Reference:

ELEXON

27 February 2009

Mark Feather
Director Industry Codes and Licensing
Ofgem
9 Millbank
London SW1P 3GE

Dear Mark,

ELEXON RESPONSE TO OFGEM'S CONSULTATION ON MAJOR POLICY REVIEWS AND SELF GOVERNANCE (ISSUED 19 DECEMBER 2008)

We welcome the opportunity to respond to this consultation and remain committed to making a useful contribution to the wider Code Governance Review.

In this response we've set out our views on the two potential reforms to the code governance arrangements that your document describes, namely the ability for Ofgem to undertake 'Major Policy Reviews' and a new 'Self Governance' process for industry change in defined circumstances. We've limited our comments to the BSC arrangements.

In both cases, we support the objectives of these reforms and believe that, subject to our comments as set out below, they have the potential to improve the efficiency and outcomes of industry change processes. Moreover, we believe that ELEXON is well placed to play a central role in the development and operation of any such arrangements. The requirements of the BSC and the structure of ELEXON (including its accountabilities and governance arrangements) means that ELEXON and the BSC already achieve and implement, and are well placed to better achieve and implement, the relevant good governance Review Objectives of :

- promoting inclusive, accessible and effective consultation;

- being governed by rules and processes that are transparent and easily understood;

- being administered in an independent and objective fashion;

- providing rigorous and high quality analysis of the case for and against proposed changes;

- being cost effective;

- containing rules and processes that are sufficiently flexible to circumstances that they will always allow for efficient change management; and

- be delivered in a manner that results in a proportionate regulatory burden.

We have long argued the case for some form of central industry design authority and believe that there are significant process improvements and cost reductions to be unlocked through the better alignment of the larger and more complex industry systems. We also believe that it is increasingly critical that systems should be adaptable and able to evolve in line with

technology and the industry's changing priorities. With these aims in mind, we have recently been developing the long term strategy for the BSC systems in consultation with a range of operators, system developers and a number of industry parties. We would welcome the opportunity to share our expertise and ideas in this area with Ofgem and the industry, and believe that these considerations should form a key input to any future major policy reviews.

We would welcome a simplified, more streamlined process for progressing lower level changes to industry codes.

We always seek to provide effective support, analysis and advice and will continue to do this within any new agreed framework. In particular we will continue to ensure that the BSC change processes are operated in as inclusive and transparent a manner as possible. We will also continue to seek ever better ways to help all parties – including small parties and consumers – to engage with the change process and with the balancing and settlement arrangements in general. Our response to your consultation on the role of code administrators and small participant/consumer initiatives sets out our current approach.

CHAPTER 2 - KEY ISSUES AND OBJECTIVES

Question 1: Do you agree with our assessment of the deficiencies of the codes governance arrangements and do you agree that there is a case for reform? Are the proposed reforms a proportionate response to the problems with the status quo that we have identified?

Yes; as noted above, we share Ofgem's desire for an orderly and effective approach to strategic industry development and we believe that there is a case for reform in this regard. We believe that the industry would be best served by some form of central design authority and recognise that strong central strategic leadership will be required in order to deliver this.

Question 2: Would the Major Policy Review process enable key strategic issues (eg electricity cash-out or transmission access reform) to be progressed more effectively and efficiently with consequent consumer benefits.

Yes; although it would be somewhat unfair to characterise the existing code governance arrangements as having 'failed' in some way. The current rules and procedures were never designed to deliver large scale strategic reform of the kind being considered. Indeed, the legal framework and objectives that apply to the various codes were deliberately designed to tightly delimit the types of changes that could be driven through each code. Within these bounds, the codes' change processes have been effective at delivering the types of incremental change for which they were conceived.

There are essentially two key phases when progressing large scale strategic reforms. The first is policy development and the second is delivery of the changes to industry rules, processes and systems required to give effect to that policy.

If the suggested Major Policy Review process is to deliver an effective route by which to progress key strategic issues, it will be critical to ensure that the market design and systems infrastructure implications of any strategic decisions are taken into account during the policy development phase. It will also be critical to ensure that the output of the policy

development phase is of sufficient quality to provide clear direction as to the specific nature of the changes required and the responsibilities for delivering those changes.

