

Ofgem Industry Codes Team
Office of Gas and Electricity Markets
10 South Colonnade, Canary Wharf, London
E14 4PU

31st January 2023

Dear Ofgem Industry Codes Team,

SSEN Transmission response to Call for Input on Energy Code Governance Reform

This response is prepared on behalf of Scottish Hydro Electric Transmission Plc (SSEN Transmission), part of the SSE Group, responsible for the electricity transmission network in the north of Scotland. We welcome the opportunity to respond to the Call for Input by Ofgem on Energy Code Governance Reform.

In principle, we understand some of the issues being addressed by the reforms. However, we consider some of the ways in which the outcomes have been translated into changes to the institutional framework could risk undermining what currently works.

We do not agree with the abolishment of the STC and SQSS panels. The STC and SQSS are unique in that they set obligations on transmission licensees to ensure the safety, security, reliability, and economic planning and operation of the transmission system in a coordinated manner, which in turn are reflected in licence conditions. The STC and SQSS, supported by their panels, successfully ensure this, without being diluted by commercial interests. The issues identified apply to some codes, but do not apply to the STC or SQSS. Analysis shows that the STC and SQSS Panels work well:

- **The code modification process is not industry-led. The ESO already lead code change**, having raised 100% of live SQSS modifications and 75% of STC modifications, as opposed to 54% in the CUSC,
- **They are not resource intensive or slow**, the STC has the second lowest average wait time for modifications in the pipeline across all codes, and
- **They do not lack co-ordination**, respondents to Ofgem's survey said the STC has the third lowest overall dissatisfaction score of all codes.

Stakeholder Advisory Forums

We do not believe the case for abolishing the STC and SQSS Panels has been made, and that the effective working of these Panels should be retained. In 2016 the CMA's energy market investigation made recommendations on how issues it had found in code governance could be addressed. BEIS and Ofgem have sought to address these recommendations through Energy Code Reform. However, the reforms go beyond the recommendations made by the CMA. The CMA did not recommend abolishing Panels and replacing them with Stakeholder Advisory Forums. Stakeholder Advisory Forums (SAFs) provide an inadequate replacement for the essential scrutiny and challenge to code managers and accountability to signatories that is currently provided by code panels and the industry knowledge and expertise of their members.

If the reforms proceed as proposed, we believe that duty holders, including network licensees, must have formal and codified involvement in the process of code change, in the approval of code change, and hold any code manager function to account where a change impacts upon the safety, security, reliability and economic planning and operation of networks. Transmission licensees are duty holders within the STC and SQSS, and therefore their role

within future governance and SAFs should be codified within the STC and SQSS. Further, the SAFs created for the STC and SQSS should be constituted in such a way that the role of the forum to fulfil the objective of ensuring the objective of the safety, security, reliability and economic planning and operation of networks is not diluted by commercial interest, or through the proliferation of access for parties with commercial interest. Assuming that the STC and SQSS panels are retained in their current format, we think that in line with BEIS' April 2022 decision document¹ there should be a Technical Committee constituted formally in the Grid Code and CUSC, with formalised and codified involvement from Transmission Owners. We believe that this would drive the best outcomes for consumers and coordinated activity of licensees.

Consolidation

We agree with Cornwall Insight's findings that Option 0 offers the best overall outcomes. We support harmonisation over consolidation. As the STC and SQSS are unique, in that they set the obligations on transmission licensees only and determine the safety and reliability of the transmission network, these codes should not be consolidated. These codes should retain their individual purpose and legal importance, with the authority of transmission owners to manage their network, as per their license conditions, remaining undiluted.

We support a phased implementation approach to deliver 'quick wins', 'best practice', and 'lessons learned' with a thorough review of the benefits realised against the Impact Assessment, which can be achieved through the annual strategic direction and code manager forward work plans. If these phases, along with a strategic direction and overarching principles of timely and efficient delivering of net zero whilst maintaining a safe and reliable network, realise 80% of the intended benefits, then further, and potentially disruptive reform and consolidation, would not be required. We would be happy engage with Ofgem to discuss our more detailed recommendations on approach and what benefits can be achieved.

Code Manager licensing

Licensing work should prioritise the avoidance of conflicts of interest. For example, current proposals could result in the creation of the FSO as a Code Manager and provides the Secretary of State the powers to delegate the responsibility of setting the strategic direction for codes to the FSO. Meaning, the FSO would be setting the priorities for themselves as Code Manager, and other Code Managers who are their competitors. More generally at this stage the licensing work should seek to formalise obligations with overarching principles to enabling net zero and ensuring the safety, security, reliability, and economic planning and operation of networks.

Our response is not confidential, and we would be happy to discuss any of the feedback contained herein further with Ofgem. Our responses to the specific questions in the call for input are set out below.

We would welcome further engagement with Ofgem on any of these areas as the reform process progresses. SSEN Transmission is committed to playing its part to improve codes governance to deliver the right outcomes for all market participants and consumers.

Yours sincerely,

David Boyland,

Senior Commercial Policy Manager,

SSEN Transmission

¹ Government response to the consultation on Energy Code Reform
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1066722/energy-code-reform-consultation-government-response.pdf

Code Consolidation

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

No, we disagree. SSEN Transmission consider Energy Code Reform to be an opportunity to set an overarching principle and formalise obligations, through legislation, licenses, and codes, for the safe, efficient, and timely delivery of net zero and ensuring the safety, security, reliability, economic planning and operation of networks (and other systems and services as relevant). It is with this principle that we assessed the energy code reform proposals.

