

Code Administrators Working Group Meeting 3 –29/10/2008

Attendees:

Roger Barnard – EdF Energy	Phil Lucas – National Grid
Dorcas Batstone – Elexon	Rosie McGlynn – EdF Energy
Emma Carr – National Grid	Eddie Proffitt – MEUC
Tim Davis – Joint Office	Ed Reed – Cornwall Energy
Sebastian Eyre – EdF Energy	Louisa Stuart-Smith – Npower
Mark Feather – Ofgem	Alex Travell – E.on
Arjan Geveke – BERR	Barbara Vest - AEP
Richard Hall - Ofgem	David Watson - Centrica
Robert Hammond – Consumer Focus	Chris Welby – Good Energy
David Jones – Elexon	Catherine Wheeler – Ofgem
Man Kwong Liu - SAIC	

The previous minutes were agreed with suggested changes incorporated.

An update was given on the other work-strands of the code governance review. The planned consultation under the 'Code Objectives' work-strand has been delayed slightly but will hopefully be published shortly. It will ask for opinions on the current environmental guidance and Ofgem's interpretation of the objectives. It will also be asking whether panels and industry, in considering modification proposals should consider other broader environmental factors rather than just CO2 emissions.

Ofgem Presentation

Slides One and Two – Key Issues – setting the scene.

Key issues identified so far have focused around the transparency and accessibility of the codes and the effectiveness of the consultations around modifications. Also, the flexibility of the modification processes to deal with simple house-keeping mods right through to major mods in the codes has been considered along with the cost effectiveness of the processes and whether there is any duplication. Other issues raised involved the quality of analysis, whether it was robust, objective, independent, and whether the processes allowed for a rigorous analysis.

Slide Three – Formulating and raising modification proposals.

How easy is it to test ideas under CUSC/BSC and UNC?

Discussion – A group member suggested that there should be a template that could be applied to all issues groups, work-streams and working groups when considering modifications.

One member felt that it was easy to raise issues in the UNC work-stream meetings but that you had to attend the meetings in order to do that, which could raise issues for those who might not be able to get to the work-stream meetings. There is no written approach for sending in issues for discussion at the meeting without the raiser being present.

Members were asked if they preferred the work-stream approach or the issues group approach. It was felt that there were advantages and disadvantages to both.

A group member wondered if a cross-code issues group could be created that discussed modifications that affect all the codes, in order to avoid modifications being held up as a result of other codes needing to make consequential modifications.

It was suggested that a web-based forum site be set up for the BSC where issues can be discussed amongst parties. This would be a way to get instant feedback from other parties.

One group member wanted to know where issues that have an influence on all parties (but not necessarily on the codes directly), such as Smart Metering, should be discussed. Another felt that these were not issues for the panels to lead on.

Issues Groups or work-streams?

Discussion – The BSC have issues groups, the UNC has work-streams and the CUSC has standing groups. One of the group members wanted to know if these groups were necessary as they felt that if a party has a problem that they feel strongly enough about to want to raise a modification proposal then they should have a good idea about what the problem is and how they think it could be resolved. Other group members disagreed noting that, quite often a party will know there is an issue but will not know how to resolve it and what the extent of the issue is. Also, the groups provided experts who would be able to consider a number of different solutions. It was noted that the BSC did not originally have issues groups until they had a number of problems with poorly defined or developed proposals. One member felt that they would rather go through the issues group to find out whether a mod proposal was needed than the more expensive process of raising a mod proposal.

Generally, it was agreed that there was sufficient flexibility across the codes for raising modifications but that there should be easier ways of raising issues, such as web based forums.

A group member felt that it was important that the testing of the modification proposal should result in a better quality modification proposal. Another member wanted to know if the issues group/work-streams/standing groups should be made mandatory for all modification proposals. The group member felt this would help to reduce the frequency of poorly developed or defined proposals. This view was not shared by the majority of the group who felt that it would be an unnecessary burden. The group member said that they felt that there should be a filter early on in the process to filter out bad quality mod proposals before they reached the panel. However, other group members considered that the process to reject a poor quality modification already existed.

Who can raise modification proposals?

The BSC panel can raise modification proposals that considered to 'increase efficiency' however, the definition for efficiency is very restricted. The BSC panel can also raise modification proposal for housekeeping changes and consequential changes as a result of other modifications.

A group member wanted to know if a panel can keep another panel informed if a modification they make is likely to require consequential modifications to another code. It was confirmed that the panels did this.

A suggestion was made that the BSC panel should be able to raise modifications other than just house-keeping modifications. It was pointed out that the UNC panel could instruct the GTs to raise a modification; however, this power has never been used. It would also have to be a majority decision by the panel. It was noted that the CUSC panel cannot raise proposals.

The question was asked whether there was any benefit in a panel being able to raise a modification on more significant policy issues in order to address deficiencies in the code arrangements. One member felt that panels should not be involved in promulgated significant policy change. The group member indicated that if this was permitted the circumstances in which the power could be used would need to be clearly defined. Other group members indicated that if panels raised modifications it would place them in a judge and jury position given that they would also be making the recommendations to the Authority on the proposals they had raised. They felt that the panel should not be allowed to make a recommendation on a modification proposal it has raised.

The question was asked whether the regulator should be allowed to raise modifications. A group member felt that perhaps this would be suitable for large policy issues. But another felt that the Authority could not be judge and jury.

