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Dear Mark

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

Thank you for the opportunity to respond to the above consultation. This response is on behalf of National Grid Electricity Transmission (NGET) and National Grid Gas (NGG). NGET owns the electricity transmission system in England and Wales and is the GB System Operator. It is responsible for administering the electricity Connection and Use of System Code (CUSC), the Grid Code and the System Operator – Transmission Owner Code (STC). NGG owns and operates the Gas Transmission System and also owns four of the Gas Distribution Networks. In association with the three other gas Distribution Network Operators we also jointly provide for the administration of the Uniform Network Code (UNC) Governance arrangements via the Joint Office of Gas Transporters and operation of a number of key systems (including the Supply Point Register) via our agent xoserve.

We are supportive of the proposals within the consultation on the proviso that the benefits of change outweigh the cost of implementation. However, we do not believe that a one size fits all approach across all codes would necessarily be beneficial or appropriate and each code needs to be assessed individually.

National Grid understands the important role code administrators play in the industry but believes that active engagement from all parties is the key to a successful modification process at all stages; from industry debate prior to the modification, the modification proposal process itself and the Ofgem decision.

In practice, we believe that all code administrators, to varying degrees, already undertake the Critical Friend role as described in the consultation by supporting the panels and industry participants. However, such an obligation is not codified. We support the development of this role and believe that further clarification is required. In our opinion, we believe it may prove difficult to codify such a role and detailing within a code of practice or guidance document may be a more proportional approach.

National Grid does not believe that the Active Secretariat would provide sufficient benefit to justify the costs, as we envisage such a change in role would be resource intensive and would duplicate (to an extent) the function of the panels. In addition, we do not believe that this would necessarily increase the quality of reports. The quality of reports depends heavily on industry engagement and input and such a change would not in itself encourage the industry to be more active. Finally, we believe that the introduction of an Active Secretariat role could adversely impact on code administrators' ability to act in an independent manner.

We agree with Ofgem's initial view that the de-merger of code administrators and system responsibilities for BSC, CUSC and Grid Code may not be proportional or cost effective. Therefore, further consideration is necessary to better understand the possible merging of the Joint Office of Gas Transporters and xoserve and the extent to which there are any benefits associated with this approach.

The introduction of a board structure in the CUSC and UNC would be a significant change in terms of the codes, the nature of the organisation and the role of panel members and we believe the implementation costs may outweigh the benefits. National Grid supports the principle of a board structure but believes further analysis of the benefits and the costs is required. Consequently the appointment of an independent chair for both the CUSC and UNC may be a more proportional and cost effective measure.

The funding arrangements for the codes have evolved over time in accordance with the governance arrangements of the respective codes and in our view, they should not be changed at present. The funding arrangements will require consideration and review subsequent to a decision being made regarding the governance arrangements of the CUSC and UNC. We agree with Ofgem that price control funding for independent code administrators may be disproportionate but any future funding arrangements must ensure the appropriate incentives are created to balance spend against efficient discharge of code administrators' duties.

The gas and electricity industries are complex and National Grid understands the difficulties that the scale of the industry places on small participants, new entrants and consumers. We welcome the proposals to assist small participants and consumers but we have concerns regarding the options. Option 1 – Status quo plus offers improvements and is our preferred option. However, it raises practical difficulties in respect of the UNC if consumer voting were to be introduced within the UNC Panel as this would significantly alter the voting structure. In addition, the code administrators may be unable to seek views and ensure small parties are represented in the final report if such parties do not wish to engage in the processes.

The remaining 3 options appear to duplicate the role of Consumer Focus, which already receives funding, has voting rights in some codes and can raise modification proposals in certain circumstances. Option 4 also would create significant practical issues and duplication of expertise as code administrators would need to fully understand modification proposals and the impacts that small parties face.

National Grid advocates a number of the incremental developments highlighted within the consultation. In particular, the introduction of a non-binding code of practice and performance measures for code administrators. However, any such developments need to be flexible and not over complicated.

We are not convinced of the merits of allowing code administrators to raise modification proposals and do not believe their role should be extended. Code administrators' views and support are vital in the efficient operation of the governance processes but allowing administrators to raise modification proposals may adversely impact their independence.

As previously stated, the key to a successful code governance process is active engagement. We believe that the "call in" proposal as detailed within the consultation already exists *'practically'* within the codes; Ofgem attends all panels and the majority of modification working groups and has the ability to highlight issues. For example, Ofgem has indicated areas of further analysis in the recent transmission access modification groups and at the BSC Panel regarding modification P212. As a consequence, we do not believe any change is required in this area. In relation to the "send back" proposals, for the reasons stated above we believe that the circumstances in which this would occur should be limited. We do see merit in such a right but believe that criteria should be developed in order to determine the circumstances when a modification proposal can be "sent back" to prevent regulatory uncertainty.