Assessing impacts upon and specifying changes to industry systems and processes is a key part of ELEXON's role and we would welcome the opportunity to offer our expertise and assistance to support any Major Policy Review, much as we did during the development of BETTA when Ofgem asked us to become involved in the more detailed aspects of the programme including preparing legal drafting and implementation. We believe that our independence and experience in this field would enhance the process and its outcomes.
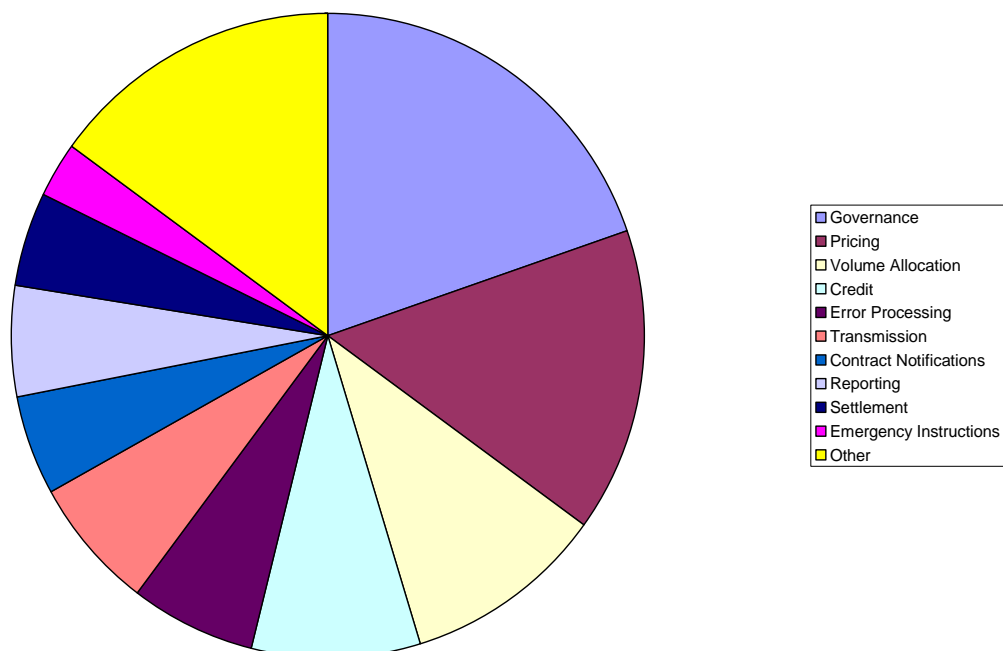
Question 3: Would a Self Governance route be suitable for a significant proportion of modification proposals?

Yes; it's possible that a significant number of modifications may be suitable for a self governance route but it would be necessary to have some clarification as to which proposals might fall in to this category. We've provided some statistics below on the different categories Modification Proposals have fallen into to date in an attempt to indicate those which could have been considered at the time to have had a major policy impact, and those which may have been able to be progressed under a self governance route. However, without looking at the substance of every Proposal, the subject matter does not always indicate which category of process they could have been allocated to and each Modification must be treated on a case-by-case basis. It is also worthwhile noting that the greater majority of those that were recommended were assessed as better facilitating Applicable BSC Objective (c) (promoting effective competition) even when they look as if they may have been potential candidates for a self-governance route. This would have further implications for Ofgem's criteria for assessing which path a change should be directed towards, as is highlighted later in this response.

The BSC is underpinned by a number of Code Subsidiary Documents which principally deal with changes to effect operability improvements to the processes and systems we manage. This process could be characterised as a form of self governance. The changes are proposed either by ELEXON or the industry and are agreed by Panel Committees after discussion and consultation with the industry.

We also believe that using the full rigours of the Modification Procedures to address 'housekeeping' changes (e.g. minor inconsistencies, typographical errors, name changes or manifest errors) is inappropriate. The regulatory burden is disproportionate and a more administrative variations process (with suitable controls) should be introduced into the BSC.

Modification by Type

Legend:
- Governance
- Pricing
- Volume Allocation
- Credit
- Error Processing
- Transmission
- Contract Notifications
- Reporting
- Settlement
- Emergency Instructions
- Other

The category of 'Other' includes Modifications relating to communications, Trading Disputes, Interconnectors, PARMS and Licence Exempt Generators, as well as seven other subject areas.

Question 4: If both the Major Policy Review and Self Governance routes were implemented, is there a case for retaining an Improved Status Quo path?

