



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

E.ON UK plc
Westwood Way
Westwood Business Park
Coventry
CV4 8LG
peter.bolitho@eon-uk.com

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Dear Mark

The "timing-out" of Authority decisions on modification proposals

E.ON UK continues to believe that it is inappropriate for Ofgem to seek new powers to direct particular implementation dates for modifications under the BSC and other relevant industry codes. Although the new Option C goes some way towards addressing some of the concerns of respondees from the last consultation (e.g. with respect to refreshing any analysis), we consider that the effective establishment of an 'open-ended' decision process applied to all code modifications will remove an essential 'check and balance' in the code governance regime adding to regulatory uncertainty and weakening incentives on Ofgem to make prompt decisions.

In our previous response we suggested that all that is needed is a simple request from the Authority to the relevant Panel to amend decision-by dates. Clearly any Panel would be expected to agree to any reasonable request, so a refusal would be extremely unlikely. In our view this would be sufficient to deal with future procedural difficulties, similar to those of the Losses case, should they arise. If it were considered necessary to formalise such a request procedure in the relevant code(s) we would be more than happy to bring forward appropriate code modification proposal(s).

In its latest consultation Ofgem proposes detailed prescriptive amendments to the licences of the monopoly regulated network businesses as the means of implementing a new option "Option C". This is not a fair process because the parties most affected by these proposals, the network users, have no formal collective right to refuse to consent to these changes. We also note however, that licence changes include obligations, if necessary, to bring forward appropriate proposals to modify the relevant code. This at least gives each relevant Panel the opportunity to choose not to recommend the implementation of such a modifications thus opening up the opportunity of an appeal to Competition Commission should Ofgem eventually approve such a proposal.

E.ON UK plc
Registered in
England and Wales
No 2366970
Registered Office:
Westwood Way
Westwood Business Park
Coventry CV4 8LG

Our full views on the "timing-out" of Authority decisions are set out in our response of 12 January 2009 attached. For completeness please consider this attachment as part of our response to the current consultation.

In summary we do not consider that a regime that allows Ofgem to ultimately dictate modification implementation dates is compatible with 'good governance'. We urge Ofgem to reconsider its position on this. A simple request of the relevant Panel to amend "decision-by" dates is all that is required.

Yours sincerely

Peter Bolitho
Trading Arrangements Manager

Attachment: E.ON UK response on the the "timing-out" of Authority decisions on modification proposals date 12 January 2009