

Mark Feather
Director – Codes and Industry Licensing
Office of Gas and Electricity Markets
9 Millbank
London
SW1P 3GE

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Dear Mark

REVIEW OF INDUSTRY CODE GOVERNANCE

EDF Energy welcomes the opportunity to respond to your recent letter setting out Ofgem's proposals for a review of Industry Code Governance. This is an important topic because the documents in question comprise a whole suite of legal instruments closely related in purpose and containing a coherent set of industry rules.

Those rules are fundamental to the effective continuance of core industry activities and processes in a way that is consistent both with regulatory objectives and, sometimes, with public policy goals.

We are supportive of the review taking place and agree that this is the right time to carry it out following the creation of several new industry agreements (for example, DCUSA and the iGT UNC) alongside the more established codes. The industry is now in a good position both to compare the varying approaches to tackling similar governance issues across the codes and to identify best practice which could be applied going forward.

EDF Energy agrees that the code objectives should be reviewed in the context of the Sustainable Energy Act 2003 and Energy Act 2004. Most of the objectives as currently drafted are reflective of an earlier era before new powers and duties in relation to the environment and sustainable development were conferred on the Authority. We would also welcome alignment of the objectives across codes where practicable in order to assist with the consistency of the appraisal of modifications and change proposals both by the industry and by Ofgem.

As you know, our active support for the industry code governance process is currently demonstrated by our staff's participation in code panels and by their contributions to the numerous sub-committees and modification/working groups. This combined expertise across electricity and gas codes and agreements covers network activities as well as upstream supply and retail services, and provides us with a detailed understanding of the mechanisms of code governance. This experience leads us to suggest that the scope of the review should be expanded.

In our view, to better ensure achievement of the seven objectives listed on the last page of your letter, which we support, the following specific issues and/or questions should be included within the scope of the review:

1. The role of the code panels and code administrators: can best practice be shared between panels, and is there scope for merging the functions and reducing the costs of some of the code administrators (particularly on the networks side)?
2. The alignment of governance procedures across codes: is there merit in converging procedures across codes to the highest achievable level of quality assurance, for example covering assessment rules and implementation timescales?
3. The role and impartiality of Ofgem and the rules of engagement: should Ofgem be more active at the beginning of the change process rather than remaining silent until the decision-making process begins? Should it be able, in tightly specified circumstances, to call in a modification proposal that is clearly not being assessed properly, or to return a proposal for further assessment and research where the quality of work has not been good enough?
4. The burden of evidence: is there a need for additional information to be provided to support modification proposals to the code panels?
5. The weighting of objectives: is there a requirement for additional information to be provided to panels to assist them with determining whether, and if so how, code objectives should be ranked and weighted?
6. Reviews of code modifications when made: could the industry and Ofgem benefit from post-implementation review of modifications, to assess whether or not they have had the intended effect?
7. Ofgem assessments: how could Ofgem be best required/incentivised to provide greater transparency of its decision-making process?
8. Gaming temptations: do current code rules and arrangements allow the parties to misuse modification/governance processes to delay change, and if so, what kind of amendments or restrictions in the processes across all the documents would best ensure that they do not support such activity?

The inclusion and appropriate public debating of these topics within a well-managed review process should be able to ensure that a robust examination of the industry code governance structure is delivered.

We hope that our comments in this response will assist with Ofgem's scoping and development of this important review. We look forward to contributing proactively to the process going forward. If you wish to discuss our response in more detail, we would be more than happy to meet with you.

Yours sincerely

Roger Barnard

Head of Regulatory Law