implications for market design, public policy, or Ofgem’s statutory duties.

Under the current code governance arrangements, there is no way to formally propose explicit high-level changes, rather than individual changes to specific rules. The current debate over priority access for renewables provides a good example. A natural approach would be to first consider at high level whether or not the codes should depart from non-discrimination to provide support for renewable generation. Such a debate could begin from fundamental principles of economics, law and public policy, to see what the case is for providing support in this way and how it relates to the relevant criteria (i.e., Ofgem’s statutory objectives). It would also consider a

number of different types and packages of measures that might provide support. For example, they might consider the rules governing priority access, the charges that would be imposed on renewables with priority access, arrangements for transmission charging that reflected intermittency and the small scale of many renewables projects, etc. The debate would need to be sufficiently concrete to facilitate evidence-based policy making, but much less detailed than that at the implementation stage. The point would be to understand the implications of different types of support measures in relation to Ofgem’s statutory duties and any other applicable criteria, and make informed decisions on that basis. There would then be an implementation stage where these decisions were translated into specific changes to the codes.

In summary, we believe that there is a fundamental flaw in the current arrangements. They are designed to process incremental changes in a set of complex commercial contracts, and are not well-suited for assessing more fundamental changes that are not incremental, in the sense that they may require multiple simultaneous rule changes across multiple sets of rules, and that have significant implications in areas that are not purely or even mainly commercial but form part of public policy (e.g., security of supply, environment).

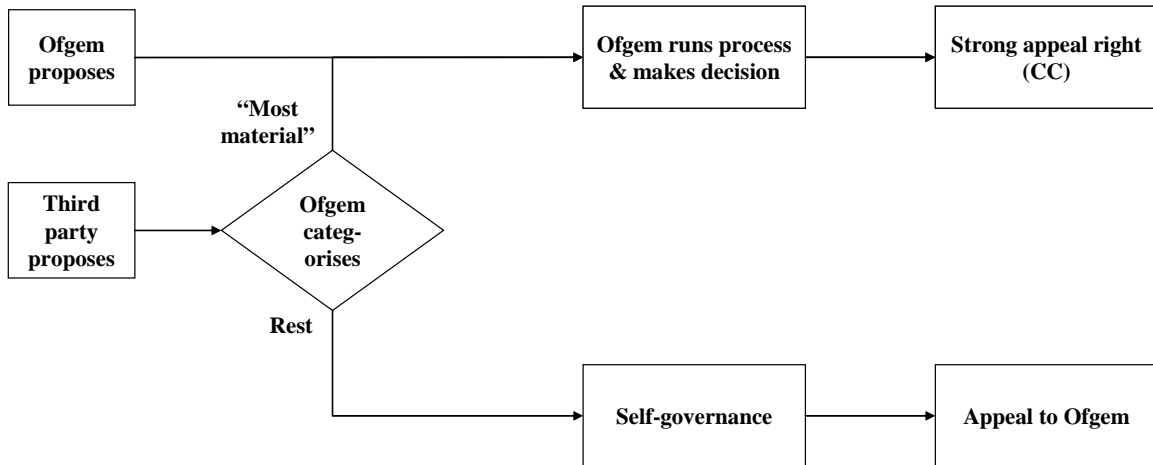
9.2 Proposed reform – option A

Our proposed reform responds to the finding outlined above by creating two processes. For issues that are not incremental and fall in the sphere of public policy, the process would be led by Ofgem, with the addition of appropriate safeguards. If Ofgem considers that a modification proposal raises important policy issues it would “call in” the proposal: either to run the assessment of the modification itself, or to initiate a wider “Issue Review”, if it considers that the problem being addressed by the modification is too wide to be considered in isolation.

For less material or purely commercial issues, and for implementation of high-level decisions, industry participants would raise modifications (as now) and the assessment process would be run by the industry through a form of self-governance. Figure 3 illustrates the proposed approach, which we describe below in more detail.

In both processes industry participants are responsible for raising the modification proposals. However, Ofgem would also have the right to initiate an “Issue Review” without a triggering code modification proposal from industry.

Figure 3: Overview of proposal



9.2.1 Process for governing high-level policy changes and “significant” modification proposals

We propose a process that would differ from the current arrangements in a number of ways. We envisage that most high-level changes would be considered by a full-scale “Issue Review”, in some ways similar to, for example, the cashout review, but with full leadership from Ofgem and

1. An Issue Review could be kicked off either in response to a modification proposal made by a party (as at present), or by Ofgem itself if it believes that a major issue or set of issues requires addressing through code changes.
2. Even if it was triggered by a single modification proposal, an Issue Review would consider the issue “in the round”, rather than looking at individual changes in piecemeal fashion. A package might entail multiple rule changes, possibly covering a number of different codes and charging statements.
3. Ofgem would lead the Issue Review. There is a clear logic for having Ofgem rather than industry lead a high-level, “top down” review of this nature. Specifically, this proposal would entail Ofgem, in close consultation with stakeholders:
 - Setting the agenda, to ensure that the process addressed all relevant issues.
 - Gathering necessary evidence (to the extent that it has relevant powers to do so).
 - Defining and carrying out or commissioning necessary analyses, to ensure appropriate scope, independence and technical quality.
 - Being responsible for the final output from the process.
4. The output from this process—in contrast to existing informal reviews such as the cashout review—would have legal force. Given the high level nature of the process, its output would probably not comprise specific modification proposals, but high level recommendations that would then have to be implemented by the industry.

5. Once the process was over and implementation had occurred, there would be a moratorium (with some safeguards, e.g. for security of supply) on changes in this area for a reasonable length of time.
6. Because Ofgem would lead the process, there would have to be a strong right of appeal, e.g. to the CC. Some legal issues would need resolving here, since currently an appeal is possible only when Ofgem has over-ruled the Panel.⁵⁸

The outcome of an “Issue Review” would be an Ofgem policy statement of some kind. To give this legal force, an obligation could be placed on the network operator that “owns” each code to raise modifications that give effect to the Ofgem policy statements. This obligation could sit in the licence, or it could be part of the codes that relate to the modification process.

Some modifications called in by Ofgem might not require such a review – because the issues involved are limited in scope – but would have consequences that would be too material for the proposal to be left for industry consideration. In these circumstances, the process would be similar to the current governance arrangements except that the analysis and consultation would be carried out by Ofgem rather than a code panel.

9.2.2 Process for governing “lower-level” changes

For changes that are “lower-level”, either because they involve implementing decisions already made at high level or because inherently they do not have major implications for public policy goals or Ofgem’s statutory duties, the current governance arrangements appear disproportionate relative to the level of public interest, and in comparison with arrangements in other markets.

Note that we envisage that modifications processed under these self-governance arrangements would not engage Ofgem’s wider statutory duties (eg, with respect to the environment), either because the proposal relates to purely “commercial” matters, or because as a result of an Issue Review, the necessary trade-offs have already been made clear in an Ofgem policy statement. As a result these modifications can be effectively assessed by the industry against a set of code objectives that are narrowly focussed on “commercial” issues and are a subset of Ofgem’s wider statutory duties.

In particular in light of Ofgem’s Better Regulation duties, a more appropriate process for dealing with lower-level/less material changes would therefore involve:

1. Initial “filtering” by Ofgem. When a modification proposal came forward, Ofgem would apply a set of published criteria to determine whether the proposal was so material and the circumstance such that its statutory duties required it to act as decision maker, or whether it could be left to industry to decide.
2. For proposals that Ofgem viewed as being in the “most material” category, the modification process would be the one described above (even if the proposal did not necessarily require consideration of a broader set of changes).
3. All other proposals would be processed via industry self-governance

⁵⁸ This may be capable of being addressed through secondary legislation.

- Decisions would be made by industry, without Ofgem’s consent or veto.
 - Licensees would be required to enter into and operate codes that met those objectives. They would be obliged to amend them if they were failing to meet those objectives (as is the case for the STC).
 - The process for modifying the codes would be set out in the appropriate licence.
 - The industry process would involve the same code administrators as now, but with a strong element of process harmonisation (“de-fragmentation”) and some streamlining (the “de-fragmentation” and streamlining proposals are discussed in more detail in section 9.3).
4. There would need to be strong safeguards to prevent abuse of this freedom. For example:
- Parties could ask Ofgem to take a proposal for decision, rather than leave it to self-government. For example, there might be some kind of industry vote to endorse an Ofgem choice to leave a particular decision to industry self-governance. The voting could be set up so that relatively small groups could veto the Ofgem choice and so require it to take up the proposal for its own decision.⁵⁹
 - Ofgem could hold periodic “retrospective reviews” where it assessed the cumulative effect of all the changes introduced by the industry over a given time period (e.g., three years) and proposed any corrections deemed necessary (e.g., via licence powers).
5. As discussed above, all code objectives would be changed to be as close as possible to a subset of Ofgem’s statutory duties, while recognising that in some cases this may not be possible as it would conflict with primary legislation.⁶⁰

9.2.3 The risk of over-regulation

Our proposal would enhance Ofgem’s powers with regard to major changes, by giving it a right of initiative and greater control over the process. Whether this is a radical shift in power is debatable, given that Ofgem already has the ability to procure changes using existing levers such as licence enforcement. Moreover, some industry representatives argue that Ofgem already procures proposals through informal and less transparent means. We note also that our proposal involves a significant reduction in Ofgem’s involvement in “lower-level” changes.

Nonetheless, we recognise that any suggestion of enhanced powers or more active exercise of existing powers in this area will be contentious. However, it seems clear to us, both in principle and drawing on the evidence gathered through this study, that decisions concerning what are essentially matters of public policy are by their nature decisions for public authorities to make, albeit in close consultation with stakeholders. It is neither sensible nor reasonable to expect

⁵⁹ For example, one might have a rule that X% of any class of licence-holder (generator, supplier, shipper etc) could veto the decision to allow decision by self-governance.

⁶⁰ The statutory duties of the network operators under the Gas and Electricity Acts.

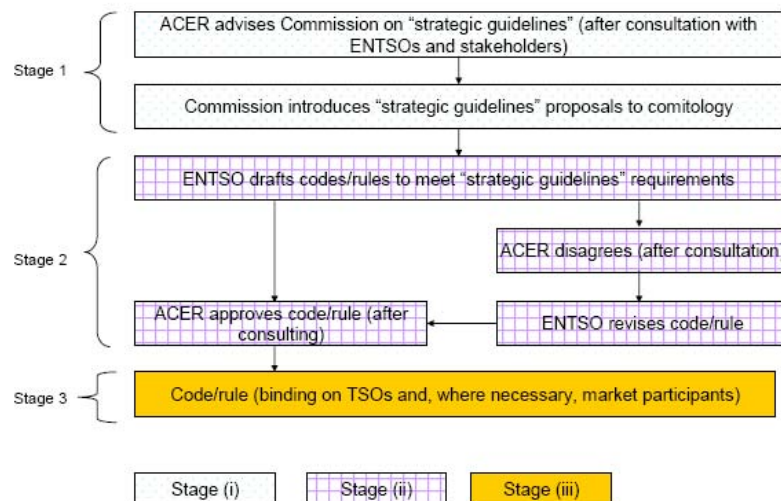
commercial organizations to produce analyses and develop large-scale policy proposals concerning matters of economic efficiency, sustainability or security of supply in a way that fully reflects the public interest or Ofgem’s statutory duties. They do not have the incentives, and in some cases may not have the necessary skill sets, except perhaps for the very largest players, who may then be unduly advantaged.

However, it is also clear that any extension of Ofgem’s powers should be accompanied by strengthened checks and balances. As background, we note that the safeguards now in place are already much stronger than they were when the current arrangements were put in place, owing to the introduction of appeals, the requirement for Impact Assessments, and arguably the increasing prominence of judicial review. Nonetheless, in our view any reform along the lines we suggest would necessarily include additional safeguards in the form of (a) clear and transparent procedural rules and decision criteria, and (b) a right of appeal to the Competition Commission.

9.2.4 Consistency with European arrangements

Although the exact shape of future EU regulatory arrangements is at present unclear, we note that our proposal is consistent, at least in spirit, with the recent proposals from the Council of European Energy Regulators (CEER) for a kind of “two tier” system in Europe, where the regulators would propose a high level framework for codes, with industry (TSOs) responsible for more detailed development and implementation, under regulatory supervision. Figure 4 shows the CEER proposals (the complexity reflects the difficult legal constraints that — according to the European Commission — limit what can be delegated to the European regulators acting through the newly proposed Agency for the Cooperation of Energy regulators).⁶¹

Figure 4: European Regulators’ Proposed Process for adoption of codes and rules



⁶¹ CEER, “Key Comments on the European Commission’s Third Package”, Ref: C07-GA-36-08, Public version. 20 December 2007.

Under the CEER proposals, the regulators would also be able to require the network operators to modify the codes if the regulators felt that the codes were no-longer meeting their objectives.

9.3 Proposed reform—option B

We have also assembled a less extensive set of proposals for more marginal reform, “option B”. These proposals take as given the fundamental parameters (a two-stage process, uniform for all types of issues) and focus on potential “quick wins”. Nonetheless we see the potential for significant improvements, such as:

1. As under option A, “de-fragmentation” of the arrangements, so as to minimise the complexity of dealing with different administrative procedures for each code. We do not recommend merging the codes themselves (e.g., BSC with CUSC), or even the code administrators, as this would be unnecessarily disruptive. In our view it is sufficient to ensure that the different administrators all follow a uniform set of processes.
2. Again as under option A, changing all the all code objectives to be as close as possible to a subset of Ofgem’s statutory duties, while recognising that in some cases this may not be possible as it would conflict with primary legislation.
3. Give increasing prominence to policy reviews, like the cashout review, by announcing in advance that at the end of the review (with a well-defined timetable) Ofgem will consider carefully whether to require network operators to bring forward modification proposals to implement the review’s conclusions (under its current licence/competition powers). However, in contrast to option A, Ofgem would not have a right of initiative over modification proposals, nor would it run the process.
4. Improve the quality of analysis provided to the extent possible within the existing framework, by for example:
 - Making use of existing powers to gather information when possible (e.g., via the Enterprise Act, licence conditions).
 - Routinely provide clear early guidance on the kinds of analysis required for proper decision-making.
 - Placing an obligation on the secretariat to send modifications to Ofgem only when the analysis is complete.
 - Introducing the ability to send back panel recommendations if the quality of analysis is nonetheless inadequate.
 - Consider staging assessments so that a high-level debate is carried out before discussion of implementation issues.

9.4 Discussion

The two options we have put forward above are very different. Subject to our proposals in relation to rights of appeal to the Competition Commission, both options could in principle be

implemented without recourse to legislation, although this may not be straightforward. Option A would fully address the “fundamental flaw” we identify in the current arrangements. Option B would not do so, but would nonetheless deliver worthwhile improvements. On the other hand, Option A may be difficult and relatively costly to implement. It would be considered as a radical change by some, and implementing it could be a long and resource-intensive process, at a time when the industry and Ofgem have many other issues and challenges to consider, not least the implications of new European targets for renewables, which might lead to major policy changes that could affect all aspects of industry arrangements.

It is clearly outside our scope to say whether the cost of implementing Option A both to Ofgem (in terms of resources and political capital) and to the industry (in terms of resources and management attention) can be justified by the potential long-term benefits, especially since not implementing Option A now still leaves it as an option for the future.

We note also the potential for some kind of “hybrid” arrangement that combines Option B with some elements of Option A. For example, instead of giving a right of initiative to Ofgem one could give it to the Code panel, with an obligation on the panel to bring forward modifications that further the code objectives.

Appendix I Industry questionnaire

As part of our critique we wanted to solicit views on the governance arrangements from interested parties, and also to ask specific questions of the code secretariats. We published a questionnaire for interested parties on our website, and Ofgem put out an email alert advising that views could be contributed via the questionnaire. The questionnaire was in excel format, but a text version of the questions is reproduced below. Respondents were given the opportunity to answer detailed questions about any of the ten codes, and also to suggest general improvements to the governance arrangements.

A full copy of the responses is in Appendix III

I.1. Questions

About you

1. How would you describe your organisation e.g. renewable generator, trade association etc?

2. If you are active in a competitive activity, how would you describe yourself? Please choose one of the following categories and put your answer in the table at the end of this section.

- (a) New entrant
- (b) Small but established player
- (c) Large but established player
- (d) Other

3. Approx. how many FTE/year does your organization devote to engaging with code governance in total (i.e., across all codes listed in this questionnaire)? Please choose one of the following categories and put your answer in the table at the end of this section.

- (a) <0.5
- (b) 0.5-1
- (c) 1-2
- (d) 2-3
- (e) 3-5
- (f) 5-10
- (g) >10

4. Approx what is the cost to your organization of engaging with code governance in total (i.e., across all codes listed in this questionnaire)? Cost here refers to salaries, costs of lawyers, consultants etc (but not to costs arising as a result of code modifications themselves, e.g., if changes to cashout rules led to higher charges that would not be included here). Please choose one of the following categories and put your answer in the table at the end of this section.

- (a) <£10k
- (b) £10k-£50k
- (c) £50k-£100k
- (d) £100k-£500k
- (e) >£500k

5. To which codes are you a signatory?

6. Can we show your responses to Ofgem? Please choose one of the following categories and put your answer in the table at the end of this section.

- (a) No
- (b) Yes but unattributably
- (c) Yes

General questions

1. One suggestion that has been made in connection with the Code Governance Review is that the Charging Methodologies should be taken out of the license conditions and given governance arrangements like those of the existing Codes. Is this desirable? Please state the reason for your views in less than 100 words.

2. Another suggestion that has been made in connection with the Code Governance Review is that the BSC, CUSC, and at least parts of the Grid Code, DCUSA and Distribution Code should be merged into one, or alternatively, that the codes should remain separate but under a single governance arrangement (eg one central organization would administer modifications, in accordance with harmonized modification criteria and processes). Are either of these options desirable? Please choose one of the following options and put your answer in the table at the end of this section.

- (a) no change required
- (b) merge governance but keep codes separate
- (c) merge codes

2a. Please explain the reason for your views on code mergers and/or merged governance arrangements (in less than 100 words)?

3. For certain codes e.g. the BSC, the Panel members are meant to be impartial even when they employees of market participants, how well do you think they succeed? Please choose one of the following options and put your answer in the table at the end of this section.

- (a) Not at all - they almost always follow the view of their company
- (b) To some extent - they sometime deviate from the view of their company
- (c) Completely

3. Please provide your top three suggestions for changes to the governance to the industry codes in no more than 100 words. Suggestions can be generic to all codes, specific to individual codes, or involve cross code changes (e.g. the merger of codes and/or their governance arrangements)

Code questions

1. How engaged is your firm/organisation with the governance process for this code? Please choose from the following options:

- (a) Not at all
- (b) Primarily an interested observer
- (c) Some active engagement [e.g., have proposed at least one modification in last two years]
- (d) Very active engagement [frequently propose modifications, sit on working groups etc]

1a. If your answer to question 1 is "not at all", please explain why and then proceed to next code.

2. Approx what is the cost to your organization of engaging with code governance for this specific code? Cost here refers to salaries, costs of lawyers, consultants etc (but not to costs arising as a result of code modifications themselves, e.g., if changes to cashout rules led to higher charges that would not be included here). Please choose from the following options:

- (a) <£10k
- (b) £10k-£50k
- (c) £50k-£100k
- (d) £100k-£500k
- (e) >£500k

3. For this code, how easy is it for you to understand and track code governance, i.e., at any time to be aware of which modifications have been proposed, where they are in the process, and what that means in terms of the final outcome? Please choose from one of the following options:

- (a) Very difficult
- (b) Somewhat challenging
- (c) Reasonably straightforward

4. How easy is it for you to understand the practical significance of proposed modifications to this code? Please choose from one of the following options:

- (a) Very difficult
- (b) Somewhat challenging
- (c) Reasonably straightforward

5. How do you judge the role played by the code secretariat (e.g., Elexon for the BSC) in facilitating your understanding and participation in the governance process for this code? Please choose from one of the following options:

- (a) Poor – the secretariat does not do a good job of making the processes clear, and it places (or fails to remove) unnecessary barriers to participation
- (b) OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better
- (c) Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation

6. How do you judge the role played by the code secretariat (e.g., Elexon for the BSC) in facilitating your understanding of modifications? Please choose from one of the following options:

- (a) Poor – the secretariat does not do a good job of making the processes clear, and it places (or fails to remove) unnecessary barriers to participation
- (b) OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better
- (c) Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation

7. Is the administrator for this code sufficiently accountable in relation to their costs and quality of service provided? Please choose from one of the following options:

- (a) Not at all
- (b) A little
- (c) About right

8. What is the quality of the technical analysis (e.g., assessment of costs and benefits) produced in the code governance process for this code in the last 2-3 years? [N.B. this is not about analysis produced by or on behalf of Ofgem, but about e.g. analysis produced in working groups for the BSC]. Please choose from one of the following options:

- (a) Poor - the analysis often does not address the relevant issues and/or is not reliable owing to poor data or methodology
- (b) Below average - the analysis sometimes addresses the relevant issues and/or the data and methodology may be suspect
- (c) Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies

- (d) Above average - the analysis often addresses most of the relevant issues and is often reasonably reliable in terms of data and methodology
- (e) Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies
- (f) Excellent – the analysis almost always addresses all of the relevant issues, and draws on robust data and methodologies

9. How do you judge the average quality of the decisions/recommendations to Ofgem arrived at via the governance process for this code in the last 2-3years? [N.B. this is not about Ofgem decisions, but about e.g. BSC Panel, recommendations]. Please choose from one of the following options.

- (a) Poor – decisions/recommendations are not well-argued nor based on appropriate evidence and analysis
- (b) Below average – decisions/recommendations are mostly not well-argued nor based on appropriate evidence and analysis
- (c) OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis
- (d) Above average - the decisions/recommendations are more often than not reasonably well-argued and based on appropriate evidence and analysis
- (e) Good– the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis

Excellent– the decisions/recommendations are almost always well-argued and based on appropriate evidence and analysis

Table XV: Detailed questions

	BSC	CUSC	DCUSA	MRA	Grid Code	Distribution Code	UNC	IGT UNC	SPAA
Number of responses	15	13	14	11	14	10	14	8	7
Level of engagement with code?	Mostly very active engagement apart from the DNOs and the customer.	Most very active	Most very active	Most very active	Some or very active	Some or very active	Most very active	Some or very active	Most very active
Cost of engaging with governance of this code (£k)	100-500 for the big players, others less.	Mostly 50-100	Mostly 10-50	Mostly 10-100	10-100	10-50	Mostly 100-500	Mostly 10-50	Mostly 50-100
How easy is it to understand and track modification proposals	Most "reasonably straightforward", some "somewhat challenging".	Most "reasonably straightforward", some "somewhat challenging".	Mostly reasonably straightforward, two "very difficult".	Reasonably straightforward	Reasonably straightforward	Reasonably straightforward	Reasonably straightforward	Reasonably straightforward	Reasonably straightforward
How easy is it to understand practical significance of mods	Most "reasonably straightforward", some "somewhat challenging".	Most "reasonably straightforward", some "somewhat challenging".	Mostly reasonably straightforward, two "very difficult".	Reasonably straightforward	Reasonably straightforward	Reasonably straightforward	Reasonably straightforward	Reasonably straightforward	Reasonably straightforward
How do you judge the role played by the secretariat in facilitating your understanding and participation in code governance	OK or good.	OK or good.	Mostly good, two poor.	Good or OK	Good or OK	Good	Good	OK	Good
How do you judge the role played by the secretariat in facilitating your understanding of mods	OK or good.	OK or good, one poor.	Mostly good, two poor.	Good or OK	Good or OK	Good	Good	OK	Good
Is the administrator sufficiently accountable	Mostly "about right", 3 of the VI players have concerns.	A little or about right.	Mostly about right, three "a little".	About right	Mostly about right, two "a little"	About right	Mostly about right, some not at all	Mixed: not at all to about right	About right
What is the quality of the technical analysis	Range from average to good.	Above average / good.	Range from poor to excellent	Average to good	Average to excellent	Good to excellent	Average	Average	Average to good
How do you judge the quality of the recommendations/decisions given to Ofgem	Most OK to excellent	Above average / good.	OK to excellent	Good or excellent	Good to excellent	Good to excellent	OK to good	OK	OK to excellent
Comments	Small supplier complains that generators and networks dominate governance process.	Energywatch says that it is very difficult to understand mod proposals.	Several respondents point out that the secretariat is not responsible for the technical analysis.	Some positive comments on the MRASCO website and process, and accountability arrangements	Tow respondents, including one of the large VI players, found the process difficult to engage with.	The customer respondent finds the quality of the secretariat and analysis "poor".	Energywatch: very difficult to understand mod proposals. Shipper: UNC 184 process did not address all impacts; to understand significance necessary to attend working meetings. VI player: JO is excellent but not accountable to shippers; xoserve reluctant to analyse until after mod is implemented; transporters sometimes block "popular" mods; transporters sometimes have a "commercial" rather than "industry benefits" perspective (eg. 186 / 186A). Industry association: not everyone has same access to data.	VI player: no standard "change pack" or timetable, unlike MRA; shippers don't "see" Genserv costs because contract is between Genserv and iGTs; not the role of the secretariat to provide technical analysis.	I&C supplier: SPAA governance is weighted heavily towards ERA members.

Notes

The scores given in the table are an attempt to summarise the respondent's views. In some cases there may be some responses outside the range given.

Appendix II Survey of code administrators

II.1. Questions we asked

We wrote to all of the code administrators asking for their replies to the questions listed below.

General secretariat information

1. How would you describe the nature of your organisation?
2. How would you describe your role in the governance process?
3. Number of staff employed to deal with code governance (excluding implementation)?
4. Annual running costs split into costs of dealing with modifications, costs of implementing modifications, costs of managing systems e.g. CVA in the case of Elexon, and other costs? Please explain how you have allocated fixed costs between these functions.
5. Who pays the secretariat costs and how are the charges calculated?
6. Do you consider that you have sufficient resources and skills to provide the appropriate level of constructive analysis for modifications?
7. If you answered “no” to question 6, please explain:
 - (a) whether the problem is resources, skills or both
 - (b) if the problem involves skills, what skills do you consider you lack e.g. experience in regulatory economics, energy market modelling etc.
 - (c) why you do not have the necessary resources/skills
8. If you answered “yes” to question 6, please estimate for what percentage of modifications you actually provide some form of analysis. If possible, indicate separate percentages for qualitative and quantitative analysis.
9. Recognising that the level and type of analysis required will be different for different codes, can you discuss how often you think that modification proposals for “your” code would or do materially benefit from your being able to provide qualitative and/or quantitative analysis.

Modification processes

10. Typically, how many modifications are there per year?
11. What is the typical secretariat cost associated with processing (but not implementing) a modification? Please answer in terms of person-days or direct cost.

