



Charles House
5-11 Regent Street
London
SW1Y 4LR
Tel: 020 7930 9390
Fax: 020 7930 9391
enquiries@aepuk.com
accounts@aepuk.com
www.aepuk.com

FAO Jon Dixon
Head of Industry Codes and Licensing
Office of Gas and Electricity Markets
9 Millbank
London
SW1P 3GE

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Dear Jon

AEP response to your code administrator and small participant/consumer initiatives – initial proposals consultation

Thank you for the opportunity to respond to your consultation on initial proposals for the future role of code administrators and small participant/consumer initiatives. As you are aware the Association of Electricity Producers represents generating companies in the UK with our membership comprising a wide range of technologies utilising fossil, nuclear and renewable sources of energy. Our members include some of the largest through to the smallest UK energy producers many of whom actively participate in the development of all industry codes. We provide regular updates through our association committees for those who are unable to participate directly.

Whilst we agree in principle that there are improvements that can be made to the process in general we do not support any change mandated via licence change. This would not represent a proportionate response to issues which can be easily managed via the application of common sense and improved co-operation between the relevant code administrators, Ofgem and the wider industry. The code governance review process to date has been valuable in highlighting areas of best practice which should now be left to the industry and relevant code administrators to progress. At a time when there are several big ticket issues to be addressed by government, industry and the regulator, it would be more pragmatic to leave further development and enhancement of this issue to code administrators and their relevant panel.

We have included answers to your specific consultation questions in APPENDIX 1 to this letter; however, we have several questions for clarification including the following:

1. Ofgem proposes that it appoints independent Chairs to the UNC and CUSC panels who will help embed the critical friend approach and support the self governance

framework. This aligns the CUSC and UNC with the BSC. How will Ofgem conduct the appointment process and at what cost? There is a process ongoing at present to find a replacement for the Elexon/BSC Panel Chair. It is therefore relatively easy for Ofgem to provide an indicative cost for this aspect of its proposals. What say is there for the industry with regard to salary? The BSC Panel are able to provide views on their Chairman's salary. What process has been outlined for the Chairman to ensure that the Code Administrator carries out the role of Critical Friend and increases the robustness of the industry assessments? Members have raised concerns about the linkage to the Ofgem Major Policy Review proposals that would empower Ofgem to raise and actively promote its own change proposals. In particular concerns about how appropriate it would be for Ofgem to appoint its own panel chair. If this was the case then we believe that it would not be appropriate for the Chair to retain the right to invoke a casting vote on proposals raised by their own paymaster. Should the proposal to extend its powers be proven to be legal then it would be more appropriate for DECC to make such appointments in future.

2. Critical Friend – clarification is required from each Code Administrator about how each organisation proposes to undertake the new duties. Clarification is also required from Ofgem regarding what the panel role and vires is in 'policing' this approach. Irrespective of size, companies only have a small number of staff dealing with industry change. Why does Ofgem believe it appropriate to expect that Code Administrators should discriminate against larger players by not extending their Critical Friend role to also assist during the change process? For example the BSC Panel was presented with Assessment Reports for two offshore related code modifications P237 and P238 on Thursday 10th September and was disappointed to find that both had attracted only four consultation responses. Further enquiries revealed that this was due to limitations of staff availability across the whole industry not just amongst the larger players. In addition the consultation proposes to define 'small' as those who supply more or less than one million supply points and would mean in terms of gas supply that companies such as BP, Exxon Mobil, Gazprom and Shell would fall into this category. Perhaps some more thought is required here

The consultation refers to costs associated with the hiring of additional staff to undertake this role of around £62.5k to £100k per annum. At present we are unable to comment on this estimate but should be able to provide a view once we have answers to the issues raised in this response.

3. It is disappointing to note that the consultation does not deal with concerns raised within the final Code Administrators Working Group that recommended significant improvements surround the lack of transparency around GEMA activities. This is an issue that has been raised by the Association on a number of occasions. In order to ensure industry is aware of GEMA concerns and is forewarned about the potential for regulatory intervention this situation must be rectified as a matter of urgency. Members strongly believe that Ofgem should lead by example

This consultation response has been compiled following discussions between our Electricity & Gas Committee, Electricity Trading Committee and Electricity Networks Committee. We have had presentations from Mark Feather, input from various industry code panel members and members of DECC and the Better

Regulation Executive. Answers to your specific consultation questions are included in APPENDIX 1.

