



Mark Feather  
Director of Industry Codes and Licensing  
Ofgem  
9 Millbank  
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23 January 2008

Dear Mark,

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

I am writing on behalf of the members of the Energy Networks Association (ENA) in response to your Open Letter of 28 November on the proposed Review of Industry Code Governance. This letter represents the views of the GB electricity and gas transmission companies, seven electricity distributors (DNOs) and four gas distribution network operators (DNs) in membership.

ENA recognises the need for such a review in view of the increasing number of codes, their different governance arrangements and the changes in Ofgem's statutory duties (particularly in relation to sustainability) which have not been mirrored in those of the market participants. This has led to concerns that insufficient weight is being given to such issues in both change proposals and decisions taken by the Authority.

The present code governance arrangements put the responsibility for proposing change with market players, whilst leaving final decisions, either directly or through the appeals process, with Ofgem/GEMA. The key question for any review must be whether the present arrangements are felt to be inadequate by existing market players or potential entrants. It is important that the extent of the review is proportionate to these concerns. For ENA members a wide-ranging review will require considerable resources at a time, for the DNOs in particular, when their attention will be focused on the forthcoming five yearly price review.

Furthermore Ofgem has made it clear in the Revised Guidance on Impact Assessments (IA) (7.5) that it '...recognises the need to integrate the requirement for IAs within the industry code and charging methodology modification process.' This will add further costs to what is already a very costly procedure.

There will also need to be clear recognition of the costs and benefits associated with any proposed changes and an understanding of where these costs will fall. Some could have a significant impact on our members' costs and we would want assurance that they would be able to recover any efficient costs that are incurred.

***well connected***

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We support Ofgem's aspirations for code governance i.e. rigorous and high quality analysis, cost effectiveness, independently and objectively administered, flexible, transparent, easily understood etc. But they must not be achieved at any cost. A sensible balance will need to be struck. Both Ofgem and ENA members operate under strict RPI-X regimes and have limited resources to commit to this area of work. If the quality of Code Modification processes is giving cause for concern then resources must be made available to either Ofgem or the industry to remedy it. It would not be acceptable for Ofgem to shift a greater amount of the responsibility to the network operators for managing the Codes without recognising this.

An important outcome from any review should be clarity, not only over Ofgem's role in the governance of industry codes but also over how the costs of operating the codes should be assigned between the market participants. This will be increasingly important in respect of UNC developments following the introduction of the 'user pays principle' in the recent GDPCR proposals.

In view of the concerns that have been raised with Ofgem and the potential impact they have on market participants, we agree that the governance arrangements surrounding the various network charging methodologies should be within the scope of the review. It will be important that the particular concerns with the present arrangements are thoroughly examined before any changes are considered.

The gas and electricity industries are, by their nature, complex and consequently detailed rules are required to reflect this. Whilst we agree that accessibility is an important component of any governance objectives, greater accessibility must not lead to a proliferation of modification proposals which either do not contribute to an improvement in service or simply reflect the narrow commercial interests of the parties concerned rather than the objectives of the Code itself.

ENA members look forward to working with Ofgem on this review over the forthcoming months. If you wish to discuss any of the issues raised in this response please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andy', followed by a horizontal line.

Andy Phelps  
Head of Regulation