Yes; we believe that it will be necessary to retain a 'Status Quo' path for modifications that are likely to have a competition or consumer impact but which are not the stuff of Major Policy Reviews. This would include proposals where the issue or solution is restricted to just one industry code. The number of this type of modification will be highly dependent on the 'filtering criteria' chosen and also on the application and interpretation of these criteria in practice. On the basis of the guidance in the consultation document we would agree that the number of Path 3 modifications is likely to be lower for the BSC, and that this in itself supports the retention of the status quo or improved status quo concept.

Question 5: If this package of reforms is implemented, should it apply to all codes? If not all, which? Should the introduction be phased?

ELEXON can only comment on the impact of the reforms on the BSC. If the suggested reforms are to be introduced then a phased introduction may be an appropriate approach to dealing with those modifications already underway. We closely track the progress of all BSC changes and can advise on the status of these, as and when the timing of any reforms is agreed. Further consideration may need to be given to the situation where there is a

pending modification in the same subject area as a planned Major Policy Review, in order to avoid nugatory work.

A further matter that may require consideration is whether a change will be required to the BSC in order to provide clear vires for ELEXON to participate in Major Policy Reviews (e.g. through provision of analysis). An enabling provision was required in order to allow us to undertake work in relation to the introduction of the BETTA arrangements and an enduring equivalent provision may now be appropriate to cover all possible future reviews.

CHAPTER 3 - FILTERING CRITERIA

Question 1: Once a Modification has been raised, should the filtering decision be taken by Ofgem (with a panel recommendation) or by the relevant panel with an Ofgem veto?

Whilst ELEXON could operate either option, we would prefer Option B as it expedites the process while still allowing Ofgem the right of veto

Option A - Ofgem allocates modifications

Option A is characterised as Ofgem allocating the modifications to the relevant path, and the inclusion of a panel recommendation is cited as a possible variation (in paragraph 3.7). The wording of the question therefore relates to a variant within Option A.

We note the similarities of the variant with the treatment of urgent Modifications. When considering a request for urgency, available members of the BSC Panel will generally meet by teleconference and make a rapid recommendation. The Panel's urgency recommendation will include an outline of the process to be followed and provisional timetable for assessing the Modification as an Urgent Code Modification. Where urgency is granted, the actual process and timetable is determined by Ofgem through a right of veto on the Panel's recommendations.

It would be helpful to clarify whether, as part of its filtering recommendation, the Panel would be required to provide views on the process and timetable, or merely a recommendation of the path. It is assumed it will be the latter as under Path 1 Ofgem is leading the process, under Path 2 the existing Modification Procedures would apply and under Path 3 it is self governance.

The addition of any sequential filtering process will increase the time needed to finish the assessment and thereby determine a Modification Proposal. Current practice is that most Modification Proposals are submitted close against the agenda deadline for the Panel meeting at which they are first considered. The addition of an Ofgem allocation process would increase the timescales for Paths 2 and 3.

Ofgem may like to note as a future consideration that were the Panel to make a recommendation, then clarity would be needed at some point over whether the recommendation would be taken at a normal (monthly) scheduled meeting or by means of an ad hoc meeting. Also, Proposers would benefit from clarity on the Panel's and Ofgem's likely timescales.

Option B - Panel Decision with Ofgem veto

The ideal outcome under such a process would be that the veto right never needs to be exercised. To minimise likelihood of this, the publication and application of clear criteria that distinguish between Paths 1, 2 and 3 is required. Such information would greatly assist proposers, panels and code administrators, along with removing uncertainty for the industry as a whole.

The consultation paper cites "call back" as being an Ofgem initiated event, but equally the Panel could presumably request a change to the Path, where it becomes aware that the assigned path should be altered.

The use of Option B allows the Modification Procedures to start promptly, but such work will be "at risk". With the veto right extending across the duration of the Modification Procedure then the paper correctly records that the risk of "call back" extends across the duration of all of the BSC assessment processes.

Should a Modification be "called back" from Path 3 to Path 2 then the extent to which prior work is negated will largely be determined by the extent to which the Path 3 and Path 2 processes differ. As mentioned previously, the BSC already operates a self governance process for managing changes to the Code Subsidiary Documents (i.e. a Path 3 approach). These reflect the practices of the Modification Procedures albeit with different supporting committees and decision makers. With suitable process design the effects of "call back" can be minimised.

Additional Comments

A specific difference between Path 2 and Path 3 processes is that under the Path 2 process the Panel does not make a judgement between two or more "competitive" modifications. Instead they give independent views for each against the current baseline and the decision on which option, if any, are approved resides with Ofgem. In the Path 3 processes, the decision on which Modification, if any, should be made will reside with the Panel and thus judgements would need to be taken between competing Modification Proposals.

