

Corona Energy Limited
Building 2
Croxley Park
Watford
WD18 8YH

28 September 2021

Dear Sir/Madame

We would firstly like to thank both BEIS and Ofgem for giving the market an opportunity to provide views on the proposals, as detailed in the consultation, on the design and delivery of the energy code reform.

In general, we are supportive of the proposals detailed in this consultation, in particular we would like to highlight support for Option 1 which places Ofgem in the role of Strategic Body. However, as noted in our consultation responses, in order for us to provide more concrete views we require further information in some areas.

We have provided our responses to the consultation in the appendix below and would be happy to support BEIS and Ofgem in further developing the proposed policy changes in future.

Yours faithfully,

Dan Fittock
Regulation and Compliance Manager
Corona Energy

Appendix A – Consultation Question Responses

1. To what extent do you agree with our proposals on the licensing of a code manager for in-scope engineering standards, and why?

We support the proposal of licensing a Code Manager for the management of in-scope engineering standards. Taking such an approach would ensure that the Code Manager has in place sufficient resource and expertise to manage the day-to-day application of the standards in a manner that is not only in line with the Strategic Function, but also would allow for Code Managers to enable innovation in this area. Additionally, the inclusion of these standards within the remit of Code Managers means that inter-code dependencies on such standards will be well understood and result in less regulatory burden on energy industry participants where appropriate.

2. What are your initial views on how central system delivery bodies should be regulated (including their relationship or integration with code managers and the extent to which licensing may be appropriate), bearing in mind this may be the subject of future consultation?

Upon initial review, we are supportive of the regulatory roadmap for central industry bodies as set out in this consultation. However, we would like to note that although the consultation documents refer to each Code Manager being bound by CACoP requirements, we believe that CACoP arrangements would require significant further work in order for this to be considered feasible. It is our view, and a view echoed by a number of other industry participants, that CACoP requires oversight and direction from Ofgem to ensure that benefits are realised for industry participants. Current CACoP initiated innovations are often hampered by the commercial positions of the Code Administrators and beneficial change, such as the centralised CACoP website first tabled a number of years ago, are not realised in a timely manner or at all. We would welcome direct intervention and Chairing by Ofgem for this forum to ensure that it remains fit for purpose as part of these reforms.

3. To what extent do you agree with the proposed roles and responsibilities of the strategic function, as set out above, and why?

We fully agree with the roles and responsibilities of the Strategic Function. Current market issues, especially around how slow the regulatory sphere is in comparison to the rapid development of technological solutions to market issues, would be greatly alleviated by a set strategic function. However, we do have some concerns that the SPS, being a statement that would require Parliamentary approval, may end

up being a barrier to innovation if unprecedented requirements on the energy industry were encountered and required the SPS to be updated. For example, in recent times both the covid-19 pandemic and the increase in gas prices have both put unprecedented strain on the competitive nature of the supplier market. In the current proposals it is not clear whether the Strategic Body would have the vires to alter its strategy and subsequently amend the Strategic Function without the SPS requiring an update via Parliamentary approval. We would welcome clarity on whether the Strategic Function would be granted these vires, or whether a secondary legislative route such as a Statutory Instrument directed from the Secretary of State could be used to update the Strategic Function.

4. To what extent do you agree with the proposed roles and responsibilities of the code manager function as set out above, and why?

We welcome the proposed roles and responsibilities for Code Managers as detailed in this consultation. However, it is not yet clear what requirements the Code Managers would have built into their Licence Conditions. For example, would there be a condition to ensure that the Code Manager recruits energy industry specialists to ensure that they are able to understand the code in a similar manner to market participants? Without a view of these licence requirements we remain uncomfortable that there may be a risk that Code Managers take a different view to that of industry when it comes to interpretation of code. As is often the case, legislative interpretation can be a positive step to innovative and commercially beneficial approaches to compliance, however if there is a lack of expertise from the Code Manager there exists a major risk that a potential code change could have adverse impacts on market participant's business models. Although we are cognisant that stakeholder engagement and appeal routes take steps to mitigate these risks, without the base level of comfort in building in required expertise to Licence Conditions, we cannot fully support this approach.

5. To what extent do you agree with the proposed roles and responsibilities of stakeholders as set out above, including the role of the stakeholder advisory forums, and why?

