Mark Feather
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Office of Gas and Electricity Markets
9 Millbank
London
SW1P 3GE

27th February 2009

Dear Mark,

Code Governance Review: Role of Code Administrators and Small Participants / Consumer Initiatives

Drax Power Limited ("Drax") is the operating subsidiary of Drax Group plc and the owner and operator of Drax Power Station in North Yorkshire. We are pleased to have the opportunity to respond to Ofgem's consultation on the Role of Code Administrators and Small Participants / Consumer Initiatives.

Drax welcomes the review into code governance and believes it is good practice for Ofgem to periodically review the governance process. A full response to the questions raised by the consultation document can be found in Appendix 1; however, Drax would like to put forward the following high-level views:

- It must be recognised that the industry codes are particularly complex due to the nature of the complex systems that they manage;

- Industry codes, and their associated governance structure, should reflect the systems and processes that they intend to manage; ensuring that each industry code promotes the efficient operation of industry systems is more important than each code having a similar governance structure;

- Whilst it is important to ensure that industry codes and modification reports are clear and concise, there does have to be an assumption that the reader has some knowledge of the relevant code when developing code documentation;

- Some code administrators do help small participants with code and modification documentation, in terms of information sheets, industry seminars, etc;

- Drax believes that certain existing code administrator models work well under the current arrangements, such as the Elexon model for the BSC; however, that is not to say that the same model would be appropriate for all codes;

- Drax believes that the quality of analysis performed by BSC and CUSC working groups is more than adequate and that the 'broad' criticism in the consultation document is unjustified;

- There are code administrators that already seemingly act as an "Active Secretariat", challenging the thoughts of working group members in order to ensure the objectives of the working group are achieved, such as Elexon for the BSC; this appears to work well;

- Drax does not believe that the suggested "call-in" and "send-back" interventions would be necessary if Ofgem were to provide more advice / feedback to code panel and working group meetings during the modification process.

If you would like to discuss the views expressed in this document, please feel free to contact me.

Yours sincerely,

Stuart Cotten

Regulation
Drax Power Limited

Appendix 1
Code Governance Review: Role of Code Administrators and Small Participants / Consumer Initiatives Questions

Chapter 2: Key issues and objectives

Question 1: Are the Authority's concerns regarding the quality of analysis undertaken through the code modification processes justified?
Question 2: Are some code administrators more accountable than others?
Question 3: We consider that code complexity is a problem, particularly for small participants, new entrants and consumer representatives. Do you agree? How can the complexity be reduced?
Question 4: Do small participants, new entrants and consumer representatives find it difficult to engage with the code modification process?

Drax only currently engages (in any extensive way) with the BSC and CUSC processes; therefore, we may not be best placed to comment on the other industry codes. However, as far as the BSC and CUSC are concerned, we believe that the quality of analysis performed by BSC and CUSC working groups is more than adequate and that the 'broad' criticism in the consultation document is unjustified.

The reports that the Authority receives for determination are developed in accordance with the Terms of Reference (ToR) that are set by the relevant code panel. Such ToR are used by the relevant modification working group in order to determine the analysis required to assess the modification in question. It is the experience of Drax that modification working groups do attempt to ensure that the final report meets the agreed ToR; working groups also consult with the industry in order to ensure that industry participants agree. The relevant code panel also has a duty to ensure that the ToR have been met.

It is important to note that Ofgem attends (or is able to attend) code panel and modification working group meetings. If Ofgem are able to identify areas of analysis or assessment that are not being considered by a given working group or code panel, Ofgem should be able to help highlight those areas in order to ensure that the information required by the Authority is present in the final modification report (much in the same way as working group and code panel members would).

Drax believes that it is fair to say that (to a certain degree) modification reports can be complex, although some code administrators (such as Elexon for the BSC and National Grid for the CUSC) do their utmost to explain the nature of the changes, along with the systems they intend to change, in a clear and concise manner. However, there does need to be an assumption that the reader has some knowledge of the relevant code when developing the modification report, otherwise modification reports will become excessively long and unwieldy.

It would be difficult to reduce the complexity of the industry codes due to the complex nature of the systems they govern. In order to help users understand the industry codes, code administrators could produce guidance notes and fact sheets, in a similar fashion to those published by Elexon, or ensure that there are seminars for particularly complex modifications.

Chapter 3: Roles and responsibilities of Code Administrators

Question 1: Do you agree that the quality of analysis in code modification reports could be improved? Should the role of the code administrator be changed to help enhance the quality of code modification reports?
Question 2: Which of the options for changing the role of the code administrator in the modification process (critical friend or active secretariat) is most appropriate? Should different options be chosen for different codes?

With regards to the quality of analysis, please see our comments above.

When assessing the roles of code administrators, Drax believes that certain code administrators currently act as a form of "Active Secretariat" (such as Elexon under the BSC), by ensuring that working groups

perform exhaustive analysis, and by challenging the thoughts of working group members, in order to ensure the objectives of the working group are achieved. This appears to work well.

