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Dear Gavin

Preliminary Strategic Direction Statement and code governance arrangements

BUUK Infrastructure Limited (BUUK) welcomes the opportunity to respond to Ofgem's consultation on the preliminary Strategic Direction Statement (SDS) and code governance arrangements. This letter first presents an overview of our business and then discusses our views on the proposed consultation.

Overview of our business

BUUK is the leading UK multi-utility infrastructure investor, working across Great Britain and competing against incumbent utility companies. Our initial interest in utilities began with ownership of regulated gas networks and we have gradually expanded our portfolio into other utility sectors including electricity, fibre, water, wastewater, and heat.

Summary of our views

We support the proposal to provide greater clarity on energy policy priority areas. Aligning Government, Ofgem and industry in understanding what regulatory change is needed will support its timely delivery and help ensure the process is undertaken in an efficient a way as is possible. In doing so costs to parties, the central delivery bodies and ultimately consumers should be reduced.

The level of detail and format of the first draft SDS, included along with the consultation, seems an excellent start. The idea of including indicative timescales for the different policy areas is helpful from an industry planning perspective. The inclusion of a diagram showing the impacted codes is very useful.

Work is now needed from the industry codes and especially the new code managers to understand how they will align their work planning and budget setting processes to the SDS.

Logically frequent changes to the SDS should be avoided but it will need to be flexible enough to cater for urgent issues that may arise that require policy and regulatory change. The SDS process will also have to recognise that energy policy is driven by political decisions and therefore it is good to see the linkage to the Government's SPS for Ofgem.

Our key concern with the proposals is the suggestion that there is a need for a new licence obligation on network operators to engage with and answer any requests for information issued by one of the new code managers.

This we believe will lead to unintended consequences, will drive in inappropriate and unwelcome behaviour from the code managers and result in unnecessary costs for licenced code parties.

The code managers should be incentivised via their own performance regime to engage with code parties, rather than these being compelled to work with them.

Parties have a commercial interest in any changes that are made to the codes and will therefore engage with the process. Making it as inclusive and as easy as possible to participate in should be the ambition and the duty of the code manager.

It isn't clear to us the safeguards that would be in place for code managers having access to sensitive commercial information from code parties. Before they would be willing to provide this information parties will need to be reassured that this issue can be addressed. We have provided answers to the consultation specific questions in Appendix 1.

Yours sincerely,

Alex Travell

Head of Regulation

Appendix 1 - Answers to consultation questions:***Q1. Is the structuring of SDS content into three-time horizons (Act now, Think & plan, Listen & wait) helpful?***

Yes. Understanding the time horizon for change assists stakeholders to prepare and aids in prioritisation of activity. We understand the intent of providing these categories with names to try and make them more meaningful but would encourage inclusion of specific date ranges as well. This will provide additional useful clarity and ensure consistency in understanding as to when change is likely to occur.

Q2. Do you agree with the way modifications have been categorised into these three-time horizons (Act now, Think & plan, Listen & wait)? If not, please specify what changes you suggest and why.

Yes, although there may be some flexibility in the timing of when modifications are raised to codes to reflect their complexity and likely time needed to support their assessment and implementation. Experience has shown that some industry code modifications can take many years to develop and implement. Understanding the likely complexity of the modifications needed to support an SDS priority is therefore critical in determining when the change needs to be commenced.

Q3. On the basis that the SDS should contain a strategic assessment of government policies and developments relating to the energy sector, that will or may require the making of code modifications, do you think there is anything missing from the SDS that you would expect to require code modifications in the next 1-5 years? If so, please specify.

No

Q4. Did you find the SDS easy to understand and do you think that the level of detail included is sufficient to allow you to begin raising and implementing code changes?

Yes, it was clear with a good level of detail. The clear link in the structure of the document to the Ofgem forward workplan is useful. Maintaining this will require the publication of both documents to be aligned. The process for consulting on changes to both should be undertaken at the same time.

Q5. If you are a code administrator or code panel what action do you intend to take, if any, to implement the SDS following publication?

N/A

Q6. Do you have any suggestions about the best way to implement the SDS in the context of budget setting, delivery planning and the introduction of a harmonised prioritisation process?

Alignment is going to be challenging for the industry codes in the context of budget setting, delivery planning and the introduction of a harmonised prioritisation process.

We understand the logic in linking the SPS to Ofgem forward plan and priorities and then onto the SDS for industry codes. Aligned policy direction is important.

Industry codes need to set their own workplans and consequent budgets with clear visibility of what the SDS is going to include. As Ofgem and the industry code fiscal years are currently aligned this would appear to be a challenging task. It may therefore be necessary to change the planning and budget cycles for the industry codes to be several months later, moving from April to June of each year.

Q7. Do you have any other feedback?

Close alignment in the Ofgem forward workplan and SDS development will be crucial in ensuring that the policy framework is robust. We would suggest that the two are consulted upon at the same time in the future to ensure that this happens with linkages clearly highlighted.

Q8. Do you agree with our proposed prioritisation process, including the requirements that:

(a) a proposer of a modification proposal should be required to include an assessment of their proposal against the prioritisation criteria

Yes, with the support of the code manager.

(b) that the code panel should then be responsible for determining the prioritisation category of the modification proposal

It was our understanding from previous Ofgem consultations that the code panels were being disbanded. Therefore, it would be for the new licenced code managers to determine the prioritisation category and for parties to appeal this should they disagree with the decision.

(c) that code panels should reassess the prioritisation category of modification proposals on a quarterly basis

As with the question above this would be an activity for the code manager to undertake.

(d) that all codes contain a requirement for a code modification register, that also includes whether a modification is urgent and the prioritisation category

Yes, this provides transparency for parties to that code as to the prioritisation of change. The register should include additional relevant information such as the likely decision and implementation dates for a change.

Q9. Do you agree with our proposed prioritisation criteria and prioritisation categories?

Yes

Q10. Do you agree with our proposed legal drafting of code modification prioritisation procedure included in Annex A?

Yes

Q11. Do you agree with our proposed definitions to form future guidance on Code Modification Prioritisation included in Annex B?

Yes

Q12. Do you have views on whether this proposed prioritisation process should also apply to all live modifications that exist at the date that the proposed code changes take effect, as well as newly proposed modifications from this date onwards?

It would be logical to include this prioritisation process for all code modifications, including those already underway, to ensure that the process for managing change is consistent.

Q13. Do you agree with our proposed drafting of a new principles-based standard condition, for cooperation with code modifications related to SDS, for all gas and electricity licences, included in Annex C?

No. We do not believe that there is a valid justification for including an obligation on parties to engage with code managers on modifications. This undermines the requirement for code managers to engage with parties in a collaborative and customer centric manner. Instead, it encourages them to rely on forcing parties to engage with the threat of punitive financial action.

It also encourages code managers to become lazy in their approach to requesting information and pushing the onus on change assessment to parties rather than undertaking this activity themselves.

This change will create a real risk of excessive new regulatory burden on licensee holders and parties to the industry codes. Ultimately driving up their costs and risking these being passed onto consumers.

A need to have a licence condition on parties to co-operate with code managers is a sign that they have failed to deliver and have been unable to develop successful approaches to engagement. Introducing this now is premature and has not allowed them time to prove themselves.

Q14. Do you agree with the proposed criteria the code manager should consider prior to issuing a request for cooperation?

A code manager should be able to develop their own approaches for engagement and this may vary between parties to their specific codes. Not all parties will be licenced entities but in theory all will be interested in the outcome of any modification process.

Developing ways that best engage with parties, rather than what is most expedient for the code manager, should be something that they tasked with doing and measured upon as part of their performance assessment.