

ElectraLink

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Mark Feather  
Director Industry Codes and Licensing  
Ofgem  
9 Millbank  
London  
SW1P 3GE

22<sup>nd</sup> January 2008

Dear Mark,

ElectraLink welcomes the opportunity to respond to Ofgem's open letter: **Review of Industry Codes Governance.**

ElectraLink provides secretarial, administration, change process management and corporate support services to the Supply Point Administration Agreement ("SPAA") in the gas market and the Distribution Connection and Use Of System Agreement ("DCUSA") in the electricity market in its role as code administrator.

ElectraLink's services are provided through arms length commercial contracts which were subject to competitive tender and contain detailed sets of service levels against which performance is monitored. ElectraLink believes that its role as code administrator is to provide independent and equitable service to all the code parties through the timely, efficient and cost effective delivery of the agreed processes.

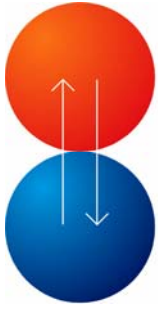
Under the SPAA and the DCUSA the code administrator is responsible for the administration and operation of the procedures set out within the agreements while industry members provide the crucial role of constituting the governing committees of the agreement and providing the expert analysis and input into the modification assessment process. Evidence suggests that this framework has worked well for both agreements since their inception.

ElectraLink believes that this division of duties between code parties and code administrators, supported by a service level contract structure, is fundamental to the efficient administration of these codes. Any potential risk of conflicts of independence or interest arising between the code administrator and market participants are mitigated through this clear division of duties.

*Is it time to look again at the effectiveness of code governance?*

ElectraLink believes that it is for the parties to the codes, in consultation with other industry stakeholders such as Ofgem, to determine whether it is time to look again at the effectiveness of code governance. ElectraLink is fully committed to participating and providing input into any resulting review.

It is right and proper that any market should not contain any undue hurdles or barriers to entry for new parties wishing to enter the market. However, it must be noted that adding to or increasing the assessment analysis and reporting burden within codes could have a disproportionate impact on existing smaller players and / or new market entrants.



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### Critical analysis of modification processes

As the present set of arrangements and codes have been developed over a substantial period of time it is inevitable that some variation will exist in the assessment and modification processes.

Across the codes the assessment processes vary in complexity as do the respective roles and responsibilities of industry participants and code administrators. ElectraLink believes that an effective and efficient assessment process should contain a number of key principles: openness and transparency; the encouragement and promotion of full participation across all code parties; provision for an open forum for debate; assessment of modifications against the code objectives as well as against wider industry benefits; and the opportunity for legal review.

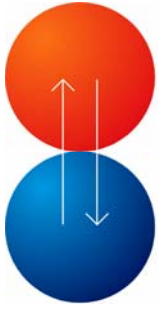
Any assessment process must recognise, in the first instance the nature and complexity of the code and secondly, the complexity and nature of any proposed modification. In some circumstances, a simple assessment process will deliver the required level of quality and report to enable a determination to be achieved either by the industry through self regulation principles or the Authority where such consent is required.

Both the SPAA and the DCUSA contain the principle of self regulation and operate open and transparent assessment processes which allow market participants to be fully engaged throughout the development, analysis and assessment of all modifications. Both codes have structured voting systems which allow impacted parties as a whole to determine whether a modification is accepted (subject to Authority consent in defined circumstances). Evidence suggests that this structure has worked well for both these codes and achieves a manageable balance between self governance and Authority regulation.

ElectraLink believes that there could be benefits gained from an increased level of uniformity and standardisation of the assessment processes across the codes. This could lead to an increased level of efficiency being gained by market participants and also lead to efficiencies within code administrator organisations. However, it should be noted that the extent to which uniformity and standardisation is sought to be increased on an existing code should be reflective of the existing complexity and structure of that code.

While some of the assessment processes can be carried out and managed by the code administrators, industry participants are best placed to assess the impact of any modifications and to carry out the requisite level of analysis to enable code administrators to provide quality modification reports to Ofgem. The drive for an increase in quality is recognised and desirable but must be achieved in a cost effective manner.

To ensure that the assessment processes produce the right data to enable Ofgem to make a transparent and informed decision it is crucial that there is no ambiguity surrounding the criteria which Ofgem will use in assessing the modification.



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Other issues

ElectraLink would welcome further involvement in any debate regarding the potential impact of fragmented code administration and the multiplicity of code administrators. The economic and efficiency benefits gained by conducting competitive tenders for the role of code administration are widely accepted and have demonstrated that efficient code administration services can be delivered in a cost effective manner without compromising the quality of the services provided.

The delivery of cost effective governance and code administration is enhanced through allowing parties to the codes to proactively and directly manage the wider costs of administering the agreements including its service provider and the associated legal fees and meeting costs.

Through the competitive tendering of code administration services on a periodic basis it could be argued that market forces will drive consolidation of administration functions.

ElectraLink believes that the appropriate level of independence required between code administrators and market participants can be achieved through an arms length contracting framework. Such a contracting structure will ensure that code administrators operate in an independent manner in compliance with their service level agreements and allow the code parties to monitor and measure their performance.

An increase in self regulation would be beneficial to all parties. It would enhance the authority and responsibilities vested in the code parties for the efficient and effective operation of the market whilst also reducing the number of modifications requiring consent and thus reduce the regulatory burden on the Authority.

It is critical to the successful operation of a code that the membership of its decision making bodies is reflective of the various constituencies that exist within the code. The level of authority and decision making powers of such Panels need to be reflective of the scope and complexity of the codes and must align with the principle of self regulation as appropriate.

ElectraLink would welcome the opportunity to discuss in more detail the content of its response and look forward to working with industry as part of this review.

Yours sincerely

For and on behalf of ElectraLink

Brian O' Shea