12. What has been the highest secretariat cost associated with processing (but not implementing) a modification? Please answer in terms of person-days or direct cost.
13. For how many modifications has external analytical support been sought by your organisation in the last two years. Was the support quantitative or qualitative?
14. For how many modifications has analytical support (or drafting support) been provided by the modification proposer in the last two years ? Was the support quantitative or qualitative?
15. What is the average number of respondents to a modification in the last two years?
16. What is the typical length of time between receiving a modification and making a decision/recommendation to Ofgem in the last two years?
17. Can you provide a breakdown of the number of modification proposals made by large parties (NGG, the big 6 integrated utilities), small parties (new entrants, renewables) and others in the last two years. If this is too time-consuming, please provide a list of who has proposed each modification.
18. In those cases in the last two years where a recommendation has been made, what percentage of modifications has been recommended for approval by the Panel?
19. In how many cases in the last two years has a recommendation not been provided?
20. In the last two years, for what percentage of Panel recommendations did the Panel reach a unanimous decision?
21. In the last two years, for those cases where a recommendation was made by the Panel, how many times has Ofgem reached a decision that is different to the Panel recommendation?
22. What is the process for identifying modifications which are of a “housekeeping” nature, or which are consequent on modifications made to other codes?

Views on governance

23. In your view, how well do you think the governance procedures work?
24. Do you think the modification process could be made more efficient? If so, please list the three changes that you consider would be most effective?

Appendix III Full responses

III.1. Ideas for improving the governance arrangements

- *Look at the big ticket issues to be debated over the next few years for Electricity under the BSC and see if developmental workstreams would help in understanding the issues and fleshing out solutions .e.g. Smart Metering, Improved Change Delivery, Support for Sustainable Technologies*
- *It is essential that there is a common understanding of what falls within the scope of each of the code objectives. The current situation whereby GEMA assess code modifications against a wider set of objectives (e.g. sustainability, security of supply & social issues) compared to the code panels is potentially inefficient. The existence of a continual mismatch of modification assessment needs to be addressed in order to reduce any regulatory uncertainty.*
- *There should be more transparency around modifications that are clearly raised on the instructions of the regulator. This could include why the regulator is keen for the modification to go through.*
- *Balanced and appropriate panel representation. Independence can be seen as a red herring. Finding well informed, experienced and yet completely impartial panel members for any code panel will be difficult. All individuals' view points are influenced by previous experience; for example, it would be difficult for anyone with roots in only one part of the industry to understand, and hence be able to consider, the interests of other industry parties. We would suggest that key issues on the make-up of panels are adequate and appropriately balanced representation of industry parties and transparency of allegiance.*
- *"ROLE OF OFGEM: Ofgem's involvement must be timely and appropriate. Ofgem should act principally in response to calls from the market and consumers unless (after due process of consultation) it considers that broader reform called for to deliver on its statutory duties. For example, if co-ordinated changes are required to codes, licences and/or network pricing arrangements. Such proactive activity should result in broad guidance as opposed to detailed involvement with the initiation of any particular modification. We believe there is benefit in increased quality of Ofgem engagement and input to industry discussions themselves. Along with the suggestions above this would improve the speed and quality of the decision making.*
- *The Part I or Part II matters system of DCuSA works well, and could be adopted cross-codes.*
- *Companies that do not have a large domestic portfolio are under represented in many governance fora and there appears to be an attitude from some large Shippers/Suppliers and Gas Transporters that they should vote based on their commercial interest rather than what is best for the whole industry. Individuals should not represent their companies but instead the industry first, their constituency second and their company third. They should have a responsibility to present the views of the majority of members of their constituency and not their own companies view.*
- *Reform the BSC Panel - the current BSC Panel does not in our view represent the full breath and diversity of industry views. At the very least the current unorthodox*

transferable vote system for election of industry members should be replaced with something more obviously democratic. At best we would like to see a DCUSA style constituency based approach which would give the Panel a level of legitimacy for greater self-governance.

- *Common consistent approach to governance arrangements and modification proposals to deliver harmonisation to the fullest extent possible.*
- *An effective voice for end consumers on all code Panels and through the change process where the commercial implications of those codes carry costs for consumers. This should recognise the limitations of resource available to consumer representatives in taking part in code processes.*
- *Where appropriate similar processes are applied within code governance.*
- *There is a clear timetable from the outset of a modification being raised. This should equally apply to Ofgem's decision making to prevent Ofgem "sitting on" decisions for extended periods*
- *Governance and management of the implementation of cross industry code / licence and wider / wholesale industry changes. We are not convinced that large scale and/or broad changes which cut across two or more industry codes and licences, such as DN Sales and Access reform, can easily be implemented by the current governance processes (or any single/merged code governance process). Current governance arrangements work well for assessing incremental changes and/or discreet packaged changes but they struggle to accommodate and take account of such wider complications or fundamental changes. We believe that more flexible frameworks need to be developed that can adapt to increasing complexities and external influences such as developments to the regulatory regime in Europe.*
- *No major changes required*
- *Broaden their remit to consider explicitly the impact on industry. Large autogenerating demand sites like Alcan are at continuous risk from inappropriate regulation. Issues of international competitiveness are ignored even though results of impact from regulation cannot be passed into the international commodity markets for aluminium. For example, the effects of incomplete electricity market deregulation in the EU are also not considered*
- *Look at the code governance structures across the codes and some appear to "work" better than others. Understanding the differences in the various processes would provide a view across the codes as to which process components are advantageous and which ones are more likely to hinder efficient and effective code governance. This analysis should then help to form a view of best practice.*
- *There is a clear case for moving the charging methodologies to within the scope of the appropriate Codes (see answer to 1a above). In doing so, we believe that the focus should be on Transmission methodologies in gas and electricity, given their GB application, the scale of costs and the potential to create significant windfall gains and losses. This would not preclude Distribution charging being placed within a similar governance arrangement in the longer term.*
- *Self-governance could vastly improve the process, though speeding up the progression of a proposal, from the time it is proposed, to the time it is implemented. This is particularly the case where a simple housekeeping modification is proposed.*

If a proposal is non-contentious, that is, all representations made, were in support of the proposal, then the Modification Panel could be given the power to implement that proposal. This would also free up the resources of the regulator to monitor the market. We accept that unanimous support, through all representations voting in favour of a proposal, would be a very difficult hurdle, any deviation from this, whilst necessary to move towards a more fast-track regime, would also bear the significant risk of undue discrimination against one section of the market, if the constitution of the Panel does not reflect an equal representation of the industry. We expect appropriate mechanisms could be put in place to alleviate some of this concern, which we would be happy to discuss further.

- *Change Proposals for all codes are often ill thought out and poorly specified. It is often obvious from an early stage that a change will be rejected but Parties still have to go through the process of carrying out assessments and attending working groups to ensure that "due process" is followed. All change proposals should require a specified minimum level of support before they can be progressed.*
- *Improvement between cross code governance e.g.: IGT and UNC*
- *Improve transparency within the gas arrangements re the delivery of change by Xoserve. BSC participants engage, via Project Boards and committees, in the decision making process around what elements are included within each release programme and have some control over the cost of change. Adopting this approach for the UNC would provide an opportunity for improved transparency and increased participant interaction currently missing under that code*
- *A consistent approach to code governance across all industry codes should be adopted where there appears to be no just reason for different arrangements. Ensuring an engagement process that does not disenfranchise market participants. E.g. on modification assessment and the development of alternatives etc.*
- *The introduction of some kind of self governance in the UNC. If a modification proposal has unanimous support when it goes to the panel there should be a process where it could be implemented without going to Ofgem.*
- *Cost effectiveness. We agree that this should be a core objective of any review, particularly as network operators operate in a price-controlled environment: we support effective governance, but not at any cost. When considering changes to governance arrangements it is important not only to be mindful of the effect on overall costs, but also to ensure that the cost of governance does not fall disproportionately on particular parties or party groups.*
- *SUPPLIER INFLUENCE; Suppliers need improved influence over industry arrangements, especially charging methodologies (CM) given the direct impact upon supplier costs and consumers. It is timely to review how voting rights and decisions are managed under various codes, and whether they should be restricted or indeed extended on CMs to those impacted. Companies with both supply and network businesses have greater access and influence to industry decision making processes. E.g. in some cases on voting rights those with both businesses can adopt positions on supply matters based on net group level impact. The influence of network businesses in supply matters should be strictly limited.*
- *Making the Codes more self-governing may result in less work for Ofgem.*

- *Direct funding for the Joint Office - thanks to the individuals involved JO staff ensure that the UNC is currently run fairly and without favouring particular affected parties - any personnel changes could however alter this. To ensure the on-going effectiveness, independence and proper resourcing of the administration of the UNC governance arrangements we believe that its activities should be funded by transporters and shippers equally. In addition we believe the JO should be given responsibility for drafting changes to the UNC.*
- *Merging the functions and reducing the costs of some of the code administrators.*
- *Effective means for a wider stakeholder community to gain access to, and interact with, the codes where these will affect their commercial operations. Small parties are disadvantaged by lack of understanding of the code processes and lack of resource, and influence, on the process. If code administrators need to go to external forums which are more suitable to obtain views from these parties, they should do so.*
- *Equal representation for smaller market participants.*
- *Ofgem should engage more in developing proposals (without fettering its discretion). This would limit the extent of guesswork in proposing changes that are palatable to Ofgem. Developmental workstreams could be used to achieve this.*
- *Clarification and guidance regarding Ofgem's role in relation to the development of proposals in the modification process and specifically in relation to its role in facilitating the effective and efficient undertaking of the governance processes. Increased transparency surrounding the decision making process will provide the industry parties with a better insight into the reasoning behind decisions and would subsequently lead to provision of supporting evidence/analysis that aligns closer to that required by the Authority. Whilst reviewing Ofgem's role in the modification process, we believe there is also merit in reviewing the code rules/guidance provided to the parties (primary and secondary) that are involved in the development and analytical assessment of modification proposals, and the urgent processes (in order to ensure that there is sufficient time to develop the proposal and undertake the supporting analysis).*
- *The purpose of the Codes must be to facilitate competition, efficiency and security. They should not constitute open-ended liabilities and commitments. Dynamic changes to the codes should be within limits set by perceptions against which investments decisions have previously been made or are being made. Investment in the energy industry and in energy-intensive consumers requires confidence in the manner in which the regulatory arrangements and market rules will apply to that investment asset.*
- *The time taken to assess modification proposals - in this context there may be certain changes which can be expedited while others require more detailed consideration and assessment. It would be helpful if the modification process enabled the code administrator and Panel to fast track certain low impact changes while other more significant changes can be subject to a longer assessment process.*
- *We believe that over time Ofgem should withdraw from the regulation of the Codes. The first step in such a withdrawal could be changing the modification processes in the majority of the Codes along similar principles to that used in the DCUSA i.e. a two or three "Part" process where modifications are streamed into Parts dependent*

on their importance and which sections of the Code they impact on and therefore whether or not they require Ofgem approval.

- *We would encourage greater involvement of the regulator in the day to day governance regime, for example, ensuring that Ofgem representatives attend meetings and are able to participate in discussion and offer views at those meetings. Currently, Ofgem representatives may attend meetings but do not possess the necessary knowledge, specific to the area under discussion, to offer views; this can sometimes lead to proposals being developed and consequently rejected as they may not reflect, in the view of the regulator, the correct interpretation of the licence. If the regulator's views were given at an earlier stage in the process, then proposals could be developed in light of such views, avoiding the potential for a proposal to fail at the final hurdle because the industry was not aware of specific concerns of the regulator. This has proved to be the case in the past, necessitating a further proposal to be raised to address specific concerns, when they might have been dealt with at the initial stages of a proposal. For the avoidance of doubt, we are not suggesting that the regulator ought to direct changes as it is not their role to act as the progenitor of a proposal, we are simply suggesting greater input and involvement in discussion.*
- *Ofgem to ensure consistency where practicable across code decisions*
- *Ensure that the codes don't stand still under this review, that quick wins are identified and pursued and that cross code good practise is shared and acted upon. In addition develop and agree 'Terms of Engagement' across the code modification/amendment process that include Ofgem, so all clearly understand roles and responsibilities in order to deliver a fit for purpose set of final proposals for, or against, change*
- *Some rationalisation may be desirable given that there is inefficient overlap between certain codes and licence conditions. Merging codes or at least part of them should be considered provided the change can be relatively quick and simple to implement. However, fundamental reform that requires wholesale review and significant industry resource is unlikely to satisfy any cost benefit test.*
- *When Ofgem instruct the Joint Office to implement a modification that has been sent to them with the recommendation that it is rejected there should be more clarity around Ofgem's decision to ignore the recommendations of the panel.*
- *Transparency and accessibility. We support an appropriate level of transparency and accessibility for all codes: however, it is important to recognise the core purpose of each particular code. For example, where a code has been designed to support the commercial trading arrangements between specific parties and/or manage the licence objectives of parties, it may be inappropriate for access arrangements to be broadened to cater for access by non-parties and such would need to be very carefully considered to avoid undesirable volatility and cost that might result from such things as spurious enquiries and representations, or inappropriate or ill-considered change proposals.*
- *"OPPORTUNITIES FOR INCREASED SELF GOVERNANCE; The governance processes themselves are impacted by the amount of documentation and as a result parties may be deterred from initiating change proposals that would be of benefit to the market. Governance arrangements also differ sharply between codes, principally as a product of history rather than design. Increased levels of self governance would be a positive step forward, particularly in areas where there is lower materiality, risk*

or contention. However, the issues of access and transparency would need to be properly addressed first. In addition an enduring right of appeal to Ofgem must be in place for all matters that relate to industry arrangements.

- *Best practises from codes could be used as a model for others.*
- *Establish one UNC - this would enable many of the structural problems that adversely affect IGT customers to be addressed through a common set of arrangements. In particular the establishment of a DN Offtake Agreement section within a combined UNC / IGT would be particularly helpful in establishing proper oversight of key rules as the current Network Exit Agreements between DNs and IGTs seem to fail most if not all the key tests for good governance.*
- *Where changes to industry codes are initiated, de facto if not de jure by Ofgem, those changes should be closely monitored to ensure that they are implemented in an appropriate manner.*
- *Efficient operation of the codes change process where change proposals affect more than one code, e.g. the BSC and the CUSC. This can take the form of cross-code modification groups assessing, according to a common timetable, the impacts of changes on their codes, leading to timely and effective Panel recommendations which minimise disruption to current arrangements.*
- *Allow more alternatives in BSC environment (subject to more Ofgem engagement). This would allow a dissenting voice to be heard by Ofgem and reduce the number of modifications that have to be raised to get to a proposal that is acceptable to Ofgem.*
- *We also support a close examination of the relevant objectives with a view to achieving a better alignment between these, Ofgem's wider statutory duties and other influencing factors such as developments to the regulatory regime in Europe. Potentially this may be achieved by a broader interpretation of the current objectives or it may require the current objectives to be supplemented by new ones, such as the introduction of an objective to promote sustainable development. However, the introduction of such an environmental objective could potentially conflict with our existing objectives, particularly as our licences currently emphasise operating our systems in a co-ordinated, economic and efficient manner and therefore the introduction of any new objectives needs to carefully consider the interplay with the existing objectives. Any changes to Licences can only be achieved by following the statutory consultation process.*
- *Define the circumstances when a Panel decision can be overruled by the Regulator and the time in which a regulator must make a decision.*
- *Modification proposals can vary in the quality of the initial description and supporting analysis. We believe this is an important stage in the process which should be subject to a more rigorous process - we believe the review should consider best practice in this area to assess benefits of issue groups or pre-qualification processes before a concept for change becomes a full modification*
- *Transmission Price Control Review - as part of the last review, specific changes were proposed, such as Entry Capacity Substitution; at a high level, substitution appeared to have considerable benefits, with respect to maximising available capacity. For this reason, many market participants supported the concept, however, once the practicalities, complexities and unintended consequences of substitution*

were more fully understood, support for the proposals diminished. We would strongly urge, therefore, that new changes to the Price Control regime are discussed in greater detail at an earlier stage in the process to give the industry sufficient time to understand all aspects of a regime change, prior to implementation. The consequence of not doing this is implementation of a proposal, the impact of which is uncertain and which may result in further changes required, to remedy the potentially undesirable outcome of the initial change - the 'sticking plaster affect'.

III.2. Views on merging codes / governance arrangements

- *The main concern here is the treatment of issues at the boundary of the codes and any future potential conflicts in assessment that might arise should 'environmental' factors have to be taken into consideration when assessing change against applicable code objectives. You describe in question 2 a range of activities currently within the scope of the UNC, however a like for like comparison of codes, their structure and governance is not relevant here as the industries have developed at a different pace, dealing with issues of a very different technical nature. There is an attraction in seeing the BSC, CUSC, Grid Code and Distribution Code administered by an independent entity, however a thorough cost benefit analysis would be required as would an assessment of the remit, obligations, budget and appropriate cost recovery mechanism.*
- *We consider the above options should be considered. However, any radical reform of the existing governance regime is likely to be extremely timely, costly and require a significant amount of industry resource. Such reform is unlikely to satisfy any cost benefit test. We do consider improvements could be made in harmonising modification criteria and processes across certain codes where there appears to be no just reason for different arrangements. A suggestion would be to merge the MRA with the BSC. It is much easier to engage with the BSC than the MRA and with regards to the change process there is duplication.*
- *It is unclear why a change would be considered necessary. Merging the documents into one would be an immense challenge. From our point of view, there are no clear benefits with having one supercode, especially considering its potential cost, and the potential benefits of a merger have not been clearly identified. Managing combined codes might also be more difficult.*
- *We should aim for the fewest practical number of code administrators, recognising the increasingly dual fuel nature of the market. Each code administrator must justify why it needs to exist, why it cannot be amalgamated with another, and why any costs exceed those of comparable service providers. As part of the review, benchmarking of the administration functions across gas, electricity and other industries should be undertaken. Consideration should also be given to ownership, control, interdependence and costs.*
- *The codes themselves are massively complex, with objectives relevant to that code only, and with its own panel of experts. It is not often that a modification is proposed that impacts upon other codes. By merging codes the requirements would rise to those of the highest common denominator.*
- *Simplification of the electricity governance is desirable to encourage new entrants. The existing regimes are too complex.*

- *We would only support merger of codes or code governance where this would demonstrably improve the quality of recommendations/decisions or provide real competition and efficiency benefits to customers through the adoption of common rules (e.g. merger of IGT UNC with UNC). The suggested mergers of BSC/CUSC and parts of Grid Code and DCUSA would in our view significantly dilute the existing Panel expertise and make any combined Panel more remote from the industry - the quality of recommendations would diminish as a result. Adopting a 'BSC style' Panel or its unduly bureaucratic governance arrangements for any combined arrangements would further reduce its effectiveness. The DCUSA self-governance arrangements work well as do the consensus building processes under the Grid Code and these advantages would be lost if merged with the other codes.*
- *There is a need to converge governance and modification procedures across codes to the highest available level of quality assurance, particularly in relation to assessment rules, implementation timescales, and the weighting of objectives. There may be merit for example in merging the Distribution Code into DCUSA as a schedule.*
- *As for the role of the code administrators, it is clearly desirable to seek to merge their functions, reduce their costs and improve their productivity. The independence of the code administrator bodies is also an issue of real concern. "*
- *The choice is: radical change (merged codes); a halfway house (merged code administration); or the status quo. We believe that code change is evolutionary and governance arrangements should reflect this - improved cross-code assessment and implementation where more than one code is affected by specific change proposals. This approach limits the need to radically re-draft the current codes which would create significant disruption to the industry at a time when other important challenges affecting end consumers ought to be given priority. It also allows specialist knowledge of the various codes through separate administration to be retained. So long as administrators are under a clear obligation to operate efficient and economically run processes, code parties and end consumers ought to be satisfied.*
- *It is important that there are separate codes, so that participants only sign up to the appropriate codes. There currently exists a market for the provision of administrative services for codes. Moving to one central organisation creates a monopoly which in the longer term could result in higher costs. This review should be looking at the processes within the various codes and confirming the processes are fit for purpose and deliver the objectives of the code.*
- *A single code would become unwieldy. However, it would make sense to have single governance arrangements to allow cross governance issues to be assessed simultaneously, and harmonise the modifications process.*
- *Fundamental changes such as the merging of codes and to a lesser extent the combining of governance arrangements would be very expensive to achieve and before this policy is adopted NGG would want to see a clear benefits case, which outweighs the potential costs. As an alternative to fundamental change we believe that many of the anticipated code governance benefits could be realised by incremental changes and sharing of best practice (on code governance) and that this would be a much more cost effective proposition. We see some benefits in aligning code administration (and potentially adopting a common/independent code administrator) and adopting more flexible code arrangements to help deal with some*

of the wholesale change and cross code issues (see our views on wholesale changes below (section 4(1)).

- *The governance arrangements around the UNC, whilst not perfect, would be disadvantaged by the merger of codes and/or governance, purely to create a central role. Specific issues require individual management at a governance level and incremental improvements (by code) best serve this aim. In particular, differences between the electricity and gas markets mean that different arrangements in each area are appropriate.*
- *An important feature of the Codes and linked contractual forms is that users can be obliged to accede to a code as a consequence of signing a contract or acceding to another code even when there is no compelling reason. For example DCUSA appears to oblige accession to CUSC for DG. Connection agreements at a distribution level can also force CUSC accession. As accession brings with it obligations, costs and risks to users it should be avoided except where necessary. Merging the codes would exacerbate this problem in that a single peripheral contract could trigger accession to one code and thus to all.*
- *There may be opportunities to merge governance arrangements for some of the codes where the cost can be justified and this will lead to long term benefits for industry and customers. Some code administrators provide analytical support, we would not want to lose this. We do not support the merging of codes as we do not see any benefits coming out of this process but an expensive and time consuming process in doing so.*
- *In our view, there may be potential merit in streamlining some processes and back office functions across the codes, but only where clear economies of scale and efficiencies can be demonstrated. In particular, we need to ensure that any such amalgamation does not dilute staff expertise on each of the codes or more generally does not reduce the effectiveness of the existing arrangements.*
- *Although initially an attractive option, the cost of making any changes is likely to outweigh any benefit, which will primarily be reduced administration charges. Competitive tendering for the various codes' administration arrangements provides opportunities for merging governance systems and it should be left to the market to determine if this is the most cost effective method. Merging the agreements themselves is likely to be a hugely time consuming process and is not warranted.*

III.3. Complete answers to detailed questions

Please see following pages.

Market participant survey responses

Company	1 AEP	2 BE	3 BP	4 CE	5 Centrica	6 CN	7 Corona	8 E.ON	9 EDF	10 energywatch	11 XXX
Description of organisation	Trade Association	Electricity Generator, Supplier & Trader	Gas Shipper	Distributor	Integrated Supplier/Shipper/Generator/Trader but without network business interests - responses do not include Centrica Storage Ltd, also gas producer	Electricity Distributor	Gas Supplier/Shipper	Conventional and Renewable C/Generator, Shipper, Trader, Energy Retailer, Energy Services Company, Meter Provider, Heat Provider, Gas Storage Operator and Electricity Distribution Company	A major vertically-integrated utility with 4 GW of coal-fired generation, 800 MW of gas-fired generation, a small amount of wind power, more than five million domestic and industrial energy customers and the operator of the Distribution Networks for East Anglia, London and the South East region. We have ambitions in the areas of new renewable and nuclear generation	Statutory consumer watchdog body	Electricity Distributor
How would you describe yourself		large established player	large established player	large established player	large established player	Licensed Electricity Distributor (ex Public Electricity Supply Company)	Gas Supplier and Energy Services Provider	Supplier, Shipper and Generator	Gas and Electricity Supplier, Electricity Generator and Gas Shipper	N/A	
FTE/year on code governance in total		1.6-3.5	1-2	1-2	<10			9 FTE (Not including our Central Networks electricity distribution business - see separate response). These are staff directly engaged in code governance.	>20	0.5-1	3-5
Cost of engaging in code governance in total	The cost of 1.6 Full Time Staff plus one Consultant	£100k-£500k	£50k-£100k	£50k-£100k	>£500k			£900k per annum across all codes (exclhding Central Networks). This does not include funding of Secretariats where direct funding arrangements apply). A further £200k per annum typically applies for external legal advice and consultancy although this could rise significantly in exceptional cases (e.g. a Competition Commission 200000 appeal).	>£500k legal costs are mainly internalised within the company. However, where a substantial issue of commercial concern is involved (for example, as in BSC Modification Proposal 37) external legal costs can be very high (they round to more than £100k in that particular case)	<£10k	£100k-£500k
Signatories to:	None	yes	yes	yes	yes	Yes	yes	yes	yes	no	Yes
BSC		yes	no	yes	yes	yes	yes	yes	yes	no	yes
CUSC		yes	no	yes	yes	yes	yes	yes	yes	no	yes
DCUSA		yes	no	yes	yes	yes	yes	yes	yes	no	yes
MRA		yes	no	yes	yes	yes	yes	yes	yes	no	yes
Grid Code		yes	no	yes	yes	yes	yes	yes	yes	no	yes
Distribution Code		yes	no	yes	yes	yes	yes	yes	yes	no	yes
UNC		yes	yes	no	yes	no	yes	yes	yes	no	no
IGT UNC		no	no	no	yes	no	yes	yes	yes	no	no
SPAA		no	no	no	yes	no	yes	yes	yes	no	no
Show response to Ofgem?	Yes	Yes	Yes but unattributably	Yes	Yes	Yes	Yes	yes	yes	Yes	Yes but unattributably

Market participant survey responses

Company	12 Infl Power	13 NG	14 NGN	15 Rio Tinto	16 RWE	17 SSE	18 XXX	19 WPD	20 WW Utilities
Description of organisation	Power Generator	This response is on behalf of National Grid (National Grid Electricity Transmission (NGET) and National Grid Gas (NGG)). NGET owns the electricity transmission system in England and Wales and is the GB System Operator. We are responsible for administering the electricity Connection and Use of System Code, the Grid Code and the System Operator – Transmission Owner Code. NGG owns and operates the Gas Transmission System and also owns four of the Gas Distribution Networks. In association with the three other gas Distribution Network Operators we also jointly provide for the administration of the Uniform Network Code (UNC) Governance arrangements via the Joint Office of Gas Transporters.	NORTHERN GAS NETWORKS : Gas Distribution Network	Primary aluminium producer	The operations of RWE within the UK include - power generation from gas, coal, oil, CHP and renewables. We are one of the UK's largest energy suppliers serving residential consumers and business customers. We also operate as gas, coal, petroleum and CO2 emmissions allowances.	Scottish and Southern Energy is one of the largest energy companies in the UK. We are involved in the transmission, distribution, supply and generation (conventional and renewable) of electricity; the storage, distribution, shipping and supply of gas; energy contracting; electrical and utility services; energy services; and telecoms.	Gas shipper / producer	Electricity Distribution Network Operator	Gas distribution Transporter
How would you describe yourself	large established player	N/A		large established player	large established player	large established player	large established player	large established player	large established player
FTE/year on code governance in total	1-2	NGET - 18.25 NGG (T) - 14 NGG (D) - 4.5		1.5 <0.5	>10	>10	2-3	2-3	5-10
Cost of engaging in code governance in total	£100k-£500k	>£500k	£100k	£50k-£100k	>£500k	>£500k	£100k-£500k	£100k-£500k	>£500k
Signatories to:									
BSC	yes	yes	N	no	yes	yes	no	yes	no
CUSC	yes	yes	N	no	yes	yes	no	yes	no
DCUSA	no	no	N	no	yes	yes	no	yes	no
MRA	no	no	N	no	yes	yes	no	yes	no
Grid Code	yes	yes	N	no	yes	yes	no	yes	no
Distribution Code		yes	N	no	yes	yes	no	yes	no
UNC	yes	no	yes	no	yes	yes	yes	no	yes
IGT UNC	yes	yes	N	no	yes	yes	no	no	no
SPAA		no	yes	no	yes	yes	no	no	yes
Show response to Ofgem?	Yes		yes	Yes	Yes	Yes	Yes but unattributably	Yes	Yes

