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27 February 2009

Dear Mark,

**RE: Code Governance review – role of code administrators and small participant/consumer initiatives**

Thank you for providing the opportunity to respond to this extremely important piece of work looking at the role of industry codes, and the way they are managed and administered. This response is sent on behalf of the Centrica Group of companies, excluding Centrica Storage Limited.

**Summary of Key Points**

- Centrica supports the objectives of this review; while details need to be developed, the overall direction is right
- Well-functioning governance arrangements are a critical part of a stable regulatory framework that promotes confidence in the market
- Greater Ofgem engagement, particularly at early stages in the process, has the potential to improve the process and reduce frustration, wasted time and effort
- Ofgem has the opportunity to improve the quality of the internal resource that it brings to monitor and aid the modification process
- Code Administrators, as a group, should share best practice and meet clear performance standards
- Definition and classification of functions would be helpful, as a basis for more consistency and transparency in performance across codes. A Code of Practice to establish common standards would support these points
- Of the Ofgem proposals, we would support the critical friend and devil's advocate approach by Code Administrators
- Where parties cannot bilaterally resolve performance issues, Administrators should have active role to facilitate solutions
- Code Administrators, individually and as a group, should continue to work with the industry to encourage a high quality industry change process

**Background**

Whilst we believe that the majority of Code governance rules and practices are generally fit for purpose, we agree that Ofgem's review is timely and that the Code governance review could identify areas for incremental improvement. Governance

arrangements under the current Codes have evolved over time in response to changing demands. Care needs to be taken to ensure this review does not introduce (or re-introduce) additional risks; for example additional costs to Code parties, or other unintended consequences.

We note Ofgem's particular focus upon issues of complexity faced by smaller players and new entrants. We believe that a number of helpful measures can be taken in order to assist small parties and new entrants to manage the governance aspects of the Codes, and indeed make Code governance arrangements even more accessible and understandable for all. It is essential to draw a distinction between the necessary complexity of the wider industry arrangements and the accessibility of the governance arrangements. We have also seen recently the success of the Transmission Access Review in ensuring small and renewable generators have had full and appropriate access to the change process.

It is our understanding that further consultation will follow on this subject as Ofgem's thinking is refined; we have therefore focused this response on the general principles, rather than trying to map out specific solutions. We look forward to commenting in more detail on future consultations which we understand are to follow. For convenience, the numbering of our sections below broadly follows Ofgem's consultation document.

### 3. Roles and responsibilities of Code Administrators

3.1. We note Ofgem's concerns about the quality of analysis contained within modification reports. Looking at the major Codes, compared to the BSC we would agree that UNC modification reports are less detailed. We do not believe that UNC reports are necessarily deficient for those close to the subject, but recognise that for parties who are less involved in UNC matters, more detail might be helpful.

That said, we also regard the BSC and, to a lesser extent CUSC, style of modification reporting as over long, detailed and, in some cases repetitive and confusing. We do not believe that the BSC model is cost efficient, or indeed preferred by smaller players.

In our view the optimal report should take into account the good practice elements of both approaches, striking a balance between the two extremes and, more importantly, be appropriate to each **individual** modification. Noting that in many cases detail is necessary for the reports to be meaningful, an effective executive summary section including proposal background, intention and impacts would be beneficial and may also help the smaller players. Trade associations also play an important role in supporting all their members' understanding of modification business.

We note Ofgem's desire to divest itself of much responsibility for analysing individual modification proposals. This being the case, we believe that Code Administrators must have the ability to procure independent analysis. The trigger for procuring analysis, and the issue of who pays, will need to be resolved over time. We also have concerns that Ofgem's ability to make decisions on the more complex modifications will diminish over time if they do not retain some degree of analytical capability.

In fact, we actually see significant benefits in retaining Ofgem's role and analysis in the modification process. For example, Code parties are not obliged to take part in modification processes; neither do we believe they should be. As a result, when modification analysis requires input from Code parties in respect of commercially sensitive information e.g. this information is unlikely to be volunteered as some may not wish to publish this data via the Code Administrator. Ofgem is the only body that can require submission of that data. Given the sensitive nature of the information Ofgem could collate, analyse and release anonymous data as necessary, significantly improving the process.