As detailed in our response to Question 4, we are uncomfortable with the proposal to remove industry led Working Groups and Panels and placing these responsibilities into the hands of Code Managers without a conclusive indication of Code Manager Licence Conditions. We reserve our judgement of these proposals until such a time as the Code Manager Licence Conditions are drafted, and encourage Ofgem and BEIS to consider the importance of experienced industry experts from both operational and regulatory arenas for these roles.

- 6. In relation to option 1, where Ofgem would be the strategic body, to what extent do you agree with our proposals on how decisions by the code manager would be overseen by the strategic body with, as a minimum, existing appeal routes retained and moved to the strategic body?**

We fully support the approach detailed in option 1, however we are of the opinion that Ofgem would be required to take a much more active role in the development of code change compared to current practices. Ofgem will need to have a greater level of understanding, participation and leadership in the designing and day-to-day operations of the industry codes. Under current arrangements it is never a certainty whether Ofgem will attend code governance meetings, and often they act as observers. Under these proposals they will need to provide a greater level of strategic direction and direct intervention to ensure that the code managers are developing codes in a fashion that aligns with the Strategic Function.

- 7. In relation to option 2, where the FSO would take on the role of the IRMB, to what extent do you agree with our proposals on how relevant decisions by the code manager function would be appealable to Ofgem, with a potential prior review route via an internal body?**

As with our response to Question 6 – we agree with this proposal in principle, however Ofgem’s current approach would require review in order for us to fully support the proposal. Ofgem has been sat on a number of key decisions for much longer than their 5-week target turnaround time for code changes. For example, UNC Modification 0687 – Creation of new charge to recover Last Resort Supply Payments was originally referred to Ofgem for decision on 19 September 2019. Subsequently, Ofgem referred this back to industry for further consideration on 09 October 2019 and following further development and consideration by the UNC Panel, this was again referred to Ofgem for consideration on 17 October 2019. Upon the drafting of this response at the end of September 2021, Ofgem have yet to make a decision on this highly commercially sensitive modification and have failed to provide a rationale as to why it has taken nearly two years for their decision making process. If industry is to support the approach detailed in this consultation, we believe it would be necessary to build in backstop dates requiring Ofgem to respond within a certain timescale or, if required, require Ofgem to provide weekly or monthly reports to industry detailing the work undertaken if this timescale is not met. This would reflect performance assurance requirements on industry parties and would place greater focus on Ofgem’s requirement to make decisions on such industry changes that are important for both industry parties and consumers.

8. Do you have any views on the two proposed options for appealing decisions made by Ofgem on material code changes in option 1 (with Ofgem as the strategic body) and option 2 (with the FSO as the IRMB)?

Due to the complexities of justifying whether an appeal should be undertaken with either the CMA or via a Judicial Review, we would welcome the simplified approach under Option 1 where all appeals against the Strategic Body are made via Judicial Review. This would ensure that the tried, tested and transparent existing framework of the UK legal system could be employed and the resulting ruling is made public.

9. Do you have any thoughts on other potential appeal routes?

N/A

10. To what extent do you agree with the proposed operating model and accountability structure for Ofgem as the strategic body, and why?

We agree with the proposed operating model, however we are concerned that Ofgem as the Strategic Body, would be able to delegate some of its functions and decision making powers to other bodies:

“In order to provide flexibility and future proofing, we are proposing that primary legislation would enable Ofgem (in certain circumstances and following appropriate consultation) to be able to delegate some of its proposed powers and duties to an alternative body, or bodies, with approval from the Secretary of State.”

Although we understand that any such delegation would require approval from the Secretary of State, this appears to run in opposition to the desired outcomes as detailed in the BEIS White Paper:

“the current arrangements are a code governance framework that is complex, fragmented, and lacks incentives to innovate, despite our urgent need for a more unified, flexible, and dynamic approach.”

We would suggest that allowing Ofgem as Strategic Body to delegate some of its proposed powers and duties to other bodies would introduce further, new complexity which risks returning the industry governance framework to the more complex and transparent model that we see today. We would welcome BEIS and Ofgem’s views on removing this provision and, like we suggest for Code Managers, mandating Ofgem as Strategic Body to employ the expert resource required for them to fulfil the Strategic Function completely in-house.

11. To what extent do you agree with the monitoring and evaluation approach for Ofgem’s performance as the strategic body, and why?