Our evidence-based conclusion is that code reform should avoid the STC and SQSS's role in ensuring the safety, security, reliability, and economic planning and operation of the transmission network being diluted by commercial interest or by consolidation with commercial codes. The principle can continue to be achieved by retaining well-functioning STC and SQSS panels and by a formal and codified role of network licensees, as duty holders, to:

- have formal and codified involvement in the **process** of code change. This includes the approval of terms of reference for each modification, ongoing assessment of the proposal and final report against these terms of reference, recommendation on governance route, the urgency of code changes, the prioritisation of modifications, consulted at least once on each modification with vote captured and shared with the decision-maker, the code manager or Ofgem,
- have formal and codified involvement in the **approval** of code change, and
- any code manager function must be **held to account** where a change impacts upon the safety, security, reliability and economic planning and operation of networks

The principles for assessing the consolidation options should reflect this by acting as another means for ensuring that code reform enables, and does not hinder the safe, efficient, and timely delivery of net zero and ensuring the safety, security, reliability, and economic planning and operation of networks (and other systems and services as relevant). Further they should recognise the unique role that the STC and SQSS play in achieving this in their current format without consolidation. The codified rules, that as duty holders we comply with, have resulted in transmission system reliability in the north of Scotland of in excess of 99.999% in the first six years of the RIIO-T1 price control, thus demonstrating the benefit that the current arrangements have for consumers.²

Given the context of the cost-of-living crisis and rising consumer bills, and that the Impact Assessment has a net cost to consumers of £1 per annum on bills, benefits and consumer value should be tracked and published as part of Ofgem's annual strategic direction statement. This will allow an ongoing assessment of the need for full reform against the costs and benefits to ensure that it can be delivered for £37m per annum.

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.

SSEN Transmission favours 'no consolidation' Option 0 as it retains the STC and SQSS as unconsolidated. We agree with Cornwall Insight's findings that Option 0 offers the best return on benefits against costs for consumers.

We do not agree with any proposal (such as vertical option 1B) that would seek to consolidate the STC or the SQSS. The STC and SQSS's role in ensuring the safety, security, reliability, and economic planning and operation of the transmission network, should not be diluted by commercial interest or by consolidation with commercial codes.

² 'A Network for Net Zero RIIO-T2 Business Plan', <https://www.ssen-transmission.co.uk/information-centre/riio-t2-plan-and-uncertainty-mechanisms/>, p.6

Why STC and SQSS should not be consolidated

The STC defines the relationship between the transmission system owners and the system operator. It includes rules and procedures for transmission services and operations, planning co-ordination, communication and data and rules on network construction. The SQSS sets out the criteria and methodology for planning and operating the National Electricity Transmission System (NETS) for onshore and offshore transmission owners. It covers how Transmission Owners (TOs) plan the network and includes generation connection criteria, demand connection criteria, operation and design of the transmission system, and voltage limits. Both codes set out clear and accessible rules for transmission licensees and duty holders for maintaining, developing, and enabling connections to the transmission system. These form the basis of how TOs discharge their legal requirements under their licence conditions.

The STC and SQSS are unique in that they set obligations on transmission licensees to ensure the safety, security, reliability, and economic planning and operation of the transmission network. They are also unique in that they successfully ensure this, without being diluted by commercial interests. The STC and SQSS have codified objectives for the 'maintenance and operation of an efficient, economical and coordinated system of electricity transmission'. The CUSC, for example, has no such objective. The STC and SQSS codes should retain their independent purpose and legal importance, with the authority of transmission owners to manage their network remaining undiluted.

It would be inappropriate to consolidate the STC. Vertical alignment option 1B proposes to consolidate the Grid Code, STC, SQSS, and D Code as a single Technical Code. However, the STC is distinct from these codes. The STC is wider than a technical code for duty holders to follow, instead it provides detail for managing the relationship processes between ESO and transmission licensees, and how they work together to ensure the maintenance of a safe and reliable transmission network for UK consumers. This includes ESO-TO functions for example, but not exclusively: outage planning, connection requests, data sharing, and network operation.

It would also be inappropriate to consolidate the SQSS, for example under vertical alignment option 1B that consolidates it with the Grid Code. The Grid Code stipulates what users must account for in their systems. The SQSS covers the planning, design and operation of the network undertaken by TOs and the ESO. To have both in one code could lead to users changing obligations in a way that reduces the security and resilience of the network for the purposes of improving their own commercial positions.

Why we favour no consolidation

We understand some of the issues being addressed with current code governance, but it is not clear that the problems identified in the July 2021 consultation³ or the April 2022 decision document⁴ i) are fully evidenced, ii) exist across all codes, iii) will be resolved by the full measures proposed, iv) will enable rather than hinder the timely and efficient delivery of net zero.

We do however think that significant benefit can be realised, and the issues broadly addressed with a programme of incremental reforms of 'quick wins', 'best practice', and 'lessons learned' that focuses on simplification, harmonisation, and digitalisation. Our view that significant benefit can be achieved with consolidation option 0 is supported by the findings in Elexon's 2019 White Paper: A faster, more consistent process for changing energy codes.⁵ We would be happy engage with Ofgem to discuss our more detailed recommendations on approach and what benefits can be achieved.

³ Consultation on the Design and Delivery of the Energy Code Reform, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004005/energy-code-reform-consultation.pdf

⁴ Government response to the consultation on Energy Code Reform, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1066722/energy-code-reform-consultation-government-response.pdf

⁵ Elexon's 2019 White Paper: A faster, more consistent process for changing energy codes, <https://www.elexon.co.uk/change/elexon-insights-how-we-could-streamline-the-modification->

We agree with Cornwall Insight's findings that incremental reform would be the easiest means of implementation because the approach avoids fundamental restructuring of the codes framework essential to a secure system of electricity supply. It also avoids the risk of disrupting the industry's existing commitments such as the delivery of net zero, as key industry expertise would be needed to support the implementation of reforms. We also agree that this model can be easily aligned with future code manager arrangements, where the code manager could drive their work on simplification, harmonisation, and digitalisation to meet the objectives of strategic direction.

