



Energy for  
generations

# ESB GT's response to Ofgem's Energy Code Governance Reform Call for Input

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## 1. INTRODUCTION

This submission presents ESB Generation and Trading's ("ESB GT") response to Ofgem's Consultation: **Energy Code Governance Reform**. ESB GT welcomes this opportunity to discuss this important topic.

ESB's portfolio in Great Britain includes a combined-cycle gas turbine plant in the northwest, offshore wind farm interests in Scotland, and a growing onshore wind presence. A central feature of ESB's business is to deliver benefits to consumers by investing in the most efficient renewable assets, particularly offshore and onshore wind at locations where the wind resource is highest. Naturally, it is important for the rules to facilitate investments at locations where the energy yield is economically viable for these renewable assets.

By way of an introduction, ESB is Ireland's foremost energy company, with around 7,000 employees. Established in 1927 by the Irish Government, and remaining 95% state owned, ESB created the first fully integrated electricity system in the world. ESB owns the transmission and distribution systems in Ireland and Northern Ireland. ESB have been present in Great Britain since market liberalisation and for 25 years has powered homes and businesses across the country, investing around £2 billion. ESB was one of the first IPPs in the UK with our investment in Corby Power Station (350 MW) in the early 1990's.

ESB is supporting Britain's transition to a low carbon future by investing in flexible and renewable generation assets, including combined-cycle gas turbine, wind, and biomass technologies. ESB opened Carrington Power Station (880 MW) in 2016, one of the most flexible and efficient plants in the market on the site of an old coal plant near Manchester. This was the first large-scale gas-fired station to come on stream in Great Britain since 2013. Carrington is owned by ESB's 100% subsidiary Carrington Power Limited. ESB also owns 125 MW of onshore wind generation capacity (with over 1,400 MW in the development pipeline across the UK), a 7 MW battery storage project in Lincolnshire, and recently invested in the 353 MW Galloper offshore wind project.

## 2. KEY POINTS

- i) **A stable Policy and Regulatory Framework** – The GB energy market has proved to be an attractive area for investment since privatisation in the early 1990s. This has been due to a policy and regulatory regime where the electricity and gas codes have provided a stable governance framework. However, we agree that there is currently over-complexity in the market arrangements and that this can favour existing market participants and deter new entry.
- ii) **Clarity is needed on what the problem is and how it should be addressed** – there is little point in just combining codes unless there are clear benefits. A key objective of the Code Governance Reform should be to simplify the modification and assessment process with fewer industry meetings and more effective decision making. The objectives of better governance may be possible by better cross-code coordination rather than amalgamation of codes.
- iii) **Need to identify which parts of particular codes could be consolidated** – there may be merit in combining aspects of the codes that fit logically together, rather than combining codes in an arbitrary “vertical” or “horizontal” way. For example, it may be appropriate to combine gas and electricity network charging given the similar nature of the underlying arrangements. There may also be some synergies in combining the connections schedules of the Grid Code, DCUSA and CUSC.
- iv) **Code Governance Reform should not lead to a reduction in the influence of market participants** - any outcome of code reform must maintain the codes’ accountability to industry, and we believe that this should be delivered by the Strategic Advisory Forums (SAFs), as the equivalent of the current code panels. The panels play a hugely important role in providing a check to both the code managers, and on the outputs of workgroups, the membership of which is largely self-selecting
- v) **Code manager licensing** – ESB would prefer a slimmed down licensing regime where provisions would be moved from the code manager licence into the code itself, rather than into a new licence.

### 3. DETAILED RESPONSES

***Q1: Do you agree with the design principles proposed to frame our assessment of code consolidation options? If 'no', please explain why.***

On the whole, ESB agrees with the identified design principles. We believe that there is currently over-complexity in the market arrangements and that this can favour existing market participants and deter new entry. A key objective of the Code Governance Reform should be to simplify the modification and assessment process with fewer industry meetings and more effective decision making.

Ofgem should also ensure that any option minimises disruption to ongoing programmes of work, such as charging reform and the development of the Future System Operator. There should also be an assessment of the value for money provided by any consolidation.

***Q2: What are your views on the high-level options for code consolidation we have described ('no consolidation', 'vertical' & 'horizontal')? We welcome input on the possible benefits/disbenefits of each option.***

Before and code consolidation takes place, clarity is needed on what the problem is that is being addressed. There is little point in just combining codes unless there are clear benefits. A key objective of the Code Governance Reform should be to simplify the modification and assessment process with fewer industry meetings and more effective decision making. Any code consolidation must be approached from the perspective of those that interact with the codes.