Market participant survey responses

Company	1 AEP	2 BE	3 BP	4 CE	5 Centrica	6 CN	7 Corona	8 E.ON	9 EDF	10 energywatch	11 XXX
Include charging methodologies in code governance?	Potentially yes but only if you get the governance, including timing of change right	no	no	no	yes	No	yes	no	For some charging methodologies there may be benefit in migrating them into existing codes e.g. IGT Charging Methodologies and the costs associated with the Agency Charging Statement However, the focus of this review in the first instance should be to harmonise governance and modification arrangements across all the codes, and issues related to charging methodologies - particularly having regard to the current state of the structure of charges project for the DNOs - should be treated as secondary to that focus.	no	No
Defragment electricity codes?	Maybe but only for the right reasons and only if the cost of doing so could be justified and seen to deliver appropriate long term and enduring benefits	Possibly.	No preference	no change required		Neither of these options are acceptable.	merge codes	no change required	There may be some merit in merging the governance and modification processes but retaining code separation. There is clearly substantial scope for simplifying and slimming down the existing administration arrangements for the Codes, in particular by reducing the number of administrator bodies.	no change required	no change required
Impartiality of Panels meant to be impartial?	Completely	Varies between codes. BSC Panel usually support views of mad groups and Elecon and so impartiality is generally not an issue. However, other 'codes' such as the MRA don't fair so well on this issue.	To some extent - they sometime deviate from the view of their company	Not at all - they almost always follow the view of their company	To some extent - they sometime deviate from the view of their company	Completely	Completely	We do not consider the impartiality concept of the BSC to be very helpful. It can hinder open and honest debate.	We have observed all Panel members trying hard to act neutrally sometimes they fail, the scale of failure could be mitigated to some extent by making it a condition of the appointment of all Code Panel independent persons and not as delegates.	Completely	Not at all - they almost always follow the view of their company

Market participant survey responses

Company	12 Iatl Power	13 NG	14 NGN	15 Rio Tinto	16 RWE	17 SSE	18 XXX	19 WPD	20 WW Utilities
Include charging methodologies in code governance?	yes	No	no	yes	no	yes	no	no	no
Defragment electricity codes?	merge governance but keep codes separate	no change required	no change required	no change required	merge governance but keep codes separate	merge governance but keep codes separate		no change required	
Impartiality of Panels meant to be impartial?	To some extent - they sometimes deviate from the view of their company	It is our view that panel members do, in the vast majority of cases act independently (they may hold a similar view to their company but would change that based on evidence) hence, of the three options we would say they are completely independent.	To some extent - they sometimes deviate from the view of their company	We feel that they do very well under difficult circumstances. Their remit is quite narrow which means they cannot explicitly consider the impact on industry. Even when they can be overruled by the Regulator.	Completely	Completely	To some extent - they sometimes deviate from the view of their company	To some extent - they sometimes deviate from the view of their company	To some extent - they sometimes deviate from the view of their company

Market participant survey responses

Company	1 AEP	2 BE	3 BP	4 CE	5 Centrica	6 CN	7 Corona	8 E.ON	9 EDF	10 energywatch	11 XXX
BSC											
Want to comment on this code?	yes	yes	yes	yes	yes	yes	yes	yes	Yes	yes	yes
Level of engagement with code?	Very active engagement at Board, Panel, Sub Committee and Modification Group level	Very active engagement [frequently propose mods, sit on working groups etc]	Not at all	Some active engagement [e.g. have proposed at least one mod in last two years]	Very active engagement [frequently propose mods, sit on working groups etc]	Primarily an interested observer	Not at all	Very active engagement [frequently propose mods, sit on working groups etc]	Very active engagement [frequently propose mods, sit on working groups etc]	Very active engagement [frequently propose mods, sit on working groups etc]	Some active engagement [e.g. have proposed at least one mod in last two years]
If not why not?			We use an external consultant to monitor the BSC for us.				Electricity governance is so complicated and dominated by the generators and network owners that it has been considered 'too hard' to do at the moment.				
Cost of engaging with governance of this code	We employ 1 member of staff	£100k-£500k		£10k-£50k	Reasonably straightforward	Reasonably straightforward	£10k-£50k	£100k-£500k	£100k-£500k	<£10k	£10k-£50k
How easy is it to understand and track modification	Reasonably straightforward	Reasonably straightforward		Reasonably straightforward	Reasonably straightforward	Reasonably straightforward	Reasonably straightforward	Somewhat challenging. The	Relatively easy	Reasonably straightforward	Somewhat challenging
How easy is it to understand practical significance of modification	Reasonably straightforward	Somewhat challenging		Reasonably straightforward	Somewhat challenging	Reasonably straightforward	Reasonably straightforward	Relatively easy, there would be	Relatively easy, there would be	Somewhat challenging	Somewhat challenging
How do you judge the role played by the secretariat in facilitating your understanding and participation in code governance	Good – the secretariat works to ensure that I have a clear understanding of the processes, use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, use, although it could do better		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, use, although it could do better	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better
How do you judge the role played by the secretariat in facilitating your understanding of mods	Good – the secretariat works to ensure that I have a clear understanding of the processes, use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, use, although it could do better		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, use, although it could do better	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better
Is the administrator sufficiently accountable	About right	About right		About right	Not at all	About right	About right	A little. The BSCCo Board is not properly accountable to the BSC parties that fund the activities of Elexon. There are only 2 Panel members on the Board.	Elexon have reduced their expenditure over recent years but there is a culture of over resourcing that needs to be removed.	About right	About right
What is the quality of the technical analysis	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable issues, and draws on reasonable	Good – the analysis usually addresses most of the relevant issues and is often Excellent – the		Average – the analysis fairly often addresses the relevant issues and uses acceptable data	Above average – the analysis often addresses most of the relevant issues and is often OK – the	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable	Average – the analysis fairly often addresses the relevant issues and uses acceptable data
How do you judge the quality of the recommendations/decisions given to Ofgem	Excellent – the decisions/recommendations are almost always well-argued and	Good – the decisions/recommendations are usually well-argued and based		OK – the decisions/recommendations are fairly often reasonably well-	OK – the decisions/recommendations are fairly often reasonably well-	Good – the decisions/recommendations are usually well-argued and based	Good – the decisions/recommendations are usually well-argued and based	The quality of the modification group recommendations tends to be Good or Excellent.	Above average – the decisions/recommendations are more often than not reasonably	Excellent – the decisions/recommendations are almost always well-argued and	Below average – the decisions/recommendations are mostly not well-argued nor

Market participant survey responses

Company	12 Infl Power	13 NG	14 NGN	15 Rio Tinto	16 RWE	17 SSE	18 XXX	19 WPD	20 WW Utilities
BSC									
Want to comment on this code?	yes	yes		yes	yes	yes		yes	no
Level of engagement with code?	Very active engagement [frequently propose mods, sit on working groups etc]	Very active engagement [frequently propose mods, sit on working groups etc]		Primarily an interested observer [frequently propose mods, sit on working groups etc]	Very active engagement [frequently propose mods, sit on working groups etc]	Very active engagement [frequently propose mods, sit on working groups etc]		Very active engagement [frequently propose mods, sit on working groups etc]	
If not why not?									
Cost of engaging with governance of this code	£50k-£100k	£100k-£500k		£10k-£50k	£100k-£500k	£100k-£500k		£10k-£50k	
How easy is it to understand and track modification	Reasonably straightforward	Reasonably straightforward		Reasonably straightforward	Reasonably straightforward	Reasonably straightforward		Reasonably straightforward	
How easy is it to understand practical significance of modification	Reasonably straightforward	Somewhat challenging		Somewhat challenging	Reasonably straightforward	Reasonably straightforward		Reasonably straightforward	
How do you judge the role played by the secretariat in facilitating your understanding and participation in code governance	Good – the secretariat works to ensure that I have a clear understanding of the processes, OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, Good – the secretariat works to ensure that I have a clear understanding of the processes,		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, understanding of the processes,	Good – the secretariat works to ensure that I have a clear understanding of the processes, understanding of the processes,		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	
How do you judge the role played by the secretariat in facilitating your understanding of mods	Good – the secretariat works to ensure that I have a clear understanding of the processes, OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes,		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, understanding of the processes,	Good – the secretariat works to ensure that I have a clear understanding of the processes, understanding of the processes,		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	
Is the administrator sufficiently accountable	About right Good – the analysis usually addresses all of the relevant issues, and draws on reasonable decisions/recommendations are usually well-argued and based	About right Good – the analysis usually addresses all of the relevant issues, and draws on reasonable decisions/recommendations are usually well-argued and based		A little Good – the analysis usually addresses all of the relevant issues, and draws on reasonable decisions/recommendations are usually well-argued and based	About right Above average - the analysis often addresses most of the relevant issues and is often Good – the decisions/recommendations are usually well-argued and based	About right Good – the analysis usually addresses all of the relevant issues, and draws on reasonable decisions/recommendations are almost always well-argued and		About right Above average - the analysis often addresses most of the relevant issues and is often Above average - the decisions/recommendations are more often than not reasonably	
What is the quality of the technical analysis	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable decisions/recommendations are usually well-argued and based	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable decisions/recommendations are usually well-argued and based		Good – the analysis usually addresses all of the relevant issues, and draws on reasonable decisions/recommendations are usually well-argued and based	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable decisions/recommendations are usually well-argued and based	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable decisions/recommendations are almost always well-argued and		Good – the analysis usually addresses all of the relevant issues, and draws on reasonable decisions/recommendations are more often than not reasonably	
How do you judge the quality of the recommendations/decisions given to Ofgem	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable decisions/recommendations are usually well-argued and based	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable decisions/recommendations are usually well-argued and based		Good – the analysis usually addresses all of the relevant issues, and draws on reasonable decisions/recommendations are usually well-argued and based	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable decisions/recommendations are usually well-argued and based	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable decisions/recommendations are almost always well-argued and		Good – the analysis usually addresses all of the relevant issues, and draws on reasonable decisions/recommendations are more often than not reasonably	

Market participant survey responses

Company	1 AEP	2 BE	3 BP	4 CE	5 Centrica	6 CN	7 Corona	8 E.ON	9 EDF	10 energywatch	11 XXX
CUSC											
Want to comment on this code?	Yes	yes	no	yes	yes	no	yes	yes	Yes	yes	yes
Level of engagement with code?	Very active engagement at Panel and Working Group level	Very active engagement [frequently propose mods, sit on working groups etc]		Some active engagement [e.g., have proposed at least one mod in last two years] CE Electric UK identifies and participates in relevant consultations / CUSC working groups.	Very active engagement [frequently propose mods, sit on working groups etc]		Not at all	Very active engagement [frequently propose mods, sit on working groups etc]	Very active engagement [frequently propose mods, sit on working groups etc]	Primarily an interested observer in last two years	Some active engagement [e.g., have proposed at least one mod
If not why not?							Electricity governance is so complicated and dominated by the generators and network owners that it has been considered 'too hard' to do at the moment.				
Cost of engaging with governance of this code		£50k-£100k		£10k-£50k				£50k-£100k	£50k-£100k	<£10k	£10k-£50k
How easy is it to understand and track modification proposals	Reasonably straightforward	Somewhat challenging		Reasonably straightforward	Somewhat challenging			Reasonably straightforward	Reasonably straightforward	Very difficult	Somewhat challenging
How easy is it to understand practical significance of mods	Reasonably straightforward	Somewhat challenging		Reasonably straightforward	Somewhat challenging			Reasonably straightforward	Sometimes CUSC amendment reports, although comprehensive, follow too closely a set format with set headings, making them longer than they need to be and not the easiest reading.	Very difficult	Somewhat challenging
How do you judge the role played by the secretariat in facilitating your understanding and participation in code governance	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better			Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	The administrator plays a largely positive role however it could improve its ability to communicate in a clear straightforward manner		Poor – the secretariat does not do a good job of making the processes clear, and it places (or fails to remove) unnecessary barriers to participation
How do you judge the role played by the secretariat in facilitating your understanding of mods	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better			Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	The secretariat ensures a reasonable clarity and ease of use, although it could do better		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better
Is the administrator sufficiently accountable	About right	Not at all		A little (NGET provide the secretarial services and are also one of the parties affected by most of the governance arrangements)	A little			About right	A little		Not at all
What is the quality of the technical analysis	Excellent – the analysis always addresses all of the relevant issues, and draws on robust data and methodologies	Above average - the analysis often addresses most of the relevant issues and is often reasonably reliable in terms of data and methodology		Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies			Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies	Above average - the analysis often addresses most of the relevant issues and is often reasonably reliable in terms of data and methodology		Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies
How do you judge the quality of the recommendations/decisions given to Ofgem	Excellent – the decisions/recommendations are almost always well-argued and based on appropriate evidence and analysis	OK – the decisions/recommendations are more often than not reasonably well-argued and based on appropriate evidence and analysis		OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis	Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis			Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis	Above average - the decisions/recommendations are more often than not reasonably well-argued and based on appropriate evidence and analysis		OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis

Market participant survey responses

Company	12 Infl Power	13 NG	14 NGN	15 Rio Tinto	16 RWE	17 SSE	18 XXX	19 WPD	20 WW Utilities
CUSC									
Want to comment on this code?	yes	yes		yes	yes	yes		no	no
Level of engagement with code?	Very active engagement [frequently propose mods, sit on working groups etc]	Very active engagement [frequently propose mods, sit on working groups etc]		Primarily an interested observer [frequently propose mods, sit on working groups etc]	Very active engagement [frequently propose mods, sit on working groups etc]	Very active engagement [frequently propose mods, sit on working groups etc]			
If not why not?									
Cost of engaging with governance of this code	£50k-£100k	>£500k		£10k-£50k	£50k-£100k	£100k-£500k			
How easy is it to understand and track modification proposals	Reasonably straightforward	Not appropriate to comment		Reasonably straightforward	Reasonably straightforward	Reasonably straightforward			
How easy is it to understand practical significance of mods	Reasonably straightforward	Reasonably straightforward		Somewhat challenging	Reasonably straightforward	Reasonably straightforward			
How do you judge the role played by the secretariat in facilitating your understanding and participation in code governance	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	We do not believe it is appropriate to comment on this question as National Grid is the code secretariat for CUSC.		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation			
How do you judge the role played by the secretariat in facilitating your understanding of mods	Poor – the secretariat does not do a good job of making the processes clear, and it places (or fails to remove) unnecessary barriers to participation	Not appropriate to comment		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better			
Is the administrator sufficiently accountable	About right	Not appropriate to comment		A little	About right	A little			
What is the quality of the technical analysis	Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies	Not appropriate to comment		Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies	Above average - the analysis often addresses most of the relevant issues and is often reasonably reliable in terms of data and methodology			
How do you judge the quality of the recommendations/decisions given to Ofgem	Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis	Not appropriate to comment		Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis	Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis	Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis			

Market participant survey responses

Company	1 AEP	2 BE	3 BP	4 CE	5 Centrica	6 CN	7 Corona	8 E.ON	9 EDF	10 energywatch	11 XXX
DCUSA											
Want to comment on this code?	Yes	yes	no	yes	yes	yes	yes	yes	Yes	yes	yes
Level of engagement with code?	Primarily an interested observer			Very active engagement [frequently propose mods, sit on working groups etc]	Some active engagement [e.g. have proposed at least one mod in last two years]	Very active engagement [frequently propose mods, sit on working groups etc]	Not at all	Very active engagement [frequently propose mods, sit on working groups etc]	Very active engagement [frequently propose mods, sit on working groups etc]	Primarily an interested observer	Very active engagement [frequently propose mods, sit on working groups etc]
If not why not?	Electricity governance is so complicated and dominated by the generators and network owners that it has been considered 'too hard' to do at the moment.										
Cost of engaging with governance of this code	Minimal amount at present but would depend on range of proposals	£10k-£50k		£10k-£50k		£10k-£50k		£10k-£50k	£50k-£100k	<£10k	£10k-£50k
How easy is it to understand and track modification proposals	Somewhat challenging but improving with the opening up of the website to code non signatories	Very difficult		Reasonably straightforward	Reasonably straightforward	Reasonably straightforward		Reasonably straightforward	Relatively easy, the DCUSA website is easy to navigate and holds all relevant change proposal information.	Reasonably straightforward	Reasonably straightforward
How easy is it to understand practical significance of mods	Reasonably straightforward	Very difficult		Reasonably straightforward	Reasonably straightforward	Reasonably straightforward		Reasonably straightforward	Easy	Somewhat challenging	Reasonably straightforward
How do you judge the role played by the secretariat in facilitating your understanding and participation in code governance	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Poor – the secretariat does not do a good job of making the processes clear, and it places (or fails to remove) unnecessary barriers to participation		Good – the secretariat works to ensure that we have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Electralink in their role as secretariat are excellent at providing assistance to parties to ensure they are engaged with the change process and the associated governance structure.	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better
How do you judge the role played by the secretariat in facilitating your understanding of mods	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Poor – the secretariat does not do a good job of making the processes clear, and it places (or fails to remove) unnecessary barriers to participation		Good – the secretariat works to ensure that we have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		The code secretariat provides all the necessary information to allow me to understand the modification.	Electralink provide high level guidance on change proposals however it is parties responsibilities to impact assess proposals to determine the impact on their individual organisations.	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better
Is the administrator sufficiently accountable	A little	A little		About right	About right	About right		About right	Yes, the DCUSA Board have responsibilities for ensuring that the DCUSA is administered in a cost effective manner.	About right	About right
What is the quality of the technical analysis	Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies	Below average - the analysis sometimes addresses the relevant issues and/or the data and methodology may be suspect		Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies	Above average - the analysis often addresses most of the relevant issues and is often reasonably reliable in terms of data and methodology	Excellent – the analysis almost always addresses all of the relevant issues, and draws on robust data and methodologies		It is not the role of DCUSA to produce costs and benefits of a change - it is for individual parties to assess which will than when they vote upon the acceptance of a proposed change.	Electralink are not responsible for providing technical analysis	Above average - the analysis often addresses most of the relevant issues and is often reasonably reliable in terms of data and methodology	Above average - the analysis often addresses most of the relevant issues and is often reasonably reliable in terms of data and methodology
How do you judge the quality of the recommendations/decisions given to Ofgem	OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis	OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis		Good – the decisions/recommendations are more often than not reasonably well-argued and based on appropriate evidence and analysis	Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis	Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis		Excellent – the decisions/recommendations reflect the balance of views of the industry.	Good – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis	Good – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis	Good – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis

Market participant survey responses

Company	12 Ird Power	13 NG	14 NGN	15 Rio Tinto	16 RWE	17 SSE	18 XXX	19 WPD	20 WW Utilities
DCUSA									
Want to comment on this code?	no	yes	yes	yes	yes	yes		yes	no
Level of engagement with code?	Not at all	Primarily an interested observer	Primarily an interested observer	Very active engagement [frequently propose mods, sit on working groups etc]	Very active engagement [frequently propose mods, sit on working groups etc]	Very active engagement [frequently propose mods, sit on working groups etc]		Very active engagement [frequently propose mods, sit on working groups etc]	
If not why not?	Not at all								
Cost of engaging with governance of this code		<£10k	<£10k	£10k-£50k	£100k-£500k			£10k-£50k	
How easy is it to understand and track modification proposals		Reasonably straightforward	Very difficult	Reasonably straightforward	Reasonably straightforward			Reasonably straightforward	
How easy is it to understand practical significance of mods		Reasonably straightforward	Very difficult	Reasonably straightforward	Reasonably straightforward			Reasonably straightforward	
How do you judge the role played by the secretariat in facilitating your understanding and participation in code governance		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Poor – the secretariat does not do a good job of making the processes clear, and it places (or fails to remove) unnecessary barriers to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better			Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	
How do you judge the role played by the secretariat in facilitating your understanding of mods		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Poor – the secretariat does not do a good job of making the processes clear, and it places (or fails to remove) unnecessary barriers to participation	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better			Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	
Is the administrator sufficiently accountable		Too early to say.	A little	About right	About right			About right	
What is the quality of the technical analysis		Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies	Poor - the analysis often does not address the relevant issues and/or is not reliable owing to poor data or methodology	Above average - the analysis often addresses most of the relevant issues and is often reasonably reliable in terms of data and methodology	Above average - the analysis often addresses most of the relevant issues and is often reasonably reliable in terms of data and methodology			Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies	
How do you judge the quality of the recommendations/decisions given to Ofgem		Good–the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis	Poor – decisions/recommendations are not well-argued nor based on appropriate evidence and analysis	OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis	Good–the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis			Above average - the decisions/recommendations are more often than not reasonably well-argued and based on appropriate evidence and analysis	

Market participant survey responses

Company	1 AEP	2 BE	3 BP	4 CE	5 Centrica	6 CN	7 Corona	8 E.ON	9 EDF	10 energywatch	11 XXX
MRA											
Want to comment on this code?	No	yes	no	yes	yes	yes	yes	yes	Yes	yes	yes
Level of engagement with code?		Primarily an interested observer		Some active engagement [e.g. have proposed at least one mod in last two years]	Very active engagement [frequently propose mods, sit on working groups etc]	Very active engagement [frequently propose mods, sit on working groups etc]	Not at all	Very active engagement [frequently propose mods, sit on working groups etc]	Very active engagement [frequently propose mods, sit on working groups etc]	Primarily an interested observer	Very active engagement [frequently propose mods, sit on working groups etc]
If not why not?							Electricity governance is so complicated and dominated by the generators and network owners that it has been considered 'too hard' to do at the moment.				
Cost of engaging with governance of this code		£10k-£50k		£10k-£50k		£50k-£100k		£50k-£100k	£50k-£100k	<£10k	£10k-£50k
How easy is it to understand and track modification proposals		Very difficult		Reasonably straightforward	Reasonably straightforward	Reasonably straightforward		Reasonably straightforward	Extremely easy, the MRASCo website is easy to navigate and holds all relevant change proposal information. Change proposals are published in a change pack on a monthly basis and there are set deadlines for parties to respond and provide indicative votes on changes.	Reasonably straightforward	Reasonably straightforward
How easy is it to understand practical significance of mods		Very difficult		Reasonably straightforward	Reasonably straightforward	Reasonably straightforward		Reasonably straightforward	Easy Genserv in their role as secretariat at excellent are facilitating understanding of the processes, and to remove any unnecessary obstacles to participation	Somewhat challenging	Reasonably straightforward
How do you judge the role played by the secretariat in facilitating your understanding and participation in code governance		Poor – the secretariat does not do a good job of making the processes clear, and it places (or fails to remove) unnecessary barriers to participation		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better
How do you judge the role played by the secretariat in facilitating your understanding of mods		Poor – the secretariat does not do a good job of making the processes clear, and it places (or fails to remove) unnecessary barriers to participation		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better
Is the administrator sufficiently accountable		Not at all		About right	About right	About right		About right	Yes, the administration of the MRA is managed through the MRA Services Agreement. The SAFEG (financial committee) are responsible for ensuring their respective constituents are satisfied with the costs associated with the MRA Services Agreement and that negotiations are managed effectively to deliver cost and service efficiencies to MRA Parties.	About right	About right
What is the quality of the technical analysis		Below average - the analysis sometimes addresses the relevant issues and/or the data and methodology may be suspect		Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies		It is not the role of the MRA to produce costs and benefits for a change - it is up to individual parties to assess which will be taken into consideration when they vote upon the acceptance of a proposed change	The majority of the technical analysis is carried out by MRA Parties due to the nature of the MRA.	Above average - the analysis often addresses most of the relevant issues and is often reasonably reliable in terms of data and methodology	Above average - the analysis often addresses most of the relevant issues and is often reasonably reliable in terms of data and methodology
How do you judge the quality of the recommendations/decisions given to Ofgem		Below average – decisions/recommendations are mostly not well-argued nor based on appropriate evidence and analysis		OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis	Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis	Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis		Excellent - the decisions/recommendations reflect the balance of industry views.	Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis	Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis	Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis

Market participant survey responses

Company	12 Infl Power	13 NG	14 NGN	15 Rio Tinto	16 RWE	17 SSE	18 XXX	19 WPD	20 WW Utilities
MRA									
Want to comment on this code?	no	no	no	yes	yes			yes	no
Level of engagement with code?				Very active engagement [frequently propose mods, sit on working groups etc]	Very active engagement [frequently propose mods, sit on working groups etc]			Very active engagement [frequently propose mods, sit on working groups etc]	
If not why not?									
Cost of engaging with governance of this code				£50k-£100k	£100k-£500k			£10k-£50k	
How easy is it to understand and track modification proposals				Reasonably straightforward	Reasonably straightforward			Reasonably straightforward	
How easy is it to understand practical significance of mods				Reasonably straightforward	Reasonably straightforward			Reasonably straightforward	
How do you judge the role played by the secretariat in facilitating your understanding and participation in code governance				Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation			Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	
How do you judge the role played by the secretariat in facilitating your understanding of mods				Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation			Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	
Is the administrator sufficiently accountable				About right	About right			About right	
What is the quality of the technical analysis				Above average - the analysis often addresses most of the relevant issues and is often reasonably reliable in terms of data and methodology	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies			Above average - the analysis often addresses most of the relevant issues and is often reasonably reliable in terms of data and methodology	
How do you judge the quality of the recommendations/decisions given to Ofgem				Not applicable for the MRA	Excellent– the decisions/recommendations are almost always well-argued and based on appropriate evidence and analysis			Good–the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis	