The consultation paper states that the Path 1 decision will still reside with the Authority. It is possible that a change could be proposed under Option B that appears to the Panel from the outset to be Path 1. In such circumstances a rapid decision from Ofgem could avoid nugatory work. The minimum interval between a Modification being raised and heard by the BSC Panel is 8.5 days (Panel agenda deadline to Panel meeting). If a Path 1 decision could be reached in this interval (accepting that subsequent information might mean this decision needs to be revisited) this would be extremely helpful. Alternatively, consideration should be given to allowing the Panel to request a decision and even to suspend processing the Modification whilst awaiting this decision.

Question 2: What criteria should be applied to assessing whether a modification falls into Path 1 or Path 2?

The more objective any criteria are the easier they will be to apply and the more self evident decisions will be. The distinction between the draft criteria for Path 1 and Path 2 is often the

difference between the highly subjective "likely to have significant impacts" and "likely to have impacts".

In producing arguments which are measured against the Applicable BSC Objectives, most Modification Proposals have sought to cite the positive impact on Applicable Objective C (promoting competition). Thus most Modification Proposals have been judged to have an impact on competition. If this was evidence of qualifying under "likely to have impacts on competition" then there will be very few proposals that will be subject to self governance and certainly far less than suggested in Appendix 2. Adding an additional qualifier may be necessary in order to raise the bar of this test and ensure metrics similar to those in Ofgem's consultation are achieved.

Similarly the criteria do not map on to the evaluation criteria that the Modification Groups and Panel will subsequently use. For example under both the Path 1 and Path 2 criteria there are explicit references to the "impact on consumers" - a concept which is excluded from the Applicable BSC Objectives. That would mean that along with the current possibility of misalignment between Ofgem decisions (made against broader criteria) and Modification Group / Panel recommendations (made against the BSC Objectives), misalignments would be introduced at the start of the process. Ideally the criteria and the objectives used within the assessment processes should be aligned.

Question 3: How should we treat modifications that fall within the scope of an existing Major Policy Review?

Processing a Modification Proposal that is within an area being addressed by a Major Policy Review would not be appropriate. The consultation paper suggests that such proposals would be formally rejected and the ideas that had been generated absorbed within the Major Policy Review. It would, however, be necessary to consider by whom and when such a proposal would be rejected.

Consistent with the approach of introducing a moratorium on change we assume that if a new Modification Proposal is submitted that seeks to change an area that is subject to a Major Policy Review, it could be rejected by the Panel when it is raised or when the Panel is informed by Ofgem that the Modification Proposal falls within the Major Policy Review category. We suggest rejection (except where the Authority otherwise requires) should be discretionary rather than mandatory as there could be circumstances when it could still be beneficial / necessary to seek a short term expedient change whilst awaiting the delivery of a longer term solution via the Major Policy Review.

Clarification is sought as the wording of the consultation paper could be interpreted as meaning that such a Modification Proposal would be assessed fully by the Modification Group and Panel and then rejected only when the Report is submitted to the Authority. It is considered unlikely that this is the intention.

Clarity is also sought over the period of the moratorium: its start and its finish.

Possible "start" events include:

- when the intention to conduct a review is published; or

- a defined period prior to the start of a review; or

- when a review is started; or

- the point at which Ofgem "lifts" a modification into the Major Policy Review category if it thinks it falls within that category.

Possible "finish" events include:

- when the Review's outcome is published: or

- when the modification(s) triggered by the Review have been decided upon by the Authority; or

- when the modification(s) triggered by the Review have been implemented; or

- some defined period after modification(s) triggered by the Review have been operational.

We assume that if a Pending Modification is in assessment when a Major Policy Review is initiated then the Modification Process will be halted and the findings subsumed within the Major Policy Review. This Modification would not be restarted following completion of the Review.

CHAPTER 4 - PROPOSED 'MAJOR POLICY REVIEW' PROCESS

ELEXON's responses against this chapter are centred around the practicalities of making a "Major Policy Review" process work if introduced. The decision on whether such a process should be introduced is for Ofgem to determine in light of industry views.

Question 1: What process should be adopted for Major Policy Reviews?

