



12 January 2009

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Dear Mark

Environment and Code Objectives: BSC Panel Response

The BSC Panel welcomes the opportunity to respond to Ofgem's open letter 'Review of Industry Code Governance – Environment and Code Objectives, published 21 November 2008. The following views represent the consensus opinion agreed by the Panel at its December meeting in relation to some of Ofgem's statements but does not preclude individual Panel Members responding directly with additional points they wish to make.

Do panels agree that the existing legal framework not only enables code panels, but requires them to assess the impacts of modification proposals on Green House Gas emissions or should Ofgem progress licence modifications to put the position beyond doubt?

Following the publication of Ofgem's guidance on taking account of the impact on Green House Gas (GHG) emissions through an assessment of the cost of carbon against the code objectives relating to the efficient and economic operation of the networks (Applicable BSC Objective (b)), the BSC Panel sought legal advice on whether this would leave its decisions or the general modification process adopted in the case of a particular modification proposal vulnerable to challenge. The Panel ultimately concluded, based on this advice and on the Ofgem guidance, that the issue was a complex one but that it should be possible for it in most cases to take account of the relevant environmental economic impact under BSC Objective (b) relating to the efficient, economic and co-ordinated operation of the transmission system. As a result, the assessment of impact on GHG emissions now regularly forms part of the terms of reference that the Panel gives to Modification Groups.

Notwithstanding this conclusion, the Panel would definitely welcome the introduction of a relevant licence condition as a means of ensuring clarity and legal certainty in an area where historically environmental matters have not been within the general remit of the BSC modifications process and very little exists in the way of custom and practice. The Panel is also appreciative of the work led by CUSC looking at how this assessment can be undertaken in practice and would find any further detailed Ofgem guidance helpful.

In particular, the Panel notes that it would be important for further clarity as to whether and to what extent the environmental economic cost is limited to the physical transmission system and related plant (as distinct from other parts of the overall supply system such as distribution, and as distinct from effects which go beyond industry systems). Further, there is a question concerning the extent to which other environmental factors (e.g. greenhouse gases other than carbon) need to be considered. The Panel considers that it is important for

such matters to be dealt with in a transparent way in order to promote certainty and such that clear licence or statutory authority and guidelines can be relied upon by industry and the Panels.

Should Ofgem introduce express requirements on code panels to consider the broader environmental issues?

The BSC Panel discussed at its December meeting whether it was appropriate for the impact of the wider environmental issues to be considered under the Applicable BSC Objectives. The following points were agreed:

- There have been no instances (nor could one be envisaged) of a BSC Modification Proposal from which the broader environmental impact on the BSC was not tertiary in nature;
- The BSC Panel in its current structure has limited and untested expertise necessary for such an assessment;
- Any such considerations would have an associated cost and an impact on the timescales of the modification process.

However, the Panel noted that if it was asked to take into account the wider environmental impact, it would do so but to enable such an assessment, it would like an explicit duty and some more detailed guidance from Ofgem on the complex considerations which could arise. As an alternative process, should Ofgem request it, the Panel would be in a position during consultations on modifications to request and collect views on the broader environmental impacts to pass through to Ofgem without the Panel itself assessing these comments.

Summary

In conclusion, the Panel continues to believe that it is able in most cases to take the impact on GHG emissions into account under Applicable BSC Objective (b) when assessing a potential change but would still welcome the legal certainty provided by the introduction of a relevant licence condition. The Panel also believes that consideration of the wider environmental impact is more appropriately done by a body with a public policy remit, but should it be required to do so, would request an explicit duty and further guidance.

I hope this response on behalf of the BSC Panel has been helpful. If you need to discuss it further please contact Dorcas Batstone (0207 3804256) or Laone Roscorla (0207 3804120) in the first instance.

Yours sincerely



Nick Durlacher
BSC Chairman