Market participant survey responses

Company	1 AEP	2 BE	3 BP	4 CE	5 Centrica	6 CN	7 Corona	8 E.ON	9 EDF	10 energywatch	11 XXX
Grid Code											
Want to comment on this code?	Yes	yes	no	yes	yes	yes	yes	yes	no		yes
Level of engagement with code?	Very active engagement at Panel and Working Group level	Very active engagement [frequently propose mods, sit on working groups etc]		CE Electric UK is one of the Network Operator representatives on the GCRP	Primarily an interested observer	Primarily an interested observer	Not at all		Some active engagement [e.g., have proposed at least one mod in last two years]		Some active engagement [e.g., have proposed at least one mod in last two years]
If not why not?							Electricity governance is so complicated and dominated by the generators and network owners that it has been considered 'too hard' to do at the moment.				
Cost of engaging with governance of this code		<£10k		£10k-£50k		£10k-£50k		£50k-£100k	£10k-£50k		<£10k
How easy is it to understand and track modification proposals	Reasonably straightforward	Reasonably straightforward		Reasonably straightforward	Reasonably straightforward	Reasonably straightforward		Reasonably straightforward	Somewhat challenging		Very difficult
How easy is it to understand practical significance of mods	Reasonably straightforward	Reasonably straightforward		Reasonably straightforward	Somewhat challenging	Reasonably straightforward		Reasonably straightforward	Somewhat challenging		Very difficult
How do you judge the role played by the secretariat in facilitating your understanding and participation in code governance	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		Good – the secretariat works to ensure that we have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation			Poor – the secretariat does not do a good job of making the processes clear, and it places (or fails to remove) unnecessary barriers to participation
How do you judge the role played by the secretariat in facilitating your understanding of mods	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		Good – the secretariat works to ensure that we have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better			OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better
Is the administrator sufficiently accountable	About right	About right		A little		About right		A little	A little		Not at all
What is the quality of the technical analysis	Excellent – the analysis almost always addresses all of the relevant issues, and draws on robust data and methodologies	Poor - the analysis often does not address the relevant issues and/or is not reliable owing to poor data or methodology		Above average - the analysis often addresses most of the relevant issues and is often reasonably reliable in terms of data and methodology. However, in some cases the implications can be very difficult / complex to assess without actually implementing the change itself. It can be difficult to justify spending time in the business assessing the implications of a proposed change.		Excellent – the analysis almost always addresses all of the relevant issues, and draws on robust data and methodologies		Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies	Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies		Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies
How do you judge the quality of the recommendations/decisions given to Ofgem	Excellent – the decisions/recommendations are almost always well-argued and based on appropriate evidence and analysis	Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis		Above average - the decisions/recommendations are more often than not reasonably well-argued and based on appropriate evidence and analysis		Excellent – the decisions/recommendations are almost always well-argued and based on appropriate evidence and analysis		Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis	Below average – decisions/recommendations are mostly not well-argued nor based on appropriate evidence and analysis		Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies

Market participant survey responses

Company	12 Ird Power	13 NG	14 NGN	15 Rio Tinto	16 RWE	17 SSE	18 XXX	19 WPD	20 WW Utilities
Grid Code									
Want to comment on this code?	no	yes		no	yes	yes		yes	no
Level of engagement with code?	Some active engagement [e.g., have proposed at least one mod in last two years]	Very active engagement [frequently propose mods, sit on working groups etc]		Primarily an interested observer	Very active engagement [frequently propose mods, sit on working groups etc]	Some active engagement [e.g., have proposed at least one mod in last two years]		Very active engagement [frequently propose mods, sit on working groups etc]	
If not why not?									
Cost of engaging with governance of this code	<£10k	£100k-£500k		£10k-£50k	£50k-£100k	£50k-£100k		£10k-£50k	
How easy is it to understand and track modification proposals	Reasonably straightforward	Not appropriate to comment		Reasonably straightforward	Reasonably straightforward	Reasonably straightforward		Reasonably straightforward	
How easy is it to understand practical significance of mods		Not appropriate to comment		Reasonably straightforward	Reasonably straightforward	Reasonably straightforward		Reasonably straightforward	
How do you judge the role played by the secretariat in facilitating your understanding and participation in code governance	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	We do not believe it is appropriate to comment on this question as National Grid is the code secretariat for CUSC.		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	
How do you judge the role played by the secretariat in facilitating your understanding of mods		Not appropriate to comment		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	
Is the administrator sufficiently accountable		Not appropriate to comment		About right	About right	A little		About right	
What is the quality of the technical analysis		Not appropriate to comment		Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies	Above average - the analysis often addresses most of the relevant issues and is often reasonably reliable in terms of data and methodology		Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies	
How do you judge the quality of the recommendations/decisions given to Ofgem		Not appropriate to comment		OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis	Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis	Above average - the decisions/recommendations are more often than not reasonably well-argued and based on appropriate evidence and analysis		Excellent – the decisions/recommendations are almost always well-argued and based on appropriate evidence and analysis	

Market participant survey responses

Company	1 AEP	2 BE	3 BP	4 CE	5 Centrica	6 CN	7 Corona	8 E.ON	9 EDF	10 energywatch	11 XXX	
Distribution Code												
Want to comment on this code?	Yes	no	no	yes	no	yes	yes	no	Yes	no	yes	
Level of engagement with code?	Very active engagement at Panel and Working Group level			CE Electric UK is represented at the Industry Technical Codes Group, which forms part of the Governance framework for the Dcode		Some active engagement [e.g., have proposed at least one mod in last two years]		Not at all		Some active engagement [e.g., have proposed at least one mod in last two years]		Very active engagement [frequently propose mods, sit on working groups etc]
If not why not?	We employ 1 member of staff who is working on Distribution Code related issues at least 1 day per month. This will vary depending on how many modifications are being processed at the time and issues such as Access are being reviewed			We have minimal engagement on this code		Electricity governance is so complicated and dominated by the generators and network owners that it has been considered 'too hard' to do at the moment.						
Cost of engaging with governance of this code				£10k-£50k		£10k-£50k		£50k-£100k		£10k-£50k		
How easy is it to understand and track modification proposals	Reasonably straightforward			Reasonably straightforward		Reasonably straightforward		Reasonably straightforward		Reasonably straightforward		
How easy is it to understand practical significance of mod	Reasonably straightforward			Reasonably straightforward		Reasonably straightforward		Reasonably straightforward		Reasonably straightforward		
How do you judge the role played by the secretariat in facilitating your understanding and participation in code governance	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation			Good – the secretariat works to ensure that we have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better				Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		
How do you judge the role played by the secretariat in facilitating your understanding of mods	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation			Good – the secretariat works to ensure that we have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better				Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		
Is the administrator sufficiently accountable	About right			About right		About right				About right		
What is the quality of the technical analysis	Excellent – the analysis almost always addresses all of the relevant issues, and draws on robust data and methodologies			Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies. However, there are in fact only a small number of consultations per annum.		Excellent – the analysis almost always addresses all of the relevant issues, and draws on robust data and methodologies		Above average - the analysis often addresses most of the relevant issues and is often reasonably reliable in terms of data and methodology		Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies		
How do you judge the quality of the recommendations/decisions given to Ofgem	Excellent – the decisions/recommendations are almost always well-argued and based on appropriate evidence and analysis			Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis		Excellent – the decisions/recommendations are almost always well-argued and based on appropriate evidence and analysis		Above average - the decisions/recommendations are more often than not reasonably well-argued and based on appropriate evidence and analysis		Excellent – the decisions/recommendations are almost always well-argued and based on appropriate evidence and analysis		

Market participant survey responses

Company	12 Iml Power	13 NG	14 NGN	15 Rio Tinto	16 RWE	17 SSE	18 XXX	19 WPD	20 WW Utilities
Distribution Code									
Want to comment on this code?	no	yes		no	yes	yes		yes	no
Level of engagement with code?		Primarily in an advisory capacity		Primarily an interested observer	Very active engagement [frequently propose mods, sit on working groups etc]	Some active engagement [e.g., have proposed at least one mod in last two years]		Very active engagement [frequently propose mods, sit on working groups etc]	
If not why not?									
Cost of engaging with governance of this code		<£10k		£10k-£50k	£10k-£50k	£50k-£100k		£10k-£50k	
How easy is it to understand and track modification proposals		Reasonably straightforward		Reasonably straightforward	Reasonably straightforward	Reasonably straightforward		Reasonably straightforward	
How easy is it to understand practical significance of mods		Reasonably straightforward		Reasonably straightforward	Reasonably straightforward	Reasonably straightforward		Reasonably straightforward	
How do you judge the role played by the secretariat in facilitating your understanding and participation in code governance		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		Poor – the secretariat does not do a good job of making the processes clear, and it places (or fails to remove) unnecessary barriers to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	
How do you judge the role played by the secretariat in facilitating your understanding of mods		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		Poor – the secretariat does not do a good job of making the processes clear, and it places (or fails to remove) unnecessary barriers to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	
Is the administrator sufficiently accountable		About right		A little	About right	About right		About right	
What is the quality of the technical analysis		Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis		Poor - the analysis often does not address the relevant issues and/or is not reliable owing to poor data or methodology OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis		Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies Excellent – the decisions/recommendations are almost always well-argued and based on appropriate evidence and analysis	
How do you judge the quality of the recommendations/decisions given to Ofgem		Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies Excellent – the decisions/recommendations are almost always well-argued and based on appropriate evidence and analysis		Poor - the analysis often does not address the relevant issues and/or is not reliable owing to poor data or methodology OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis		Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies Excellent – the decisions/recommendations are almost always well-argued and based on appropriate evidence and analysis	

Market participant survey responses

Company	1 AEP	2 BE	3 BP	4 CE	5 Centrica	6 CN	7 Corona	8 E.ON	9 EDF	10 energywatch	11 XXX			
UNC														
Want to comment on this code?	Yes	no	yes	no	yes	no	yes	yes	Yes	yes	no			
Level of engagement with code?	Very active engagement at Working Stream level		Primarily an interested observer			Very active engagement [frequently propose mods, sit on working groups etc]		Very active engagement [frequently propose mods, sit on working groups etc]		Some active engagement [e.g., have proposed at least one mod in last two years]				
If not why not?														
Cost of engaging with governance of this code	We employ 1 member of staff who is working on UNC related issues at least 2 days per week. This will vary depending on how many modifications are being processed at the time and the status of workstream issues		£100k-£500k			Reasonably straightforward		150000 £100k-£500k		£50k-£100k		<£10k		
How easy is it to understand and track modification proposals	Reasonably straightforward		Reasonably straightforward			Reasonably straightforward		Reasonably straightforward		Reasonably straightforward		Very Easy	Very difficult	
How easy is it to understand practical significance of mods	Reasonably straightforward		Reasonably straightforward			Reasonably straightforward		Reasonably straightforward		Reasonably straightforward		In general very easy - although issues have been raised recently with mods that have failed to identify all of the impacts - e.g. 184		Very difficult
How do you judge the role played by the secretariat in facilitating your understanding and participation in code governance	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation			Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		The Joint Office provide an excellent, impartial service allowing any interested parties to understand and participate in the governance process		Poor – the secretariat does not do a good job of making the processes clear, and it places (or fails to remove) unnecessary barriers to participation
How do you judge the role played by the secretariat in facilitating your understanding of mods	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation			Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		The Joint Office provide an excellent service		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better
Is the administrator sufficiently accountable	A little although the range of costs associated with the Joint Office are not as widely subject to scrutiny when compared to those of Elexon for example. This is understandable however as they have very different roles and responsibilities		About right			About right		Not at all		About right		There does not appear any accountability to Shippers - however the Joint Office provide a very high quality of service and appear to be very cost effective		A little

Market participant survey responses

Company	12 Infl Power	13 NG	14 NGN	15 Rio Tinto	16 RWE	17 SSE	18 XXX	19 WPD	20 WW Utilities
UNC									
Want to comment on this code?	yes	yes	Yes	no	yes	yes, but note that our comments relate to the Joint Office.	no	yes	
Level of engagement with code?	Primarily an interested observer on working groups etc]	Very active engagement [frequently propose mods, sit on working groups etc]	Fully		Very active engagement [frequently propose mods, sit on working groups etc]	Very active engagement [frequently propose mods, sit on working groups etc]		Very active engagement [frequently propose mods, sit on working groups etc]	
If not why not?									
Cost of engaging with governance of this code	£10k-£50k	>£500k	£100k		£100k-£500k	£100k-£500k			£100k-£500k
How easy is it to understand and track modification proposals	Somewhat challenging	Reasonably straightforward	Reasonably straightforward		Reasonably straightforward	Reasonably straightforward			Reasonably straightforward
How easy is it to understand practical significance of mods	Somewhat challenging	Reasonably straightforward	Completely commensurate with complexity of mod proposal		Reasonably straightforward	Reasonably straightforward	Reasonably straightforward. This is, however, only achievable through participating in the relevant meetings and discussing the proposal internally, to gain greater insight into the impact of a proposal on the business. A balance needs to be sought between drafting modification reports, which provide unbiased, effective and critical assessment of a proposal and over reliance on such reports, which could result in lengthy and complex reports, leading to an over-bureaucratic and costly process.		Reasonably straightforward
How do you judge the role played by the secretariat in facilitating your understanding and participation in code governance	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation
How do you judge the role played by the secretariat in facilitating your understanding of mods	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	Not main function of JO.	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation
Is the administrator sufficiently accountable	About right	About right	About right		Not at all	A little	A little		About right

Market participant survey responses

Company	1 AEP	2 BE	3 BP	4 CE	5 Centrica	6 CN	7 Corona	8 E.ON	9 EDF	10 energywatch	11 XXX
What is the quality of the technical analysis	Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies although the range of access to data for all participants is not equal and not available to all who request it		Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies		Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies		Below average - the analysis sometimes addresses the relevant issues and/or the data and methodology may be suspect	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies	Average - there is generally some high level analysis but xoserve are reluctant to engage on detailed analysis until the mod has been implemented	Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies	
How do you judge the quality of the recommendations/decisions given to Ofgem	Excellent – the decisions/recommendations are almost always well-argued and based on appropriate evidence and analysis		Above average - the decisions/recommendations are more often than not reasonably well-argued and based on appropriate evidence and analysis		Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis		OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis	Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis. Sometimes it appears that 'block-voting' by transporters means recommendations to implement are not carried when consultation responses suggest otherwise.	The quality of the decisions has been very high – although there has been a recent tendency for the GTs to focus on commercial implications rather than the benefits to the industry. This has resulted in apparently inconsistent recommendations on proposals - e.g. 186 & 186A analysis	OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis	

Market participant survey responses

Company	12 Infl Power	13 NG	14 NGN	15 Rio Tinto	16 RWE	17 SSE	18 XXX	19 WPD	20 WW Utilities
What is the quality of the technical analysis	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies	Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies	Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies		Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies	Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies	Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies. Where a modification proposal has been particularly complex or contentious, i.e. UNC proposal 0116, the industry has provided further analysis, through, for example, commissioning consultants to undertake technical analysis or appraisal, to enable the industry to better understand the impacts.		Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies
How do you judge the quality of the recommendations/decisions given to Ofgem	Good- the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis	Good- the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis	Above average - the decisions/recommendations are more often than not reasonably well-argued and based on appropriate evidence and analysis		OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis	Good- the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis	OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis		Above average - the decisions/recommendations are more often than not reasonably well-argued and based on appropriate evidence and analysis

Market participant survey responses

Company	1 AEP	2 BE	3 BP	4 CE	5 Centrica	6 CN	7 Corona	8 E.ON	9 EDF	10 energywatch	11 XXX
IGT UNC											
Want to comment on this code?	No	no	no	no	yes	no	no	yes	Yes	yes	no
Level of engagement with code?					Some active engagement [e.g., have proposed at least one mod in last two years]			Very active engagement [frequently propose mods, sit on working groups etc]	Very active engagement [frequently propose mods, sit on working groups etc]	Primarily an interested observer	
If not why not?											
Cost of engaging with governance of this code								£50k-£100k	£10k-£50k	<£10k	
How easy is it to understand and track modification proposals					Reasonably straightforward			Reasonably straightforward	Not easy as the iGT UNC modification process does not have a standard change pack with associated set response timescales. Each modification has its own timeline which iGT UNC signatories have to follow. Also the iGT UNC website had significant technical issues with it for the first ten months of its operation which made it even more difficult for parties to understand where modifications were in the process.	Somewhat challenging	
How easy is it to understand practical significance of mods					Reasonably straightforward			Reasonably straightforward	Reasonably straightforward	Very difficult	
How do you judge the role played by the secretariat in facilitating your understanding and participation in code governance					Poor – the secretariat does not do a good job of making the processes clear, and it places (or fails to remove) unnecessary barriers to participation			Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	The secretariat ensures a reasonable clarity and ease of use, although it could do better		
How do you judge the role played by the secretariat in facilitating your understanding of mods					Poor – the secretariat does not do a good job of making the processes clear, and it places (or fails to remove) unnecessary barriers to participation			Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	The secretariat ensures a reasonable clarity and ease of use, although it could do better		
Is the administrator sufficiently accountable					Not at all			About right	The iGT UNC is delivered by Genserv on a contractual basis between IGTx and Genserv. Shipper/suppliers have no visibility of the costs associated with this contract and therefore cannot comment on the cost/quality elements.		
What is the quality of the technical analysis	Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies			Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies	Below average - the analysis sometimes addresses the relevant issues and/or the data and methodology may be suspect	Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies		Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies	None provided by the administrator.	Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies	
How do you judge the quality of the recommendations/decisions given to Ofgem					Poor – decisions/recommendations are not well-argued nor based on appropriate evidence and analysis			Good–the decisions/recommendations are usually well-argued and based on the relevant impact to the different constituencies to the IGT UNC	Above average - the decisions/recommendations are more often than not reasonably well-argued and based on appropriate evidence and analysis		

Market participant survey responses

Company	12 Infl Power	13 NG	14 NGN	15 Rio Tinto	16 RWE	17 SSE	18 XXX	19 WPD	20 WW Utilities
IGT UNC									
Want to comment on this code?	no	yes		no	yes	yes		no	yes
Level of engagement with code?		Some active engagement [e.g., have proposed at least one mod in last two years]			Very active engagement [frequently propose mods, sit on working groups etc]	Some active engagement [e.g., have proposed at least one mod in last two years]			Primarily an interested observer
If not why not?									
Cost of engaging with governance of this code		<£10k			£10k-£50k	£50k-£100k			£10k-£50k
How easy is it to understand and track modification proposals		Reasonably straightforward			Somewhat challenging	Reasonably straightforward			Somewhat challenging
How easy is it to understand practical significance of mods		Somewhat challenging			Reasonably straightforward	Reasonably straightforward			Somewhat challenging
How do you judge the role played by the secretariat in facilitating your understanding and participation in code governance		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better			OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better			OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better
How do you judge the role played by the secretariat in facilitating your understanding of mods		Not the Role of Gemserve.			OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better			OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better
Is the administrator sufficiently accountable		About right			Not at all	A little			
What is the quality of the technical analysis	Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies	Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies			Below average - the analysis sometimes addresses the relevant issues and/or the data and methodology may be suspect	Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies			
How do you judge the quality of the recommendations/decisions given to Ofgem		OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis			OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis	OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis			OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis

Market participant survey responses

Company	1 AEP	2 BE	3 BP	4 CE	5 Centrica	6 CN	7 Corona	8 E.ON	9 EDF	10 energywatch	11 XXX
SPAA											
Want to comment on this code?	No	no	no	no	yes	no	yes	yes	Yes	no	no
Level of engagement with code?					Very active engagement [frequently propose mods, sit on working groups etc]		Not at all	Very active engagement [frequently propose mods, sit on working groups etc]	Very active engagement [frequently propose mods, sit on working groups etc]		
If not why not? Cost of engaging with governance of this code								£50k-£100k	£50k-£100k		
How easy is it to understand and track modification proposals					Reasonably straightforward			Reasonably straightforward	Reasonably straightforward the SPAA website is reasonably easy to navigate and Electralink staff are extremely helpful if advice is required.		
How easy is it to understand practical significance of mods					Reasonably straightforward			Reasonably straightforward	Reasonably straightforward SPAA Parties draft the change proposals and the CP's are then subject to industry review and voting.		
How do you judge the role played by the secretariat in facilitating your understanding and participation in code governance					Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation			Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that industry parties have a clear understanding of the processes, and to remove any unnecessary obstacles to participation		
How do you judge the role played by the secretariat in facilitating your understanding of mods					Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation			Good – the secretariat works to ensure that I have a clear understanding of the processes, change proposals to ensure they and to remove any unnecessary obstacles to participation	The secretariat ensures a reasonable clarity and ease of use however it is up to SPAA Parties to thoroughly assess understand the potential impact of a change.		
Is the administrator sufficiently accountable					About right			About right	Yes SPAA is run on a not for profit basis and any unused funds are returned to SPAA Parties on an annual basis. There is an annual budget approval process which SPAA Parties are actively engaged in.		
What is the quality of the technical analysis					Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies			Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies	The analysis of change proposals is provided by SPAA Parties rather than the SPAA Administrator.		
How do you judge the quality of the recommendations/decisions given to Ofgem					Excellent – the decisions/recommendations are almost always well-argued and based on appropriate evidence and analysis			Excellent – the decisions/recommendations reflect a balance of industry views.	Good – the decisions/recommendations are usually well-argued and based on appropriate evidence and analysis. The recommendations are provided by the industry as a result of the voting process undertaken at the SPAA Change Board.		

Market participant survey responses

Company	12 Infl Power	13 NG	14 NGN	15 Rio Tinto	16 RWE	17 SSE	18 XXX	19 WPD	20 WW Utilities
SPAA									
Want to comment on this code?	no		yes	no	yes	yes		no	yes
Level of engagement with code?			Limited		Very active engagement [frequently propose mods, sit on working groups etc]	Very active engagement [frequently propose mods, sit on working groups etc]			Some active engagement [e.g., have proposed at least one mod in last two years]
If not why not?									
Cost of engaging with governance of this code			£10k		£50k-£100k	£50k-£100k			£100k-£500k
How easy is it to understand and track modification proposals			Somewhat challenging		Reasonably straightforward	Reasonably straightforward			Reasonably straightforward
How easy is it to understand practical significance of mods			Somewhat challenging		Reasonably straightforward	Reasonably straightforward			Reasonably straightforward
How do you judge the role played by the secretariat in facilitating your understanding and participation in code governance			OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better		Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation			Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation
How do you judge the role played by the secretariat in facilitating your understanding of mods			OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better		OK – the secretariat ensures a reasonable clarity and ease of use, although it could do better	Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation			Good – the secretariat works to ensure that I have a clear understanding of the processes, and to remove any unnecessary obstacles to participation
Is the administrator sufficiently accountable			About right		About right	About right			About right
What is the quality of the technical analysis			Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies		Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies	Good – the analysis usually addresses all of the relevant issues, and draws on reasonable data and methodologies			Average – the analysis fairly often addresses the relevant issues and uses acceptable data and methodologies
How do you judge the quality of the recommendations/decisions given to Ofgem			OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis		OK – the decisions/recommendations are fairly often reasonably well-argued and based on appropriate evidence and analysis	Above average - the decisions/recommendations are more often than not reasonably well-argued and based on appropriate evidence and analysis			Above average - the decisions/recommendations are more often than not reasonably well-argued and based on appropriate evidence and analysis

III.4. Complete administrator responses

Please see following pages.

Industry Code Administrators Questionnaire MRASCo Response to the Brattle Group

Glossary of acronyms

BSCCo	Balancing and Settlement Code Company (Elexon)
DCUSA	Distribution, Connection and Use of System Agreement
ECOES	Electricity Central Online Enquiry Service
MAP	MRA Agreed Procedure
MDB	MRA Development Board
MEC	MRA Executive Committee
MPAS	Meter Point Administration Service
MRA	Master Registration Agreement
MRASCo	MRA Service Company

General secretariat information

1. How would you describe the nature of your organisation?

Gemserv is a consultancy providing market-level services to governance regimes. Gemserv is contracted to the Master Registration Agreement (MRA) Executive Committee (MEC) to fulfil the secretariat function of the MRA Service Company (MRASCo). MRASCo is a joint-venture company owned by all MRA parties (electricity Suppliers and Distribution Businesses).

2. How would you describe your role in the governance process?

The role of MRASCo, as set out in the MRA, is to administer the MRA and undertake any development activities required by the UK electricity retail processes under the scope of the MRA. The delivery of the MRASCo services is contracted to Gemserv Limited under a Service Agreement managed by the MRA Executive Committee in accordance with the MRA. That Services Agreement covers the areas of :

- Secretariat services
- Market entry assessment for new Parties
- Outsourced business processes in support of MRASCo (eg finance and billing)
- Contract management of ECOES (Electricity Central Online Enquiry Service)

Gemserv provides the above functions in its capacity as an 'intelligent secretariat', which means that its expertise is utilised in drafting changes to the product set, leading working groups, and progressing strategic initiatives to improve the operation of the governance process.

Administered by:



3. Number of staff employed to deal with code governance (excluding implementation)?

The total headcount of staff involved in providing MRA services is 24, equivalent to 17 FTEs recognising the actual time spent by support staff and industry experts in the provision of the suite of MRA Services as outlined in the answer to Question 2.¹

4. Annual running costs split into costs of dealing with modifications, costs of implementing modifications, costs of managing systems e.g. CVA in the case of Elexon, and other costs? Please explain how you have allocated fixed costs between these functions.

Total annual running costs of the MRA secretariat are £3.339m. The charge for the Change Process (including the development of issues into Change Proposals) is £1.068m, representing 32% of the MRASCo cost. That 'change' figure breaks down as 82% for dealing with modifications, and 18% for implementation.²

Note that MRASCo does not operate any central systems as such, and so in general any costs of this nature are borne by MRA Parties in updating their own systems. The only exception to this is ECOES (the Electricity Central Online Enquiry Service) which is provided by MRASCo. This is a website provided to MRA parties in order to view metering point data and annual running costs are £256,000².

5. Who pays the secretariat costs and how are the charges calculated?

Secretariat and ECOES costs are borne by the MRA Parties. Charges are in accordance with the annual budget as approved in advance by Parties at the MRA Forum, and as set out in the MRASCo three-year plan. Individual Parties' respective contributions are calculated according to their market share (defined in terms of the average number of metering points registered to them in MPAS in a given period). Two thirds of costs are borne by Suppliers, with the remainder borne by Distribution Businesses. The MRASCo cost to Suppliers in a 12-month period equates to approximately 9.3 pence per MPAN³.

6. Do you consider that you have sufficient resources and skills to provide the appropriate level of constructive analysis for modifications?

Yes. MRASCo provides an intelligent secretariat that deploys the skills and tools necessary to constructively analyse changes. Where appropriate, issues can be referred by the industry to the standing Issue Resolution Expert Group (IREG) or to bespoke Working Groups to provide for a more focused level of direct industry input. Such groups mean that the impact of different potential solutions can be considered prior to a formal Change Proposal being raised. As such, by the time a change is formally raised, it may well already enjoy widespread consensus.