In addition, a key message from previous consultation rounds was that Ofgem needed to provide much greater input to the modification process, and at an earlier stage. Amongst other things, this means taking an active part in workgroup discussions, and providing robust guidance on the aspects of each proposal that they believe require specific consideration and analysis, including overlaps with other Codes. We believe that this level of input will go a long way towards ensuring that appropriate modification reports are presented to Ofgem at later stages of the process, whilst helping to avoid unnecessary and wasteful analysis where it is not needed. We are therefore concerned at references (consultation document section 3.11 and again in section 5) that Ofgem may be under-resourced for the scale of the task.

3.2. In our experience Code Administrators, especially the major codes, are generally extremely helpful in providing both a strategic view of the governance processes within their remit, and also where requested specific guidance and critique to a proposer on individual modification proposals and procedural nuances.

Broadly, we could support the evolution and alignment of all Code Administrators' roles to that of "critical friend". We believe that, subject to code administrators having an appropriate brief, this could lead to higher quality modification procedures. We do not believe it is appropriate to extend that role to the "active secretariat" model suggested by Ofgem.

We could support a position whereby the requirement to share best practice is formalised through a Code of Practice. The requirements could be informed by smaller parties and new entrants, within reason, but we would caution against placing undue costs and burdens on code administrators, at least initially, as we see relatively little take up of expanded services of this type, especially in gas. We note that assistance is also currently available through numerous trade organisations.

3.3 We do not believe that the roles of Code Administrator and central system provider need to be merged in all cases; it is appropriate for different codes to have different levels of responsibility for these systems. We do, however, believe that the roles of each service provider – i.e. central systems provider and Code Administrator – need to be transparent and clearly defined, possibly with an obligation on system providers to respond appropriately to all requests for analysis and costs, and not to discriminate. This will help to ensure impartiality in the presentation and positioning of data reporting.

#### **4.0 Governance and funding**

4.1. Independence of Code Administrators from network owners is not the issue, it is the guaranteed impartiality in its dealing that is critical. There are many examples of management and functional ringfencing within the industry that work very successfully, and we believe that that principle can extend to code administrators. Additional caution must be exercised where the Code Administrator is not truly independent and holds a voting right.

4.2. We do not believe that it is essential for this review to conclude that corporate governance structures are aligned across all Codes. However, we consider that in adopting best practice – an outcome of the proposed code administrators' Code of Practice – greater alignment of governance structures likely to follow.

4.3. Unsurprisingly, there are significantly different levels of cost and service provision amongst code administrators. For example, the BSC modification approach is fairly detailed compared to the UNC approach. Both approaches have merits, and more important is the need to identify and share the best practice of both Codes to establish the correct balance between cost and effectiveness. Similarly, regarding Code Administrators' accountability for performance and cost, transparency is key.

We could support a Code of Practice to formalise the objectives and outputs of code administrators and encourage greater discussion of cross industry changes.

4.4. We believe that the service contract approach is the most transparent and accountable approach, but at this stage we have no firm views on a specific funding model.

4.5. Clearly, if a means of funding other than through a price control is agreed, price control funding must fall away.

#### **5. Other potential improvements**

5.1. As a last resort, with clear limits on when these powers could be used, we acknowledge there may be a case for an Ofgem "call-in" and "send-back" option. However, this should not be used as an alternative to significantly increased levels of engagement in the modification process, which many industry participants including ourselves have repeatedly requested. We would not want the "call-in" and "send-back" option to be an alternative to this increased engagement.

5.2. We support the publication of a summary of Panel discussions, covering the main areas of discussion. This must, though, avoid becoming too lengthy and complex a document which could further alienate smaller players. In addition, the publication of the name of the Ofgem lead for each modification, and the decision timescales envisaged, would be extremely helpful especially for small organisations.

5.3. A mechanism is required for expediting purely housekeeping proposals. Under the UNC, this is taken care of by the Consent to Modify process. This process works successfully. We therefore support the adoption of the Consent to Modify process across other Codes and this should remove the need for panels to raise proposals. We also believe that having a single proposer/owner gives rise to a neater and more manageable process.

5.4. We could support the principle of a Code of Practice applying to the main Code Administrators, providing this covers only high level principles, in particular agreement on, and sharing of, best practice.

5.5. Whilst we are generally very supportive of the way in which Code Administrators perform their duties, we could support some kind of assessment mechanism. However, given the significant role that Ofgem is required to play in the Codes process, we would insist that any such assessment is extended also to cover the performance of Ofgem and the Authority.

## 6. Small participants, new entrants and consumer representatives

6.1 We have participated in a number of discussions where the issue of small players and new entrants has been discussed and we have witnessed some confusion between the complexity of the Codes themselves, and the complexity of the Codes' governance arrangements.