Cornwall Insight set out several concerns about this approach, however we believe that each can be addressed through the improvements to current code governance proposed by option 0, or that option 0 does not pose the barrier assumed by Cornwall Insight. Concerns about usability and accessibility can be addressed through reforms adopted by code managers that draw lessons from current codes that have improved usability and accessibility such as the digitisation of the REC, SEC, and DCUSA. Lessons learned can also be adopted from ongoing projects like the ESO's Whole System Code that seeks simplification, digitalisation, and increased useability through user journeys. Concerns regarding adaptability to future market arrangements and compatibility with net zero, can be addressed by the significant existing and ongoing commitments by industry to delivering net zero within the current code landscape, such as SSENT's RIIO-T2 business plan commitment to support the delivery of a net zero network in the north of Scotland by transporting the renewable electricity that powers 10 million homes.⁶ Concerns that option 0 will miss out on economies of scale are addressed by the fact that BEIS and Ofgem's Impact Assessment states the expected benefit to industry of ECR and potential economies of scale amount to £1.8m per annum to be shared across all of industry, therefore they are minimal. Concerns that market access may not be improved upon do not apply to the STC and SQSS which enable access for impacted parties, as evidenced by the fact that the panels have facilitated codifying the role of OFTOs and are in the process of extending membership to CATOs. More generally we do not agree that current code governance has posed a barrier to new market entrants given the significant growth in small and medium size suppliers in the retail market which occurred within the current code governance structure.

We agree with benefits of no consolidation identified by Ofgem, including bringing forward the implementation of the strategic direction which would allow code administrators the direction to prioritise the work needed to enable net zero and improve existing code governance. Benefits would also be realised by the industry and consumers quicker, most likely at a lower cost to consumers than the Impact Assessment, without the distraction and resource-intensive seven-year project of consolidating the codes during the key years for delivering net zero obligations.

What this means for vertical and horizontal options

Should Ofgem not choose our preferred option of no consolidation, with other reform such as simplification, harmonisation, and digitisation, then of the options presented in the Cornwall Insight paper we have the least concerns with vertical alignment Option 1A – Minimal reform (network codes). This is because, option 1A retains the STC and SQSS as independent codes and they are not consolidated. If the CUSC and the Grid Code were aligned, there would be benefit in the CUSC adopting the objective to 'to permit the development, maintenance and operation of an efficient, coordinated and economical system for the transmission of electricity'. Currently the CUSC has no such objective. Further, we would expect a formalised and codified role within the new code through a Technical Committee to support in ensuring that this objective is met. Currently TOs have no formal or codified role within the CUSC panel, despite being materially impacted by CUSC modifications. It would be important to ensure that if Grid Code and CUSC requirements are combined the technical obligations placed upon users are not conflated

process/#:~:text=Based%20on%20our%20latest%20Policy%20View%2C%20Elxon%20could,participants%20that%20get%20involved%20in%20the%20change%20process.

⁶ 'A Network for Net Zero RIIO-T2 Business Plan', <https://www.ssen-transmission.co.uk/information-centre/riio-t2-plan-and-uncertainty-mechanisms/>

with commercial considerations to any extent that jeopardise the safe and resilient planning and operation of the transmission network.

We would not support the other vertical alignment or horizontal alignment options.

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?

No, we strongly disagree. In considering this response, please see our response to question 2.

We favour Option 0, no consolidation. The STC and SQSS should remain unconsolidated. Code reform should avoid the STC and SQSS's role in ensuring the safety, security, reliability, and economic planning and operation of the transmission network being diluted by commercial interest or by consolidation with commercial codes. We would not support vertical alignment option 1B that would result in the consolidation of the STC and SQSS with other codes.

We believe that issues within specific codes in the current code governance structure can be addressed through harmonisation, simplification, and digitalisation by implementing 'quick wins', 'best practice', and 'lessons learned', and a targeted approach of improving the codes that have the issues in them. Once the improvements have been implemented, the reforms should be paused for a period to allow for review and benefits tracking before any consolidation options are further considered. We believe 80% of the intended benefits of the benefit can be realised for 20% of the reform. We would be happy engage with Ofgem to discuss our more detailed recommendations on approach.

This approach has the benefits of i) delivering consumer benefit efficiently, ii) making what we have now, existing code administrators, and code modification decision making work optimally, iii) minimising disruption to codes that are essential to a well-functioning market, iv) avoids distracting key industry resource from the delivery of net zero v) targets improvements on the codes where the issues lie, rather than applying fundamental reform to codes that work well, such as the STC and SQSS.

We would suggest prioritising codes where issues have been identified. This would mean codes that are slow, reactive, overly complex, resource-intensive, lacking co-ordination, or lacking incentive for industry to deliver policy priorities beyond commercial interest. It would also mean that codes that did not have these issues would not be prioritised or considered for consolidation.

Analysis shows that the STC and SQSS work well, and do not have the issues identified by Ofgem and BEIS:

- **The code modification process is not industry-led. The ESO already lead code change**, having raised 100% of live SQSS modifications and 75% of STC modifications, as opposed to 54% in the CUSC
- **They are not resource intensive or slow:**
 - Based on CACoP data on live modifications, the STC has the second lowest average wait time for modifications in the pipeline across all codes, nearly 50% lower than the average, and 70% lower than the slowest code,
 - The STC has the lowest average implementation time of codes managed by the ESO, 22% lower than the CUSC and 40% lower than the Grid Code,
 - The STC has the lowest longest wait time for an individual modification implemented by the ESO, 40% lower than the CUSC and Grid Code,
 - We note Elexon's recommendations in their 2019 White Paper: A faster, more consistent process for changing energy codes⁷ could result in code changes being delivered on average within 8 months,

⁷ Ibid.

The STC already outperforms that objective. CUSC would require a 30% improvement and Grid Code a 45% improvement to meet that same standard

- **They do not lack co-ordination**, respondents to Ofgem's survey said the STC has third lowest overall dissatisfaction score of all codes. The SQSS has not had a modification rejected by Ofgem, the STC has only had 3% of modifications rejected, compared to 6% in the Grid Code and 11% in the CUSC being rejected by Ofgem, showing that the workings of STC and SQSS, including the panels, are more aligned to policy.