The process outlined in the consultation paper identifies three means of initiating a review:

1   Ofgem identifying a major deficiency within an industry code; or

2   Ofgem commencing a review as a result of government led public policy initiatives; or

3   An industry participant raising a code modification proposal within a key strategic area.

Initiating a Major Policy Review

The process outlined in paragraph 4.3 of your document could imply that the decision on whether an industry raised proposal has triggered a major policy review will be taken on a case by case basis. The overall efficiency of the process would be greatly assisted if Ofgem were to publish the "key strategic areas" for each Code. Such guidance and transparency would greatly assist market participants. Clearly it is always possible that assessing a modification may uncover a significant issue that warrants a previously unidentified area being subject to major policy review, but this occurrence should be the exception rather than the rule.

The process outlined in paragraph 4.4 states that an industry initiated modification "would be formally rejected at the start of the Major Policy Review Process". It is not clear whether this

means the Modification Proposal would be processed by the Panel / Modification Group until such time as Ofgem declares it to have been subsumed within the area of the Major Policy Review. This risks nugatory work and expense. This risk could in part be addressed by Ofgem publishing information on what it considers to be the "strategic areas" and when it is planned to review these.

How often?

It is assumed that a minor change in a key strategic area would not itself warrant a major policy review.

Conducting one or two reviews per year appears manageable. However consideration should be given to the number of "key strategic areas" and the likelihood of a non minor change being sought or needed within these areas.

If an industry raised, non minor, Modification Proposal in one of key strategic areas were always to trigger a Major Policy Review, then the workload could prove excessive and unpredictable.

If an industry raised, non minor, Modification Proposal in one of these key strategic areas were only sometimes to trigger a Major Policy Review, then clarification on the criteria that has been applied in deciding whether to undertake a review will be necessary to avoid the decision appearing arbitrary.

Publishing the programme of future reviews would enable the industry to better judge whether their specific concerns will be addressed by Ofgem within an acceptable timescale.

Sizing of Reviews

We support the concept that the scale of the processes should be flexed in accordance with the subject and scope of the particular review. Nevertheless the basic constituent parts of any review should be largely the same.

Question 2: What are your views on the Options for determining the outcome of a Major Policy Review?

A key factor in determining the success or otherwise of a Major Policy Review is how the findings of the review and the actions arising from it are communicated.

The options outlined in the consultation paper are very high level and it is difficult to form an opinion (other than in relation to Option 3) without having more information or a worked example. However, ELEXON would like to note that it seems efficient in terms of consistency and coherence of drafting to have this function undertaken by the central body which manages the code and understands the interrelationships between the different sections.

Adopting option 3 (Ofgem prepares the Modification Proposal and its legal text) could be argued as negating the need for and benefits arising from a modification process. Ofgem would both prepare and decide on the Modification. In such circumstances it could arguably be more efficient for Ofgem to simply direct the change. However if a Panel consultation process and recommendation process were adopted then the Modification Proposal would

need to provide comprehensive information on the benefits against the Applicable BSC Objectives in order for BSC Parties to be able to provide their views.

We would comment that in our experience the devil is in the detail in drafting legal text where it relates to technical issues and system changes. In other words it is not just the principle which is being specified but the exact detail of the solution which implies close involvement between the legal drafters and the technical and design experts which can be a resource intensive process and may not be the best use of Ofgem's time. We would be happy to expand on this and share our experience if that would be helpful.

The difference between options 1 and 2 is stated as being between a binding direction to deliver the conclusions and a binding outline of the modification (paragraphs 4.10 and 4.11 respectively). It is concluded there are clear risks that the modification "raised by the industry / code panel would not adequately reflect Ofgem's policy conclusions" (paragraph 4.14). The primary means of mitigating this risk is for Ofgem to ensure that when they deliver their conclusions, the binding elements are very clearly stated alongside areas where the industry may have latitude. Similarly when the Modification is being processed then the Authority's representatives in the process should inform the industry of any deviation from Ofgem's policy conclusions. The industry could then self correct. The option for Ofgem to direct the Modification (i.e. Option 3) should only be used as a last resort.

Question 3: How ought the outcomes of a Major Policy Review be implemented?

Under options 1 and 2 the paper talks about the relevant network operator raising the modification proposal (paragraph 4.20) and the industry developing detailed proposals (paragraph 4.19). It is assumed that under the BSC, National Grid would raise the necessary Modification Proposals and BSC Parties would develop the proposals via the Modification Procedures.

