

27th February 2009



Mark Feather
Director, Industry Codes and Licensing
Office of Gas and Electricity Markets
9, Millbank
London
SW1P 3GE

Dear Mark,

Code Governance Review: Major Policy Reviews and Self Governance

Energy Networks Association is funded by the major licensed electricity and gas transmission and distribution companies in the UK. We welcome the opportunity to respond and contribute to the Code Governance Review regarding Major Policy Reform and Self Governance.

Our response is split by the different areas within the consultation document:

- Filtering/Allocation of Modification Proposals
- Major Policy Reform
- Self Governance
- Impact Assessment

Overall we commend the process Ofgem has chosen for the Code Governance Review including open letters, consultation documents and workshops and think that this has fully engaged the industry.

ENA and its members support the high-level changes proposed with the move to three paths of governance for modification proposals and agree that if this is implemented effectively it will give significant benefit to the industry. We do however feel that care should be taken around implementing these changes as a “one size fits all” approach across all the industry codes.

Filtering/Allocation of Modification Proposals

We support the criteria outlined for Path 2 and 3 along with Option B where the industry allocate the modification proposals. We are in support of this option as it will minimise constraints on Ofgem’s time whilst allowing the industry to deal with modifications where potential amendments are needed before they are sent to Ofgem. To ensure Ofgem agrees on the allocated path we are happy with Ofgem having a right to veto any decision made by the industry.

Major Policy Reform

Although the document is very detailed around the decision and implementation process of Major Policy Reform changes we think further information is needed around the actual process i.e. how the reforms will be conducted and what the level of industry involvement will be.

In general, and depending on the above detail, Ofgem needs to ensure it is not creating further strain on its time and resources through this process than it will be saving through the Self Governance route, and that industry participation is present throughout.

We are also disappointed with the lack of reference to gas changes which could have been resolved through Major Policy Reforms; only the Electricity Security of Supply and Electricity Transmission Access Reform were mentioned, which is surprising considering the large recent changes in gas e.g. Exit Reform and Interruption Reform.

We do support the Major Policy Reform but consider there to be further information needed around this change. For Options 1 and 2 we feel that Ofgem needs to clarify the potential licence changes required to enforce modifications being raised by the industry and the impact of this on potential appeals. For Option 3 Ofgem need to ensure that if implemented any resulting modifications are put through the appropriate industry change procedure and are recommended by the Panel before implementation. A solid appeals process will also need to be put in place to safeguard the industry.

ENA fully understands the reasoning behind including a moratorium on subsequent modification proposals but feel that Ofgem does have to ensure that an option will be available to the industry to raise changes if the process implemented is not practically sound. Therefore our preferred option would be not to have a set timescale in place, only an Ofgem right to veto any modifications raised.

Self Governance

ENA and its members support the implementation of Self Governance as it should lead to quicker implementation of minor, but relevant, changes and that the responsibility is put on the code signatories to implement this change.

We would like to highlight however that within BSC procedures in particular it is vital that each code objectives should be reviewed so that they are not interpreted too narrowly and reflect the wider remit that Ofgem sometimes applies in reaching its decisions. For example, Distributors' objectives are different from those of the BSC, and DNOs have sometimes to rely on this difference being taken into account by Ofgem at the end of the change process. The checks and balances accompanying the BSC self-governance route should therefore incorporate some comparative protection for Distributors.

Impact Assessment

We agree with all of the qualitative and quantitative benefits listed for both the Major Policy Reform and Self Governance.

The risks and unintended consequences mentioned in the document can all be managed by Ofgem and the industry and so we do not think these pose a threat to the processes.

However, an additional risk for Self Governance may be that if the filtering and allocation processes are not managed efficiently this could take up valuable industry (including small market participants) time spent on panels leading to additional monetary implications which may simply nullify or exceed savings made by Ofgem.

For the Major Policy Reform an additional risk may be that although the overall time required for the Reforms is reduced through this process the amount of Ofgem resource needed for each change may increase. This may mean that rather than dedicating one or two FTE over four years during the current process, Ofgem may need three to four FTE over two years which could negate any savings made through this change.

Please note that ENA are in favour of both the Self Governance and Major Policy Reform but wish to highlight these possible risks to ensure these can be managed appropriately by Ofgem and the industry.

We hope that you find these comments useful.

Yours Sincerely

A handwritten signature in blue ink that reads "David Smith". The signature is written in a cursive style with a long horizontal stroke at the end.

David Smith
Chief Executive
Energy Networks Association