Based on this evidence we would prioritise commercial codes where they are industry-led, resource intensive and slow, and lack co-ordination.

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

No, we disagree. We reiterate our view set out in response to questions 2 and 3 that we do not support consolidation of codes and thus don't agree with any method of consolidation. We believe that issues identified in current code governance can be addressed by Option 0 and our proposed approach set out in our answers to these questions.

Should Ofgem decide upon implementing Option 0, this would also facilitate the achievement of the objectives of implementation approach Option 2. Our view that significant alignment between code governance procedures can be achieved with consolidation option 0 is supported by the findings in Elexon's 2019 White Paper: A faster, more consistent process for changing energy codes.⁸ This paper recommends a number of best practices for efficient code change governance, that could enable common governance arrangements, and ensure an average code change process of 8 months, for example: 'Proposals for major changes should be broken down into 'control gates' where Ofgem gives a view on progress and whether the modification (as it stands in each stage) could be acceptable or not'.

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)?

In considering this response, please see also our responses to questions 2, 6 and 7 for our recommended approach to code reform. Broadly, the list of contents is comprehensive, we are particularly pleased to see that Ofgem propose to have **licence conditions to ensure that conflicts of interest are avoided**. We are encouraged that Ofgem are considering that the licence may need obligations on 'the ownership, control or governance of the code manager; business separation requirements; restrictions on activities; ring-fencing of finances; and/or having a 'compliance officer' to ensure compliance with any conditions related to conflicts of interest'.

We are concerned that there is a significant risk of conflict of interest where the FSO could be setting the strategic direction for itself as a code manager, and other code managers. The other code managers could be the FSOs competitors. Therefore, we would caution any presumption in the reforms, legislation, and licencing that the implementation of the new role and powers of Code Managers will resolve BEIS and Ofgem's concern that code governance is overly influenced by commercial interest. We are concerned that the new powers and the creation of a competitive landscape for code managers with commercial interests themselves, risks incentivising code managers to influence code governance and code change for commercial or strategic gain. To resolve this, there should be clear and formalised accountability, for Ofgem through legislation, and for Code Managers through the licence, to ensure that the new code governance does not result in conflicts of interest or commercial interest driving the future direction.

⁸ Ibid.

We note that whilst there should be licence provisions for code managers to ensure ‘ease of use of the code’, ‘cooperation and cross-code working’, ‘supporting, engaging and consulting stakeholders, and decision-making’, significant improvements in these areas can be achieved without the fundamental reforms proposals in BEIS’s decision document and the Energy Security Bill, that would avoid the costs to consumers and the risk of disruption and distraction to the industry in enabling net zero. Our recommended approach is to deliver ‘quick wins’, ‘best practice’, and ‘lessons learned’ with the goal of achieving 80% of the intended benefits of the reforms for 20% of the reforms. We would be happy engage with Ofgem to discuss our more detailed recommendations on approach and what benefits can be achieved.

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

Broadly, the list of contents is comprehensive, however we have recommended additional areas for licencing. We have also commented where the illustrative examples and initial thoughts are insufficiently detailed or too forward-looking to ensure that what works well just now is retained, and industry knowledge and expertise is not lost.

Conflicts of Interest

In accordance with our response to question 5, we are concerned that there is a significant risk of conflict of interest where the FSO could be setting the strategic direction for itself as a code manager, and other code managers. The other code managers could be the FSOs competitors. To resolve this, there should be clear and formalised accountability, for Ofgem through legislation, and for Code Managers through the licence, to ensure that the new code governance does not result in conflicts of interest or commercial interest driving the future direction.

Overarching licence principle

The outcome and direction for codes needs to be formalised before the type of reform needed to deliver on that strategy is agreed. In the Supplier Licence the overarching principle for supplier obligations of Treating Customers Fairly was introduced as licence condition 0. We believe a suitable **overarching principle for licenced code managers would be the safe, efficient, and timely delivery of net zero whilst supporting a safe and reliable network and security of supply**. This work should be prioritised and brought forward along with setting the strategic direction in advance of other licence development or consolidation decisions.

Formalising duty holder and stakeholder roles

The illustrative examples and initial thoughts in content sections ‘code governance’ and ‘supporting, engaging and consulting stakeholders, and decision-making’ do not include references to the formal role duty holders will play in code governance. Currently this is done in the Governance section of each code, which details the constitution and membership of the panels and the relationship with the code administrator. This section needs to be suitably replicated in the code manager licence and the codes themselves.

In the STC, SQSS, Grid Code, and CUSC we propose this may be achieved by ensuring that:

- i. the criteria for decision-making by code managers and the Strategic Body includes requirements that protect the reliability, security, safety and economic planning and operation of the networks, systems and services which the codes are in place to manage,
- ii. code managers are accountable to network licensees during the code modification process where any code development has an impact on the reliability, security, safety and economic planning and operation of the network, and
- iii. network licensees have voting rights on modifications that have any such impact, and the right to veto or require revisions / mitigations for any modification which would have a negative impact. This approach may be adopted for each code activity area, where parties have licence obligations in relation to the specific network, system, or service in question.

Creating licence provisions supported by detailed Governance provisions within the code will help ensure that the historic knowledge and expertise of code signatories is retained, incentivised, and not lost.

Complying with the delivery plan and reporting on progress

Further to our response to question 1, we are concerned that the current proposals have insufficient accountability to duty holders, code signatories, and consumers that the reforms will deliver the promised benefits at the promised costs in the Impact Assessment. It is essential that the performance of both Ofgem as Strategic Body and code managers is open to public scrutiny when considered within the context that the reforms will increase consumer bills during an ongoing cost of living crisis and projected high energy bills for the foreseeable future.