These support mechanisms are formally set out in the following documents:

- MRA Agreed Procedure(MAP) 06 'The Change Management Procedure for MRASCo Products'
- MAP07 'The Issue Resolution Procedure for MRASCo Products'

¹ Confidential to MRA Parties

² All of these cost-related statistics are confidential to MRA Parties

³ Confidential to MRA Parties

7. If you answered “no” to question 6, please explain:

- (a) whether the problem is resources, skills or both
 (b) if the problem involves skills, what skills do you consider you lack e.g. experience in regulatory economics, energy market modelling etc.
 (c) why you do not have the necessary resources/skills

n/a

8. If you answered “yes” to question 6, please estimate for what percentage of modifications you actually provide some form of analysis. If possible, indicate separate percentages for qualitative and quantitative analysis.

Gemserv provides analysis for all changes. This analysis may take the form of any or all of:

- Convening and leading Issue and/or Working Groups to consider the change
- Active participation in other governance fora in order to inform the MRA change process
- Ensuring that a change proposal is valid and that Parties are aware of any relevant background information
- Quantitative analysis (usually in the form of cost option analysis for ECOES changes)

9. Recognising that the level and type of analysis required will be different for different codes, can you discuss how often you think that mod proposals for “your” code would or do materially benefit from your being able to provide qualitative and/or quantitative analysis.

The structure of the MRA change process is such that the appropriate level of qualitative and quantitative analysis is always available. In addition to the qualitative analysis available both from Gemserv and industry experts, quantitative analysis can be gained from the industry consultation that accompanies any change to the MRA Product Set.

Modification processes

10. Typically, how many modifications are there per year?

Since the inception of the MRA in 1998 there have been 184 MRA Change Proposals, an average of just over 18 per year. The average annual number of Change Proposals over the past two years (Jan 2006 – Dec 2007) has been as follows:

	CPs Raised	Implemented	% Implemented
MRA	7	6	86%
Other MRA products	28	24	86%
Total	35	30	86%

Administered by





11. What is the typical secretariat cost associated with processing (but not implementing) a modification? Please answer in terms of person-days or direct cost.

Although there is no 'typical' cost, the range is from a minor 'housekeeping' type Change Proposal, which would take one person-day to process, to a complicated change like the 2007 Supply Licence Review, involving several calendar months of developing, drafting and voting on the change. This equated to approximately four person weeks of work.

12. What has been the highest secretariat cost associated with processing (but not implementing) a modification? Please answer in terms of person-days or direct cost.

The most involved change of recent times has been the introduction of Clause 31 of the MRA and the associated ECOES service. This and other associated Change Proposals were developed over the course of two calendar years (2004 – 2006) prior to final approval. This equated to approximately one Full Time Employee's time for 2 years.

13. For how many modifications has external analytical support been sought by your organisation in the last two years. Was the support quantitative or qualitative?

The nature of the modifications process and the support services provided by MRASCo means that the only external analytical support has tended to come in the form of professional services, usually legal advice (though not drafting of changes). Legal support has been sought three times in the last two years; however only on two occasions was this in support of the development of issues into Change Proposals.

14. For how many modifications has analytical support (or drafting support) been provided by the modification proposer in the last two years? Was the support quantitative or qualitative?

Where a modification is raised by Gemserv, it will always be raised as a result of work undertaken at an Issue Group or Working Group, or at the behest of MDB. As such, there will have been analytical support prior to the drafting, and often collaboration in the drafting of the CP.

Where a modification is raised by an individual Party, they will have completed the drafting themselves. They will often have conducted analysis prior to raising the change, but this would not always be fully visible to MRASCo and the other MRA Parties other than in the business justification section of the CP.

Two of the 11 MRA CPs raised over the past two years were drafted by Parties other than Gemserv. Twenty of the 56 modifications to other Products were drafted by other parties.

15. What is the average number of respondents to a modification in the last two years?

In 2006-07, there were on average fifteen respondents to each Change Proposal issued.

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16. What is the typical length of time between receiving a modification and making a decision/recommendation to Ofgem in the last two years?

The MRA Change Process only requires the MRA Development Board⁴ (MDB) to make recommendations to Ofgem in the case of a limited number of MRA Clauses that require Authority consent to change (as listed in MRA Clause 9.5.1). Other than these, once MDB makes a decision, the change is duly implemented according to the agreed implementation date.

The average time from the submission of a Change Proposal to MDB making a decision is six weeks.

Where MDB has considered changes that require Authority consent, that six weeks is lengthened by the time spent by Ofgem considering its decision. Fewer than 5% of modifications have needed to be referred to Ofgem in the past two years. The typical length of time between MDB approval and an Ofgem decision in that period was approximately four weeks, making a total of ten weeks from the raising of the modification to an Ofgem decision.

17. Can you provide a breakdown of the number of mod proposals made by large parties (National Grid, the big 6 integrated utilities), small parties (new entrants, renewables) and others in the last two years. If this is too time-consuming, please provide a list of who has proposed each mod.

TYPE OF PARTY	MRA CHANGES RAISED 2006-2007	OTHER CHANGES RAISED 2006-2007	TOTAL
Large (big 6 Suppliers, large Distribution Businesses)	2	13	15
Small (Small Suppliers, IDNOs)	0	1	1
BSCCo	0	6	6
MRASCo	11	36	47
TOTAL	13	56	69

18. In those cases in the last two years where a recommendation has been made, what percentage of modifications has been recommended for approval by the Panel?

As explained in the answer to question 16 above, the majority of MDB decisions are implemented without the need for Authority consent. MDB voting requires a majority of Suppliers and a majority of Distribution Businesses to support a change, and additionally – for the ‘BSC Requirements’ listed in MRA Schedule 6 – the support of BSCCo.

Of the Change Proposals voted on by MDB, 86% were approved in the period Jan 2007 – Dec 2008.

⁴ MDB has delegated authority from MEC for all matters relating to change management

19. In how many cases in the last two years has a recommendation not been provided?

All Change Proposals considered by MDB are voted on.

20. In the last two years, for what percentage of Panel recommendations did the Panel reach a unanimous decision?

The following table shows the number of CPs voted upon for the MRA between Jan 2006 – Dec 2007 and for the other products in the Product Set, the number where the decision was unanimous, and what percentage that represents.

	Number voted upon	Number decided unanimously	% decided unanimously
MRA Changes	13	9	69%
Changes to Other MRA Products	56	37	66%
Total	69	46	66%

21. In the last two years, for those cases where a recommendation was made by the Panel, how many times has Ofgem reached a decision that is different to the Panel recommendation?

All changes that are required by the process to be referred to Ofgem for approval in the period received Authority consent.

22. What is the process for identifying mods which are of a “housekeeping” nature, or which are consequent on modifications made to other codes?

Housekeeping: There is no separate process for modifications of a ‘housekeeping’ nature. In 2007 MDB discussed instituting a process but concluded that the existing process is sufficient to deal with such changes.

Identifying modifications which are consequent on other codes’ modifications: MRASCo works closely with BSCCo and DCUSA – including representation on one another’s committees and change groups – to ensure a co-ordinated approach to change. Additionally, MRA Schedule 6 lists clauses of the MRA that require BSCCo consent before they can be changed.

Views on governance

23. In your view, how well do you think the governance procedures work?

MRA governance procedures work very well. An average of 86% of changes are approved and on average within 6 weeks.

The result of the MRASCo 2007 annual Customer Satisfaction Survey bear this out in MRA Parties’ opinions, with 98% of respondents considering the Change Management process works ‘very well’ or ‘quite well’, 98% considering that the MRA is operated in a ‘fair way’, and 95% in a ‘transparent way’.



24. Do you think the modification process could be made more efficient? If so, please list the three changes that you consider would be most effective?

Gemserv and MRASCo recognise that every process has room for improvement. In 2004, MAP 06 'The Change Management Procedure for MRASCo Products' was reviewed. This resulted in several improvements to the change process, including the introduction of Solution Pre-Assessment, as a means of gathering industry views on problems and alternative solutions prior to raising a formal change. It may be appropriate to conduct another review in the next 12 months, by which time it will be five years since the last review.

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BRATTLE GROUP QUESTIONNAIRE

General secretariat information

- 1 Gemserv is a consultancy providing market-level services to governance regimes. Gemserv is contracted to the 13 licensed independent Gas Transporters (iGTs) to fulfil the role of Representative.
- 2 Gemserv fulfils the role of Representative under the iGT UNC which is defined in Part L 2.4 of that Code:

2.4 The iGT UNC Operators will appoint from time to time a person or persons (the "Representative") (and may remove and replace any person so appointed) to administer the Modification Rules on behalf of the iGT UNC Operators and to act as secretary to the iGT UNC Modification Panel. The identity and contact details of the Representative will be notified as soon as reasonably practicable after appointment, to Pipeline Users and the Authority. The iGT UNC Operators may from time to time appoint (and may revoke the appointment of) a person or persons as a deputy to the Representative and references to the "Representative" include any such deputy.

The Code also states:

2.5 Where for the purpose of the Modification Rules the Pipeline Operator is or the iGT UNC Operators are required to undertake any obligation, it is acknowledged that it or they may discharge the performance of that obligation through the Representative.

Under this Clause, Gemserv has been retained to provide legal text for Modifications.

Gemserv also provides the Modification Panel Chairman and deputy Panel Chairman.

- 3 Gemserv provides a core team of four to deal with iGT UNC governance. Other expertise is drawn from Gemserv staff as appropriate and as required.
- 4 Costs of implementing Modifications and managing systems are carried by Code signatories. The only cost to Gemserv is of publishing an updated copy of the iGT UNC. There are no central systems under the iGT UNC.
- 5 Secretariat costs are paid by the iGT signatories to the Code. This cost is split proportionally according to the number of connected metering points.
- 6 Yes. Gemserv provides an intelligent secretariat that deploys the skills and tools necessary to constructively analyse Modifications. Gemserv provides legal text for Modifications after discussions with Operators and the Proposer as appropriate.
- 7 n/a
- 8 Modifications to the iGT UNC should not require quantitative (i.e. cost) analysis by the Representative but do require qualitative understanding in order that legal text can be provided (if requested). Parties might comment upon quantitative issues that their analysis highlights which the Representative will publish. There are no central systems against which a Modification has to be costed.

- 9 The iGT UNC Modification process requires the Modification Panel to agree on whether or not legal text should be provided with the Draft Modification Report. It is usually agreed that such text is required and the Rules state that the Pipeline Operators are responsible for its provision - a responsibility that is met through the Representative.

The Party raising the Modification can provide suggested legal text although there is no requirement to do so. Whether or not suggested legal text is provided, the qualitative analysis carried out materially benefits the process.

Modification process

- 10 The iGT UNC has only been in existence since May 2007. From 1 May 2007 to 31 March 2008, there have been 25 Modifications raised. Where the same Modification has been raised against two or more Individual Network Codes we have counted this as one Modification. Also, we have not counted Variants as separate Modifications. A copy of the Modification Register is available at this [link](#).
- 11 A Modification will typically require 3 person-days to process, including preparation of Modification Reports and receiving responses to consultations. In addition to this is time required to draft legal text which will vary depending upon the complexity of the Modification.
- 12 Of the Modifications received to date, the most complex has required 4 days analysis to prepare legal text in addition to the 3 days identified in 11 above.
- 13 Gemserv has not needed external analytical support as we have adequate resource to fulfil our role as the Representative.
- 14 Modification Proposals should be sufficiently well drafted to allow them to be considered and understood by Parties. The Panel can refer Modifications back to the Proposer if it considers that it is insufficiently clear in its intention. Ten Modification Proposals have been received with proposed legal text and in four cases this has been modified following qualitative analysis. Other Modifications have had legal text drafted by Gemserv as the Pipeline Operators' Representative
- 15 iGT UNC Modifications have two consultation stages. The initial consultation to the Modification Proposal focuses on the concept and principles. On average 4.3 responses have been received.

The second consultation focuses on the legal text which is provided at the Draft Modification Report stage and responses should concentrate on whether that text fulfils the requirements of the Modification. On average there have been 3.6 responses.

- 16 The average time between the Modification being received and the Panel reaching a decision on whether or not to implement is 95 days.
- 17 Modifications have been raised by:
- ScottishPower Energy Management Ltd - 9 (36%)
 - E.ON Energy - 4 (16%)
 - Independent/Quadrant Pipelines - 4 (16%)
 - ESP Pipelines - 3 (12%)

- Gas Transportation Co - 2 (8%)
 - EDF Energy - 1 (4%)
 - RWE npower - 1 (4%)
 - Scottish & Southern Energy - 1 (4%)
- 18 11 Modifications have been referred to the Authority for direction to implement. Of these, 8 were recommended by the Panel.
- 19 11 Modifications have been referred to the Authority for direction to implement. Of these there was no recommendation made for 3.
- 20 11 Modifications have been referred to the Authority for direction to implement. Of these, 7 were unanimously recommended by the Panel.
- 21 There have been no instances where the Authority reached a different decision to the Panel. In one case the Panel were unable to reach a decision on whether or not to recommend implementation and the Authority directed that the Modification should not be implemented.
- 22 There is no process for identifying Modifications that are of a “housekeeping” nature although one ‘Consent to Modify’ has been granted to tidy up some typographical errors in the iGT UNC Part L.

Views on governance

- 23 Generally the governance procedures work well although there have been some implementation issues identified since its introduction which have been addressed.
- 24 The iGT UNC has only been in existence for 11 months and all parties have been learning and understanding the processes.

The iGT UNC Panel has formed a Review Group to consider the Modification Rules and to identify where the process could be improved. The Review Group wishes to learn from best practices as used in other arrangements in particular the MRA and SPAA and have raised 4 Modifications to bring about improvements to the Modification process.

The Panel has recognised that greater transparency of the timings of the Modification process would be of benefit and recently the Representative has published a list of Panel meeting dates and timings of Modification reports subsequent to those meetings. This is available at this [link](#).

Concern has also been expressed about Draft Final Modification Reports and in particular the Representative’s summary of Pipeline Operators views to the Modification. This has been addressed by the summary being replaced by a link to Operators’ responses to the Draft Modification Report published on the iGT UNC website.

The Modification process can also be improved by Modification Proposals clearly identifying how the proposal will work and how it betters the Relevant Objectives.

General secretariat information

1. How would you describe the nature of your organisation?

Code administrator.

The Joint Office of Gas Transporters (JO) discharges a range of functions on behalf of all major GB gas transporters, with managing the UNC modification process being our major activity (estimated at 90% of the workload).

2. How would you describe your role in the governance process?

Administrative.

The JO manages the processes which support changes to the UNC and collates the information which is produced as part of the change process. We publish information for use by all interested parties, primarily through our website, and provide advice and guidance on the operation of the UNC governance process, including supporting the UNC Modification Panel to meet its remit. We manage all UNC modification related meetings, providing a Chair and Secretary, and also support some groups which monitor aspects of the UNC regime – for example, the UK Link Committee.

3. Number of staff employed to deal with code governance (excluding implementation)?

Six.

4. Annual running costs split into costs of dealing with modifications, costs of implementing modifications, costs of managing systems e.g. CVA in the case of Elexon, and other costs? Please explain how you have allocated fixed costs between these functions.

£600k

In year ending 31 March 2008, JO costs were circa £600k pa to support the end to end UNC Modification Process, i.e. from the raising of a Modification Proposal to change to the UNC document itself. This figure excludes costs associated with the provision of legal text, which is provided and funded directly by the Transporters. Similarly the JO does not incur costs associated with implementing change in practice, as opposed to amending the UNC document and so costs of physically implementing modifications and managing associated systems are automatically excluded.

The cost quoted does not rely on allocating fixed costs between activities managed by the JO within its own budget but rather represents a proportion of the JO's total running costs as an indicator of the magnitude of the costs associated with management of the UNC modification process. The estimate includes directly incurred staff costs, travel costs and the cost associated with booking meeting rooms. An infrastructure charge is paid to National Grid. The infrastructure charge covers the cost of a dedicated office and supporting systems, including IT. The IT cost is based on an equal amount per user as applied across National Grid, and covers provision of equipment and software as well as a helpline etc. It also includes provision of a dedicated website, hosted by National Grid, which relies on systems developed and maintained by National Grid. The office rental charge at 31 Homer Road is divided among all occupants, including the JO, on the basis of their share of workstations, and this also forms part of the infrastructure charge.

5. Who pays the secretariat costs and how are the charges calculated?

The Gas Transporters bear all JO costs based on the number of networks owned, with costs therefore allocated in ninths as follows:

UNC secretariat response

Northern Gas networks 1/9

Scotia Gas Networks 2/9

Wales & West Utilities 1/9

National Grid Transmission 1/9

National Grid Distribution 4/9

These costs are included in allowed revenue under the price control process and so are in turn paid by Shippers and consequently users.

6. Do you consider that you have sufficient resources and skills to provide the appropriate level of constructive analysis for modifications?

Yes.

The UNC Modification Rules do not envisage the code administrator carrying out, or commissioning, analysis but rather capturing the information and analysis which is put forward by industry participants. The onus for providing analysis sits with the Proposer of any change, and it seems reasonable for those who put forward change to be expected to demonstrate why such change is desirable and preferable to the status quo.

7. If you answered “no” to question 6, please explain:

(a) whether the problem is resources, skills or both

(b) if the problem involves skills, what skills do you consider you lack e.g. experience in regulatory economics, energy market modelling etc.

(c) why you do not have the necessary resources/skills

8. If you answered “yes” to question 6, please estimate for what percentage of modifications you actually provide some form of analysis. If possible, indicate separate percentages for qualitative and quantitative analysis.

None.

9. Recognising that the level and type of analysis required will be different for different codes, can you discuss how often you think that mod proposals for “your” code would or do materially benefit from your being able to provide qualitative and/or quantitative analysis.

While it seems reasonable for the Proposer of any change to be responsible for providing evidence in support of a proposed change, a case can be made that it would be advantageous for an independent body to exist which provides qualitative and quantitative analysis for all Modification Proposals. As such, 100% of the Modification Proposals we handle could benefit from the JO being able to provide qualitative and quantitative analysis of the Proposal provided the JO were, and were seen to be, independent and expert in all areas of the UNC.

This is, however, a stiff test and would require a major increase in the resources which the JO could access given the need to provide expert analysis based on a thorough understanding of each and every aspect of the UNC and its practical implications for all parties.

Establishing such a role could be seen as unnecessarily duplicating Ofgem’s role in the process in terms of independently assessing the merits of a Proposal irrespective of the views of the industry as a whole. A continuation of the present facilitating, questioning, role is therefore our preference – with the JO, as code administrator, ensuring that all interested parties are given the opportunity to provide evidence and analysis regarding the impact of any proposed change. This role of asking the right questions and intelligently collating the responses received, as opposed to seeking to produce independent analysis solely from within the JO’s own resources, is critical in our view and could be seen as being illustrated in this

UNC secretariat response

questionnaire. Our responses have sought to interpret the questions raised and to provide what we trust are helpful and specific responses rather than simply answering the question asked. We believe this will facilitate comparisons with other responses and help to avoid inappropriate interpretation. For example, we have not simply provided our annual running costs, plus the year to which they relate, but have explained what they do, and importantly, do not include.

Similarly in response to question 10 “*how many modifications per year are there?*”, we have presumed that the interest is in the number of Modification Proposals raised in a typical year, notwithstanding that the question refers to modifications which, at least under UNC terminology, means we should have only included the number of modifications made to the UNC – i.e. proposals implemented, which would exclude withdrawn or rejected Proposals, but would include Modifications made as a result of the Consent to Modify process in addition to changes following the raising of a Modification Proposal. We also felt that simply stating the number of Proposals raised was potentially misleading and hence have also separately identified different categories of Proposal – distinguishing between Urgent and Standard Proposals, and identifying variations, alternatives and Review Proposals. What this hopefully illustrates is the difficulty and importance of being specific about information which is being sought and subsequently presented if misinterpretation is to be avoided as far as possible. It demonstrates why we believe that the role of the code administrator, as for the Brattle Group and Simmons & Simmons in the case of this questionnaire, is to ask appropriate questions while it is the responsibility of those responding to provide responses which reflect their own knowledge and expertise in a specific area and which add value to the process.

Modification processes

10. Typically, how many modifications are there per year?

85

In the past two years (to 31 March 2008), 170 Proposals have been raised (71 in the first year, 99 in the second), an average of 85. The table attached summarises these by status to facilitate comparison with other codes, in particular identifying Review, Alternative and Varied Proposals separately. (If an explanation of the differences would be helpful, please let us know.)

11. What is the typical secretariat cost associated with processing (but not implementing) a modification? Please answer in terms of person-days or direct cost.

Specific information on the time and cost involved in processing individual Modification Proposals is not available. An estimate of the average cost of the whole life-cycle of a Proposal (including meeting costs to discuss and develop Proposals, and some post-implementation costs through the activities we support described earlier, such as the UK Link Committee) can be derived by dividing the £600k 2007/08 JO cost recorded above by 85, the quoted average number of Proposals per annum – i.e. £7,059 per Proposal. It is also worth noting that the majority of our costs are fixed (at least over a reasonable variation in the number of Proposals received) and are not proportionate to the number of Proposals processed – if more Proposals had been in play this year, our costs would not have been significantly higher, and vice versa. For example, there would still only be one main Panel meeting per month.

12. What has been the highest secretariat cost associated with processing (but not

UNC secretariat response

implementing) a modification? Please answer in terms of person-days or direct cost.

This information is not available since costs are not allocated to specific Proposals. Also, as outlined above, many of the JO costs are fixed such that the marginal costs associated with a specific Proposal tend to be fairly low. Hence the costs of a small and large Proposal do not generally vary greatly, with meeting costs being the biggest determinant. The lowest cost Proposals are those for which no meetings are held – a zero marginal cost. An example of a larger Proposal for which more meetings were held would be Review Proposal 0166 (which underpinned UNC Modification Proposal 0195). The Review Group met on 10 occasions, with a marginal cost of just £800 – being so low firstly because eight of the meetings were held on days when we already had a room booked for the full day to deal with other business, and under the arrangements we use, releasing rooms for part days does not offer significant savings; and one of the full day meetings was held in our Solihull offices, where the meeting rooms are available at no marginal cost, being part of the infrastructure charge we incur.

13. For how many modifications has external analytical support been sought by your organisation in the last two years. Was the support quantitative or qualitative?

100% in the sense that all consultations ask respondents to provide information regarding both the cost and benefit of implementing a Proposal. However, no external analytical support has been directly commissioned beyond this.

14. For how many modifications has analytical support (or drafting support) been provided by the modification Proposer in the last two years? Was the support quantitative or qualitative?

100%. The evidence provided is rarely quantitative.

15. What is the average number of respondents to a modification in the last two years?

We do not hold information in a form which allows the questions in this questionnaire to be readily answered. We have therefore gone through the records of Panel meetings held during the past two years and recorded the information requested regarding recommendations made. For consistency, this same sample has been used to record the number of representations received. Only written representations as published on our website have been counted – confidential responses are occasionally received, but are not included in the numbers. The sample size is 109. It should be noted that the numbers include alternatives as separate Proposals, and that where a Proposal has been varied, representations received in response to both the original or varied Proposal (but counting each responding organisation once only) have been counted.

Responses Received	Number of Proposals
3	1
4	1
5	3
6	5
7	11
8	6
9	13
10	14

UNC secretariat response

11	19
12	8
13	9
14	2
17	7
18	4
19	1
28	5

This indicates a mean of 11.3 responses being received per Proposal, with 11 also being the median and mode.

16. What is the typical length of time between receiving a modification and making a decision/recommendation to Ofgem in the last two years?

Based on the same sample of 109 Proposals, the mean number of days between a Proposal being raised and the Panel meeting at which a recommendation is made is 72 days, the median is 65. The table below illustrates the range.

Days	Proposals
0 Days	3
1 to 10	4
11 to 20	3
21 to 30	16
31 to 40	10
41 to 50	6
51 to 60	5
61 to 70	11
71 to 80	17
81 to 90	3
91 to 100	10
101 to 110	6
111 to 120	3
121 to 130	0
131 to 140	3
141 to 150	0
151 to 160	1
161 to 170	4
191 to 200	2
281 to 290	1
371 to 380	1

Proposals can be varied and formal variation requests are considered by the Modification Panel. A recommendation can be made immediately after this, and hence three Proposals are shown as having taken zero days to complete the process.

UNC secretariat response

17. Can you provide a breakdown of the number of mod proposals made by large parties (National Grid, the big 6 integrated utilities), small parties (new entrants, renewables) and others in the last two years. If this is too time-consuming, please provide a list of who has proposed each mod.

See attached table. Classifying these as large or small is not straightforward. As requested, the big 6 integrated suppliers have been identified. None of the Transporters are small companies, and, for example, organisations such as Statoil and Total Gas and Power would not generally be described as “small”.

18. In those cases in the last two years where a recommendation has been made, what percentage of modifications has been recommended for approval by the Panel?

The data regarding 109 recommendations is based on all Panel meetings held in the two year period April 2006 to March 2008 and shows that 67% were recommended for implementation. Of the 33% that were not recommended for implementation, 31% (11 out of 36) were subject to a split vote – i.e. 50% of the Panel Members voted for implementation, and 50% did not such that no majority in favour of implementation was achieved.

19. In how many cases in the last two years has a recommendation not been provided?

Zero.

20. In the last two years, for what percentage of Panel recommendations did the Panel reach a unanimous decision?

Of the recommendations to implement, 53% were unanimous. When no recommendation to implement was made, 6% of the cases were unanimous (i.e. no votes in favour of implementation). In total, across all 109 recommendations, 38% were unanimous (i.e. either all or none voted in favour of implementation).

21. In the last two years, for those cases where a recommendation was made by the Panel, how many times has Ofgem reached a decision that is different to the Panel recommendation?

Ofgem has announced a decision for 93 out of the 109 Proposals included in the sample described above. Among those recommended for implementation, 20% were rejected by Ofgem. Of those not recommended for implementation, 25% were accepted by Ofgem. It should be noted that in some cases Ofgem had to decide which of competing Proposals to implement, each of which could have been recommended for implementation. Hence 100% agreement would not be possible.

22. What is the process for identifying mods which are of a “housekeeping” nature, or which are consequent on modifications made to other codes?

The need for a housekeeping modification may be identified by any party. When this is done, the JO, on behalf of the Transporters, prepares a “Consent to Modify” which Ofgem either approve or reject. This is in essence exactly the same as the main modification process but without all the formal steps between raising the Proposal and submitting it to Ofgem for approval. 22 such consents have been raised in the lifetime of the UNC.

If a consequential modification were proposed, this would either go through the Consent or Modification route depending on the nature and significance of the required change.

Views on governance

23. In your view, how well do you think the governance procedures work?

The procedures work well, allowing all interested parties to participate to the extent they wish. The process is transparent and open to all, and the JO is always happy to deal with questions about the governance procedures and to help those who are not familiar with it. There are issues about the quality of input and analysis which is reflected in Modification Reports, and we accept what Ofgem has raised in this context. However, we do not see that as a failing of the Modification Rules and consequent governance procedures *per se*

24. Do you think the modification process could be made more efficient? If so, please list the three changes that you consider would be most effective?