In our experience the Modification Procedures are enhanced where the Proposer is an active champion of the Modification Proposal within the Modification Group. Where the industry clearly sees the merits arising from a Major Policy Review this is likely to cause little issue as there will be a drive to introduce the change. If however the findings received minority support, then the debate could be dominated by the consideration of objections to the change and we recognise that Ofgem, having consulted through the Review process would not want its overall conclusions undermined in this way and it will need considerable impetus from the Proposer, National Grid or other, to assist ELEXON and the Panel to even more actively drive the process. Clear parameters and a clearly defined Modification Proposal are obvious pre-requisites (and would avoid the necessity for Ofgem to have backstop powers to reject the modification and introduce one itself if the original modification failed to reflect Ofgem's policy conclusions).

There is very limited detail on the processes surrounding Option 3 other than the panel consults and makes a recommendation. It would be instructive to have further clarity on the coverage of Ofgem's modification proposal and the areas against which a panel recommendation is sought. This will in turn inform views on what needs to be delivered via the consultation exercise. For example, will the Panel be charged with recommending an Implementation Date or will this date form part of the Modification Proposal raised by Ofgem?

The introduction of backstop powers (paragraph 4.22)

With sufficient clarity on the Major Policy Review decision this option should not prove necessary. Intervention would be more timely mid-process rather than at its conclusion and again we would emphasise the need for dialogue and, where necessary, direction from the Authority's representatives. Nevertheless, the option of a backstop power is consistent with the Authority's current ability to reject changes and should also be reflected in a similar power for panels not to recommend Authority-raised changes, should analysis subsequently identify a flaw with the solution proposed by the Authority.

Question 4: What safeguards and appeals mechanisms should be in place?

We support the desire to avoid undue proliferation in appeals mechanisms.

Options 1 and 2 adhere to the current Modification Procedures, albeit that the Modification Proposal presented by the relevant network operator was initiated by an Ofgem direction arising from its Major Policy Review. Processes whereby Ofgem can itself raise the Modification Proposal (i.e. under Option 3, or as the fallback listed in paragraph 4.22 for Options 1 & 2) and then rule on it could be perceived as diminishing the value of the panels unless they have an ability to reject a proposal in light of the views they receive and their own deliberations.

Question 5: Should there be a moratorium on subsequent code modifications following the completion of a Major Policy Review?

The consultation suggests that the trigger for a moratorium, or other such process, should be the completion of a Major Policy Review. This defines the start of the period. The proposal is silent on when such a period should end. Clarity on the end point, or alternatively whether the period is seen as indefinite, would be helpful. A mechanism for communicating the coverage and timescales for any moratorium could be the direction that completes the Major Policy Review.

The complete moratorium on change following the completion of a Major Policy Review suggested in paragraph 4.29, has no end date. Were a moratorium to be introduced then it should not be indefinite, since the environment and the market changes with time.

If an end date were to be set, then it would be sensible to allow sufficient time for the impact of the changes to be assessed. This would suggest adopting a suitable period after the Implementation Date. This length of this period should reflect the nature and timing of the envisaged improvement.

We concur with the view (paragraph 4.30) that, following the implementation of the Modification Proposal(s) arising from a Major Policy Review, issues or improvements to the adopted solution may be identified. These should be addressed promptly and they may require a Modification. In these circumstances a moratorium on raising modifications would not be appropriate.

Adopting a process whereby Ofgem can halt a Modification Proposal that addresses an area that has been determined by a recent Major Policy Review would be consistent with the view that findings of the Review are binding. The paper suggests that this could be achieved by

either a yes/no Ofgem ruling at the onset (a sequential activity) or by absence/existence of an Ofgem veto (a parallel activity). An Ofgem ruling at the outset would eliminate uncertainty but would prolong the process, especially if this check were applied to all Modifications. Restricting the check to relevant Modifications will require a judgement but would contain Ofgem effort whilst expediting the initiation of the Modification Procedures.

Were the issuing of an Ofgem veto to take some time, then nugatory effort will have been expended on processing the Modification Proposal in the meantime. This can take several forms:

- ELEXON - In practice many BSC Modification Proposals are first presented immediately prior to agenda deadline of the targeted Panel meeting. In order to present the Proposal at that meeting, ELEXON has to start work immediately on its receipt.

- BSC Panel - Once the Panel paperwork is published the Panel will start its work.

- Modification Group - Post the first Panel meeting, the Modification Group will start work.