Code managers should be licenced to publicly report on performance. The annual strategic direction and code manager forward work plans should be used as a means of assessing the new code governance structure against the Impact Assessment and the baseline of what we already have, to evidence improvements, benefits or gaps against the commitments and action plans to address them. This will be an important mechanism in tracking the benefits of energy code reform and whether they have been successful in enabling net zero, as opposed to our concern that the full reforms may act as a distraction and barrier to the efficient and timely delivery of net zero. It will also help ensure that there are clear lines of accountability to Ofgem and code managers that the new code governance structure is an improvement on the baseline of what we already have and demonstrate to consumers the benefit of the reforms against the costs and increase in energy bills.

Budgets (related to code manager funding)

We note that BEIS committed in its consultation and decision document that stakeholders would be consulted on code manager budgets, we would therefore expect this to be included in this section of the licence conditions.

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?

Conflicts of interest

We welcome that 'conflicts of interest' has been prioritised. We are encouraged that Ofgem are considering that the licence may need obligations on 'the ownership, control or governance of the code manager; business separation requirements; restrictions on activities; ring-fencing of finances; and/or having a 'compliance officer' to ensure compliance with any conditions related to conflicts of interest'. However, we would caution any presumption in the reforms, legislation, and licencing that the implementation of the new role and powers of Code Managers will resolve BEIS and Ofgem's concern that code governance is overly influenced by commercial interest. We are concerned that the new powers and the creation of a competitive landscape for code managers with commercial interests themselves, risks incentivising code managers to influence code governance and code change for commercial or strategic gain. There should be clear and formalised accountability for Ofgem and Code Managers to ensure that the new code governance does not result in conflicts of interest or commercial interest driving the future direction. The annual strategic direction and code manager forward work plans should be used as a means of assessing the new code governance structure against the Impact Assessment and the baseline of what we already have, to evidence improvements, benefits or gaps against the commitments and action plans to address them. This should include evidencing an improvement and reduction in perceived commercial interests of the current arrangements, on which some of the benefits case for the reforms are made.

Potential or perceived conflicts of interest of code managers must be avoided and the licence is an important mechanism for helping to ensure this. Conflicts of interest need to be carefully managed so that code managers cannot implement changes which may benefit themselves, and we would expect formal stakeholder engagement to ensure that parties who are impacted by the proposed changes have an opportunity to feed in. There is a risk of

conflicts of interest driving decision-making and recommendations, which would require to be eliminated in the selection of an appropriate party to fulfil the role, and through licence.

The licence is not the only means and other mechanisms such as business separation and requirements within the selection or tendering process itself must be considered as well in identifying suitable code managers. Commercial and strategic independence and absence of conflicts of interest (current and for the duration of the role) should also be pre-requisites for consideration of the role. It may be appropriate to include in the terms of reference for any code manager that they must not have or take on any conflicting work, to avoid the temptation to influence change for commercial or strategic gain.

Another important way to avoid perceived conflicts of interest and to enshrine trust within the constitution of the code manager role, and as we note in our response to questions 6 and 9, would be to formalise that duty holders must be able to hold code bodies / managers to account, rather than these functions being accountable only to the Strategic Body. Specifically, duty holders including network licensees must retain the right to make decisions on modifications which have an impact on the reliability, security, safety, and economic planning and operation of the systems which they own and operate under licence, to have powers of veto / modification amendment where there are impacts, and ultimately to appeal decisions with which they do not agree.

We are concerned about the ambition set out by the ESO in their Business Plan 2, that they plan to be both Future System Operator (FSO) and a Code Manager. The draft Energy Security Bill under clause 142 gives the Secretary of State powers to transfer functions under section 141 to Independent System Operator and Planner, meaning passing the responsibility of the Strategic direction statement from GEMA to the FSO. This seems to create a significant risk of conflict of interest where the FSO would be setting the strategic direction for itself as a code manager, and other code managers. The other code managers could be the FSOs competitors. There would be a clear incentive for the FSO to set a strategic direction that benefited and assured itself as retaining the position of code manager in the future, potentially expanding into other codes (through tendering for them), or in other ways to influence change for strategic gain and/or control. To fully understand the risks posed by the Energy Security Bill and energy code governance reforms, the roles, responsibilities, and corporate structure including any commercial arrangements of the FSO need to be decided upon. The strategic direction for code managers must be from an organisation or body independent from code managers, including the FSO, to ensure there is no conflicts of interest.

Prioritise overarching licence principle

Further to our response to question 6, SSEN T believes the licencing work should prioritise the development of an overarching licencing principle. We believe a suitable **overarching principle for licenced code managers would be the safe, efficient, and timely delivery of net zero whilst supporting network reliability and security of supply.**

This should be aligned with, and may be dependent on, the development of BEIS' Strategy and Policy Statement (SPS) and Ofgem's strategic direction, but the work should be done in tandem and hopefully can be brought forward to set the pathway for code governance and reform.

Supporting, engaging and consulting stakeholders, and decision-making

Whilst we welcome that Ofgem has prioritised the licencing of requirements to consult stakeholders, please consider our answer to question 6 on what these conditions should include through the licence, and in turn in the code, to ensure a formalised and codified role for duty holders.

Charging methodology – code manager funding

We welcome Ofgem's suggestion of further consultation on this.

Funding of code managers may be via licence fees, licensee price control or by payments from parties to the relevant code, but arguably this makes less sense the further away from licensees and / or code parties that the code management function sits. Costs should be collected via all parties who directly utilise or benefit from the code management service (third party commercial entities, code parties, licensees) to ensure efficiency and effectiveness; it may be appropriate that the function is funded on a GB-wide basis. In any case, the funding mechanism and charging methodologies and costs should be clear and transparent; this may be achieved through benchmarking costs against other similar functions and publishing relevant information on costs.

Production of a delivery plan consistent with the strategic direction

We welcome that Ofgem confirm, in line with BEIS' decision document,⁹ that there will be a licence requirement on code managers to consult stakeholders on their delivery or forward work plans.