To make the UNC process more efficient:

1. Ofgem to provide guidance about issues it wishes to see considered earlier in the process rather than awaiting the industry to complete its considerations.
2. Increase the extent of self governance such that non-controversial changes (beyond housekeeping) can be progressed quickly and with minimal bureaucracy.
3. Avoid processes operating in series, with increased parallel, complementary, working to assist efficiency – for example, when change is required outside the UNC to implement a full proposal, keep the processes aligned; merge/align UNC and iGT UNC processes.

UNC secretariat response

Proposals Raised in Accordance with the UNC Modification Rules - April 2006 to March 2008

	Review	Urgent Proposals			Standard Proposals			All
	Proposals	Modification	Alternate	Variation	Modification	Alternate	Variation	
BGT	6	1			15	3	4	29
EON	3	2	3		5	4		17
EDF	1	1			2	1	2	7
RWE					8	2	1	11
SSE	1							1
Scottish Power		1	1	1	1			4
<i>Big 6</i>	<i>11</i>	<i>5</i>	<i>4</i>	<i>1</i>	<i>31</i>	<i>10</i>	<i>7</i>	<i>69</i>
Centrica Storage		1			1	1		3
Corona	1	1			2			4
GDF	1	1			1	1		4
Macquarie		1						1
Statoil						1	1	2
Total Gas & Power					4			4
<i>Other Shippers</i>	<i>2</i>	<i>4</i>	<i>0</i>	<i>0</i>	<i>8</i>	<i>3</i>	<i>1</i>	<i>18</i>
NG Distribution		1			25	2	2	30
NG NTS	1	7			24	1	4	37
Scotia Gas Networks					2	2		4
Wales & West Utilities			1		5	3	2	11
<i>Transporters</i>	<i>1</i>	<i>8</i>	<i>1</i>	<i>0</i>	<i>56</i>	<i>8</i>	<i>8</i>	<i>82</i>
energywatch					1			1

UNC secretariat response

ALL	14	17	5	1	96	21	16	170
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18 April 2008

Serena Hesmondhalgh
The Brattle Group Limited
1st Floor
198 High Holborn
London WC1V 7BD

Dear Serena,

This letter sets out ELEXON's response to your questionnaire for industry code administrators issued on 28 March 2008.

General secretariat information

1. How would you describe the nature of your organisation?

ELEXON fulfils the role of the Balancing and Settlement Code Company (BSCCo) for Great Britain – a role created and defined by the Balancing and Settlement Code (BSC). The BSC obliges us as our main function:

'to provide and procure the facilities, resources and services required for the proper, effective and efficient implementation of the balancing and settlement arrangements'

We therefore procure, manage and operate the services and systems which enable the balancing and imbalance settlement of the wholesale electricity market, a number of which also underpin competition in electricity supply. These are important processes which directly impact the operations of the nearly 200 companies that participate in the market, and which also indirectly affect over 28 million consumers across the country. More than £1.1 billion of cash flowed through our systems during the last twelve months.

We also as part of our function operate the processes for BSC modification and implement the changes to our services and systems as a result of approved BSC (or BSC Code subsidiary document) change.

ELEXON Limited is a wholly owned subsidiary of National Grid. However, the BSC stipulates and our constitution has been established in a manner that keeps us fully at arms length from our parent company. For example, our chairman is de facto appointed by the Gas and Electricity Markets Authority which appoints the chairman of the BSC Panel who, under the BSC is also the chairman of ELEXON.

Our board of directors is appointed under rules within the BSC, and without any reference to National Grid. Two of our Board members are "independent" of industry, and two are Panel members elected by the Panel from among the industry members of the Panel. All Panel members are required by the BSC to act impartially and not to be representative of their employers. All Board members must act in accordance with the usual legal requirement

imposed by company law upon directors, including the obligation to act in good faith in the interests of the ELEXON.

This organisational structure allows us to maintain a position of commercial and political independence within the market. It also ensures our impartiality and neutrality.

We have also been established as a not-for-profit organisation. Again, this means that we do not have any overarching commercial interests that might conflict with our status as the independent administrator of the BSC arrangements. In recognition of our not-for-profit status, the BSC prescribes a system of checks and balances which include objectives and measures to ensure that we are efficient and transparent in our operations and expenditure. For example, we are required to consult on our business plans, to competitively procure systems and services and to include two board members drawn from the industry-appointed members of the BSC Panel.

Our main service offerings include:

- Procuring and managing the key services, systems and processes underpinning the operation of the BSC arrangements. While most of these are delivered via our contracted BSC Agents, we also deliver a number of operational services in-house.
- Assessing and delivering changes to the BSC arrangements. This can include extensive development of critical systems and processes, requiring large and complex projects.
- Providing or procuring assurance and audit services to ensure that important obligations, performance standards and targets placed on BSC Parties, Party Agents and BSC Agents are being adhered to.
- Supporting the governance of the BSC. This involves providing facilities, resources and advice to the BSC Panel, several Panel committees and other related bodies and groups.
- Providing a number of added value services to our customers - additional activities which support the effective delivery of the BSC but which are not specifically mandated. Examples include our Operational Support Managers (OSMs) who provide dedicated support to BSC Parties, hosting of regular events to help facilitate industry debate and provision of tailored training to our customers.

Our largest customer group is the BSC Parties. This comprises primarily physical energy producers and suppliers, many of whom are obliged by conditions in their licences to become a party to the BSC. National Grid is also a BSC party, as are a number of distribution system operators. We also have some 'non-physical' customers, such as banks, which have voluntarily acceded to the BSC. We also have a significant level of interaction with companies that provide services (e.g. meter operation and data collection) to BSC Parties. We regularly provide these 'Party Agents' with advice and guidance. Another customer group includes the regulatory, governmental and consumer agencies with an interest in the operation of the BSC, such as Ofgem, BERR, energywatch and Defra. We also consider the various bodies involved in the governance of the BSC to be our customers, including the BSC Panel and the committees and industry expert groups that support it.

2. How would you describe your role in the governance process?

ELEXON provides or procures all the resources, facilities and expertise required to support the various bodies involved in the governance of the BSC arrangements in the discharge of their functions. These bodies include the BSC Panel, a number of committees established by the Panel and the various industry expert groups established to support the code modification process and operations. Details of the various industry meetings that we arrange and support can be found on our website.

ELEXON administers two streams of change under the BSC. Changes to the BSC itself follow the 'Modification' process which requires Authority approval before change can be made and implemented. Additionally we maintain a suite of Code Subsidiary Documents (of which there are 141 including Procedures and metering Codes of Practice) which are necessary to give full effect to the Code but in respect of which changes follow a 'Change Proposal (CP)' process. The CP process does not require Authority determination. In providing responses to questions relating to 'modification processes' below we have sought to distinguish between Modifications and CPs.¹

3. Number of staff employed to deal with code governance (excluding implementation)?

Please refer to the attached spreadsheet.

For the purposes of answering this question, we have allocated our staff headcount across specific ELEXON activities in order to enable us to apportion the relevant costs. Employees dedicated to specific areas of the business have been identified. The remaining staff who, in the main, provide support functions have then been absorbed across these activities in proportion to the numbers directly allocated.

4. Annual running costs split into costs of dealing with modifications, costs of implementing modifications, costs of managing systems e.g. CVA in the case of ELEXON, and other costs? Please explain how you have allocated fixed costs between these functions.

Please refer to the attached spreadsheet.

The costs identified are based on our current full year results and staffing, although it should be noted that we have not as yet undertaken our full year audit. These costs do not therefore represent our final published results. However, it is thought that any change from the figures enclosed will not be material. As with staff numbers, for the purposes of answering this question, certain costs have been directly allocated, with the remainder being spread in accordance with the headcount allocation

We would be happy to provide any further explanation or detail on these figures if required.

¹ The Modification and CP processes also include 'issue' procedures to allow discussion of perceived problems and identification of potential solutions (but these do not include substantive analysis or consultation).

5. Who pays the secretariat costs and how are the charges calculated?

All of our running costs, including the costs of a number of key services that we have contracted out, are recovered from all the signatories to the BSC. The amount that each party contributes is largely dependent on the volumes of electricity that it produces or consumes. Thus, the biggest players in the market pay the majority of our costs. Together, Scottish and Southern, E.On, NPower, EDF, British Energy, Scottish Power and Centrica typically contribute over 80% of our funding.

BSC Costs are charged to BSC Parties to recover expenses or running costs incurred by ELEXON and its active subsidiary (ELEXON Clear Limited who operates the trading charges "clearing house" function). BSC Costs also includes charges relating to the transition to BETTA. As ELEXON is a not for profit company the amount charged to BSC Parties exactly matches ELEXON's costs for each financial year. The majority of BSC Costs are allocated on the basis of Funding Shares, which are determined by a BSC Party's metered data compared with the total energy produced and consumed by all BSC Parties. BSC Costs are charged to BSC Parties in advance on a monthly basis. A final reconciliation charge or credit is issued some months after the financial year end to match charges with ELEXON's actual costs for the year.

ELEXON's costs are recovered from BSC Parties using three types of charges: BSC Charges; Supplier Volume Allocation (SVA) Charges; and Default Charges. A full description of the basis of these charges and of Funding Shares is included as Annex 1 to this letter.

6. Do you consider that you have sufficient resources and skills to provide the appropriate level of constructive analysis for modifications?

Yes - This is the case for nearly all modifications. Where we have required additional resource or specialist knowledge to support particular modifications then we have procured this (see question 13 below).

8. If you answered "yes" to question 6, please estimate for what percentage of modifications you actually provide some form of analysis. If possible, indicate separate percentages for qualitative and quantitative analysis.

ELEXON undertakes analysis for every Modification and CP, and very often this analysis is extensive. The BSC is drafted in such a way that it is not presumed that BSCCo does this analysis but ELEXON as BSCCo has consistently provided both qualitative and quantitative analysis, as appropriate, for all Modifications and CPs.

9. Recognising that the level and type of analysis required will be different for different codes, can you discuss how often you think that mod proposals for "your" code would or do materially benefit from your being able to provide qualitative and/or quantitative analysis.

Always - As noted we provide analysis for all Modifications and CPs. This includes establishing the timetable for the assessment process; drafting the changes to the documents; collating industry views and arguments; analysis of the impact of change on the BSC systems and processes; establishing the implementation approach and date. The range of modifications is wide and in some instances ELEXON has also been asked to supplement analysis regarding specific participant benefits or the wider effects of a proposed Modification where this analysis has not been forthcoming from the industry.

Modification processes

10. Typically, how many modifications are there per year?

Modifications = 12²

CPs = 41³

Draft CPs (DCPs) = 29⁴

Issues = 7 (for April 2007 to March 2008)⁵

11. What is the typical secretariat cost associated with processing (but not implementing) a modification? Please answer in terms of person-days or direct cost.

Modifications Average = £17,412⁶

CP/DCP Average = £970⁷

12. What has been the highest secretariat cost associated with processing (but not implementing) a modification? Please answer in terms of person-days or direct cost.

Modification Proposal P98 'Dual Notification': £202,500⁸

2 Modification Proposals range widely in nature, from simple housekeeping changes to extremely large and complex developments. Many proposals will also generate an alternative which must also be assessed.

3 This average value has been derived from the total number of CPs raised over the past 2 years between 1 April 2006 till 31 March 2008.

4 Please note - as DCPs have only existed since the implementation of CP1170 in the February 2007 Release. The value provided is the total number of DCPs raised between 1 March 2007 till 29 February 2008.

5 This includes 4 issues raised as potentially requiring a code modification and 3 issues that were raised in relation to a potential defect in subsidiary documentation (although these can sometimes lead to a code modification dependent on the solution identified).

6 This value is based on all Mods that have been through the whole process and have been sent to the Authority. It does not include Mods that are still within the process.

7 Based on average man hours cost for all CPs processed between April 2007 and March 2008.

8 We can provide a breakdown of this secretariat cost if requested. This was a large and complex modification and the overall central systems implementation costs were of the order of £1.3M.

13. For how many modifications has external analytical support been sought by your organisation in the last two years. Was the support quantitative or qualitative?

4 Modifications (all relating to Transmission Losses) for which we used the same consultancy services to undertake an independent cost benefit analysis for each of the variations on the proposed Transmission Losses schemes. There was no such 'independent' analysis undertaken on previous Transmission Losses modifications, and this modelling required expertise and techniques of which ELEXON did not have direct experience. Therefore the work was procured by ELEXON through competitive tender.

14. For how many modifications has analytical support (or drafting support) been provided by the modification proposer in the last two years? Was the support quantitative or qualitative?

The BSC places only limited requirements on the Proposer of a Modification (see BSC F 2.1.2) and once launched the ownership of the proposal transfers to the Modification Group. The initial submissions therefore tend to be succinct summaries of the issue or defect, a description of the solution and the impact on the BSC baseline (where identified), and rationale for why the proposal would better facilitate the Applicable BSC Objectives

During the modification process variable support is provided from proposers, with some able to supplement the analysis or develop solution options, whilst others may not have the necessary skill or resource to do so. On only two occasions has the proposer provided some quantitative analysis to support the Modification Group's work. Under the recent pricing modifications, group members also provided models and qualitative analysis.

All drafting is undertaken by ELEXON. ELEXON provides the full 'legal' text of every proposed modification as is required by the BSC.

15. What is the average number of respondents to a modification in the last two years?

Modifications = 7

CPs = 13 & Draft CPs = 11

16. What is the typical length of time between receiving a modification and making a decision/recommendation to Ofgem in the last two years?

Modifications Average = 4 Months

CPs = 2.5 months & DCPs = 1.5 Months⁹ (decisions made by Panel or Panel committees)

⁹ In terms of CPs and DCPs the recommendation is to the owning Panel Committee and not to Ofgem

17. Can you provide a breakdown of the number of mod proposals made by large parties (National Grid, the big 6 integrated utilities), small parties (new entrants, renewables) and others in the last two years. If this is too time-consuming, please provide a list of who has proposed each mod.

Modifications:

Large Parties		Small Parties		Others	
Mod No.	Proposer	Mod No.	Proposer	Mod No.	Proposer
P203	RWE Npower	P200	Teesside Power	P207	energywatch
P204	British Energy	P201	UTILITA	P208	BSC Panel
P206	E.ON	P202	BizzEnergy	P209	BSC Panel
P211	EDF	P205	Good Energy	P210	BSC Panel
P213	E.ON	P212	BizzEnergy	P221	BSC Panel
P214	Scottish Power	P215	Uskmouth Power Limited		
P217	RWE Npower	P216	Smartest Energy		
P219	National Grid	P218	Good Energy		
P220	National Grid	P222	The Electricity Network Company Limited		

CPs:

Large Party (Big 6, National Grid)		Small Party	
CP no.	Originator	CP no.	Originator
CP1165	Scottish Power	CP1162	Western Power Distribution
CP1170	RWE npower	CP1163	Western Power Distribution
CP1171	RWE npower	CP1184	Western Power Distribution
CP1188	RWE npower	CP1189	United Utilities
CP1192	RWE npower		
CP1200	Scottish Power		
CP1209	Scottish Power		
CP1226	RWE npower		
CP1232	RWE npower		
CP1236	Scottish Power		

Additionally ELEXON has raised 68 CPs on behalf of the Panel committees or industry working Groups (e.g. Software Technical Advisory Group and Supplier Agents Forum) during the last two years. This is how the majority of CPs are raised.

18. In those cases in the last two years where a recommendation has been made, what percentage of modifications has been recommended for approval by the Panel?

Modifications = 52% (13) for Approval, 48% (12) for Rejection¹⁰

13 of these Modifications had Alternative solutions.

Number of CPs recommended by relevant committee = 71¹¹

19. In how many cases in the last two years has a recommendation not been provided?

None. Albeit where the Modification Group has split views the majority and minority views are reported.

20. In the last two years, for what percentage of Panel recommendations did the Panel reach a unanimous decision?

61% (13) Unanimous 39% (8) Majority

21. In the last two years, for those cases where a recommendation was made by the Panel, how many times has Ofgem reached a decision that is different to the Panel recommendation?

Once - P196 Treatment of Long Term Vacant Sites in Settlements (Panel: Reject, Authority: Approve)

22. What is the process for identifying mods which are of a "housekeeping" nature, or which are consequent on modifications made to other codes?

Section F2 of the BSC sets out the requirements for raising modifications and stipulates particular information that must accompany each proposal. Any BSC Party, National Grid, energywatch (or such bodies representative of interested third Parties as designated by the Authority) and the Panel (in certain circumstances) can propose a change and must identify the nature of the change, including whether it is 'housekeeping' in nature (such as P192: 'Change of Name of the Transmission Company'). In practice, most 'housekeeping' changes have been raised by the Panel on the recommendation of ELEXON as the BSCCo in accordance with Section F2.1.1. Whilst these changes are relatively straightforward they must still adhere to the formal Modification Procedures, requiring as a minimum an Initial Written

¹⁰ As at 12 April 2008, please note that two of these Modifications were mutually exclusive (however both the Panel and the Authority rejected both Proposals).

¹¹ From 1 April 2006 to 31 March 2008.

Assessment and Report Phase. ELEXON also maintains a list of non-material changes that are required to the Code (including typographical errors, redundant text and incorrect cross references).

ELEXON is required by Section F1.6 and F2.1.1(d)(ii) of the BSC to proactively maintain joint working arrangements with Core industry Document Owners (and System Operator-Transmission Owner Code) on changes that have a cross-code impact. We do so through attendance at other code Panels and through regular dialogue on various levels with other code administrators. We are also required to ask the Transmission Company for its view on impacts in every instance.

Views on governance

23. In your view, how well do you think the governance procedures work?

The BSC change procedures (i.e. Modifications and Change Proposals) work reasonably well. As with any process there is always room for improvement.

CP1170 revised the Change Proposal procedures to more closely align it with the Modification Procedures and thus this answer is, unless otherwise stated, applicable to both sets of change processes.

Strengths of the BSC change procedures include:

1. Ease of Initiation

A change can be sought on the basis of stating only the defect or issue: the proposer does not have to produce a detailed solution or drafting in order to initiate the change procedures. The effort to launch a change is therefore minimised.

2. All Proposals are fully processed without alteration

Once launched, the basic form of the change specified by the Proposer can not be altered. Proposed changes are always progressed through the process and the process cannot be deflected by other parties who may oppose the change. (NB whilst this benefits material changes, there are issues around minor changes – see Q. 24)

3. Transparency

The change procedures are transparent with open meetings, publicly available documents and industry wide consultations. The assessing bodies (e.g. Modification Group, Panel or Panel Committee) consider all presented views when formulating their decisions.

This information is subsequently supplied to the Authority when it considers a Modification. ELEXON is aware that some Parties have then provided supplementary information to the

Authority. Where this is relevant to and could have been made available during the Modification process this does not seem best practice.

4. Timetabled Process

The Modification Procedures operate to a published agreed timetable thus ensuring that changes are progressed through to resolution and the risk of filibustering is minimised. The timetable is agreed by the BSC Panel acting as independent guardians of the Modification process. The timescales are set to reflect the complexity, importance and urgency of the proposal. Any deviations from the agreed timetable require agreement from the BSC Panel (and in some circumstances can be vetoed by the Authority). Setting out a clear timetable removes uncertainty and assists the industry in planning its activities.

5. Use of available Industry Expertise

The industry people supporting the change procedures (such as Modification Group and Panel Committee members) are selected for their expertise and are charged with acting independently. The process utilises available industry experts and frees them from the constraints of following their company's preferred position. Independence of thought has served the process well and needs to be carefully protected. There is also a broad church of expertise and perspectives brought to bear by dint of the BSC Panel composition, which includes a mix of industry members, consumer appointees and independents.

6. Industry Owned paperwork

The paperwork produced as part of the process is owned collectively by the assessing group (albeit that ELEXON drafts and collates the papers) rather than by the Code administrator. When compiling the documentation, we always endeavour to fairly reflect all views.

Areas of the BSC change procedures that have worked less well include:

1. Volume and Complexity of Paperwork

The process generates a significant volume of paperwork. The paperwork can also be somewhat hard going as sometimes it is incorporating the diverse range of industry views. The volume of paperwork is in part the product of running an open process but equally reflects the range of matters that are mandated to be addressed within the BSC. Similarly attempting to accommodate the range of views of respondents and the owning group, in very tight timescales, can at times prove challenging.

ELEXON believes that the sheer volume can sometimes distract recipients. ELEXON has initiated a project (Write for the Reader) to improve the reports and in particular to ensure that the key arguments are clearly stated and visible. In addition ELEXON continues to

explore available avenues (e.g. newsletters, briefing sessions) for alerting all BSC Parties of pending changes and their potential impact.

2. Level of Responses

The BSC procedures are highly dependent on the input received from BSC Parties. The level of responses (see question 15) are at times disappointing. Some of the low levels may reflect the less contentious nature of some changes, equally with a process which involves 3 basic fora for debate / decision (i.e. Modification Group consultation, BSC Panel consultation, and Authority RIA consultation) there is a risk that BSC Parties will conserve resources and keep their "powder dry" by focusing effort on the more senior body. ELEXON has also identified (via its annual Customer Survey) that some BSC Parties struggle with consultation timescales and directing the reports to the correct people within their organisations.

Whilst there is a natural drive to expedite the assessment processes, sufficient time must be allowed for consultation. This may mean extending the overall timescales. However this disadvantage should be weighed against the gains of assuring fuller and more reasoned responses.

3. Use of Applicable BSC Objectives

The BSC Modification Procedures revolve around establishing whether the proposed change better facilitates the Applicable BSC Objectives. Dependent on the change being sought, formulating these arguments can be difficult for respondents, the Modification Groups and the BSC Panel (e.g. in the case of housekeeping modification P192 referred in Q22 above). Most arguments revolve around the views against objective (c) relating to competition.

The BSC Panel continues to emphasise the need to provide qualitative and where possible quantitative arguments. However it can often be difficult to construct comprehensive business cases due to the difficulty of obtaining commercial data from industry participants.

Users of the change processes have also struggled to relate the Objectives to other standard metrics for evaluating change such as cost benefit. Equally the BSC Panel contains consumer appointees and yet is precluded from explicitly considering the impact on customers other than through the Objectives. Should consideration of sustainability now be made a requirement, consideration should also be given to the practicalities of attempting to do this within the existing Applicable BSC Objectives and without explicit reference.

4. Availability of Industry Expertise

The BSC change procedures are reliant on the active participation of industry experts to form the various assessment groups. This is a limited resource, particularly when it comes to experts with knowledge of the challenges faced by smaller Parties. The current situation is acceptable but any further reduction in industry involvement would severely compromise the existing process.

In practice ELEXON sources and collates the information for the assessment groups – a role which the BSC envisages could be undertaken by industry members. The practice minimises the impact of BSC Parties and ensures a consistent approach.

ELEXON in acting as an independent body seeks to marshal the submitted views of participants rather than represent the views of any one particular section of the industry. If however the contribution of the industry experts were to reduce further then alternative models for engaging with the industry would be required.

5. Addressing Fundamental Changes

The BSC Modification Procedures in themselves have struggled to address fundamental market changes (e.g. taking forward the Cash Out debate). Launching a Modification Proposal as a "stalking horse" serves to highlight the issue but often fails to trigger finding the right solution. Rather such Proposals tend to trigger competitive Modifications each variants on the other, and leave a sense that the fundamental concern has not been addressed.

Whilst the BSC Issues process was intended to promote broader discussions this has been only a partial success. The need to have a clear strategic and long term vision of how the market could and should evolve remains. In the absence of any vehicle for this ELEXON remains willing to support and facilitate this debate (and indeed initiated some discussions under the Evolution Steering Group as a precursor of the Isis Project)

24. Do you think the modification process could be made more efficient? If so, please list the three changes that you consider would be most effective?

Yes. There are aspects of the BSC Modification Procedures where a change could lead to a more efficient process.

1. A streamlined process for minor variations

The BSC currently requires any change to the BSC to follow the full Modification Procedures. This means that even minor changes such as "housekeeping changes" need to follow the full rigours of the process.

Adoption of a simpler process to allow such minor variations, albeit a process which retains necessary authorisations would reduce the burden of such changes on all bodies (e.g. BSC Parties, ELEXON and Ofgem). Given limited resources this would enable bodies to focus their efforts on the more significant matters.

2. Extending the right to propose a Modification to all BSC Committees

Rules governing who can raise a BSC Modification are set out in Section F 2.1 of the BSC. The BSC Panel can currently raise a proposal on the recommendation of two of its Committees: the Trading Disputes Committee and the Performance Assurance Board. In each case the Committee's recommendation is made on the basis of its activities.

The Imbalance Settlement Group (ISG) and Supplier Volume Allocation Group (SVG) are also Panel Committees. They monitor the operation and development of the core settlement arrangements (notably through acting as the decision bodies for the Change Proposal

procedures). Through their role in overseeing operational issues the committees have to periodically address issues and defects with the operation of the BSC arrangements. Giving these Committees the right to propose Modifications directly to the BSC Panel would expedite the resolution of such operational issues. For example, in the past, a Panel Committee (ISG) has highlighted issues and clarifications required in relation to the calculation of credit cover which could have benefited from a Modification, but the group was unable to raise this under the current restrictions. Consistent with their normal operation, the decision to recommend a Modification could be made dependent on unanimous support from the Committee's members. This approach would limit the proposals to clearly supported changes that are driven by operational issues.

3. Greater Harmonisation of Industry and Ofgem Procedures

The current BSC Modification Procedures involve three distinct bodies: the Modification Group, the BSC Panel and the Authority. The work of the Modification Group and the BSC Panel is highly coordinated with published timetables, agreed Terms of Reference and use of common consultations.

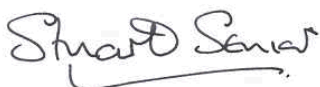
The Authority with its wider duties assesses a broader range of issues and may at times seek a Regulatory Impact Assessment (RIA). This is done as a separate exercise and projected timescales for these activities are not published.

Where the Authority perceives that there are issues other or wider than those within the Terms of Reference set by the BSC Panel then it could append these matters to the Modification Group's Terms of Reference. These could then be fed into consultations and presented in the Reports. This would assure that all matters under the BSC are addressed and could negate the risk of reports being unnecessarily rejected by the Authority as deficient. Where the matter falls outside of the BSC, the matter would not form part of the BSC Panel's considerations, but the overall process of collating information could be speeded up. Adopting such a process would also avoid the risk of BSC Parties holding back pertinent arguments for submission as part of the RIA stage. Should this occur it undermines the Modification process and increases the risk of challenge (e.g. appeal or judicial review).