In summary, whilst certain proposals merit further scrutiny, the benefits and the costs need to be fully assessed prior to making any significant changes to code governance structures.

A detailed response to the questions raised within the consultation is attached in the Annex to this letter.

If you wish to discuss this further or have any queries please do not hesitate to contact me or, Mark Ripley on 01926 654928, mark.g.ripley@uk.ngrid.com, or Richard Court on 01926 656146 richard.court@uk.ngrid.com.

Yours sincerely

[By e-mail]

Paul Whittaker
UK Director of Regulation

Annex – Question responses

Chapter 2

1. **Are the Authority's concerns regarding the quality of analysis undertaken through the code modification processes justified?**

We understand the Authority's concerns regarding analysis, but believe that the quality of reports has improved over the last year. However, the quality of analysis can vary across each of the codes and we believe that there is always room for improvement. As stated above, the quality of reports depends heavily on industry engagement and input and is not solely dependent on the code administrators and/or panels.

2. **Are some code administrators more accountable than others?**

The codes have distinct governance arrangements and have evolved over time due in part to the different functions of each code. We believe that there are advantages and disadvantages for each code arrangement and some code administrators may be more accountable than others. Improvements could be made via the adoption of a non-binding code of practice to increase accountability but a uniform approach to governance across all codes is not necessarily appropriate.

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?**

The gas and electricity industries are complex and we understand the difficulties that the scale of the industry places on small participants and new entrants. There is always room for improvement regarding the governance arrangements such as the proposals contained within this consultation and the Major Policy Review and Self Governance consultation. However, the proposals will not reduce complexity regarding technical or market mechanism issues, as the issues and consequential impacts will not become any less complex or difficult to address.

4. **Do small participants, new entrants and consumer representatives find it difficult to engage with the code modification process?**

Not applicable for National Grid.

Chapter 3

See letter above for our response regarding the questions below.

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?**

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?**

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?**

Chapter 4

See letter above for our response regarding the questions below.

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?**

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

3. **Are code administrators and the management teams for CUSC, UNC and BSC sufficiently accountable in terms of their costs and performance? Do they have clearly defined objectives and measurable performance targets?**

4. **Code administrators are currently funded by cost pass through, service contracts or price controls. Which of these funding arrangements is the most transparent and accountable?**

5. **Is there an argument for considering the service contract approach to funding for more codes if a degree of self governance for a code is introduced?**

6. **Should the funding of the code administrators for the CUSC and UNC be removed from the relevant network owner price controls?**

Chapter 5

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?**

See letter above for our response regarding this question.

2. **Should all code Panels have to publish the reasoning behind their recommendations?**

National Grid believes that this would be helpful for the industry and would increase transparency. As a consequence of this consultation, the CUSC Panel has taken action to record detailed reasoning behind each Panel recommendation within the CUSC Panel minutes. We believe that this should be undertaken by all codes, and a licence change is not necessary as this could be addressed by the code of practice.

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?**

See letter above for our response regarding this question.

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

See letter above for our response regarding this question.

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

See letter above for our response regarding this question.

Chapter 6

1. Do small participants, new entrants and consumer representatives face significant hurdles in engaging with the code governance processes?

National Grid understands the difficulties faced by small participants, consumers and new entrants, but does not believe it is appropriate to comment.

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?

As stated above, active engagement is of critical importance for the industry to develop, and all parties must have the necessary incentives and support to participate. We believe that greater representation of appropriate parties at the panels would enable better engagement and, as a consequence, support a review of all Panel compositions as a next step for this review.

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?

See letter above for our response regarding this question.

4. Which options, if any, do you consider will allow small participants and others to engage better with the code governance processes?

National Grid's preference is Option 1- Status quo plus, due to the practical difficulties and concerns with the other options. See letter above for further details.

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?

We do not believe there are any further options. However, we consider that a combination of proposals, such as an improvement to the status quo and further development of the Critical Friend role via a code of practice, will assist all participants.

Initial Impact Assessment views as requested in addition to the views expressed above

We recognise the importance of good quality reports and robust analysis to facilitate the modification process but, as stated above, changing the role of the code administrator may not necessarily improve the quality.

The performance of codes administration in an independent fashion is one of our objectives for the review. We believe that the respective arrangements should be transparent, inclusive and accessible to all relevant parties. Additionally, the processes should be flexible, impose a proportionate burden and be cost effective without comprising quality. However, the benefits and costs of introducing a company board structure for the CUSC and UNC have not been clearly identified and limited evidence has been provided to suggest that the current BSC structure better meets the objectives of this review.

We are unclear how the use of performance evaluation measures in isolation will ensure increased accountability and promote an inclusive and accessible consultation process. Therefore, we suggest that the current code administrators working group is utilised to develop this idea further and could also be used for further consideration of the code of practice and the Panel composition review discussed above.