Cooperation and cross-code working

Whilst it may not need to be prioritised, it would be beneficial if the co-operation and cross-code working licence condition was done in collaboration with licence conditions for the requirement to tender for services or to contract with current code administrators. We are concerned that the creation of competition between code managers both at the outset of the new code governance arrangements and in the future will significantly reduce collaboration and whole system thinking between code managers, thus having a detrimental impact on enabling net zero. There is a requirement for a licence condition for cooperation and cross-code working and to the overarching principle of delivering net zero, as detailed in our response to question 6.

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)?

Given our view that codes such as the STC and SQSS should retain the current code panel approach rather than moving to a Stakeholder Advisory Forum, when moving the current 'code owner' licence provisions to the new code manager licence, any code manager licence should require that STC and SQSS panels, and existing panel governance procedures in the codes, are provided for and retained. The retained panel governance would work collaboratively with the code manager to help ensure code governance and changes help facilitate the code manager to fulfil its obligations to deliver the strategic direction. The STC and SQSS Panels already work in this way by collaborating with ESO to deliver modifications raised by the ESO, often in response to Ofgem policy decisions, such as codifying the role of OFTOs within panel governance.

Consideration should be made around the treatment of codes which are currently the responsibility of multiple licenced entities. An example of this is the STC. Currently, both the ESO and TOs are obligated under Standard Condition B12 to have in force the STC and contribute to the terms in the STC relating to planning, developing, and operating the National Electricity Transmission System (NETS).

If this requirement were to be transferred to the licence of a single new code manager, amendments would need to be made to the existing licence conditions to reflect that licensee are still required to comply with the STC but are no longer obligated to ensure the STC is in force.

It is important that any Code Manager has relevant expertise in the subject of the code, whether that is technical, balancing, or commercial. Code Managers should be considered on their ability and resource to provide or, if an existing Administrator, to continue to provide a good level of service meeting stakeholder expectations. KPI's should be set to ensure good service but not at "any cost".

⁹ Government response to the consultation on Energy Code Reform,
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1066722/energy-code-reform-consultation-government-response.pdf

Stakeholder Advisory Forum

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?

Our position

We do not believe the case for abolishing Panels and replacing them with Stakeholder Advisory Forums has been made. Further, the STC and SQSS Panels work well and should be retained as they are (see evidence provided in our response to question 11).

The reform goes beyond the recommendations made by the CMA. The CMA did not recommend abolishing Panels and replacing them with Stakeholder Advisory Forums. Further, respondents to BEIS' July 2021 consultation, did not agree with the proposed roles and responsibilities of stakeholders, including the role of the stakeholder advisory forum, with 37% of respondents against the proposals and only 34% of respondents supportive.

Stakeholder Advisory Forums provide an inadequate replacement for the essential scrutiny and challenge to code managers and accountability to signatories that is currently provided by code panels, drawing on the industry knowledge and expertise of their members. We are concerned, depending on the population of the panel, that commercial interests may dilute the technical needs of the network.

We believe that under any future structure network licensees should have formal and codified involvement in the process of code change, to:

- have formal and codified involvement in the **process** of code change. This includes the approval of terms of reference for each modification, ongoing assessment of the proposal and final report against these terms of reference, recommendation on governance route, the urgency of code changes, the prioritisation of modifications, consulted at least once on each modification with vote captured and shared with the decision-maker, the code manager or Ofgem,
- have formal and codified involvement in the **approval** of code change, and
- any code manager function must be **held to account** where a change impacts upon the safety, security, reliability and economic planning and operation of networks.

Formalising duty holder roles

It is important that the commitments made by BEIS to stakeholders in its consultation and decision document are formalised both through Code Manager licence and the codes themselves. It is worth setting these out, as not all are covered in the Call for Input in the summary of what will constitute Stakeholder Advisory Forums. Commitments made by BEIS are that stakeholders will be:

- **consulted on the Strategic Direction,**
- **consulted on Code Manager forward work and codes plan.** CMs should have a licence condition to develop a delivery plan consistent with the strategic direction and that this is to be consulted on with signatories and duty holders and open to impacted parties,
- **able to raise modifications and input to the modification process.** This should be reserved for code managers, code signatories, or materially affected parties to avoid unnecessary proliferation of change proposals. Our experience is that the ESO already lead code change, having raised 100% of live SQSS modifications and 75% of STC modifications, as opposed to 54% in the CUSC. However, the ability for stakeholders to raise modifications should be formalised through the code manager licence and in the codes,
- **consulted, at least once, on code changes.** This should include being able to assess whether the modification solution is sufficiently evidenced that it will deliver the outcome and address the defect, aligns to the code objectives, and is an improvement on the baseline. Consultations should ensure that network

licensees have voting rights on modifications that have any impact on the reliability, security and safety of the network, and the right to veto or require revisions / mitigations for any modification which would have a negative impact. We consider that any future code manager function should have regular formal engagement with industry and licensees according to the specific code activity area / mod in question, to ensure that the integrity of underlying networks, systems and services is maintained,

