



Flexible Generation Group
13 Thornton Hill
London
SW19 4HU

Telephone: 020 8239 9917
e-mail: mdraper@peakgen.com
www.flexgengroup.com

By email: industrycodes@ofgem.gov.uk

Codes Reform Team
Ofgem
10 South Colonnade
London
E14 4PU

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Dear All

Energy Code Reform: Call for input

The Flexible Generation Group (FGG) represents the owners of and investors in small scale, flexible generation and storage. These power stations are embedded in distribution networks and provide a variety of vital services to the system operator to help it deliver secure, economic supplies to electricity customers. Some of our members are signatories to some of the codes. We recognise some of the issues Ofgem raises, but we are concerned that Ofgem has not examined the issue as a “customer journey”, but has instead focussed on the number of codes. We would very much welcome governance changes that make it easier for parties to engage with the change process.

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

It has been seven years since the Energy Code Reform (ECR) started in response to the Competition and Markets Authority’s (CMAs) review of the market. FGG is concerned that the problems that were identified at that time are not the issues of today. The Ofgem led process has been quite slow, and there is a need to check that the changes proposed are going to meet the issues of today, not resolve the problems of yesterday.

We would therefore urge Ofgem to more clearly define the problems that it is seeking to resolve today.

On the principles we would note:

While we agree the codes should be easier for parties to understand and comply with, it is not obvious that putting codes together without rationalisation will achieve that. There needs to be some cost benefit assessment done.

We support agile change, but do not believe removing the expertise on the Panels will help. Efficiency on code management needs to improve, as does Ofgem's decision making. All too often we wait a long time for Ofgem to reach a decision, most recently on BSUoS. Ofgem need to be at the meetings and guiding the debates, not sitting on the fence in the name of "not fettering their discretion".

Strategic change needs coordination across codes and within Ofgem. We note that charging work (SCR and TCR led by Ofgem) seems to have become never ending as Ofgem teams change, REMA is coming along, NGESO is doing its own net zero work, charging mods are taking ages to progress, etc. All of this adds to investor uncertainty. It is a bigger issue that the codes.

As heavy users of the CM Rules, it is unfortunate they are out of scope. These rules and the other codes could benefit from an edit to make them more user friendly and in plain English.

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.

FGG are surprised that Ofgem is not consulting on the next level of detail. We agree that horizontal consolidation should not be considered further. Different fuels are inherently different, so horizontal consolidation doesn't make sense beyond the retail codes. However, we would like to see some progress in making codes easier for smaller parties to interact with.

Any code consolidation must be approached from the perspective of those that interact with the codes. For FGG members, we need to understand that connections are the same across DNOs and TOs, we interact with energy markets, including ancillary services, and need to understand the charging. We can therefore see some logic in creating a connections and networks code.

There are issues in the energy market that some of the rules sit in the Grid Code, some in the CSUC and some in the BSC. Moving all energy related actions under the BSC could be an improvement. This should cover the BM and ancillary services. This is not a full merger, but allows for sensible rationalisation. This could be achieved via a code digitalisation exercise.

It is also not about what is in the codes, but who runs them. None of the monopolies should have the majority of seats on a Panel or be the administrator of a code. Ofgem now has years of code administrator surveys that show that NGESO is considered to be the worst administrator of codes, not just because it seems to have an inflexible structure, but because it is perceived as having a conflict of interest in how the codes develop.

Ofgem should also consider how companies sign-up to codes. Instead of each SPV under a parent signing up in its own right, we cannot see why their parent cannot sign-up instead. With increasing number of small flexible plants this may make it easier for both parties and code operators, cutting down the number of parties that are interacting together.

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.*

As noted above, FGG would rather see some streamlining of the current codes, moving some of the rules between the codes to make them more logical. We would then like to see the CUSC and DCUSA merged, but as that is done the different treatments of DNO and TO connected plant would need to be resolved. Just combining codes as they stand seems unlikely to achieve anything more than a very long document.

FGG notes that Elexon has digitalised the BSC, NGESO is trying to merge the Grid Code and D Code into a digitalised document, etc. These types of activities could go a long way to deliver the types of benefits that Ofgem and parties want to see.

We have no specific views on the REC and SEC, nor IGTUNC and UNC as these are not codes we interact with often.

Ofgem is wrong to expect a bigger code will result in less meetings. These are complex legal contracts and parties may only have expertise in some areas. Nothing about the consolidation of the codes is likely to change that. There are also issues with cross-code coordination that could be resolved in the absence of consolidation. FGG is confused by the role of CACoP, but Ofgem could direct them to focus on issues for coordination where it believes it is necessary.

Another quick win, as part of the FSO, would be to move code administration from NGESO to Elexon.

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.*

FGG would be unlikely to be able to resource the scale of work necessary to merge codes. There is significant work on REMA, NGESO's net zero work, new ancillary services and others

to which we all need to contribute. However, it would be critical to ensure this is done in a robust manner as just changing a word in a legal contract can alter its meaning. So while we would like to do some reforms, compared to other work this feels like a low priority and instead some tweaks could be made to deliver better value.

