



Ofgem

By email:
industrycodes@ofgem.gov.uk.

BBL Company V.O.F.

P.O. Box 225
9700 AE Groningen
The Netherlands
Concourslaan 17
+31 (0)50 521 35 41

consultations@bblcompany.com

Trade register Groningen 2085020

www.bblcompany.com

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BBL VOF 26.24

Subject: Implementation of energy code reform: second decision & template code text

Dear Sir/Madam,

Thank you for providing the opportunity to respond to your consultation on implementation of energy code reform and your draft template code text for the new modification processes related to the Energy Codes in Great Britain. As owner, and Transmission System Operator (TSO), of the BBL Interconnector gas pipeline between the UK and the Netherlands BBL Company (BBLC) are a key stakeholder in regards to the Uniform Network Code (UNC). BBLC have previously sought to use the current UNC modification process to propose beneficial changes to the UNC but have been unable to do so due to the constraints within the current UNC governance arrangements on who may raise Modification Proposals and by the limited scope of the sections of the UNC that may be amended by such non-Code parties. BBLC therefore welcome the opportunity to respond to Ofgem's consultation and the proposed template code text for the structure of the codes' modification process.

As BBLC are not a contractual party (Code Party) to the UNC we feel that it is appropriate that our response is restricted to the consultation questions that are directly related to facilitating open, efficient and transparent participation in the code modification process by those impacted by the codes. BBLC's response is therefore restricted to the following questions:

Appendix 1. Consultation questions from the second implementation consultation

Q1 - Do you agree with our proposal to have in place a premodification process and the proposed roles and responsibilities in this process?

Pre-modification processes: BBLC have previously participated in many UNC ‘pre-modification’ discussions, key recent examples being the extensive pre-modification discussions which subsequently led to the development of UNC Proposals 0785 & 0903. BBLC have found that such discussions are useful for complex issues, but also agree that such discussions should not be mandatory especially for less complex change proposals. BBLC also agree that any harmonised pre-modification process should be open to any interested party regardless of whether or not they are a Code Party.

BBLC consider that the current UNC pre-modification and ‘Review’ processes have historically demonstrated that, in general, they enable efficient and broad consideration of wider industry issues by an extensive cross-section of industry stakeholders prior to more detailed / focussed Modification Proposals being raised.

Roles and responsibilities: BBLC agree that the Code Manager is best placed to be the ‘gate-keeper’ responsible for ‘vetting’ the submission of an Issue and managing the process for its consideration. This position is reflective of the process already in place within the UNC.

Q2 - Do you agree with our proposals on who can raise modification proposals and the associated triage criteria?

BBLC strongly agree with including and widening the current limited ability for non-code parties to propose code modifications. Many ‘non-code’ industry stakeholders such as BBLC are directly and financially impacted by the provisions within the energy codes. Due to the constraints within the current UNC governance arrangements on who may raise Modification Proposals, and by the limited scope of the sections of the UNC that may subsequently be subject to a proposed amendment by any proposal allowed to be raised by such non-Code parties, BBLC has historically found it difficult to directly address what we believe to be detrimental customer, consumer, commercial and/or market issues created by the provisions set out in the UNC. Yet, where BBLC has been able to get such Modification Proposals raised by other parties, such proposals have subsequently received industry support and Ofgem approval.

It can be seen from the above, therefore, that the current restrictions on who can raise Modification Proposals has historically led to delays in the implementation of changes that have subsequently been seen to be beneficial to consumers, cross border trading, security of supply and industry competition. In BBLC’s opinion, addressing the current restrictions to ‘non-code’ stakeholder pro-active participation in the development of the energy codes is therefore a positive step forward.

BBLC therefore supports the new Code Manager role in determining whether a non-code party should be designated and therefore permitted to raise a Modification Proposal. BBLC also support the proposed assessment criteria for the Code Manager’s decision. However, BBLC is unclear on why the

SAF would have a specific role in this designation process or what additional value this specific role, and subsequent opinion, adds (paragraph A8.3 of the template code text). Paragraph A8.2 provides a clear basis for the Code Manager to make its determination. In making this determination the Code Manager may choose to consult any number of parties for a view, but BBLC considers that in making this decision the Code Manager should not be unduly influenced by, or have to ‘take into account’, one specific party’s or body’s view over that of any other. Prioritising another specific party’s or body’s opinion in this designation decision unnecessarily introduces the possibility of unwarranted and avoidable barriers being erected against non-code parties participation in the governance process.