- **able to formally appeal Ofgem or CM decisions, including to the CMA.** There is a requirement to preserve the current rights of appeal afforded to relevant parties following decisions made by Ofgem in respect of code changes. Appeal processes must be preserved as part of any framework taken forward to enable licensees and other parties with material interests in specific mods to appeal decisions. There should be no dilution of current appeal rights under a future framework,
- **consulted on the materiality of code changes; prioritisation; budgets:**
 - **Code changes:** It is proposed that Ofgem will retain decision making powers for material code changes and that Code Managers will make decisions on 'non-material' code changes, this should be consistent with the current distinction between open governance, where Ofgem are decision-maker, and self-governance where the Panel is decision-maker (subject to Ofgem approval). As Ofgem should be retained as ultimate decision-maker the definition of what is 'non-material' should not be extended beyond what is currently within panel self-governance, meaning existing definitions should be formalised within the code,
 - **Prioritisation:** The prioritisation process should retain industry input. There is a need to understand the criteria and process for assessing proposals, including those raised that are not part of large-scale strategic change proposals. However, in general we have concerns about the need for prioritisation, most codes such as the STC and SQSS do not have prioritisation; it is only the CUSC and Grid Code where prioritisation has been required. This could be addressed by improved performance review of code managers and implementation of best practice in code governance procedures,
 - **Budgets:** code signatories and duty holders should be consulted on code manager budgets and forward work plans due to the material regulatory and commercial impact code changes can have, and
- **Create a Technical Committee – where appropriate for decision making.** This is a critical requirement of any new model. The Technical Committee must be formalised to include technical experts from code signatories and duty holders. This would include Transmission Owners where any code development has an impact on the reliability, security, safety, and economic planning and operation of the network. Our experts are essential to the development of code modifications in the STC, SQSS, Grid Code and the CUSC. Assuming that the STC and SQSS panels are retained in their current format, we think that in addition there should be a Technical Committee constituted formally in the Grid Code and CUSC, with formalised and codified involvement from Transmission Owners.

We would expect the Code Manager licence and the codes themselves would formalise the BEIS commitments for duty holders and code signatories, where there is a material commercial or regulatory impact, non-code signatories, and consumer groups where consumers may be impacted in the commercial codes.

Other potential roles

Stakeholders could play an increased role in cross-code co-ordination meeting with Code Managers, through forums such as Code Administration Code of Practice (CACoP), to find whole system solutions in delivering aligned code objectives like net zero.

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

The STC and SQSS

It would be a regressive step if there was an extension of parties taking part in the forums for the STC or SQSS other than those materially impacted. The STC and SQSS are unique in that they set obligations on transmission licensees to ensure the safety, security, reliability, and economic planning and operation of the transmission network.

The STC defines the relationship between the transmission system owners and the system operator. It includes rules and procedures for transmission services and operations, planning co-ordination, communication and data, rules on construction on the network. It was developed in collaboration between transmission licensees, the network operator, and Ofgem.

The SQSS sets out the criteria and methodology for planning and operating the National Electricity Transmission System (NETS) for onshore and offshore. It covers how TOs plan the network and includes generation connection criteria, demand connection criteria, operation and design of the transmission system, and voltage limits. Given the multiple Transmission Licensees (TLs), the STC is the glue that ensures coordination in the planning and operation of the network, including ensuring consistency in the customer facing side of the TLs.

Both codes set out clear and accessible rules for transmission licensees and duty holders for planning, maintaining, developing, operating, and enabling connections to the transmission system. They are also unique in that they successfully ensure this, without being diluted by commercial interests. The issues identified by BEIS and Ofgem that there is little incentive for industry to deliver government policy beyond their own commercial interests, apply to some codes, but do not apply to the STC or SQSS. We are concerned that replacing the STC and SQSS panels may have the contrary effect of increasing commercial influence, thus diluting the codes' role in ensuring the safety, security, reliability, and economic planning and operation of the transmission network.

For both codes, the current codified governance procedure for panel membership is representative of all impacted parties and is future proof. This is evidenced by the fact that the current code governance structure has enabled the extension of membership in the STC to Offshore Transmission Owners (OFTOs) and is in the process of extending membership to potential Competitively Appointed Transmission Owners (CATOs), thus showing the current governance structure's ability to affectively extend membership to impacted parties now and in the future.

Formalised and codified role for duty holders

Code signatories must still be able to hold code bodies / managers to account, given that

- i. network licensees own and operate the systems, networks and services to which mods relate and are responsible for them to Ofgem under licence,
- ii. code managers' performance has a direct impact on the successful functioning of arrangements, and
- iii. they may be funded by code parties. Maintaining this involvement will also build trust and facilitate the progression of modifications.

We believe that there should be a formal and codified process for ensuring sufficient network licensee input into any future code amendments managed by this function which impact upon networks, as the duty holders with ultimate responsibility before Ofgem for the function of the relevant energy networks / systems. As developers, operators, maintainers, and owners of the networks / systems, with significant experience, licensees are often best placed to provide guidance, views, and technical expertise - particularly with regards to technical arrangements but also on practical implementation and wider aspects.

We are particularly concerned that without the right formalisation and codification of what is meant by a party impacted by the code manager's decision, that SAFs could be an "open door" to parties that are not impacted, hold

none of the regulatory or commercial risks of the decisions, or do not have the expertise, knowledge or competence to materially contribute to the development of the code change or an assessment of the impact of the modification in delivering the strategic direction and code objectives.

Impacted parties

The STC and SQSS panels' governance frameworks have avoided posing a barrier to entry to impacted parties, having codified the role of OFTOs and being in the process of extending membership to CATOs. Duty holders within these panels have collaborated with the ESO and facilitated the development of the code changes required to extend membership to impacted parties. However, membership has not been extended to impacted parties in other, more commercially focused codes.

Within the existing framework, SSEN Transmission has experienced instances where network licensees were not involved in code changes that directly affected business processes and drive changes in the network. For example, CMP330¹⁰ initially took the view that Transmission Owners (TOs) would not be impacted, despite the modification looking to amend the definition of Connection Assets in section 14 of the CUSC to allow cable and overhead line lengths over 2km to be contestable where agreed between the TO and the User. While TOs were eventually involved, key early engagement was lost.

A lack of involvement at the early stages can also lead to translation issues from one code to another. For example, in the past we have also experienced differences between what the CUSC says about securities and liabilities (Section 15) and the STC's less prescriptive references to these aspects. Once a CUSC change is in place the direction is already set, meaning that when it is eventually translated to the STC it can be difficult to make necessary changes. Whilst TOs are a non-CUSC party, modifications may affect our ability to develop an economic and efficient system of electricity transmission for our customers. For example, stakeholder engagement in Shetland, Orkney and the Western Isles tells us that securities can be a barrier to connection which ultimately has a bearing on our ability to progress optimal network reinforcements in a timely fashion to meet User requirements and support the transition to net zero, however the current framework means that TOs have no formalised or codified involvement in CUSC modifications that have a material impact on TOs. By contrast, membership has been extended and codified in the STC and SQSS panels to OFTOs and is in the process of being extended and codified for CATOs.

