



First Hydro Company is part of a joint venture between  
International Power plc and Mitsui & Co., Ltd.

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

19 February 2009

Dear Mark,

### **Code Governance Review: Major Policy Reviews and Self Governance**

I am writing to you on behalf of International Power's UK generation assets (Deeside Power Development Co Ltd., First Hydro Company, Rugeley Power Generation Ltd., Saltend Cogeneration Ltd., and Indian Queens Power Ltd.) with regard to Ofgem's consultation on major policy reviews and self governance.

International Power welcomes the opportunity to comment on the proposals for the introduction of major policy reviews and self governance, having been actively engaged in the code change processes for the CUSC and BSC since their inception, and to a lesser extent the UNC and GC.

### **Major Policy Reviews**

We agree that it is important that industry has the arrangements in place to progress 'big issue' changes, and that the code modification procedures are well-suited to facilitate both fundamental and incremental changes. The introduction of major policy reviews could help to ensure that modification arrangements across the codes are better able to deliver fundamental change, but we are not convinced that the existing arrangements are failing to deliver, when called upon, significant and broad ranging change. An example of this would be the ongoing work across different codes in implementing the draft gas and electricity supply and distribution licence obligations to install advanced metering, which has already resulted in two current modification proposals - UNC224 and BSC mod P230. In addition, we believe that to a considerable extent Ofgem already has the ability to initiate and direct change, using licence enforcement, via Ofgem lead fora and review requests such as that issued recently to National Grid on the issue of managing constraints on the GB transmission

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system. More specifically however, we have concerns about the proposed major policy review process as outlined in the consultation document, in particular in relation to the appeals mechanisms proposed and to a lesser extent about the lack of detail as to the actual process of conducting the reviews and the assumption that a ‘top down’ approach can always deliver workable solutions.

### *Checks & Balances*

The consultation proposes that following a major policy review the right of appeal would be unchanged from the present appeal rights following an Authority decision, namely that if the Authority’s decision differs from the recommendation of the relevant code panel there is the possibility of appeal to the Competition Commission. We are concerned that this would not provide an appropriate balance of power in the governance arrangements.

In the Brattle Critique the authors make it clear that should an Ofgem initiated change process be adopted that “there would have to be a strong right of appeal” and Brattle questions that the current arrangements would be sufficient, specifically the fact that appeal is only possible where the relevant panel decision has been over-ruled. In addition, we have noted comments made by the Competition Commission in their decision on the EON appeal against the Authority decision to accept UNC116V:

*“it is less clear that the system of checks and balances established in the code modification procedures works if GEMA is, to use GEMA’s words, the ‘effective progenitor’ of a proposal”* and

*“if GEMA is the effective progenitor of a proposal, there may be a perception that it cannot fulfil its intended role under the UNC modification procedures without having prejudged, or at least appeared to prejudge, the matter.”*

In light of these comments, we think there is a degree of uncertainty surrounding the efficacy of the proposed appeals mechanism for the outcomes of a major policy review.

We are not, in principle, opposed to the introduction of a process whereby Ofgem can initiate and pilot regulatory change in order to promote its duties, however we believe that the new powers proposed under the major policy review process need to be appropriately limited by new checks and balances.

### *Process and Approach*

In order to make a fully informed decision about introduction of the major policy review process we would like to see considerably more detail as to how the review would actually work. Aside from the point that the process should vary depending on the nature of the issue under consideration, there is almost no discussion of the review process itself, only how its outcomes might be delivered. In the absence of more specific details, we assume that Ofgem is intending a process along the lines suggested in the Brattle Critique whereby Ofgem sets the agenda, gathers evidence, defines and either carries out or commissions analysis, with a view to developing its legally binding recommendations. We are concerned that there might be insufficient industry input, which would be to the detriment of the process given the depth and breadth of expertise industry can contribute.

This links to another concern we have regarding the proposed process; the assumption that a 'top down' approach to change can always deliver workable solutions, sometimes it is only when a proposal is fleshed out, when the detail is being developed, that its practicability can be determined, for example, NG's initial proposal within the TAR for transmission access on a zonal basis, which was only shown to be unworkable following three months of intensive and detailed work by the industry workgroup. For this reason we are uneasy about supporting a process where it is assumed that high level conclusions can always translate into workable solutions.

### *Summary*

For the reasons outlined above we are unable to support the introduction of major policy reviews as currently proposed however, we do believe that greater Ofgem involvement in 'big issue' code modifications would be beneficial in terms of outcome and process. Benefits could be reaped from increased Ofgem transparency and more active involvement throughout the assessment process, by ensuring that reviews are signposted well in advance, and by the clear assignment of Ofgem personnel to particular modifications (providing a valuable point of contact for smaller participants).

### **Self Governance**

International Power supports the introduction of more self governance across the various codes but not in the form outlined by Ofgem in the consultation. It would seem very likely that the vast majority of modifications following the self governance route would not prove contentious in any way however we believe it is important to ensure there are sufficient checks and balances in place to reassure participants for the rare instances where this is not the case.

- We support the suggestion that housekeeping modifications should progress via a self governance process
- For other modifications we think there needs to be greater safeguards than those proposed, and would suggest that right of appeal to the competition commission should be retained for all modifications following a self governance route
- The filtering of modifications to determine their route through the modification framework would need to be very robust, and a formal mechanism to re-route self governance modifications would be a prerequisite of introducing self governance
- In the consultation we can see no reference to industry consultation within the proposals for self governance. We believe it is important that industry should always have the opportunity to contribute
- We believe that the current Panel voting arrangements are fit for purpose and support straightforward majority voting.

On other aspects of the review, we have the following comments:

- We do not support the proposal for a two year moratorium on related modification proposals following a major policy review because there will inevitably be occasions

where an element of 'tidying up' is required following the implementation of code changes.

- Given our concerns that a 'top down' approach cannot always deliver workable solutions we think that of the options given for the determining the outcome of policy reviews the most effective route would involve Ofgem involvement in developing detailed, rather than high level, conclusions.

I hope you find these comments useful and we look forward to participating further in the governance review.

Yours sincerely

Emma Williams

Interim Manager, Market Development