There may be merit in combining aspects of the codes that fit logically together, rather than combining codes in an arbitrary "vertical" or "horizontal" way. For example, it may be appropriate to combine gas and electricity network charging given the similar nature of the underlying arrangements. There may also be some synergies in combining the connections schedules of the Grid Code, DCUSA and CUSC. This could simplify and streamline the process to arrange connection for a new entrant. Ofgem should consider NGESO's work on the digital *Whole System Technical Code*, which combines the Distribution Code, Grid Code and SQSS. This could provide a useful basis for any transition.

In terms of vertical and horizontal code consolidation, we have a preference for vertical (i.e. for a single fuel type) as horizontal consolidation of gas and electricity **market** arrangements may lead to an inefficient, piecemeal outcome with alternate paragraphs referring to gas and electricity. There are exceptions, such as for network charging and connections as discussed above

It is not clear from this consultation how hydrogen and carbon dioxide may be treated. We would welcome clarity on the future regulation of these sectors, and whether/how they will be adopted into existing arrangements.

**Q3: Do you agree with our initial preference to explore vertical code consolidation options and, if so, do you have any observations on the potential models set out in Cornwall Insight's April 2022 report? We welcome specific views on the following:**

- **Whether the UNC and IGTUNC should be consolidated;**
- **If/how to consolidate the electricity codes;**
- **Whether the REC and SEC should remain separate; and/or**
- **Whether the consolidation of any codes should be prioritised, and if so, why.**

ESB believes that many of the proposed design principles could be achieved through simplification and digitalisation of the codes in their existing form. Consolidating codes without a clear understanding of the benefits may be counter-productive.

We believe that reducing the number of codes and/or the number of meetings that relate to their governance could deliver benefits and streamline the regulatory burden. However, this should not come at the expense of appropriate engagement which is key to understanding and effecting desirable change. ESB would welcome efficiency improvements in these processes, with the roll out of best practice across the different codes: we believe that this could be delivered without the need for code consolidation in most (if not all) cases. Other improvements to code governance could include an updated *Ofgem Strategy and Policy Statement* and a net zero objective shared across Ofgem and the codes.

There are also issues with cross-code coordination that could be resolved in the absence of consolidation, through a greater role for the CACoP, and through Ofgem enforcement as the Strategic Body. Further improvements within the current framework include sharing best practice in governance of Codes and more effective prioritisation of code changes, working with Ofgem and stakeholders in a transparent way.

Specifically, for the **UNC and IGTUNC**, ESB does not see any reason why these two codes should not be consolidated as they deal with very similar issues.

In terms of **If/how the electricity codes could be consolidated**, ESB believes that certain aspects of the electricity codes could be consolidated such as network charging and connections (as discussed in Q2 above). It would, we believe, be difficult to consolidate, say the BSC and the CUSC as both codes are complex and contain detailed provisions on electricity market governance. It may be best that the BSC remains a standalone code, whereas aspects of the CUSC could be consolidated with other electricity codes.

We see no particular advantages of consolidating the **REC and SEC** and believe that they should remain separate.

In terms of prioritising the consolidation of any codes, then the codes governing network charging and/or connections may be the most appropriate to consolidate.

#### **Q4: Do you agree with our preferred implementation approach (Option 2)?**

- **If so, do you have any additional observations on what we should consider when further developing this approach, including which code provisions should be considered within the scope of governance arrangements?**
- **If not, please provide details.**

Given the scale of change that is required to deliver the transition to net zero, ESB believes that this should be the focus of the energy industry and that initiatives such as code governance reform should not delay or interfere with the programme of work required to deliver this transition. If there are quick wins, in terms of simplifying and streamlining governance arrangements then these should be pursued but we believe that any major consolidation should not be a priority.

We are also keen to see that stakeholder engagement and involvement is maintained under any new arrangements. We are not yet convinced that this will indeed be the case under the new proposals and as there is a lack of concrete information as yet of how the new Stakeholder Advisory Forums (SAFs) will work. There is a danger that industry parties will lose influence and change will be dictated by code managers and Ofgem. ESB believes that the code change process should continue to be industry-led. We would welcome further clarity on the shared

governance arrangements proposed in Option 2 in the consultation. We would also welcome some overarching shared governance provisions, such as a shared modification process, accession, enforcement and credit arrangements; however, we would point out that this could be delivered without code consolidation.

