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Dear Mark

Re: Review of industry code governance

Thank you for the opportunity to input to this debate. We believe it to be timely to conduct a review of industry code governance and are sure that this will reveal areas for potential enhancement. However we would caution against wholesale change to align the current variety of approaches adopted for each individual code without a thorough cost benefit analysis. Code development has been undertaken over many years under robust and well managed and understood arrangements, to make radical change at this point would, we expect, be prohibitively expensive for delivery of little benefit.

For ease of reading we have structured our response under the same headings you used throughout your letter of 28th November 2007.

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

The Sustainable Energy Act 2003 and the Energy Act 2004 introduced new statutory requirements for the Gas and Electricity Markets Authority (GEMA), specifically the requirement to carry out Impact Assessments, decisions being subject to provisions within the appeals process and requirements to deliver Better Regulation. GEMA must endeavour to deliver decisions 'based on credible evidence that has been appropriately tested and to ensure that your reasoning underlying these decisions is transparent and consistent. Market participants have worked within a transparent and inclusive environment for many years. To see GEMA adopt this work ethic would be most encouraging.

Opening GEMA meetings to industry observers, with timely publication of meeting papers would be a good starting point from which to begin in support of such aspirations. Indeed during your briefings to industry on this topic you produced slides which included

a 'sunburst' spectrum of best endeavours. To apply these to GEMA in the first instance would be the best example for the rest of the industry, ensuring a much improved understanding of the regulatory burdens faced by all participants, whether large or small.

Critical analysis of modification proposals

In order to improve your requirement that the 'quality and depth of analysis provided in code modification reports and the extent to which arguments in support of code modifications are well substantiated'. Creation of some form of 'Terms of Engagement' would be most helpful, however this would only work if delivered in parallel with improved engagement from the Ofgem representatives attending industry meetings. Consistent attendance by well briefed and knowledgeable representative who engage in the process is a must and would lead to wide reaching efficiencies. Whilst we have sympathy that the discretion of GEMA cannot be fettered in any way, improved interaction with regard to timely requests for additional information, clarification or analysis could be made via Ofgem at any time throughout the modification and amendment process that would assist GEMA in delivery of its statutory obligations.

Ofgem is in receipt of all relevant documentation throughout the whole lifetime of the change procedure providing the opportunity to ensure all relevant information and supporting evidence has been requested, gathered and adequately challenged. In addition Ofgem should be reviewing consultation responses along with all members of the Modification and Amendment Groups at which point a request should be made if clarification on any aspect of Participant responses is required. Code Administrators should do this prior to finalisation of any report so ensuring the quality and robustness of all documentation to be presented to the relevant code Panel and subsequently Ofgem and GEMA. To state post event that there are omissions from any Final Report is unacceptable and inefficient.

We propose that Ofgem establish a cross industry group to develop a 'Terms of Engagement' guideline clearly defining trigger points where requests for clarification and/or analysis would be expected leading to the certainty that all statutory requirements have been fulfilled.

In addition to the above Ofgem should review opportunities to improve the availability of industry data generally. As an example where lack of access may have frustrated progress we would reiterate concerns raised during the assessment of gas modification 115 when the lack of accessibility to data frustrated a fulsome and timely assessment of the impact of the proposal on non domestic Suppliers.

The relevance of code objectives – are they still fit for purpose?

Recognising the need for some consistency on Ofgem's wider code objectives and their relationship to code decisions, we believe that changes to include Sustainability or wider Environmental provisions flowing through from government policy should remain outside the industry code framework. This would offer Ofgem, under the instruction of BERR, the opportunity to award derogations against a standard set of baselined codes which would apply to all market participants.

Charging Methodologies

Gaz de France ESS would support investigation into the potential inclusion of charging methodologies within an organised industry change management process delivered via existing industry codes. Changes to charging methodologies may lead to subsequent code modification, we therefore believe there may be benefits to a move to enable market participants to be more involved in their governance so enhancing transparency and understanding of how National Grids models work.

Other Issues

Gaz de France ESS is concerned about the lack of Shipper access and interaction with the governance of Xoserve. We find that the open and transparent approach adopted within the Balancing and Settlement Code with regard to development of the Elexon Business Strategy and Budget and representation of the industry of major project development boards to be invaluable in facilitating transparency around costs and impacts of changes upon our own business. We would encourage Ofgem to facilitate further work in exploring opportunities to enhance the industry/Xoserve relationship.

A number of our codes have matured over many years with, on a number of occasions Ofgem and industry participants in accord regarding adoption or rejection of proposals. Recent development and implementation of the Distribution and Connection Use of System Code built upon a degree of self-governance for signatories. Whilst we would like to explore the possibility to adopt some features of this approach for basic 'housekeeping' proposals we would support the impact of implementation of such a model under the representative and independent panel models we work with today paying particular attention to the impact upon smaller players who have historically had difficulty in fully participating in the process.

With the demise of energywatch we would also like to understand the potential options being explored to ensure continued inclusion within the governance model of a consumer view.

Gaz de France ESS believes there to be attractive efficiency features within some codes that have not been widely adopted, for example, the ability to vary or withdraw modifications. We would encourage Ofgem to facilitate a debate around the benefits of these alternate approaches.

Finally we believe that it would be useful for Ofgem to include in their review the potential to not only promote the UK market model but also to look at areas of best practice on the Continent such as smart metering where for example EDF network is going to implement 35 million smart meters and areas such as the Inter shipper disputes process.

Governance Review

We support Ofgem's aspirations in development of a project to deliver an inclusive, transparent, rigorous and cost effective governance regime when aspects of the current governance model have been proven to be deficient and would expect, as a minimum that Ofgem and GEMA lead by example and seek to find ways of enhancing their performance in pursuit of these objectives.

We would wish to explore fully the cost benefit of moving towards independent code administration, including the potential to merge codes

Way Forward

We will be attending your 'Powering the Energy Debate' and look forward to hearing how you intend progressing this review. If in the meantime you wish to discuss any aspect of this submission please feel free to contact Phil Broom on 07733322460.

Yours sincerely

Franck Neel