Proposal assessment criteria – BBLC supports Ofgem’s proposal to remove *‘the scope of the modification is incorrect and/or encompasses too much proposed change’* from the assessment criteria and agree that its inclusion could have inadvertently restricted the development of significant reforms. BBLC however remains concerned that the inclusion of *‘does not have a reasonable prospect of being approved’* as an assessment criterion is too subjective and open to interpretation to enable such a restriction to be consistently applied by the Code Manager and SAF. Whilst this concern is mitigated to some extent by the inclusion of the ability for the Proposer to appeal such a rejection to the Authority, such an appeal would inevitably be a time consuming process and therefore may be considered to be at odds with the ethos of this consultation.

Q7 - Do you agree with our proposals on alternative modifications; i) who can raise them and ii) a limit on their number?

i) BBLC disagree that the ability of to raise an alternative proposal should be restricted to the Code Manager or the Workgroup. This artificial restriction is likely to impact smaller industry players more than others. This risk is evident where workgroup membership / participation could be dominated by representatives of larger industry sectors. It therefore appears to be at odds with Ofgem’s stated aim of increasing the participation / contribution of smaller parties.

ii) Any limit placed on the number of alternative proposals that could be raised will inevitably be arbitrary. Historically, the number of alternative proposals raised has varied significantly but can be seen to broadly correlate to the variability of the potential financial impact of the original Proposal on specific industry sectors, i.e., industrial, power generation, storage, domestic consumers etc. Artificially restricting the number of alternative proposals risks stifling industry debate and introduces a further element of subjectivity into the decisions of the SAF and Code Manager. BBLC is also concerned that limiting alternative proposals would lead to a greater barrier to non-code parties raising such proposals since Code Party alternatives may be given greater prominence / priority in such circumstances. BBLC therefore welcomes Ofgem’s revised proposal to not restrict the number of alternative proposals and instead rely on a set of criteria.

Q12 - Do you agree with our proposals for SAF membership?

BBLC remain concerned that the proposed restricted membership arrangements of the SAF does not overtly recognise the important role that gas Interconnectors play in the GB energy market and GB energy security of supply. Interconnector Operators are not Code Parties and therefore it appears that, under the current proposals, they could only attend SAF meetings if they were allowed by the

Code Manager to raise a Proposal and were attending the SAF to discuss such Proposal. BBLC would therefore suggest that additional provisions are added to establish that if any Modification Proposal has been identified as having an impact on cross border trading or alignment with EU energy Codes, then Interconnector Operators should be invited to attend, and contribute to, any SAF meeting where such a Proposal is being discussed.

Appendix 2 - New consultation questions on proposed code text and current conflict of interest provisions

QT1 - To what extent do you agree that the proposed code text accurately reflects our policy decisions set out in the main document?

As a general view BBLC considers that the proposed code text is a fair reflection of Ofgem's policy decisions set out in the main consultation document. More specifically BBLC have the following comments on specific sections of the proposed text:

Designation of non-code parties (Section A8): Paragraphs A8.2 to A8.5 – In the spirit of openness and inclusion BBLC supports greater facilitation and accommodation of impacted non-code parties raising Issues and Modification Proposals. As such, we believe that the barriers to such non-code parties should be minimal. BBLC therefore welcomes the proposed text in A8.2 as this text provides a suitable balance between the goals of openness and the provision of suitable safeguards.

To reflect the concerns detailed earlier in this response, BBLC would suggest that paragraph A8.3 be deleted and A8.4 amended to remove the role of the SAF in this decision.

Alternative Proposals (Section A15): Whilst the text in this section does reflect Ofgem's policy decisions set out in the consultation document, BBLC does not support restricting the ability to raise Alternative Proposals to the Code Manager and or the Workgroup. BBLC considers that this is a retrograde step that will have a greater impact on smaller industry parties and is therefore at odds with the Authority's aims of openness and accommodation of such parties.

Yours faithfully



Rudi Streuper
Markets & Regulation Manager
BBL Company