## **Code Manager Licensing**

**Q5: Are any of the contents we have identified for the licence conditions unnecessary, or, would be more effectively covered outside of the licence (e.g. in the codes)?**

ESB has some concerns about the proposals for code managers to take on the current role of the code panels in making recommendations on, or approving, code modification proposals. There may well be conflicts of interest where the delivery plan aspect of the proposed code manager Licence interacts with the code manager's power to prioritise change. There may be instances where a proposed modification does not fit with the delivery plan, and there is a danger that the code manager could ignore the wishes of industry stakeholders and de-prioritise the modification. We would like to see safeguards in place in the code managers' licence to prevent this.

An alternative approach would be to develop the code manager licences such that as many provisions are retained in the codes as possible, and the licences are kept at a high-level. The example of NGESO's ownership of the CUSC and Grid Code shows that licences are far more onerous to change than the codes, so moving provisions into licences would appear contradictory to the stated objectives of Code Reform.

Finally, it is not clear who would be fined if a code manager is found in breach of its licence. This is particularly relevant in the case of Elexon, where it is expected that industry would assume ownership.

**Q6: Are there any additional areas that should be subject to licence rules?**

ESB sees some merit in requiring code managers to inform Ofgem of relevant developments, for instance where the code manager believes Ofgem intervention is needed where the code manager may have a conflict of interest on a particular code change, and to comply with any directions that Ofgem may issue.

We also support obligations on code managers that will ensure a smooth handover of responsibilities and assets to a new code manager where licences are time-limited, and/or in response to any financial failure of a code manager. This should help to limit disruption to the operation of the market in the event of a planned or unplanned change in code governance.

**Q7: Do you agree with our indicative prioritisation for policy development, and do you identify any specific dependencies that you think we should factor into our policy considerations?**

Yes, ESB agrees broadly with the indicative prioritisation for policy development. We agree that it will be important to *“manage any potential or perceived conflicts of interest that the code manager has, including where it is managing the code modification process”*. The financial resilience of code managers is an important consideration, and we believe that code managers should have to meet certain standards to minimise the risk of financial failure. The licence should also contain requirements related to ensuring effective corporate governance, internal control and risk management, change in ownership or board composition.

We would like to see more detail on how code managers may be incentivised to ensure no conflicts of interest. We believe that there is a role for stakeholders (through the Stakeholder Advisory Forums) for assessing code managers’ performance against agreed KPIs.

**Q8: Are there any issues that we should take into account when considering moving the current ‘code owner’ licence provisions to the new code manager licence (such as unintended consequences)?**

As we understand this question, this relates to NGESO’s licence, which allows it to prepare and amend the Grid Code and the CUSC, and which states the applicable objectives. These provisions would be moved to new code manager licence. We assume that the reason for this is that an entirely new entity could take over management of the Grid Code and CUSC. We would support moving code management responsibilities away from the Future System Operator (FSO), so that it could focus on its core roles of strategic planning and system operation.

ESB would prefer a slimmed down licensing regime where provisions would be moved from the code manager licence into the code itself, rather than into a new licence.



## **Stakeholder Advisory Forum (SAF)**

**Q9: What do you think the stakeholder advisory forums' key roles and/or functions should be, and what areas (other than code change) should the forum(s) potentially have a role in?**

As stated above, ESB has serious concerns with the current proposals about a potential loss of stakeholder influence and the ability to shape change through the code management process. We believe that industry participants would lose the ability to shape change effectively if Ofgem sets the strategic direction and then code managers carry it out and prioritise accordingly. We would, therefore, welcome further clarity on the role of the Stakeholder Advisory Forums. Any outcome of code reform must maintain the codes' accountability to industry, and we believe that this should be delivered by the SAFs, as the equivalent of the current code panels. The panels play a hugely important role in providing a check to both the code managers, and on the outputs of workgroups, the membership of which is largely self-selecting.

If the role of the SAF is to be purely advisory, we would welcome clarity on the route to appeal code manager and Ofgem decisions. The opportunity to dispute a direction from Ofgem or a code manager would lead to more robust decision-making.

**Q10: What options/issues should be considered in terms of constituting the stakeholder advisory forum(s), in terms of membership and securing appropriate representation?**

There is some perception that the larger, more established market participants can have undue influence in the code modification process due to their resources and established market position. It is key, therefore, that the SAFs are representative of those impacted by code change, and that if user types are to select representatives, that they are obliged to act independently and not just represent their own commercial interests. Improvements in the make-ups of existing panels would be welcome, particularly those that are dominated by regulated monopolies.

**Q11: Are there any lessons learnt (either good or bad) from the current code arrangements that should be considered?**

No answer.