The absence of timetable information introduces uncertainty as to when a change will be implemented were it approved. Whilst this is in part addressed through the BSC Panel's formulation of the Implementation Date (i.e. the adopted formulation of "if approved by [X] then it will be implemented on [Y]"), the uncertainty costs the Industry money as resources need to be reserved pending the decision. Judicious use of public "minded to" statements would help reduce this issue.

We hope that the responses to the questions provided above are sufficient for your purposes but we would of course be happy to provide any further information or clarification that you might require. In that event, please contact Dorcas Batstone in the first instance (dorcas.batstone@elexon.co.uk, 020 7380 4256).

Yours sincerely,

A handwritten signature in black ink that reads "Stuart Senior". The signature is written in a cursive style with a long horizontal flourish underneath the name.

Stuart Senior
Chief Executive

List of Enclosures

Annex 1 – BSC Cost Recovery

Attachment 1 – ELEXON Costs for Brattle (MS Excel Spreadsheet)

Annex 1 – BSC Cost Recovery

BSC Charges

BSC Charges comprise three types of charge as outlined below.

1. Net Main Charges recover approximately 55 percent of ELEXON's costs and are calculated on the basis of each BSC Trading Party's Main Funding Share. Net Main Charges must be paid by all BSC Trading Parties (BSC Annex D-1 refers).
2. Main Specified Charges recover approximately 10 percent of ELEXON's costs and are charged on a tariff basis. For example BSC Parties must pay £100 per month for each BM Unit they own (BSC Annex D-3 refers). These charges are paid by BSC Parties using the services to which each tariff applies.
3. Further Charges are determined by the BSC Panel and charged to BSC Parties to recover the cost of any services that ELEXON provides or procures on a Party's behalf. For example, relocation/re-configuration of High Grade Data Links. These charges are levied only on the BSC Parties that request additional services (BSC Annex D3 refers).

Supplier Volume Allocation (SVA) Charges

SVA Charges cover the operational aspects of SVA and amount to approximately 15 percent of ELEXON's total costs. There are three types of charge: Production Charging SVA; Consumption Charging SVA; and SVA Specified.

Half of SVA costs are allocated to those BSC Trading Parties with Production credited energy using the SVA (Production) Funding Share. This portion is known as Production Charging SVA.

The remaining half of SVA Costs are made up of the SVA Specified Charges and the Consumption Charging SVA. The SVA Specified Charges are allocated to BSC Trading Parties whose customers have Half Hourly meters. A fixed tariff of £0.70 per month is charged for each meter supplied. This tariff recovers a small percentage of the SVA charges from BSC Trading Parties in proportion to the quantity of SVA Half Hourly meters they supply. Once costs have been allocated to BSC Trading Parties through the SVA Specified Charges, the remainder is charged to BSC Trading Parties that supply customers with Non Half Hourly meters through Consumption Charging SVA. This is calculated using the SVA (Consumption) Funding Shares.

Default Charges

Default Charges relate to unpaid BSC and SVA Charges due from Defaulting BSC Parties. These unpaid amounts are recognised by ELEXON as a bad debt and charged to all BSC Trading Parties in proportion to their Default Funding Share.

Funding Shares

Funding Shares define the proportions of various categories of costs for which each BSC Trading Party is liable. This includes Net Main costs, Specified NETA, SVA Production and Consumption charging which are mentioned above. As Funding Shares for each BSC Trading

Party will differ, each BSC Trading Party's contribution to BSC Costs will vary in proportion to their Funding Shares. Funding shares are initially calculated using estimated metered data, which is replaced by actual metered data as it becomes available (BSC Annex D-1 refers).

There are five types of Funding Share outlined in the BSC:

1. Main Funding Share for the Monthly Net Main Costs – a BSC Trading Party's Main Funding Share reflects its proportionate share of total Credited Energy Volumes for all BSC Trading Parties for that month. Note that Credited Energy Volumes take account of Metered Volume Reallocation Notifications (MVRNs).
2. Supplier Volume Allocation (SVA) Funding Share for Monthly Production Charging SVA Costs – a BSC Trading Party's SVA (Production) Funding Share reflects its proportionate share of total Credited Energy Volumes for Production of BM Units for all BSC Trading Parties for that month.
3. SVA Funding Share for Monthly Consumption Charging SVA Costs – a Supplier's SVA (Consumption) Funding Share reflects its proportionate share of total Non Half Hourly consumption for all BSC Trading Parties for that month. Note that this reflects metered energy and but not MVRNs.
4. General Funding Shares – a BSC Trading Party's General Funding Share reflects its proportionate share of the aggregate of all BSC Section D Charges for that month.
5. Default Funding Share of Monthly Default Costs – these are determined using General Funding Shares excluding any Defaulting BSC Parties.

Party Funded Charges

The remainder of the BSC Annual Charges is made up of Party Funded Charges. These are known as the 'BETTA Member NETA Funding' charging arrangements. The cost of implementing BETTA was incurred by Trading Parties before BETTA Go Live (1 April 2005). The Parties who contributed to these costs are known as 'Funding Parties' and are entitled to recuperate these costs in proportion to their recovery shares. These costs are recovered by ELEXON through the 'BETTA Charge' on behalf of Trading Parties. ELEXON has not incurred these costs but is acting in an administrative role on behalf of Funding Parties. The expenditure associated with BETTA is collected from BSC Parties and reimbursed to the Funding Parties over the course of five years. These costs are allocated to all Trading Parties using Main Funding Shares and reimbursed to Funding Parties on a quarterly basis by ELEXON.

BSC secretariat response

ELEXON ANNUAL RUNNING COSTS

	Direct Staff Sub totals	O'heads	Total		<u>£'000s</u>	<u>£'000s</u>
Governance	9	3.65	12.7	Cost of Governance		£1,341
Panel Administration, meetings, elections etc				People	815	
Panel Sub Committee support SVG,ISG, PAB,TDC etc				Overheads	526	
Technical Secretary services and document drafting						
Accession/Exit						
ELEXON Board						
Change Assessment (Modifications & Change Proposals)	22	8.93	30.9	Cost of Modification Assessment		£3,934
(All Aspects of change management up to the decision)				People	1,992	
Modification & Change Proposal Group Administration				Overheads	1,286	
Change Assessment & Analysis				Demand Led Change Assessment	656	
Solution Design & Impact Assessment						
Design Authority						
Configuration Management of BSC & CSDs						
Modification/Change Implementation	23.5	9.54	33.0	Cost of Change Implementation		£3,915
(Change man. from point of decision through to implementation)				People	2,128	
Programme/Project Management				Overheads	1,374	
Agent Procurement/ Commercial Management				Demand Led Change Implementa	413	
Testing/Acceptance/Commissioning						
Configuration Management of Design Docs & Software						
BSC Central Operation	26	10.55	36.6	Cost of Operations		£20,005
Central Agent Management				People	2,354	
Centrally delivered process management				Overheads	1,520	
Parameter & Standing Data management				Agent Costs	16,069	
Market Monitoring,diagnostics and analysis				Audit (5% of total)	62	
Central System Audit						
Metering Requirements						
Market Assurance/Support	20.5	8.32	28.8	Cost of Market Assurance		£5,080
Oversight of Distributed Supplier Settlement Processes & Systems				People	1,856	
Performance Assurance Processes				Overheads	1,199	
Operational Support				Agent Costs	847	
Qualification & Audit				Audit (95% of total)	1,178	
Totals	101	41.00	142.0	Total Budget	34,274	

Overheads

Finance						<u>£34,274</u>
HR						
Facilities						
IT						
Assurance						
Administration						
Totals			41			

Average ELEXON Headcount 2007/08 = 142

Costs Per March 08 Finance Report

	<u>£'000s</u>
People Costs	9,144
Overheads	5,905
Demand Led Change Assessment	656
Demand Led Change Implementation	413
Audit	1,240
Agent costs - entry process/tech assurance	847
Agent costs - other	16,069
Totals	34,274

General secretariat information

1. How would you describe the nature of your organisation?

ElectraLink is the UK gas and electricity industry specialist in Data Transfer, supporting Technical Services and Code Governance Administration. Our data transfer services are crucial to the effective operation of the gas and electricity supply markets. ElectraLink provides code governance administration and support services to DCUSA and SPAA respectively in the electricity and gas markets. We provide an end to end service for the management of these industry agreements including the interaction with external service providers and all industry stakeholders. ElectraLink's services are provided against arms length commercial service level agreements and our performance is monitored and reported on a monthly basis. This contract was awarded following an open and competitive tendering exercise carried out by DCUSA Limited in 2006. ElectraLink's governance support services have been recognised as a key example of the cost effective delivery of efficient code governance.

2. How would you describe your role in the governance process?

ElectraLink provides end to end secretarial, administrative support, business support and change management services to DCUSA Limited in support of the Distribution Connection and Use of System Agreement. Services are provided in accordance with the commercial service level contract in place between ElectraLink and DCUSA Limited. ElectraLink provides an independent and equitable service to all the code Parties through the timely, efficient and cost effective delivery of the agreed processes.

Under the DCUSA the code administrator is responsible for the administration and operation of the procedures set out within the agreement while industry members provide the crucial role of constituting the governing committee of the agreement and providing the expert analysis and input into the modification assessment process. DCUSA formally constitutes Working Groups to manage and develop CPs and each Working Group operates within defined Terms of Reference. While the remit of each Working Group may differ depending on the nature of the CP the core principle of assessing the CP against the Code Objectives and working to develop a robust proposal with supporting legal drafting is common across all Working Groups.

ElectraLink provides administrative support to all DCUSA Working Group meetings, advises the Working Group on the application of the Agreement, and assists the Working Group in drafting the outputs required under the terms of the Agreement.

This division of duties between code Parties and code administrator, supported by a service level contract structure, is fundamental to the efficient administration of the code. In addition ElectraLink administers the DCUSA website in order to support the Agreement and provides advice on the administration and application of the code to members and interested Parties. This structure has worked well since go live of the agreement in 2006.

3. Number of staff employed to deal with code governance (excluding Implementation)?

Within ElectraLink there are 5 members of staff who provide support to the service of which 2 are dedicated to the administration and secretariat support of our code governance services.

4. Annual running costs split into costs of dealing with modifications, costs of implementing modifications, costs of managing systems e.g. CVA in the case of Elexon, and other costs? Please explain how you have allocated fixed costs between these functions.

The DCUSA budget (which includes the cost of the secretariat contract) is set by the DCUSA Panel and agreed by DCUSA Parties on an annual basis. The 2008/09 DCUSA budget includes an allowance for legal fees and meetings costs associated with the assessment and development of 12 standard CPs as well as the management of 3 projects. The secretarial services contract in place between DCUSA Ltd and ElectraLink is for an all inclusive service. The delivery of cost effective governance and code administration is enhanced through allowing Parties to the code to proactively and directly manage the wider costs of administering the agreement including its service provider and any associated legal fees and meeting costs.

5. Who pays the secretariat costs and how are the charges calculated?

All the costs of DCUSA including the secretariat costs are wholly and exclusively recoverable from DCUSA Parties. The costs are split equally, in the first instance between Supplier and Distribution categories and are then recovered based on each company's uncapped market share, based on number of registered MPANs within their Party category.

6. Do you consider that you have sufficient resources and skills to provide the appropriate level of constructive analysis for modifications?

Yes. ElectraLink has the sufficient resources and skills to provide the level of constructive analysis for modifications as required by the Agreement and the

service level agreement. Under the DCUSA the industry Parties provide the crucial role of expert input and analysis into the change process, legal advice is out sourced, and the administrator is required to deliver the change process in accordance with the Agreement. This has proven to work well since the inception of the Agreement and is recognised as key component in the DCUSA model.

7. If you answered “no” to question 6, please explain:

(a) whether the problem is resources, skills or both

(b) if the problem involves skills, what skills do you consider you lack e.g. experience in regulatory economics, energy market modeling etc.

(c) why you do not have the necessary resources/skills

8. If you answered “yes” to question 6, please estimate for what percentage of modifications you actually provide some form of analysis. If possible, indicate separate percentages for qualitative and quantitative analysis.

Under the terms of the DCUSA the Secretariat provides a high level initial assessment of each Change Proposal to ensure it meets the necessary requirements as set out in the Agreement and is fit for purpose. ElectraLink attends and supports all meetings where Change Proposals are assessed and developed. We provide advice on the application of the Agreement in relation to the Change Process. For all modifications, as part of our end to end service, ElectraLink manages the CP through each of the stages in the process from the initial assessment, consultation, voting, authority consent, and implementation.

9. Recognising that the level and type of analysis required will be different for different codes, can you discuss how often you think that mod proposals for “your” code would or do materially benefit from your being able to provide qualitative and/or quantitative analysis.

The structure of the DCUSA means that Parties are responsible for carrying out their own qualitative and quantitative analysis of the impact of the CP on their businesses, typically via a consultation process. ElectraLink believes that in the case of the DCUSA, Parties to the Agreement are best placed to carry out such analysis and that it is not the role, in this instance, of the code administrator to perform this role on behalf of the industry. This split of duties has worked well.

ElectraLink considers that for both the code administrator and Parties to fully assess each CP would result in both a duplication of effort and a cost increase for Parties. ElectraLink considers that as the industry experts and the decision makers in terms of the DCUSA voting mechanism, Parties are best placed to

carry out the requisite level of analysis to enable code administrators to provide quality modification reports to Ofgem at this time. This is achieved primarily through participation in Working Groups as well as each Party conducting their own internal impact assessment against their respective businesses.

Modification processes

10. Typically, how many modifications are there per year?

Since its inception in October 2006 there have been 21 Standard CPs raised of which 2 have been urgent and 3 have had associated alternative variations. This equates to an average of 17 CPs per annum.

11. What is the typical secretariat cost associated with processing (but not implementing) a modification? Please answer in terms of person-days or direct cost.

The DCUSA has a clearly defined process for managing and developing CPs. Each CP is developed on its own timetable which is largely driven by the complexity of the change. While it must be noted that there is no such thing as a typical CP the average number of secretariat man days associated with managing a CP through the Change Process is between 7 and 10 days plus an additional 2 -3 days per Working Group meeting that is held.

The DCUSA differentiates between Part One and Part Two Change Proposals and offers two routes for progressing changes: the Definition Phase whereby CPs are developed by a Working Group and typically issued for industry consultation; and the Report Phase whereby CPs are issued directly to Parties for voting. The nature of the CP raised, and the route it is progressed, will greatly impact the level of resource required to process the CP.

12. What has been the highest secretariat cost associated with processing (but not implementing) a modification? Please answer in terms of person-days or direct cost.

The contract in place between ElectraLink and DCUSA is a fixed price contract and the cost does not change based on either the complexity of the CP or the time involved in processing the CP. As a result of industry Parties providing the crucial role of expert input and analysis into the change process the level of additional costs such as legal fees can be minimised. The value of the secretariat contract is commercially confidential.

13. For how many modifications has external analytical support been sought by your organisation in the last two years. Was the support quantitative or qualitative?

Because Parties typically undertake the role of providing analytical review for modifications no external analytical support has been required. DCUSA is provided with independent legal advice on changes by Wragge & Co and Wragge & Co provides DCUSA with the legal drafting required to reflect the CP within the Agreement.

14. For how many modifications has analytical support (or drafting support) been provided by the modification proposer in the last two years? Was the support quantitative or qualitative?

The DCUSA Change Proposal form requires Parties to provide initial legal drafting and a business justification for raising a CP. DCUSA consultations request as standard that Parties provide an impact assessment of the CP on their business including an assessment of the likely cost of implementing the CP. This information is shared with Parties (unless specifically submitted on a confidential basis) and is provided to Ofgem as part of the Change Report for Part One matters. Typically supporting information provided by Parties is qualitative rather than quantitative but this is broadly reflective of the nature of the CPs raised to date which relate to documentation or process changes.

15. What is the average number of respondents to a modification in the last two years?

All CPs are circulated to all Parties, including small Suppliers and IDNOs, for consideration and where a Working Group is constituted to manage the development of a CP all Parties are provided with the opportunity to provide expert members to that group. Teleconference facilities are made available for all workgroups to ensure smaller Parties with limited resources are given every opportunity to contribute to the development of the CP.

Within the Supplier category typically it is the larger Supplier organisations that provide members to workgroups, consultations and vote on CPs. Participation in the Distribution category is spread across both DNOs and IDNOs. However, whilst typically it is the larger Parties who participate more actively in the change process, smaller Parties do become involved and vote on issues that they consider material to them - e.g. Section 2B and the Standard List of Recognised Credit Assessment Agencies (LORCAA) Project.

16. What is the typical length of time between receiving a modification and making a decision/recommendation to Ofgem in the last two years?

For the 16 CPs which have completed the process to date, the number of days from being raised to a recommendation being submitted to Ofgem has ranged

from 50 days at one extreme to 184 days at the other extreme. The average has been 98 days.

Not included in these figures is the number of days incurred in the Section 2B Project which ran from February 2007 to November 2007. At the conclusion of this project, DCP012 was raised. This was a significant project and sought to define the relationship between DNOs and IDNOs. This project, although significant and complex, succeeded through the close participation and pragmatic approach adopted by DCUSA Parties during the project phase.

17. Can you provide a breakdown of the number of mod proposals made by large Parties (National Grid, the big 6 integrated utilities), small Parties (new entrants, renewables) and others in the last two years. If this is too time-consuming, please provide a list of who has proposed each mod.

Of the 21 CPs raised to date, 9 have been raised by Suppliers and 12 raised by distribution businesses. Of the 9 CPs raised by Suppliers 8 (90%) have been raised by big 6 supply groups. Of the 12 CPs raised by distribution companies, 11 (92%) have been raised by DNOs.

18. In those cases in the last two years where a recommendation has been made, what percentage of modifications has been recommended for approval by the Panel?

Of the 17 CPs which have been considered by Parties, 10 were accepted by industry while 7 were rejected. 16 of the 17 CPs required Authority consent and in 4 instances the Authority has overturned the industry decision.

19. In how many cases in the last two years has a recommendation not been provided?

In all instances, except where a CP is withdrawn, a recommendation or outcome on a CP will be achieved through the voting process. In only 1 instance to date has a CP been withdrawn from the process and in this case was replaced by an alternative variation which was accepted by the Party vote.

20. In the last two years, for what percentage of Panel recommendations did the Panel reach a unanimous decision?

Please note that CP recommendations are based on a Party vote and not on Panel decision.

The Parties reached a unanimous 'accept' decision on 8 CPs (47%) out of the 17 CPs which have completed the voting process. A further 3 CPs were accepted on a majority (> 50% voting Parties accepted the proposal) decision.

21. In the last two years, for those cases where a recommendation was made by the Panel, how many times has Ofgem reached a decision that is different to the Panel recommendation?

There have been 4 occasions when Ofgem has not accepted the decision reached by Industry. In 3 instances the Authority was over turning a 'reject' recommendation by industry.

22. What is the process for identifying mods which are of a "housekeeping" nature, or which are consequent on modifications made to other codes?

Parties are responsible for raising 'housekeeping' changes in line with the standard change process. If the secretariat becomes aware of a necessary housekeeping change it notifies the Panel and requests that a Party sponsor the mod. The Secretariat is not able to raise or sponsor changes. The Panel manages the Housekeeping Log and looks to raise batches of housekeeping amendments at fixed periods throughout the year. It is the responsibility of the Panel and Working Group members to be aware of developments under other codes and raise amendments as necessary.

Views on governance

23. In your view, how well do you think the governance procedures work?

The DCUSA model is relatively new within the industry, in particular the concepts of self regulation and Part One and Part Two Change Proposals. Feedback to date indicates that both elements of the agreement lead to benefits and efficiencies for the industry.

The ability of the DCUSA Parties to manage their budget, chair and participate fully in Working Group meetings, and vote on the outcome of Change Proposals is a positive step toward lighter touch regulation from the Authority and adds to efficiencies for Parties. Parties take a proactive approach to assessing the governance arrangements and processes within the Agreement to ensure they match changing and evolving industry expectations and continue to be fit for purpose.

It is critical to the successful operation of a code that the membership of its decision making bodies is reflective of the constituencies that exist within the code. The level of authority and decision making powers of such Panels need to be reflective of the scope and complexity of the codes and must align with the principle of self regulation as appropriate. The DCUSA Panel is representative

of the industry and the processes operating the agreement are open and transparent. The end to end management of the service, Agreement and DCUSA Ltd by ElectraLink minimises the impact on DCUSA Parties.

The Change Process is efficient and effective. The participation of Parties within the Working Group process ensures that robust and developed proposals with supporting rationale and drafting are put forward for voting. The ability to develop alternatives or withdraw proposals ensures that Parties can be fully involved in the decision making process and retain a crucial element of flexibility. Whilst typically it is the larger Parties who participate more actively in the change process, smaller Parties do become involved in issues that impact them - e.g. Section 2B and the Standard List of Recognised Credit Assessment Agencies (LORCAA) Project. The DCUSA Panel recognises the benefits achieved in engaging all Parties to the Agreement in the CP process and actively encourage such involvement.

The DCUSA Change Process is proving generally to be an efficient process. The principle of self regulation and the open and transparent assessment processes allows market participants to be fully engaged throughout the development, analysis and assessment of all modifications. The structured voting system allows impacted Parties as a whole to determine whether a modification is accepted (subject to Authority consent in defined circumstances) and achieves a manageable balance between self governance and Authority regulation.

DCUSA Parties work hard to resolve operational issues and apply a pragmatic approach to ensuring consensus is achieved wherever possible and work collaboratively to resolve industry and operational issues. This is demonstrated through 8 out of 17 CPs being approved unanimously.

24. Do you think the modification process could be made more efficient? If so, please list the three changes that you consider would be most effective?

The DCUSA model is relatively new and is still developing. The DCUSA Panel has included a review of the Change Process on its work plan for this year. This review will be carried out once a critical mass and broad spectrum of CPs have progressed through the modification process.

Possible areas for future consideration are:

- It is possible that as the arrangement develops and both Parties and the Authority become more familiar with the Agreement and the concept of

self regulation there will be scope to broaden the elements of the Agreement that are categorised as 'Part Two' matters i.e. those areas of the Agreement which can be changed on the basis of industry vote. An increase in self regulation could prove beneficial by enhancing the authority and responsibilities vested in the code Parties for the efficient and effective operation of the market whilst also reducing the number of modifications requiring consent and thus reduce the regulatory burden on the Authority. This would be of particular benefit to housekeeping modifications.

- It may also be beneficial for Parties / Ofgem to reconsider the DCUSA objectives. The DCUSA Panel and Working Groups have considered that whilst a CP provides a sensible solution to an issue, or has real operational benefits, it may not strictly either better facilitate, or be detrimental to, any of the DCUSA objectives. It may be worthwhile to consider that a CP could be 'neutral' against the objectives but still have merit in the industry. DCP 008 - Provision of Urgent Metering Services is being progressed on this basis and Ofgem has confirmed that it is supportive of its progression. Such consideration would allow Parties to raise and support valid changes without having to 'shoe horn' them to fit the current objectives. Furthermore it could be considered that some of the objectives are contradictory which causes difficulty in assessing whether they are 'better facilitated' by a proposed amendment. The DCUSA Objectives are prescribed in Condition 9B of the Distribution Licence and therefore any change in the objectives would require a modification to the licence condition.

General secretariat information

1. How would you describe the nature of your organisation?

ElectraLink is the UK gas and electricity industry specialist in Data Transfer, supporting Technical Services and Code Governance Administration. Our data transfer services are crucial to the effective operation of the gas and electricity supply markets. ElectraLink provides code governance administration and support services to SPAA and DCUSA respectively in the gas and electricity market. We provide an end to end service for the management of these industry agreements including the interaction with external service providers and all industry stakeholders. ElectraLink's services are provided against arms length commercial service level agreements and our performance is monitored and reported on a monthly basis. ElectraLink's governance support services have been recognised as a key example of the cost effective delivery of efficient code governance.

2. How would you describe your role in the governance process?

ElectraLink provides end to end secretarial, administrative support, business support and change management services to SPAA Limited in support of the Supply Point Administration Agreement. Services are provided in accordance with the commercial service level contract in place between ElectraLink and SPAA Limited. ElectraLink provides an independent and equitable service to all the code parties through the timely, efficient and cost effective delivery of the agreed processes.

Under the SPAA the code administrator is responsible for the administration and operation of the procedures set out within the agreement while industry members provide the crucial role of constituting the governing committee of the agreement and providing the expert analysis and input into the modification assessment process. This division of duties between code parties and code administrator, supported by a service level contract structure, is fundamental to the efficient administration of the code. In addition ElectraLink administers the SPAA website in order to support the SPA Agreement and provides advice on the administration and application of the code to members and interested parties. This structure has worked well since go live of the agreement in 2004.

3. Number of staff employed to deal with code governance (excluding implementation)?

Within ElectraLink there are 5 members of staff who provide support to the service of which 2 are dedicated to the administration and secretariat support of our code governance services.

4. Annual running costs split into costs of dealing with modifications, costs of implementing modifications, costs of managing systems e.g. CVA in the case of Elexon, and other costs? Please explain how you have allocated fixed costs between these functions.

The SPAA budget (which includes the cost of the secretariat contract) is set by the SPAA Executive Committee and agreed in open Forum by all SPAA Parties on an annual basis. The SPAA budget does not include a breakdown of modification costs, nor does the secretarial contract. The annual budget reflects the level of resource required to deliver the objectives within the Annual Work Plan and covers such costs as the secretarial and administration contract, meeting costs, legal fees, website development and operation costs. The budget for 2008/09 has been set at £219k. The delivery of cost effective governance and code administration is enhanced through allowing parties to the code to proactively and directly manage the wider costs of administering the agreement including its service provider and any associated legal fees and meeting costs.

5. Who pays the secretariat costs and how are the charges calculated?

All the costs of SPAA including the secretariat costs are wholly and exclusively recoverable from Supplier parties and are recovered based on each Suppliers uncapped market share.

6. Do you consider that you have sufficient resources and skills to provide the appropriate level of constructive analysis for modifications?

Yes. ElectraLink has the sufficient resources and skills to provide the level of constructive analysis for modifications as required by the Agreement and the service level agreement. Under the SPAA the industry parties provide the crucial role of expert input and analysis into the change process while the administrator is required to deliver the change process in accordance with the Agreement. This has proven to work well since the inception of the Agreement and is recognised as key component in the SPAA model of self regulation.

7. If you answered "no" to question 6, please explain:

(a) whether the problem is resources, skills or both

(b) if the problem involves skills, what skills do you consider you lack e.g. experience in regulatory economics, energy market modeling etc.

(c) why you do not have the necessary resources/skills

8. If you answered "yes" to question 6, please estimate for what percentage of

modifications you actually provide some form of analysis. If possible, indicate separate percentages for qualitative and quantitative analysis.

Under the terms of the SPAA the Secretariat provides a high level initial assessment of each Change Proposal to ensure it meets the necessary requirements as set out in the Agreement and is fit for purpose. ElectraLink attends and supports all meetings where Change Proposals are assessed and developed. We provide advice on the application of the Agreement in relation to the Change Process. For all modifications, as part of our end to end service, ElectraLink manages the CP through each of the stages in the process from the initial assessment, consultation, voting, authority consent, and implementation.

