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Dear Mark

GUIDANCE ON ENVIRONMENTAL ISSUES AND THE CODE OBJECTIVES

Your open letter of 15 April 2008 invited written submissions from interested parties.

We welcome Ofgem's proposed guidance to code panels, administrators, and industry participants on the treatment of carbon costs within the existing code governance framework. This general welcome is subject to two caveats.

1. The guidance focuses exclusively on code modifications that are likely to have an impact on the efficient and economic operation of industry networks. But the relevant code objectives also encompass other considerations, including the promotion of competition in production and supply, and the efficient discharge by the licensee of its licence obligations as a whole. It would therefore be preferable for code panels to be expected to take account of the guidance in relation to the assessment of code modification proposals against each and every relevant code objective that is applicable to the case in question.
2. In an industry environment in which the serial introduction of alternative modification proposals is already a significant problem, the recommendation that code panels should develop a range of cost scenarios using both the price of carbon under the EU ETS and the shadow price of carbon is a recipe for further confusion and delay. The panels should use one imputed price only for cost scenarios, which should be indicated by Ofgem at the start of each relevant modification process.

Insofar as the use of relevant expertise to undertake measurements of the greenhouse gas impact of particular modifications adds to the operating costs of code governance and code administration, we consider that the benefits will justify those costs.

The logical terminus of these developments, of course, is that Ofgem should be actively pressing BERR to introduce a new clause into the Energy Bill, to the effect that every holder of a licence under Part 1 of the Gas Act 1986 or Part 1 of the Electricity Act 1989 must take all reasonable steps to carry on the activities authorised by the licence in the manner most likely to contribute to the reduction of greenhouse gas emissions within the meaning of the Climate Change Act 2008.

We hope that these comments are helpful.

Yours sincerely

Roger Barnard

Head of Regulatory Law