

Code Governance Reform

Sent by email to industrycodes@ofgem.gov.uk

23rd April 2024

Octopus Energy's response to Ofgem's consultation on the implementation of code reform

We thank Ofgem for the opportunity to respond to this consultation on the implementation of code reform. We are pleased with the new governance arrangements that will be implemented due to the passing of the Energy Act 2023, which gives Ofgem a greater role in setting the strategic direction for code development, with dedicated code managers to oversee and implement the vision.

We note that given the pace of change in the electricity sector and the frequent emergence of new markets, codes are not always able to adapt quickly enough, meaning there can be quite stark differences in whether certain markets require change through traditional code modification processes, or not. In some cases, the requirement to follow code change processes can slow down the pace of market development and innovation. Therefore, when going through the process of consolidation we urge that there is sufficient focus on the purpose that each consolidated code should serve. Given the rapid need for innovation and the constant development of markets, we would support a lighter-touch definition of each market that focuses on outcomes and objectives, rather than overly detailed descriptions of market functions within codes which often makes any change to the codes difficult and far too lengthy compared to the urgency of action needed to address the climate crisis.

In summary:

- We strongly support the new governance arrangements which will make it far easier for a wider group of parties to interact with codes
- We support code consolidation but urge that the purpose of each new code is made explicitly clear when this process is undertaken and that all codes are digitised in a way that's as standard as possible to aid usability
- We agree with the approach to publish annual Strategic Direction Statements (SDS) - however, there must be a clear feedback loop between GEMA, the bodies setting the SDS and the code managers responsible for

developing delivery plans to ensure a consistent direction of travel year by year

- We strongly support alignment of code modification processes across each code to improve the governance process for raising modifications
- We are most in favour of the 'big bang' approach to implementation that brings the governance arrangements into effect across all codes concurrently and shortens the transitional period as much as possible

We have summarised our views to each of the sections in the consultation below. Please reach out to madelaine.brooks@octoenergy.com in the first instance if you'd like to discuss our response further.

Section 2: Designation of codes and central systems

We agree with both proposals in this section, both the proposal to recommend that all 11 industry codes should be designated as 'qualifying documents' and that the 5 central systems listed should be designated as 'qualifying central systems'.

Section 3: Code consolidation

We agree with the proposals to consolidate codes by subject matter and think consolidation in this way is most likely to reduce the potential for conflicting code changes in the future, given code managers will be responsible for a broader but more compatible set of code requirements.

During the process of consolidating codes, we also recommend that Ofgem enforce the digitalisation of all remaining codes. An example of where this has been done well is the Balancing and Settlement Code, so we'd highlight this as an example to model when codes which have not yet been digitised do so. This greatly improves usability by introducing search functions that allow users to find specific aspects of the code that they need to review and improves filtering ability as well as a more clear representation of any document changes over time.

Section 4: Strategic direction

We agree with Ofgem's approach to publish the first Strategic Direction Statement before code managers are in place. Whilst in principle we agree with this approach the success depends on the level of granularity in the Strategic Direction Statements (SDS) that Ofgem publishes. To allow sufficient scrutiny and refinement of the SDS before the new governance arrangements are in place, we

support the initial publication of the SDS in Winter 2024 to test and refine the process before code managers are in place.

We agree that it's important that the SDS covers up to five years ahead, and that the content in each new SDS will build on that of the previous year's publication. This is important to ensure there is a general trend in a particular direction of travel so code managers have a clear vision that may evolve and update with time but will not materially differ year by year. There must be a clear feedback loop between GEMA and the bodies setting the SDS and the code managers responsible for developing delivery plans and ultimately implementing the vision. We suggest Ofgem thinks carefully about how this can be done most effectively. Simply relying on feedback on an annual frequency would not be sufficient.

Finally, there must be ample opportunity for stakeholders to feed into the development of the SDS each year as in some areas industry may be pushing further ahead or innovating ahead of regulatory or policy change. We support an annual consultation process on the SDS before it is finalised and handed to the code manager to develop delivery plans. We support plans to align code modification processes across codes to encourage wider participation and engagement across the industry. The current differences in process that exist across codes and markets are not conducive to encouraging new and smaller companies to engage in the process of submitting code modification proposals. For example, Capacity Market rules (the remit of Ofgem and CMAG) often interact with policy (the remit of DESNZ). This can limit the ability of CMAG to enact change, as it requires DESNZ steer. Because some elements are set out in primary legislation, this also limits the pace of change. In addition, the CM rule process does not facilitate holistic review and the process is unclear. Instead, single mods are raised by different parties which leads to inefficient decision making. For example, a number of elements related to the rules around secondary trading need reform, which need to be considered in the whole. Whilst the appointment of code managers should help to remedy some of these governance issues, we recommend that Ofgem streamline the code modification process across codes when these new governance arrangements are implemented.

In addition, there must be the opportunity for the industry participants to challenge code managers when there is the impression that code changes being proposed or prioritised may not best align with the direction of the SDS.

Section 5: Code governance arrangements

We agree with Ofgem's preferred option for SAF membership; fixed membership of stakeholders and independent parties acting impartially so long as there is still the opportunity for a wider range of stakeholders to attend the forums when a particular topic is of interest.

We do not support the need for SAF votes to provide majority views or for the establishment of a SAF Chair. These measures both feel duplicative to the role of the code manager and in many ways mirror some of the code governance arrangements of the past where large and better resourced companies have more opportunity to influence change. The purpose of these new governance arrangements is in part to avoid these behaviours, and whilst code managers should consider input from all SAF attendees equally, they should ultimately be driven by the SDS, rather than the majority views of the SAF membership, as these two things may not always align.

We support introducing an explicit code objective to support the delivery of the net zero target for 2050 and five-year carbon budgets. Whilst development of the SDS should be consistent with legally binding decarbonisation targets, including this as an explicit objective will ensure that this is a primary consideration when any new code changes are proposed and should also help code managers identify code changes that should be prioritised based on their relative potential to reduce GB greenhouse gas emissions.

Section 6: Transition

We are most in favour of the 'big bang' approach to implementation that brings the governance arrangements into effect across all codes concurrently.

We are concerned that the other phased approaches to implementation will result in a long period of uncertainty for stakeholders given codes will be under different governance arrangements. To minimise conflict between code changes, appointing code managers in a similar interval will be most effective, rather than a mismatched approach to collaboration between newly appointed code managers and existing code governance arrangements.