It was argued that if there was a need for a modification then a party would raise it and if it was raised by code panels then costs would rise for all parties as the secretariat of the code would be doing more work and therefore will require more funds.

One group member noted that a modification proposal can fall apart if too much focus has been put on one particular group's needs. Another felt that if the codes had 'strong' secretariats then they would be less reliant on industry "experts" who they felt to be biased. Another group member agreed with this but with the caveat that the secretariat doesn't make an end recommendation as the administrators themselves may have their own agenda.

The question was raised as to whether new entrants who were not yet signed up to a code should be able to raise a modification. The majority of the group felt that this should not be the case.

A group member felt that consumer representatives should be able to raise modifications and they should be able to raise them on any aspect of the codes.

Slide Four – Mod raised – Panel considers what route to take

Are initial written assessments (IWA) useful or unnecessary overhead?

It was asked whether the panel found the IWA produced under the BSC were useful in making their decisions. The IWA sets out the required costs, timetable and potential areas for discussion that will be needed in order to progress the mod proposal. It also indicates other areas of the code that may be influenced by the modification proposal. It doesn't provide a qualitative analysis of the proposal. It provides indicative costs for the changes to central systems.

A group member felt that the panel needed this information, and also the other information that the IWA produces, such as what needs to be done to process the

modification. One member felt that this information could be given at any stage during the modification process and did not need to be in the form of an IWA.

One group member said that the IWA was useful not just for panel members but also for other parties who are not signed up to the code but provide services to those who are, such as IT providers, etc. They would need early notice of modification proposals that may influence them.

Several members of the group noted that flexibility already exists under the BSC, CUSC and UNC for proposals to be sent straight to consultation or to workgroups.

Inverting the Modification Process

One group member suggested that the modification process should be inverted, with the majority of the analysis undertaken through work group processes before a modification is raised. Under this approach, the code administrator would act as a "civil service" or strong secretariat, providing analytical support to the development of the proposal and overseeing the process. Once the analysis of the issue was complete a modification would be raised, if this was necessary. It was suggested that under this process parties would lose the ability to raise modification proposals themselves – rather, a single proposal (or package) would be raised for consideration by the Authority.

The group member suggested that a more streamlined process such as this would remove the problems associated with proposals coming to Ofgem in an uncoordinated manner and with inadequate assessments or analysis. The process would also help to ensure that weaker proposals and ideas were filtered out or withdrawn at an earlier stage.

There was support from some members of the group for the code administrator to be acting as a critical friend and to be a strong independent secretariat playing a larger role in the analysis.

However, other group members expressed reservations with the idea that parties to the codes would not be able to raise their own competing modification proposals under such a process. It was noted that this would be a significant change to the process as it would prevent parties to the code amending a contract that they were a party to.

However, an analogy was drawn with the Collective Licence Modification process where it was noted that licence modifications are often made on a collective basis via an Authority led process of development. It was noted that industry participants have worked with these processes for many years and that it shouldn't necessarily be too much of a change to establish such a process for the codes.

Should some steps in the process be removed depending on the nature of the proposal?

It was suggested the consultation that is carried out with BSC mod proposals, on the panel's decision before it is sent to the Authority for decision could be removed in the interest of reducing duplication.

Slide 5 – The Working Group process – ownership of the proposal

A group member felt that a modification group could end the progress of a mod if the majority of the group are against it, even if the industry or the proposer is not. Another argued that the panel receives all the arguments that are raised for and against a modification so they do not just get the views of the individual group members. There was a suggestion that the modification group should have full consensus over how the proposal is formed and sent to panel. One group member wanted to know if voting was necessary. Another questioned the impact that voting requirements have on small parties who might not be able to afford to send someone to meetings but has a stake in the mod. A group member wanted to know what the need was for a vote was if the final report that goes to the panel contains all the views held about the mod. Another group member said that the vote was only needed where the mod was owned by the mod group as it was used to shape the final mod proposal. In the CUSC it was noted that the vote is just for guidance for the panel but in the BSC it is more important as it is used to shape the proposal. In addition, under the BSC voting also influences the nature of any alternative proposal that may be raised. One group member felt that the job of the working group was not to come to an opinion on a mod but to develop it.

There was general support for the idea that the proposer of the mod should be the owner of the mod and that if this was the case then the voting rights would not be needed. Group members felt that by allowing a proposer to own their mod, they would be able to maintain control of the proposal, without it being dismissed by the modification group. It was noted that such an approach would require changes to the BSC.

Slide 7 – Other aspects of the modification process

Treatment of alternative proposals

A group member felt that the panel should be able to send one modification proposal to the Authority having picked it from the original and alternatives if there was more than one proposal. However, other group members felt that parties would just raise their alternatives as separate modifications.

Conclusions and future steps

At the next meeting it is intended the CAWG go through the remaining slides. There was a suggestion that the group should come up with a process that could be used across the codes and consider the different ways in which each code would need to be modified to achieve that process.

Roger Barnard was asked to produce a bullet point list of all the issues raised in the CAWG meetings for the December meeting.

Action – Ofgem to produce a pro-forma style document where the issues raised will be set out, a description given, and the current process for each code. There will be space for group members to set out the pros and cons of the existing approaches, a response box that the group member can use to suggest their preferred approach for resolving those issues and a further box where they could suggest the means of implementation they feel would be required (i.e. a mod rule change, a licence mod, etc).