SSEN Transmission's assessment of all live code modifications shows there are 66 that affect our business. Of the 13 modifications that we have assessed as having a high impact on our business, 6 of these are CUSC modifications, the largest number of all codes. Of the 22 modifications that we have assessed as having a medium impact on our business, 8 of these are CUSC modifications, the largest number of all codes.

As a materially impacted party of the CUSC, our concerns could be addressed through BEIS' commitment to create a Technical Committee, where appropriate, for decision making. This is a critical requirement of any new model. The Technical Committee must be formalised to include technical experts from code signatories and duty holders. This would include Transmission Owners where any code development has an impact on the reliability, security, safety, and economic planning and operation of the network. Our experts are essential to the development of code modifications in the STC, SQSS, Grid Code and the CUSC. We think there should be a technical committee constituted formally in each, with formalised and codified involvement from Transmission Owners.

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

Yes. Whilst we understand some of the problems identified with current code governance, it is not clear the problems identified in the July 2021 consultation or the April 2022 decision document i) are fully evidenced, ii) exist

¹⁰ CMP330: Allowing new Transmission Connected parties to build Connection Assets greater than 2km in length & CMP374: 'Extending contestability for Transmission Connections'

across all codes, iii) will be resolved by the full measures proposed, iv) will enable rather than hinder the timely and efficient delivery of net zero. We do not believe that the issues identified apply to the STC or the SQSS Panels, that these Panels are unique in that they are not influenced by commercial influence but duty holder licence obligations, and therefore should be retained.

Retain what works

The STC and SQSS are unique in that they set obligations on transmission licensees to ensure the safety, security, reliability, and economic planning and operation of the transmission network. They achieve this without being diluted by commercial interests.

Analysis shows that the STC and SQSS Panels work well:

- **The code modification process is not industry-led. The ESO already lead code change**, having raised 100% of live SQSS modifications and 75% of STC modifications, as opposed to 54% in the CUSC
- **They are not resource intensive or slow:**
 - Based on CACoP data on live modifications, the STC has the second lowest average wait time for modifications in the pipeline across all codes, nearly 50% lower than the average, and 70% lower than the slowest code,
 - The STC has the lowest average implementation time of codes managed by the ESO, 22% lower than the CUSC and 40% lower than the Grid Code,
 - The STC has the lowest longest wait time for an individual modification implemented by the ESO, 40% lower than the CUSC and Grid Code,
 - We note Elexon's recommendations in their 2019 White Paper: A faster, more consistent process for changing energy codes¹¹ could result in code changes being delivered on average within 8 months. The STC already outperforms that objective. CUSC would require a 30% improvement and Grid Code a 45% improvement to meet the same standard, and
- **They do not lack co-ordination**, respondents to Ofgem's survey said the STC has third lowest overall dissatisfaction score of all codes. The SQSS has not had a modification rejected by Ofgem, the STC has only had 3% of modifications rejected, compared to 6% in the Grid Code and 11% in the CUSC being rejected by Ofgem, showing that the workings of STC and SQSS, including the panels, are more aligned to policy.

The STC has an objective to ensure 'development, maintenance, and operation of an efficient, economical, and coordinated system of electricity transmission'. The STC panel has facilitated the implementation of 24 modifications since 2018 that have been assessed against that objective. The SQSS has objectives to 'facilitate the planning, development and maintenance of an efficient, coordinated and economical system of electricity transmission, and the operation of that system in an efficient, economic and coordinated manner', and 'ensure an appropriate level of security and quality of supply and safe operation of the National Electricity Transmission System'. The SQSS panel has facilitated the implementation of 6 modifications since 2013 that have been assessed against these objectives. For example, SQSS modification GSR027: Review of the NETS SQSS Criteria for Frequency Control that drive reserve, response and inertia holding on the GB electricity system¹² saw the introduction of the Frequency Risk Control Report (FRCR), which Ofgem decided as improving both SQSS objectives. This modification considered the views of a wide range of stakeholders including academics.

We understand from stakeholders that at the commencement of the Retail Energy Code the REC Code Manager has been responsible for the detailed analysis, solution design and requirement specification for all Change Proposals.

¹¹ <https://www.elexon.co.uk/change/elexon-insights-how-we-could-streamline-the-modification-process/#:~:text=Based%20on%20our%20latest%20Policy%20View%2C%20Elexon%20could,participants%20that%20get%20involved%20in%20the%20change%20process.>

¹² GSR027: Review of the NETS SQSS Criteria for Frequency Control that drive reserve, response and inertia holding on the GB electricity system, <https://www.nationalgrideso.com/industry-information/codes/security-and-quality-supply-standards-old/modifications/gsr027-review>

The supporting code change process and committees, led by the Code Manager, have little industry input until consultation stage, risking proposals having under-developed solutions that require industry expertise and background knowledge that cannot be adequately replicated by the Code Manager. The lack of industry input in what changes are needed and what should be prioritised has led to the creation of an Issues Group that is industry-led and seeks to ensure that industry issues are addressed. This evidences that if a code manager-led stakeholder advisory forum change process is chosen instead of an industry-led panel process, then a lack of industry input from the outset risks creating inefficiencies. We strongly disagree with this being replicated in the STC and the SQSS.

Our evidence demonstrates STC and SQSS panels that are capable of collaboration between participants, facilitating and codifying access for impacted parties, reaching consensus, and efficient development of change. Based on this evidence, we do not believe the case for abolishing the STC and SQSS Panels has been made, and that the effective working of these Panels should be retained in their current format.