The prompt issuing of the veto decision is therefore required. The absence of a veto decision leaves uncertainty and thus it is important to take the decision, rather than leave uncertainty and just report in those cases where the decision is to issue a veto.

A yes/no Ofgem decision at the onset would avoid the risk of nugatory work, but places Ofgem at the initial stages of the Modification Procedures. Parties wishing to target raising a Proposal to a particular Panel meeting would need to know the expected duration of the Ofgem decision process. Being a sequential process the timescales needs to be quick to avoid unduly protracting the overall Modification Procedure timetable.

Clarity over the status of any Modification Proposal subject to a moratorium would be helpful. In this circumstance will the Modification Proposal be:

- Rejected; or

- Pending but halted (and thereby reactivated post any moratorium end date)

CHAPTER 5 - PROPOSED 'SELF GOVERNANCE' PROCESS

Question 1: If current Panel/voting arrangements for any code are to be changed, which model is optimal (Independent Panel, Representative Panel, signatory voting)?

As an independent administrator, we do not have any particular preference for industry representation and voting arrangements. However, we would observe that the independent panel and committee membership has been made to work effectively under the BSC and an independent Panel could be said to accord more easily with the Review Objective of ensuring that matters were "being administered in an independent and objective fashion".

Simple quorate majority voting, combined with a clear exposition of the rationale for every decision, has also been a core feature of BSC governance.

We would suggest that where appeal mechanisms are thought to be appropriate that these are clearly defined and that these should be available to all BSC signatories, large or small. The BSC arrangements are predicated on impartiality and non-discrimination and it would therefore seem counter intuitive to carve out certain rights for particular classes of participant.

The nature of the Panel (independent or representative) cannot change depending on whether the mod is Path 2 or Path 3; we do not see how the BSC Panel could be in the position of having to act independently on the one and as a representative Panel on the other. In short, therefore, the optimum nature of the Panel would need to be tested on the basis that it was right for both Path 2 Modifications as well as Path 3 modifications

If it appears likely that the number of Path 3 Modification Proposals may not be numerous, the desirability (and cost/benefit) of introducing complex voting requirements, particularly those that might be different depending on whether a modification was in Path 2 or 3 would need to be considered.

Question 2: Should it be mandatory for panels to have a consumer and a small market participant representative?

We believe that the BSC model works effectively in terms of ensuring both consumer and small participant input, although the BSC Panel has noted that a reference to consumers in the Applicable BSC Objectives would make better use of the expertise of consumer members. We would note that all Panel and Panel Committee members are independent and impartial and not representative of a particular interest group. The BSC Panel also, as a matter of practice, considers all arguments made, not just the weight of numbers in consultation responses.

CHAPTER 6 - IMPACT ASSESSMENT

Question 1: Do you agree with our assessment of the package of reforms against the review objectives?

Yes; the present governance arrangements under the BSC cope with incremental change but we agree that there is a need for some central strategic direction and would encourage early and continuing engagement from the Authority during the progression of key modifications.

We agree that there are elements of the present governance arrangements which would lend themselves to a self-governance approach.

Question 2: Do you agree with our quantitative assessment of the potential cost savings of reform?

We agree that it would have been more efficient if a set of coherent policy principles had been developed at an early stage in order to guide changes relating to, for example, the cash-out arrangements. There are efficiencies to be gained by having greater clarity over the direction of major strategic issues; this would potentially streamline the present situation where competing/conflicting modifications arise in the same area and where multiple impact assessments have to be carried out, culminating in the Authority's own regulatory impact assessments.

A more straightforward process, for considering self evident changes, perhaps using the consent to modify procedure within the gas industry, would reduce time and cost.

Question 3: Do you agree with our assessment of the potential impact of reform on consumers, competition and sustainable development?

Yes; we agree that the timely delivery of reform in key policy areas should be beneficial for competition and have a consequential impact on consumer interest and we will continue to explore additional ways in which the BSC arrangements can become more accessible to all interested and affected parties.

Question 4: Do you agree with our assessment of the unintended risks and consequences?

Yes; clarity over the direction of major reform is essential and we do believe that continued robust assessment against the code objectives, appropriate oversight by the Panel and appropriate engagement by Ofgem (perhaps through an ability to 'call in' lower level issues) is an important feature of the present arrangements which should be retained.

We would of course be happy to discuss any of the points we have made above with you in more detail if you would find that helpful.

Yours sincerely

Stuart Senior
ELEXON Chief Executive