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Dear Mark

Review of Industry Code Governance – Environment and Code Objectives

We continue to believe that a formal change to the code objectives is not necessary as it is already feasible for an assessment of the impact of a modification proposal on green house gas (GHG) emissions to be carried out under the existing CUSC, BSC and UNC modification procedures. This view is one that is shared with the cross-code Standing Group established by the CUSC Panel to consider the Guidance - it concluded that the current code objectives could reasonably permit assessment of environmental issues.

Even though we think the proposed license change is unnecessary, the limited scope of the license change does mean it is more acceptable¹ than a more prescriptive approach that might have sought to make the Guidance binding. We are pleased the new obligation only applies “where applicable” and that the nature and basis of any analysis of the financial impact on GHGs continues to be determined by the relevant Panel². As the processes for assessment of environmental matters, and in particular the determination of the cost of carbon are likely to evolve, we consider that it is best that the relevant code panels continue to have this discretion over the scope of any environmental assessment.

We would urge Ofgem to reconsider its position on this matter or at least delay implementation until the conclusions of the wider code governance review are known. This would at least allow

¹We do not object to a requirement to carry out a financial assessment of GHG emissions. Nevertheless we consider it to be wrong in principle to, in effect, implement a ‘constitutional’ change to the modification procedures through changes to the relevant network operator’s licence as affected third parties (i.e. shippers, generators or suppliers) do not have a right to appeal such licence changes. It is also unclear to us whether it would be necessary for consequential changes to the relevant code modifications procedures to be brought forward as a result of the proposed licence changes. This would at least allow parties a limited right of appeal should Ofgem choose not to agree with the relevant Panel recommendation on any such code modification.

² The Ofgem Guidance issued on 30 June 2008 is a helpful document and the relevant panels should consider this but it remains important that such Guidance should not be binding on the industry or code panels.

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changes to code governance arrangements, to be implemented as part of a coordinated package of measures.

Yours sincerely

Peter Bolitho
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