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15th January 2009

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Dear Mark,

Review of Industry Code Governance – Environment and Code Objectives

I am writing to you as CUSC Amendments Panel Chair on behalf of the CUSC Amendments Panel. Thank you for the opportunity to respond to the above consultation.

The issues associated with environmental issues and the CUSC Objectives have been debated at length by the Panel since the issue arose during the assessment of CUSC Amendment CAP148 and the publication of your letter in April 2008.

As you are aware in 2008, the CUSC Panel established a Standing Group to investigate the issues associated with the assessment of carbon costs following Ofgem's guidance and invited representations from other industry codes in both the electricity and gas sector. The final Standing Group report was agreed at the November 2008 panel and a copy can be obtained from National Grid's website.

The CUSC Panel agree with the findings of the Standing Group, that the existing legal framework enables the CUSC Panel to undertake an assessment and take into account the impacts an amendment may have in terms of carbon impacts as part of the cost benefit analysis. In addition, the panel believes a broader assessment than that envisaged by Ofgem under the 'network operation' code objective may be achievable by using the more general code objective that refers to efficient discharge of the relevant licensee's activities.

The Panel does not believe that we are obliged to undertake such assessments and a mandatory requirement would reduce the Panel's ability to consider each amendment on a case by case basis and undertake an assessment which is both appropriate and proportionate to the issue in hand.

The Panel also agrees that the environmental assessment should not be limited to evaluating the impact on a particular licensee but should also include other parties affected by the change.

The Electricity Act places general duties and obligations (including schedule 9) on holders of transmission or other licences. Schedule 9 relates to the managing/mitigation of the effect of physical works so is likely to practically fall within the TO activity. Applicable CUSC objective (a) refers to the efficient discharge of the licensees (i.e. NGETs) obligations under the Act and licence. In considering the obligations under the Act, there is no express distinction between those activities NGET undertakes as TO or as SO.

The CUSC does not currently assess or take account of broader environmental impacts such as impacts on visual amenity, local air quality, the natural landscape, noise pollution and flora and fauna, when developing and assessing amendment proposals. We believe that such assessment would not be appropriate as they relate to the impact of implementation of an amendment rather than the CUSC amendment itself. In addition, broader environmental impacts should remain to be assessed via other legal rules which already exist such as planning law. Furthermore Regulatory Impact Assessments, facilitated and undertaken by the Authority, are already inclusive of an environmental impact assessment (in accordance with the Sustainable Energy Act).

Therefore, Schedule 9 could be applicable to the CUSC under applicable objective a) but the context is difficult to envisage and the scope of assessment should not be broadened to take account of broader environmental impacts such as impacts on visual amenity, local air quality, the natural landscape, noise pollution and flora and fauna, when developing and assessing amendment proposals.

In summary, the Panel believes:

1. that the existing framework is suitable and new licence provisions are not required,
2. Ofgem's guidance (Ofgem Final Clarification and Guidance on the treatment of carbon costs under the current industry code objectives) should be reviewed at regular intervals as this provides a more flexible and speedy response to developments regarding environmental considerations than new licence provisions,
3. the scope of assessment should not be expanded to include broader environmental and public policy issues.

If you wish to discuss further please not hesitate to contact me or Emma Carr on 01926 655843 or emma.j.carr@uk.ngrid.com.

Yours sincerely

Alison Kay (by email)