These Codes describe extremely detailed and complex market rights, obligations and transactions. Between them, they are responsible for ensuring that gas and electricity consumers continue to benefit from secure, reliable, high quality energy services, as well as setting out how cash movements running into billions of pounds every year are directed. These facts highlight that the gas and electricity industries are critical to "GB plc". It is in everyone's interests, especially end consumers, that companies seeking to enter the energy market are adequately resourced to understand and respond to changing market demands. We have excluded the complexity of market rules from our thinking, believing it to be out of scope of this review.

We are also not convinced that removing complexity from the governance arrangements will result in greater levels of participation, especially in gas where there is a very limited number of smaller players and new entrants, and in our view consumer participation is for the most part fully facilitated. Indeed, we would caution against setting unrealistic expectations about the extent to which any such changes will alter the underlying attractiveness of the gas and electricity markets to new players, or the effort and cost incurred by smaller players when participating in these markets. To do so could lead to significant churn in those entering and exiting the market. We are not in favour of unnecessary complexity, but do require arrangements to be sufficiently robust. Ultimately it must remain the responsibility of all participants to ensure that they understand, and are able to fund, the resources needed to operate safely and effectively in the energy markets, as indeed they would in any other market.

We, as well as small participants, welcome simplification of industry arrangements such that they are easier to navigate but still do the job for which they are intended. We welcome improvements that increase transparency and accessibility of all industry activities and would note the Transmission Access Review in ensuring small and renewable generators have had full and appropriate access to the change process.

6.2. We are probably not best placed to assess what needs to be changed in order to better suit the requirements of smaller players, new entrants and consumer representatives, but would caution against introducing arrangements that may improve matters for particular groups of stakeholders, only to create a series of consequences (intended or not) for all e.g. significant additional cost, complexity or burden on the balance of the industry, especially in the light of potentially limited additional engagement.

We would also point out that where volume of modifications is cited as a difficulty, this review will do nothing to address that concern (however we would not support any limitation on code parties' rights to put forward change proposals).

6.3. We share Ofgem's concerns about defining small participants, but note that no definition of a smaller participant is put forward by Ofgem for the gas industry. In terms of new entrants, there is also an issue about the point at which a new entrant becomes an incumbent player. We have no answers to these issues at this stage.

As stated elsewhere, we do not believe that the current arrangements are especially deficient. For example, in gas teleconference facilities are readily available for listening to Panel discussions or taking part in workgroups. The JO web site is also easily accessible and contains all relevant information, with a willingness to add and circulate other relevant information on request. Elexon, too, also has a good reputation for helping all players and offers formal training sources and informal one-to-one support on request. Other Codes could adopt similarly open procedures. There may be a benefit in Code Administrators establishing a web based forum to provide basis for discussion of modification business, although we are unsure of the extent to which this would be used.

We believe that consumer representation is currently well facilitated, especially under the major codes, even if it is not fully utilised at present. Given that smaller participants, with commercial interests at risk, express concerns regarding their ability to deal with the Codes it is unlikely that consumer representatives, with little or no risk, would benefit significantly in facilitating further engagement. Protecting consumers' interests is the remit of Ofgem. We do not support funding a separate advocacy panel, either directly or through representatives. Code Administrators could have a duty to assist small players and new entrants, and this should be clearly set out in the Code of Practice referred to above.

### Other issues - Constitution of Panels

There has been significant debate over the appropriate constitution of Code Panels. We believe that there is significant merit in the UNC style of Panel constitution, with the expert industry knowledge that Panel members can contribute. Conversely we understand concerns about the extent to which that style of constitution cannot be guaranteed to be independent of company-

commercial interests. We particularly like the UNC style of Shipper representative election, believing it to be open and transparent. To further strengthen this, we could support publication of the number of votes per candidate (without revealing the identity of voting parties).

We could therefore support a style of Panel that is properly constituted of a mixture of active industry participants, network owners/operators, independent participant representation. This could include a guaranteed seat for smaller players/new entrants. We do not support a move towards a single Panel for all Codes. We especially believe that the roles of Panels would need to be amended were Ofgem given the right to raise modification proposals. Consideration should be given to restricting parties voting rights to issues that directly concern those parties.

Should you wish to discuss any points raised in this response, please don't hesitate to contact me by email or on 01753 431059.

Yours sincerely,

Chris Wright  
**Commercial Manager**