As detailed in our response to Question 7, we believe that there should be a robust set of monitoring and evaluation measures to ensure that Ofgem are able to fulfil their role as Strategic Body in an effective and meaningful manner. The proposals set out in this consultation appear to be quite vague as to how this would be achieved. We would suggest that Ofgem in their role as Strategic Body should have their performance measured against a set of requirements in a similar fashion to how Suppliers are measured against requirements in a performance assurance regime. This regime could be run by BEIS and should be totally transparent, allowing for scrutiny by all energy industry participants. This transparent approach would provide both confidence and accountability to Ofgem and ensure that their approach to the Strategic Function is robust.

12. To what extent do you agree with the ways we propose that the strategic body selects code managers, and why?

We note that there are several options put forward in this consultation document, with each having its own merits and drawbacks. We reserve our judgement on our preferred method until such a time as BEIS and Ofgem provide further details. However, although the competitive tender process appears to be a good choice, we have concerns that this approach would drive potential Code Managers in a race to the bottom line and result in Code Managers encountering the same commercial constraints that cause issues with Code Administrators and CACoP arrangements. It is our opinion that if a competitive tender process is selected, focus must not be placed at all on price, rather the provision of services that the potential Code Managers can provide.

13. To what extent do you agree with our proposed approach to code manager funding, and why?

As Code Managers will be running the industry codes as highlighted in the presentation, we strongly believe that the funding mechanisms for the potential Code Managers should fall in line with code requirements. Whether or not these code requirements are fit for purpose or not should be down to the Strategic Body, who we believe should have the vires to make amendments to the individual code funding models as and when appropriate.

14. To what extent do you support our proposal that the strategic body should be accountable for code manager budgets, and why?

We agree that the Strategic Body should retain oversight and scrutiny of the Code Manager's proposed budgets. This would ensure that a robust methodology could be applied uniformly across all codes, with no code receiving comparatively

higher budgets compared with other codes, and thus resulting in a greater level of service provision – an issue which we face with current arrangements on a regular basis.

15. To what extent do you support the proposed operating model and accountability structure for option 2, where the FSO takes on the role of the IRMB, and why?

We do not support Option 2, and thus we do not support the proposed operating model and accountability structure where the FSO takes on the role of the IRMB.

We do not believe that one system operator party should have the vires to have strategic control over the entire industry, or have sufficient resource and expertise to take on the role of IRMB. We also have concerns that there would be a possibility that regulatory approaches to both gas and electricity codes would attempt to be aligned, with the two fuels being fundamentally different and impossible to align due to their physical natures. Whereas Ofgem in their current role and remit have a detailed understanding of these issues as they deal with both gas and electricity code issues on a regular basis, we do not believe that a FSO would have such experience.

16. Overall, which of the two options do you think would be best placed to reform code governance, and why?

As indicated in our response to Question 15, we support Option 1 and do not support Option 2.

Ofgem's existing role as regulator and protecting consumers gives them a good basis to adopt the role of Strategic Body. Although we are of the opinion that some of their processes will need to be reviewed and their responsiveness improved, we are comfortable that they have the correct expertise and understanding of the market to successfully adopt this role. In comparison, the adoption of the FSO as IRMB would require a huge scope of work in an area that they do not necessarily have the skill or relevant experience in. Although the FSO no doubt has significant technical experience, the role of Strategic Body needs a higher level understanding of the energy industry regulatory landscape – which lies solely within the remit of Ofgem.

17. To what extent do you agree with our estimated costs for the new code manager function set out in the impact assessment, and why?

N/A

- 18. To what extent do you agree that the case studies included in the impact assessment are indicative of the major barriers facing code changes under the current system, and why? Can you provide further examples of when current code governance has resulted in either optimal or sub-optimal outcomes?**

N/A

- 19. To what extent do you agree with the scale and type of benefits to industry estimated in the impact assessment? Are there further cost savings to industry that should be included?**

N/A

- 20. Are there any other wider industry developments we should consider in relation to the implementation timeline? How do you think these could impact on code reform?**

We only wish to note that there has been an unprecedented level of industry change over the last ten years, often overlapping. In order to successfully implement such wide reaching reforms, we would urge BEIS and Ofgem to seek a development and implementation window free of any other industry change e.g. following implementation of Faster Switching, MHHS and any present or future energy industry change programmes.

- 21. Are there any implementation issues, risks, or transition considerations we should take into account? How could these impact code reform?**

Please see our response to Question 20.

- 22. We invite respondents' views on whether our proposals may have any potential impact on people who share a protected characteristic (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation), in different ways from people who do not share them. Please provide any evidence that may be useful to assist with our analysis of impacts.**

N/A

- 23. Do you have any other comments that might aid the consultation process as whole?**

N/A