With regards to other approaches, such as "call-in" and "send-back" interventions, Drax does not believe that these measures would be conducive to an efficient modification process and may further frustrate the evolution of the codes. It may be more efficient if Ofgem were to provide more advice / feedback to working group and code panel meetings.

Question 3: Should the roles of the administrators of the BSC, UNC, CUSC, Grid Code, SPAA and MRA in respect of central systems management be harmonised i.e. should all code administrators either be made responsible for the related systems or should this responsibility be removed from them all?

Drax believes that the current models used for the BSC and the CUSC work well, although that is not to say that the same models would be appropriate for all codes. Each code must be considered on an individual basis as they manage very different processes; the ultimate aim of the Code Governance Review should be a set of industry codes and code governance processes that work efficiently, not a set of industry codes that look similar.

Chapter 4: Governance and funding

Question 1: Should code administrators be independent of network owners? If so, is it sufficient to have management unbundling or should the code administrator be an independent company?

As mentioned in our answers to previous questions, the appropriate governance structure for each code should depend upon the nature of the code in question. There are, no doubt, efficiencies in having all the expertise in one place; however, there may also be merit in ensuring some form of "ring fencing" in situations where there could be a conflict of interest, although Drax is unaware of any evidence to support a view that such a conflict exists.

Regardless of which approach is taken, it is important to ensure that the expertise required to administer a given industry code is not lost.

Question 2: Should all the major commercial codes have the same corporate governance structures? What is the most appropriate governance structure?

As mentioned in answer to a previous question, the appropriate governance structure for each code should depend upon the nature of the code in question. Ensuring each industry code has an appropriate governance structure that promotes efficiency is more important than the governance structure for each code being the same.

Chapter 5: Other potential improvements

Question 1: Should Ofgem have powers to "call in" and "send back" modification proposals? What are your views on the "call in" and "send back" options?

As mentioned in answer to the questions in Chapter 3, Drax does not believe that "call-in" and "send-back" interventions would be conducive to an efficient modification process. It may be more efficient if Ofgem were to provide more advice / feedback to working group and code panel meetings during the modification process.

Question 2: Should all code Panels have to publish the reasoning behind their recommendations?

Yes; it is important, for transparency, to ensure that industry code panels explain the reasoning behind their recommendations, in much the same way as it is important for the regulator to explain the reasons

behind its decisions. In fact, Drax believes that one area of the current regime that currently lacks transparency is the Authority's meetings; the agendas, briefing papers and minutes of the Authority's meetings should be made available to industry participants via the Ofgem website.

Question 3: Should code administrators be able to raise modifications themselves? If so, should there be limits on what modifications they can raise or should they have to gain the consent of the code Panel to the raising of the modification?

Drax believes that code administrators should be able to raise "house keeping" modifications, similar to those that Elexon currently raise; however, all other modifications should be raised by code signatories and should be raised on the basis of bettering the relevant code objectives.

Question 4: Would it be useful to develop a code of practice applying to all code administrators? Should it be voluntary or binding?

No comment.

Question 5: What are the most appropriate mechanisms to evaluate the performance of code administrators? Is a scorecard approach appropriate?

Whilst Drax believes it is important for Ofgem to evaluate the performance of the code administrators, it is also important that the benchmarking system involved does not incentivise code administrators to put the aims of the scorecard above the objectives of the code. A "light touch" to performance evaluation may be the most appropriate approach.

Chapter 6: Small participants, new entrants and consumer representatives

Question 1: Do small participants, new entrants and consumer representatives face significant hurdles in engaging with the code governance processes?
Question 2: What are the key issues that need to be addressed in order for small participants and others to better engage with the code governance processes?
Question 3: Do you have any views on the options highlighted in this chapter? Do you have any views on the advantages and disadvantages discussed under each option?
Question 4: Which options, if any, do you consider will allow small participants and others to engage better with the code governance processes?
Question 5: Are there other options which we have not yet considered which may assist small participants and others to play a fuller part in the codes governance processes?

Drax believes that Option 4, *"the introduction of a duty on code administrators to advocate on behalf of small participants, new entrants and consumers"*, is similar to the current arrangements under the BSC. Elexon currently questions the thoughts expressed and analysis undertaken by working groups in order to ensure that a balanced approach is taken when assessing modifications. This appears to work in a way that aims to find the most efficient outcome for the industry as a whole, with the appropriate checks and balances to ensure no single user is, or group of users are, subject to discrimination.

It is understandable that the resources of small participants may limit their ability to engage in the code modification process. Processes such as the Transmission Access Review require a huge amount of industry resource, with only the larger companies being able to place resource in each work-stream.

One way of ensuring that small parties have a better chance of engaging in important industry work-streams would be for the code administrators and the regulator to better co-ordinate their work, as to avoid major work-streams occurring at the same time. Simultaneous major reviews / major work-streams only serve to create the need for greater industry resource, which may alienate smaller participants.