Low hanging fruit could include:

- Change in CUSC and Grid Code administrator as part of creation of FSO;
- Ofgem to attend and lead more at meetings, taking a policy position as part of their strategic role;
- Code administrators to align the relevant applicable objectives in all codes;
- Ask Elexon/NGESO to consider moving “energy issues” into the BSC;
- Ask code manager to change the Panels to make sure each has a better balance in line with the BSC Panel;
- Require code administrators make all of their codes public, with no need for approvals of passwords, etc in line with Energy Data Taskforce; and
- Adding smaller, non-code signatories to the Panels to include wider views.

FGG support the idea of Ofgem’s strategic role in Code Governance, but do feel this could be done without new layers of governance. Ofgem could expand its annual work plan with a say 5 year strategic plan for the code administrators to consider in their own work programs. Ofgem can also take a more active role in the change process by offering views at meetings, as they used to do.

It is unclear how the Stakeholder Advisory Forums could operate in practice, but FGG members do attend those mods’ meetings of most commercial relevance. We would not be interested in attending large meetings to get updates on issues we are not interested in, and that are not actually progressing changes with industry, that would take up too much time. However, it is important the code administrators keep all websites up to date with clear explanations of all proposed changes and the timelines for mods being signed off (as must Ofgem).

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)?

It is a shame that the Energy Bill now requires licencing. We have a code administrator with a licence and that creates nothing but problems, for example, NGESO saying it cannot do things that are at odds with its licence. Or significant market changes may require changes to the licence, which no one can propose except for Ofgem. Licence changes cannot also not be done fast and there is a risk that code administrator’s licences will diverge as well as codes delivering. However, given where we are, FGG propose Ofgem goes for a licence “lite” approach.

In brief we would note:

- Incentives in NGESO's licence has not made them the best code administrator, so incentives should be minimised;
- The role of the code administrator and its obligations should be in the code so they can be easily change by the industry, via some sort of Panel, who can hold them to account;
- FGG notes the NGESO quarterly reports but never have time to read them, so cannot see what benefit they are adding to the process. Ofgem micromanaging NGESO is not obviously improving their performance. Ofgem is resource constrained and should focus on areas it can add most value;
- Code managers should not see any "bonus" for doing their job, nor any penalties for failures, as they will be paid by energy companies and customers. We cannot see a way that the incentives/penalties would sensibly work in an industry owned monopoly;
- Code managers should run codes, but that must be in consultation with industry. There is no good reason that they will have the relevant expertise to come up pragmatic business solutions, let alone know how to deal with new technologies or disruptors;
- Once a Strategic Plan is in place we all need to recognise it will change, urgent modifications, changes in Ofgem staff, unforeseen issues, etc, may take the market off plan. It is therefore vital that prioritisation is done with the industry;
- As a general rule FGG does not support prioritisation as we have seen under the CUSC how often NGESO's proposals get prioritised over everyone else. It is not clear how we would move forward new business ideas if a change supported by only one, non-code party is always at the bottom of the priority list;
- Budgets are best set under the codes as they can more easily be altered if the code manager finds they need to change an IT system, hire more staff to deliver a new priority, etc. Flexibility is critical to agility; and
- FGG note many of the draft content is already being progressed under some codes. Ofgem must have a good reason to put these into a licence rather than leave them to progress as is.

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

No. We do not support licences.

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?

FGG is unclear what Ofgem's priorities are.

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)?

FGG's concern is that with a combination of licences and codes, we risk all of the code administrators becoming like NGESO, less flexible.

It will be vital the FSO does not run codes as well as offer advice to Government. The two roles seem incompatible.

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?

FGG has no issues with Code Managers having more control over raising and progressing change, to improve the efficiency of code changes. However, we need further clarity on the role of the Stakeholder Advisory Forums. There is a clear need to get the right expertise in a room to get the best code developments. However, that will be different people for different issues, parties only attend meetings they are interested in and there is no obvious way there will be continuity, and corporate memory, unless we have something similar to the Panels.

FGG are concerned that if the change process does not operate in an open and transparent manner, taking on the legitimate concerns of business, there is a risk it may damage businesses, rather than facilitating the move to net zero. We note there are issues where the Panels and working groups take different views, as the working groups are self-selecting. If we do not engage the experts within the market, there is also a risk the market may have to pay for external expertise.

If Ofgem does away with the Panels, who is going to oversee the day-to-day operations that currently fall to them? For example, setting credit limits, expelling defaulting parties, parameters such as CADL, etc. There is also a risk that we lose some of the executive responsibility where the Panels oversee the operations and performance of the code administrators, also allowing for within year budget changes if required, etc. It is not clear how any of these roles fit into the new structure.

FGG recognises that some Panels have not been as quick at progressing changes as others. Further some changes are complex, as these are complex industries with complex legal structures. It may be better to make incremental changes, such as including some non-code parties on the panels, making sure no monopolies can carry a Panel view, and encourage the inclusion of I&C customers as one of the Citizens Advice seats.

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

See above.

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

Code Manager needs to have sufficient expertise, skills and experiences to be able to understand priorities as well the need to deliver strategic direction. In some cases additional resources and expertise would allow for quicker change. Where the monopolies fund the code administrators this tends to be more of an issue than were parties fund the code administrators.

There is a need to find ways to help smaller parties raise changes. FGG supports the way the BSC has progressed changes for non-parties, such allowing them to raise changes and apply for metering dispensations, etc. As noted above, we would also like consider if parties can sign codes in a different way, such as via a parent company rather than having to manage multiple code parties.

We would be happy to discuss this with you further if that would be helpful.

Yours sincerely



PP Mark Draper
Chairman