9. Recognising that the level and type of analysis required will be different for different codes, can you discuss how often you think that mod proposals for “your” code would or do materially benefit from your being able to provide qualitative and/or quantitative analysis.

The structure of the SPAA means that Parties are responsible for carrying out their own qualitative and quantitative analysis of the impact of the CP on their businesses. ElectraLink believes that in the case of the SPAA, Parties to the Agreement are best placed to carry out such analysis and that it is not the role, in this instance, of the code administrator to perform this role on behalf of the industry. This split of duties has worked well.

ElectraLink supports the concept of self governance as enshrined in the Agreement and considers that for both the code administrator and Parties to fully assess each CP would result in both a duplication of effort and a cost increase for Parties. ElectraLink considers that as the industry experts and the ultimate decision makers, Parties are best placed to carry out the requisite level of analysis to enable code administrators to provide quality modification reports to Ofgem at this time.

Modification processes

10. Typically, how many modifications are there per year?

Since its inception in November 2004 there have been 110 Standard CPs and 89 MDD Fast Track Changes raised to the SPAA equating to an average of 58 CPs per annum.

11. What is the typical secretariat cost associated with processing (but not implementing) a modification? Please answer in terms of person-days or direct cost.

The SPAA has a clearly defined and understandable process for managing and developing CPs. A critical part of that process is the analytical review carried out by industry parties rather than the secretariat. Under the SPAA, Parties work up Change Proposals at sub-committees before raising a formal CP. This ensures industry support for a CP before it is raised and limits the amount of time it takes to progress a CP through the process. The SPAA committees convene on a monthly basis to consider a number of issues which reduces the impact on Parties having to attend separate meetings to discuss individual changes.

The SPAA Change Process works on the principle of the 'Change Pack' in which CPs are batched together to be issued to Parties once a month. The Change Pack can include any number of CPs. Although there is no such thing as a typical change, the average number of secretariat man days associated with managing a Change Pack through the Change Process is between 5 and 10 days. The batching of CPs in this manner leads to greater efficiencies for the Code Administrator and the Parties.

12. What has been the highest secretariat cost associated with processing (but not implementing) a modification? Please answer in terms of person-days or direct cost.

The contract in place between ElectraLink and SPAA is a fixed price contract and the cost does not change based on either the complexity of the CP or the time involved in processing the CP. As a result of industry parties providing the crucial role of expert input and analysis into the change process the level of additional costs such as legal fees can be minimised. The value of the secretariat contract is commercially confidential.

13. For how many modifications has external analytical support been sought by your organisation in the last two years. Was the support quantitative or qualitative?

Because Parties typically undertake the role of providing analytical review for modifications no external analytical support has been required.

14. For how many modifications has analytical support (or drafting support) been provided by the modification proposer in the last two years? Was the support quantitative or qualitative?

Parties are required to provide the legal drafting for their proposals as well as a plain English explanation setting out the rationale for the change. Typically supporting information provided by Parties is qualitative rather than quantitative. This is primarily due the nature of the majority of SPAA CPs which relate to documentation or process changes.

15. What is the average number of respondents to a modification in the last two years?

Usually it is the 6 large suppliers and the large Transporters who comment, provide indicative votes and finally vote on SPAA CPs. All CPs are circulated to all Parties, including small suppliers and iGT's for consideration. SPAA ensures that teleconferencing facilities and email voting facilities are made available to all Parties to ensure draws on smaller Party resources are minimised.

16. What is the typical length of time between receiving a modification and making a decision/recommendation to Ofgem in the last two years?

Once a CP has been raised, the standard SPAA change cycle takes 35 WD to complete from the CP being raised to the Appeal Window closing and the recommendation being issued to Ofgem. In the last 2 years only 2 CPs have been entered into the Appeals Process. The SPAA Appeals process can add an extra 20 WD to the overall process but this does not include Appeals to Ofgem which are not time bound.

17. Can you provide a breakdown of the number of mod proposals made by large parties (National Grid, the big 6 integrated utilities), small parties (new entrants, renewables) and others in the last two years. If this is too time-consuming, please provide a list of who has proposed each mod.

All Standard CPs that have been progressed to voting have been raised by large parties as defined above. In a number of cases such large parties have sponsored CPs on behalf of non SPAA Parties (e.g. meter operators agents) and this is usually in the case of MDD Fast Track CPs.

18. In those cases in the last two years where a recommendation has been made, what percentage of modifications has been recommended for approval by the Panel?

Please note that CPs are accepted or rejected based on a Party vote and not on Panel decision. This is a crucial element to the principle of self regulation within the SPAA.

Of the 59 CPs raised since January 2006, 53 (90%) have been approved by Parties. Of those 53 approved by Parties, 51 (96%) have also been approved by Ofgem.

19. In how many cases in the last two years has a recommendation not been provided?

Under the SPAA process any CP presented at the Change Board will receive an 'accept' or 'reject' recommendation from Parties unless it is withdrawn by the proposer before the vote. 7 CPs have been withdrawn from the process in the last 2 years - typically where the comments made by Parties during the indicative voting process have indicated that there is little support for the proposal. This has worked well for the industry and has allowed industry members, particularly smaller players with limited resources, to avoid spending unnecessary time, money and resource on assessing CPs which are ultimately likely to be rejected.

20. In the last two years, for what percentage of Panel recommendations did the Panel reach a unanimous decision?

Please note that CPs are accepted or rejected based on a Party vote and not on Panel decision.

The Parties reached a unanimous 'accept' decision on 38 CPs out of 59 CPs (65%). A further 15 CPs were accepted on a majority (> 65% voting parties accepted the proposal) decision with the balance of 6 being rejected on a majority basis.

21. In the last two years, for those cases where a recommendation was made by the Panel, how many times has Ofgem reached a decision that is different to the Panel recommendation?

There have been two occasions when Ofgem has not accepted the decision reached by Industry.

22. What is the process for identifying mods which are of a "housekeeping" nature, or which are consequent on modifications made to other codes?

Parties are responsible for raising 'housekeeping' changes in line with the standard change process. If the secretariat becomes aware of a necessary housekeeping change it notifies the EC and requests that a Party sponsor the mod. The Secretariat is not able to raise or sponsor changes. It is the responsibility of the EC and Working Group members to be aware of developments under other codes and raise amendments as necessary.

Views on governance

23. In your view, how well do you think the governance procedures work?

The SPAA governance process works extremely well as demonstrated by the low rejection rate by Ofgem of SPAA changes and the SPAA is an example of efficient self governance. Parties have taken a proactive approach to assessing the governance arrangements and processes within the Agreement to ensure

they match changing and evolving industry expectations and continue to be fit for purpose.

It is critical to the successful operation of a code that the membership of its decision making bodies is reflective of the various constituencies that exist within the code. The level of authority and decision making powers of such Panels need to be reflective of the scope and complexity of the codes and must align with the principle of self regulation as appropriate. The SPAA EC is representative of the industry and the processes operating the agreement are open and transparent. The end to end management of the service, Agreement and Company by ElectraLink minimises the impact on SPAA Parties.

The Change Process is efficient and effective. The onus on Parties to submit developed proposals with clear rationale and drafting means that only robust proposals are put forward. The concept of self governance means that Parties take full responsibility for assessing CPs and deciding on their outcome. The success of the Change Process is highlighted by both the timeliness of the progression of CPs and the small percentage of CPs that have been rejected by Parties or rejected by Ofgem.

SPAA Parties work hard to resolve operational issues and apply a pragmatic approach to ensuring consensus is achieved wherever possible and work collaboratively to resolve industry and operational issues. This is demonstrated through 38 out of 59 CPs being approved unanimously.

SPAA Parties and the EC have developed a number of process improvements since the inception of the SPAA (e.g. Fast Track MDD Changes, SPAA Change Board) which have further increased the efficiency of the application of the governance arrangements. The SPAA Change Board process allows Parties to meet via teleconference to vote on CPs contained within a Change Pack. The ability of Parties to 'accept modified' means that Parties are able to discuss and reach consensus on a CP where there is common ground rather than reject it. Since the inception of the Change Board 35 CPs have been voted on of which only 4 have been rejected and 4 have been accepted modified. The ability to make improvements to the governance structure in such a way is greatly beneficial to Parties.

24. Do you think the modification process could be made more efficient? If so, please list the three changes that you consider would be most effective?

The SPAA Change Process has proved to be an efficient process, largely because of the flexibility set out in the arrangements and the application of a self governance regime. The principle of self regulation and the open and transparent assessment processes allows market participants to be fully engaged throughout the development, analysis and assessment of all modifications. The structured voting system allows impacted parties as a whole

to determine whether a modification is accepted (subject to Authority consent in defined circumstances). Evidence suggests that this structure has worked well for both these codes and achieves a manageable balance between self governance and Authority regulation.

Possible areas for improvement:

- Reduction in areas requiring Authority Consent - e.g. housekeeping amendments: Ofgem rarely participates in SPAA meetings and activities and this can impact Ofgem's ability to make decisions and can cause delay to straight forward amendments that are supported by the industry. Attempts to implement this improvement have not progressed primarily because of a lack of support from Ofgem. An increase in self regulation could prove beneficial by enhancing the authority and responsibilities vested in the code parties for the efficient and effective operation of the market whilst also reducing the number of modifications requiring consent and thus reduce the regulatory burden on the Authority. Whilst it may be desirable to reduce areas of the Agreement requiring consent, the right to appeal the outcome of Party voting on all CPs remains valid.
- Re-evaluation of the voting rights of Small Transporter Parties: Since the creation of the multiple large transporter parties a perception has grown among small transporters that the voting system is now weighted in favour of the large transporters. It must be noted that is a consequence of the sale of the gas distribution networks rather than a change to the voting arrangements by SPAA Parties. This perception may result in a reduced level of engagement of iGTs in SPAA. A review of the voting categories / caps may be appropriate.
- I&C Participation: Domestic Suppliers are obliged to accede to the SPAA in accordance with their Supply Licence. I&C Suppliers can accede on a voluntary basis. In some instances developments have been made in the domestic market that cannot be replicated in the I&C market and the impact and reach of the SPAA has been limited. With the advent of AMR Metering and further industry developments it would be beneficial to re-visit the concept of I&C participation in the SPAA.

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Dear Serena,

Further to your letter of 28th March 2008, this letter and attachments represent National Grid Electricity Transmission's (NGET) response to the questionnaire sent to industry code administrators. NGET owns the electricity transmission system in England and Wales and is the GB System Operator. We are responsible for administering the Connection and Use of System Code (CUSC), the Grid Code and the System Operator – Transmission Owner Code (STC).

We have responded to all of the questions. It should be noted that our activities as administrator of the CUSC, Grid Code and STC sit within our much larger System Operator, Transmission Owner organisational structure and therefore in some ways our position is different to some other code administrators such as Elexon, Electralink and the Joint Office.

As code administrator NGET provides or prepares:

- a chair¹,
- a secretary,
- administrative and governance support
- the majority of the change amendment documentation
- legal text

Successful development and governance of, in particular, the industry-facing CUSC and Grid Code could not be achieved without the high level of cross industry support and engagement we see through the code governance process, delivering analysis and evaluating the impact of proposed changes and the existing code provision. In addition, a large amount of quantitative and qualitative analysis is undertaken by NGET as a code participant and as a party impacted by the changes.

¹ The Chair for the STC is rotated on an annual basis between the Transmission Owners

If you wish to discuss this response further or have any queries please contact me or the relevant contact provided below:

- CUSC: Emma Carr (01926 655843)
- Grid Code: Lilian Macleod (01926 656368)
- STC: Bec Thornton (01926 656386)

Yours sincerely

[by email]

Duncan Burt
Acting Regulatory Frameworks Manager

Attachment 1 - National Grid's Response to The Brattle Group's Industry Code Administrators Questionnaire

General secretariat information

1. How would you describe the nature of your organisation?

See covering letter

2. How would you describe your role in the governance process?

See covering letter

3. Number of staff employed to deal with code governance (excluding implementation)?

CUSC

2 FTE can be considered pure Code administration inclusive of legal resources.

Grid Code

2 FTE can be considered pure Code administration inclusive of legal resources.

STC

1.5 FTE can be considered pure Code administration inclusive of legal resources.

NB: For the avoidance of doubt the above figures do not include staff time involved in the development and implementation of changes to the Codes, as these duties are undertaken as a participant to the Codes, rather than as Code administrator.

The figures exclude staff devoted to web administration which would equate to 0.5 FTE. NGET external website publishes relevant information on the CUSC, Grid Code and STC in line with our licence and Code obligations and as such utilises internal specialists for the development and maintenance of the web sites.

4. Annual running costs split into costs of dealing with modifications, costs of implementing modifications, costs of managing systems e.g. CVA in the case of Elexon, and other costs? Please explain how you have allocated fixed costs between these functions.

General Notes

- The costs for facilitating meetings have not been included. An approximate cost is £10,000 per annum for the CUSC, Grid Code and the STC.
- NGET has a number of complex IS Systems which are required for fulfilling its obligations as GB System Operator. There are no specific IS Systems which are bound directly to its Code administrator obligations.
- The annual costs for dealing with queries from non-industry parties, briefing/training new industry starters and overseas visitors is approximately <£20,000 per annum over the CUSC, Grid Code and the STC.

CUSC

- Annual Running Costs - £250,000 per annum approx
 - Dealing with Modifications – £150,000 per annum approx
 - Implementing Modifications – <£100,000 per annum approxIt is rare that there are any significant costs arising from implementing CUSC Amendments. The last CUSC Amendment Proposal which had significant implementation costs was CAP047 (2005) which had approximately £500,000 in IS System Costs.
- Managing Systems - £0, see general notes

- Other Costs – see general notes for cost

Grid Code

- Annual Running Costs - £200,000 per annum approx
 - Dealing with Modifications – £150,000 per annum approx
 - Implementing Modifications - <£50,000 per annum approx
It is rare that there are any significant direct costs arising from the implementation of Grid Code modifications. Although there may be rare occasions where there will be minimal start up costs e.g. introduction of System Telephony.
 - Managing Systems – £0, see general notes
 - Other Costs - see general notes for cost

STC

- Annual Running Costs - £100,000 approx
 - Dealing with Modifications – £100,000 approx (inclusive of meeting costs which is minimal)
 - Implementing Modifications - £0 to date.
 - Managing Systems - See general notes
 - Other Costs - £0

5. Who pays the secretariat costs and how are the charges calculated?

NGET provides the secretariat for the CUSC, Grid Code and STC. The cost flows are covered by NGET's internal price control arrangements for its GBSO responsibilities and the associated costs are recorded through Balancing Services Use of System (BSUoS) charges. The GBSO is incentivised to minimise costs via the incentive arrangements on BSUoS costs set out in our licence.

6. Do you consider that you have sufficient resources and skills to provide the appropriate level of constructive analysis for modifications?

Yes. We have sufficient resources with the necessary skills to undertake the CUSC, STC and Grid Code administration and to provide constructive analysis of modifications based on the current arrangements. The integrated nature of NGET's role as Code administrator and interested party enables resources to be transferred between the different functions when appropriate.

We note the scope of the Industry Code Governance Review and that any final recommendations may require the level of resources and skills to be reassessed. For example a requirement for additional analytical assessment from the Code administrator or the introduction of a new Code Objective(s) that may require specialist knowledge and/or analysis.

7. If you answered "no" to question 6, please explain:

Not Applicable.

8. If you answered "yes" to question 6, please estimate for what percentage of modifications you actually provide some form of analysis. If possible, indicate separate percentages for qualitative and quantitative analysis.

As described in the covering letter our position as the administrator of the CUSC, Grid Code and STC is somewhat different to other Code administrators. A percentage estimate of modifications analysis which is undertaken as the Code administrator is provided below. We would emphasise that these figures apply solely to analysis undertaken as the Code administrator and not analysis that NGET would any way undertake if not acting as Code administrator – as a party or administrator NGET provides some form of analysis for all modifications. These figures are based on a

historic level of analysis and are expected to increase in the future as a result of the expected recommendations arising from the Governance Review.

CUSC

Approximately 33% of modifications have some form of analysis undertaken by the Code administrator and the majority of the analysis is quantitative.

NGET would also undertake other analysis as GB System Operator and/or Transmission Owner.

Grid Code

Approximately 50% of modifications have some form of analysis undertaken by the Code administrator and the majority of the analysis is qualitative.

NGET would also undertake other analysis as GB System Operator and/or Transmission Owner.

STC

Approximately 20% of modifications have some form of analysis undertaken by the Code administrator and the majority of the analysis is qualitative.

NGET would also undertake other analysis as GB System Operator and/or Transmission Owner.

- 9. Recognising that the level and type of analysis required will be different for different codes, can you discuss how often you think that mod proposals for “your” code would or do materially benefit from your being able to provide qualitative and/or quantitative analysis.**

As stated in question 8, NGET provides some form of analysis either qualitative and/or quantitative for all modifications. Clearly the provision of quality analysis is beneficial and required to ensure efficient governance and decision making. However, the modification itself will determine the amount, type and level of analysis required and must remain proportionate.

Modification Processes

- 10. Typically, how many modifications are there per year?**

CUSC

17 on average over the last two years

Grid Code

8 on average over the last two years

STC

6 on average over the last two years

- 11. What is the typical secretariat cost associated with processing (but not implementing) a modification? Please answer in terms of person-days or direct cost.**

CUSC

25 person days.

Grid Code

15 person days.

STC

4 person days.

12. What has been the highest secretariat cost associated with processing (but not implementing) a modification? Please answer in terms of person-days or direct cost.

CUSC

Circa 100 person days (CAP131 – User Commitment for New and Existing Generators).

Grid Code

Circa 90 person days (H/04 - Changes to Incorporate New Generation Technologies and DC Inter-connectors).

STC

Circa 10 person days (CA021 – Exchange of Certain Investment Planning Data). As a relatively new Code there have been no highly complex modifications to date.

13. For how many modifications has external analytical support been sought by your organisation in the last two years. Was the support quantitative or qualitative?

CUSC

A significant proportion of analytical support is provided in-house by NGET however 3 modifications have received external legal advice.

Grid Code

None.

STC

None.

14. For how many modifications has analytical support (or drafting support) been provided by the modification proposer in the last two years? Was the support quantitative or qualitative?

CUSC

All proposers are expected to support the process for their proposal by presenting to the initial CUSC Panel, providing slides and attending at Working Group meetings. Good support from the industry is expected and provided when modifications are being progressed through the governance process.

There has been less than five occasions when the proposer of a modification did not provide the appropriate level of analytical support.

Grid Code

NGET, as the formal proposer of all modifications, will provide analytical support as and when appropriate. Panel and Industry members are actively involved in the development of all modifications throughout the process providing both quantitative and qualitative analysis.

There was no occasion when the proposer of modification did not provide the appropriate level of analytical support.

STC

All proposers are expected to support the process for their proposal by presenting to the initial STC Committee, attending Working Group meetings, etc. All STC Parties are actively involved in the development of all modifications providing both quantitative and qualitative analysis. There was no occasion when the proposer of modification did not provide the appropriate level of analytical support.

15. What is the average number of respondents to a modification in the last two years?

CUSC

7, only two proposals have had 0 responses and the highest number of responses was 32

Grid Code

7

STC

Less than 1

16. What is the typical length of time between receiving a modification and making a decision/recommendation to Ofgem in the last two years?

CUSC

Average of 74 calendar days for what we would describe as a general proposal
 Average of 204 calendar days for what we could describe as a complex proposal
 Average of 25 calendar days for Housekeeping proposals

Overall average is 100 calendar days.

Grid Code

270 calendar days

STC

120 calendar days

17. Can you provide a breakdown of the number of mod proposals made by large parties (National Grid, the big 6 integrated utilities), small parties (new entrants, renewables) and others in the last two years. If this is too time-consuming, please provide a list of who has proposed each mod.

CUSC

	Number of Modifications	Percentage
Large Parties*	43	89.5%
Small Parties	5	10.5%
Other Parties	0	0%
Total Number	48	100%

* - NGET has submitted 38 modifications over the last two years which was inclusive of 14 Housekeeping modifications.

Grid Code

Panel Members bring issues to the Grid Code Review Panel which the Panel then consider and discuss. If appropriate, NGET will submit the issue as a formal modification to the Grid Code. Over the last two years there have been 15 modification proposals.

STC

NGET, SHETL and SPT are the only parties who can put forward formal modifications to the STC (with the exception of Ofgem who may designate an external party to submit a modification). Over the last two years NGET have submitted 11, SPT have submitted 2 and SHETL have not submitted any.

18. In those cases in the last two years where a recommendation has been made, what percentage of modifications has been recommended for approval by the Panel?

CUSC

97% of modification received a Panel recommendation for the original or one of the alternative modifications. Only one modification was recommended not to implement i.e. either the original or alternative modifications were recommended.

Twelve modifications had the original recommended as the best option (36%)

Grid Code

Not applicable - the Grid Code Review Panel by practice works on consensus and therefore does not formally vote on modifications. However, the Grid Code Review Panel approves a modification for submission to the Authority for determination.

STC

The STC Committee does not make a recommendation to the Authority as a single body, but the Amendment Report provided to the Authority contains the assessments of the proposed Amendment from each of the three parties. The three parties thus far, have all been in agreement with the Amendment Proposals raised.

19. In how many cases in the last two years has a recommendation not been provided?

CUSC

None.

Grid Code

Not applicable – the Grid Code Review Panel by practice works on consensus and therefore does not formally vote on modifications. However, the Grid Code Review Panel approves a modification for submission to the Authority for determination.

STC

The STC Committee does not make a recommendation to the Authority as a single body, but the Amendment Report provided to the Authority contains the assessments of the proposed Amendment from each of the three parties.

20 In the last two years, for what percentage of Panel recommendations did the Panel reach a unanimous decision?

CUSC

55% (for the BEST option)

Grid Code

Not applicable – the Grid Code Review Panel by practise works on consensus and therefore does not formally vote on modifications. However, the Grid Code Review Panel approves a modification for submission to the Authority for determination.

STC

The STC Committee does not make a recommendation to the Authority as a single body, but the Amendment Report provided to the Authority contains the assessments of the proposed Amendment from each of the three parties. The three parties thus far, have all been in agreement with the Amendment Proposals raised.

21. In the last two years, for those cases where a recommendation was made by the Panel, how many times has Ofgem reached a decision that is different to the Panel recommendation?

CUSC

3 (14.5%)

Grid Code

1 (7%) – Grid Code modification was approved for submission to the Authority by the Panel and subsequently rejected by the Authority.

STC

2 (15%) - There have been two occasions in the last two years where although the STC Committee have all been in agreement with the Amendment Proposal, the Authority has rejected the Amendment.

22. What is the process for identifying mods which are of a “housekeeping” nature, or which are consequent on modifications made to other codes?

CUSC

Housekeeping Modifications tend to be “stored up” by a CUSC administrator until a sufficient number have been identified to warrant a CUSC consultation. Housekeeping modifications are proposed changes which will have no material impact on Parties e.g. typographical errors, inaccurate cross references. A modification will be treated as a Housekeeping Modification with the agreement of the CUSC Amendment Panel. Housekeeping is a formal term defined within the CUSC with a shortened (condensed) governance process timeline.

For modifications that are consequent on modifications to other Codes, NGET is organised internally to ensure that the Administrators of the Codes for which it has obligations to administer under its transmission licence (CUSC, Grid Code and STC) are aware of cross-Code implications. If a change to the CUSC is required consequent on a modification to another Code, NGET will conduct a separate CUSC consultation on the proposed modification.

There is also BSC representation at the CUSC Amendments Panel which assists with the identification of any consequential modifications which may be applicable to either Code. NGET also has representation at the Distribution Connection and Use of System Agreement (DCUSA) Amendments Panel which assists with the identification of any consequential modifications which may be applicable to either Code.

Grid Code

Housekeeping Modifications tend to be “stored up” by a Grid Code administrator until a sufficient number have been identified to warrant a Grid Code consultation. Housekeeping modifications are proposed changes which will have no material impact on Users e.g. typographical errors, inaccurate cross references.

For modifications that are consequent on modifications to other Codes, NGET is organised internally to ensure that the Administrators of the Codes for which it has obligations to administer under its transmission licence (CUSC, Grid Code and STC) are aware of cross-Code implications. NGET also works closely with Elexon as the Balancing and Settlement Code Company to identify cross-Code implications from changes to the BSC. If a change to the Grid Code is required consequent on a modification to another Code, NGET will conduct a separate Grid Code consultation on the proposed modification.

NGET also has representation at the Distribution Code which assists with the identification of any consequential modifications which may be applicable to either Code.

STC

Housekeeping Modifications tend to be “stored up” by a STC administrator until a sufficient number have been identified to warrant a STC consultation. Housekeeping modifications are proposed changes which will have no material impact on Parties e.g. typographical errors, inaccurate cross references.

For modifications that are consequent on modifications to other Codes, NGET is organised internally to ensure that the Administrators of the Codes for which it has obligations to administer under its transmission licence (CUSC, Grid Code and STC) are aware of cross-Code implications. If a change to the STC is required consequent on a

modification to another Code, NGET will conduct a separate STC consultation on the proposed modification.

Views on governance

23. In your view, how well do you think the governance procedures work?

In general we believe that the governance procedures have worked well and have delivered significant change over the years, however there is always room for improvement and the application of best practice.

As stated in National Grid's response to Ofgem's open letter we believe it is an appropriate time to review the effectiveness of Code governance in light of recent statutory changes and to ensure Code governance is aligned with Ofgem's decision making criteria.

The issue of the development of large scale and/or broad changes which cut across industry Codes and licences is very important. The associated governance arrangements that work well for assessing incremental changes and/or discrete packaged changes can start to struggle to accommodate and take account of such wider complications or fundamental changes.

We believe that the flexible arrangements of the Grid Code are appropriate for the nature of a technical document which sets the minimum standards for compliance. The current framework allows and actively encourages industry debate through the formal Code amendment process, which is reflected in the timescales permitted to process amendments. This enables amendments to be continuously developed, discussed by the industry throughout the amendment process and where at all possible a consensus viewpoint reached prior to the submission of the final proposals to the Authority for determination.

24. Do you think the modification process could be made more efficient? If so, please list the three changes that you consider would be most effective?

1. More flexible framework for large scale and/or broad changes, which can adapt to increasing complexities and external influences such as developments to the regulatory regime in Europe.
2. Increased transparency surrounding Ofgem's decision making process will provide the industry parties with a better insight into the reasoning behind decisions and would subsequently lead to provision of supporting evidence that aligns closer to that required by the Authority.
3. Appropriate self governance for 'lower grade' modifications (such as operational issues) through application of best practice from the UNC and the Distribution Connection and Use of System Agreement (DCUSA).