

Mark Feather
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Ofgem
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12 March 2009

Dear Mark,

**CODE GOVERNANCE REVIEW – ROLE OF CODE ADMINISTRATORS AND
SMALL PARTICIPANT/CONSUMER INITIATIVES**

ScottishPower is pleased to respond to your consultation dated 19 December 2008 on the role of code administrators and small participant/consumer initiatives. This response is on behalf of all ScottishPower's businesses including our networks, supply and generation businesses as well as ScottishPower Renewable Energy Limited.

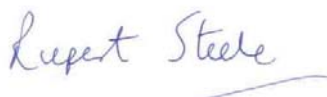
We recognise that the quality of analysis in assessing modification proposals and preparing submissions is uneven in some cases. This is something that Ofgem can help with by engaging earlier in the process and indicating the kind of analysis that it will need in order to exercise its functions. Similarly, we see a case for a more active secretariat role for code administrators in taking a greater responsibility for managing the consultation and modification submission process. This would need to go hand in hand with adequate resourcing and funding arrangements.

We are however less convinced by some of the further reaching recommendations in the paper, which we think may have compliance or disruption costs in excess of the benefits. For example, we think the costs of changing the constitution of the code administrators may exceed the benefits. We also doubt that code administrators should be able to raise modifications outside the areas where this is currently the case, as codes should remain the primary responsibility of users and other significant stakeholders to maintain and develop.

We agree that some measures to take greater account of small participants and new entrants are appropriate, but formal new representation arrangements are not necessary.

I attach a note giving more detailed comments on the consultation and we would be pleased to answer any questions you may have on our observations – please contact me using the details printed below.

Yours sincerely,



Rupert Steele
Director of Regulation

CODE GOVERNANCE REVIEW: ROLE OF CODE ADMINISTRATORS AND SMALL PARTICIPANT/CONSUMER INITIATIVES (173/08)

Comments by ScottishPower

Chapter 2

Question 1 – Concerns regarding quality of analysis

We agree that there may be legitimate concerns over the quality of analysis undertaken in some cases. However, steps to address this should be proportionate.

Question 2 – Comparative accountability of code administrators

We are aware that the arrangements for accountability differ as between codes, but question whether the differences make a material difference in practice.

Question 3 – Code complexity and new entrants

The industry codes are complex, but in the main this reflects the complexity of industry processes in the energy sector. There are a range of third party training programmes available, and in a number of cases code administrators provide workshops and guides for new entrants. It would be helpful if this practice were encouraged.

Question 4 – new entrants and consumer representatives

Please see response to question 3.

Chapter 3

Question 1 – Quality of analysis in code modification reports and the role of code administrators

We agree that in some cases there is scope for improvement in the quality of analysis in code modification reports. However, it is not clear that this merits formal changes to the role of code administrators. Much can be done within the existing framework, for example by Ofgem engaging in dialogue with the industry and providing guidance on quality criteria for modification submissions at an early stage. It must also be recognised that in some instances perceived shortcomings in the quality of analysis may be reflective of the differences between the various code objectives and Ofgem's statutory duties rather than any actual deficiencies in that analysis.

Question 2 – “critical friend” or “active secretariat” roles for code administrators

We think that code administrators could usefully take a more active role in ensuring that material presented is fit for purpose. However, we do not think that a formal ‘one size fits all’ approach is necessary or desirable. Much could be achieved through general guidance to code panels and code administrators as a result of consultation.

Question 3 – Roles of administrators in respect of central systems

We do not see a strong case for changing the current position. “Harmonisation” would be likely to involve significant costs with few discernible benefits.

Chapter 4

Question 1 – Independence of code administrators from network owners

We can see a theoretical risk of a conflict of interest, but this is not borne out in practice. There are a number of checks to prevent this occurring, such as the transparency of the modification process.

Question 2 – Should all major commercial codes have the same corporate governance structure?

It is not clear why this should be the case for codes with very different characteristics and functions.

Question 3 – Accountability of code administrators and management teams for CUSC, UNC and BSC

See answer to question 1 above. We are not aware of significant practical concerns with current arrangements.

Question 4 – Funding arrangements for code administrators

We are not convinced of the case for changing current governance structures and the same applies to funding arrangements.

Question 5 – Service contract approach to funding

Please see response to question 4 above.

Question 6 – Code administrator funding for CUSC and UNC

Please see response to question 4 above.

Chapter 5

Question 1 – “call in” and “send back” powers for Ofgem

We can see a case for a “send back” power in order to avoid the delay resulting from a formal veto. We are not convinced that a formal “call in” power is needed. In both cases, Ofgem is able to use its existing powers to provide guidance to the industry, and to signal priorities. Again enhanced engagement would help minimise such instances.

Question 2 - Publication of reasoning behind recommendations

This should be a matter of good practice.

Question 3 – Raising of modifications by code administrators

This already occurs with some codes, but powers are limited in scope to mainly administrative matters. We think this is an appropriate balance and that significant modification proposals should be reserved to users and other significant stakeholders.

Question 4 – Code of practice for code administrators

As mentioned above there is scope for Ofgem to issue guidance to code administrators and code panels within the existing framework. Any code of practice should be voluntary.

Question 5 – Evaluation of performance of code administrators

This would be of limited value given the very different functions between codes and varying flow of code modifications of differing complexity.

Chapter 6

Question 1 – Engagement of small participants and consumer representatives

We agree that it appears more difficult for small and new participants, and consumer representatives, to engage with the code governance process. However, the reasons for that need not necessarily rest at the door of the governance arrangements, but may be rather more to do with the differing priorities of such participants.

Various regimes already allow for the participation of small and new participants and many code administrators actively encourage their participation and provide appropriate induction programmes. Despite this, take up from small participants and consumer representatives remains limited in practice.

Question 2 – Key issues for engagement of small participants

There is a need to avoid formal new structures that may lengthen the modification process without significant benefits to consumers or users.

Questions 3,4 – Options for greater engagement

In order to keep down costs and time required to implement changes we are inclined towards a variant of option 1 ('status quo plus') with a reasonable endeavours obligation, where appropriate, to seek the views of such users. We agree that Consumer Focus should have a seat on each major code panel as a consumer representative.

Question 5 – Other options

No comment.