

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

Direct line 01925 534504  
Direct fax 01925 534571  
paul.bircham@enwlttd.co.uk

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Dear Mark,

### **Review of Industry Code Governance**

I write in response to your consultation letter dated 28 November 2007 and welcome the opportunity to comment at this early stage in the process. It is beneficial to be consulted on the potential scope of a review and we have strong views on how the scope of this work should be focussed.

We would support a limited review both from a better regulation viewpoint and for any practical improvements that could be made in industry code governance. It must be recognised that the current governance framework puts the responsibility for proposing change on market participants whilst leaving final decisions with Ofgem/GEMA. Each market player or group of players has a vested interest in seeking to exert the maximum influence over the way the market is operating and, therefore, new entrants are bound to be discouraged by that perception. However, the key issue is the availability of resources to support new entrants and a transparent process which enables them to become involved. To this end the current governance arrangements in the generality should be allowed further time to develop and, therefore, any review should be limited in scope.

I would also add that we would support and attend the proposed Powering the Energy Debate referred to in your letter.

We will consider each of the headings in your letter:

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

We do not believe it is time to consider this again. There is no call for this from market participants and at a time when Ofgem resources are stretched, a wide ranging review could detract from ensuring the quality analysis of existing modification proposals. DNOs preparing for the next distribution price control review would find a widespread review a significant distraction. Code Panels can improve the current effectiveness via lessons learnt rather than a

need for any further Ofgem intervention. With regard to the Distribution Code, it is only three years since the code was reviewed and we cannot see the value of a further review.

### **Critical Analysis of modification proposals**

This is the area which should be the main focus of any review. We recognise that there have been concerns regarding the quality of some recent code modifications. For that reason, it is important that both market participants and Ofgem have the requisite level of analytical capability, industry and commercial knowledge and, possibly, quality control. For all concerned, this could represent an increase in resources and, therefore, may mean that any review includes Ofgem reconsidering its own stringent cost control regime, which maybe unduly restricting Ofgem's ability to exercise its functions. We support Ofgem having sufficient resources to deal with the volume and complexity of the numerous code modifications.

### **Relevance of Code Objectives**

We would support a limited examination of this issue. However, the guiding principal should be that all codes should have an appropriate set of objectives that do not conflict and should be based on the statutory duties of the code participants. If further objectives are to be added or changed, this should be covered as part of a licence obligation modification and then the impact on each code can be assessed.

### **Charging methodologies**

This issue should be removed from the scope of the review. It would stifle innovation and prevent suppliers from introducing new offerings to customers in the competitive market. It also damages the commercial freedom of DNOs, increasing the regulatory risk and cost of capital. This is a significant issue in its own right and should not be considered as an adjunct to a review of code governance.

### **Other Issues**

As previously stated, we believe that it is important to constrain the scope of this review. We are less concerned about fragmented code administration. The MRA and the BSC seem to have a good inter-relationship and the administration is covered in detail within the MRA. The MRA and BSC are represented at the DCUSA Panel by representatives of their administrators, so from our perspective this inter-relationship exists. We support the view that each Panel selects independent administrators and the respective Code Panels should have responsibility to ensure that they procure such considering cost and incentives and they have the necessary quality control in place.

More self- regulation within codes has only recently been looked at by Ofgem and we do not believe it requires re-opening. The structure of code panels and deficiencies in the provision of legal text should be the responsibility of the respective code panels to ensure that they procure good quality legal advisors. This should not be an issue for further Ofgem intervention.

## **The Way Forward**

Any project must seek to ensure that greater certainty in the governance framework for all parties is the end result. Therefore, any project must be restricted to a closely defined number of issues. Re-opening the whole structure, whilst imperfect, should not be undertaken before the current regime has been fully developed or found to be fundamentally flawed. We consider that the main focus should be on the quality of modification proposals within existing governance arrangements and how to ensure that Ofgem and market participants are able to devote the required level and quality of resources to achieve the necessary improvements.

I hope our comments and suggestions are of assistance.

Yours sincerely,

**Paul Bircham**  
**Regulation Director**  
**Electricity North West Limited**