If you have any questions regarding this submission would you please contact our Head of Electricity Trading, Barbara Vest, on 07736 107 020.

Yours sincerely

David Porter OBE
Chief Executive

(By email)

APPENDIX 1

Question 1 and 2 and 3: Which activities should be considered within scope of the ‘critical friend’ approach? What is the appropriate mechanism to introduce the ‘critical friend’ approach? Should a specific obligation be placed upon code administrators to assist smaller participants and consumer representatives?

Several Members have already been recipients of the services described within the scope of the ‘critical friend’ and have active and professional relationships with the various code administrators. It is difficult to understand why this would need to be formalised within a mandatory code of practise backed up via licence changes. This does not represent a proportionate regulatory response.

We believe that any perceived problem may be due to lack of identification of the relevant personnel, their roles and responsibilities. This could be easily rectified if code administrators maintained and published a cross codes contacts register in order that industry members know who the relevant expert is and how to contact them.

Increased transparency around discussions at the tri-partite code administrator meetings would also improve industry understanding about the steps being taken to share ‘good practice’ being exercised by the Code Administrators

Question 4: For the purposes of identifying those who will be offered greater assistance by the code administrator, what is the appropriate threshold between small and large participants for each category of party?

In terms of providing support to ‘small participants’ Members are mindful that support should be provided to all code signatories that require it whatever their size or business activity. Code changes may impact all or a subset of participants depending on the change. It is therefore paramount that code administrators maintain open dialogue before, during and after a change is progressed in order to ensure the intent of the proposal is appropriately articulated and understood by all. To deny or curtail in any way support to any code signatory would be unjustified discrimination. In addition any support must be provided in an independent manner in order to ensure that there can be no accusations of endorsement or support of the change in question.

Question 5: Is it appropriate to modify the Gas Transporters licence in order to provide voting member status to consumer representatives on the UNC?

Members are supportive of aligning the UNC arrangements with that of the BSC and CUSC however there are a couple of issues to be addressed. Should Ofgem chose to appoint a consumer representative then it would also be appropriate to consider substitution of an iGT representative to at least one of the GT’s presently appointed to the panel. This would address concerns around the use of the block vote option available to panel GT members. In addition it would be appropriate for the current right of the BSC panel chair to appoint additional panel members to be passed to DECC should a deficiency in expertise be identified particularly where Ofgem expand its role to one which is effectively judge and jury for its own proposals.

Question 6: Are there any other bodies in addition to Consumer Focus which the Authority should consider as potential consumer representatives on the UNC?

None spring to mind

Question 7: Do you agree that the Authority should appoint the chairs of the UNC and CUSC panel in addition to the BSC?

As we have previously stated the relationship between Ofgem and their appointed Chair is a difficult one in that the industry seeks independence and this becomes complicated where Ofgem both appoint and set the salary and terms of employment for this post holder. The Secretary of State regularly appoints the Chairs of a multitude of government committee's. Members would support future post holders being appointed in the same manner. This is the only potential approach which would ensure independence

Question 8: Should such an appointment be made only at the end of the current chairs ordinary tenure?

Yes

Question 9: How should the salaries of the independent chairs be funded?

It would be appropriate to make provision for the salary and associated costs of the independent Chair of the UNC and CUSC Panels via the price control as now, with costs recoverable from users of the transmission system

Question 10: What is the appropriate mechanism by which these proposals can be introduced?

Improve dialogue and transparency between code administrators, panels and code signatories generally. We do not see mandatory licence changes represent a proportionate regulatory response.

Question 11: Do you consider it necessary to include the powers to 'call in' and 'send back' modification proposals within the relevant licences?

The current change process has proven since vesting to be an adequate mechanism for industry to engage in sufficient dialogue to ensure that their views are taken into account, be that via engagement within modification groups and/or by written responses to consultations. Improved engagement by Ofgem throughout this process should ensure that 'call in' and 'send back' capabilities are not required. It would be a poor process that would need to have such provisions as a fallback in case of regulatory failings

There are many opportunities within the current change process for Ofgem to state that it has concerns over some element of the ongoing developments. Significant improvements from empowered Ofgem staff within the current workstream, modification group and panels is required in order to avoid such a situation from occurring in the first instance. It must reflect poorly on Ofgem if it ever invoked the

‘call in’ or ‘send back’ options as suggested here. The ‘call in’ proposal places unacceptable limitations on the current democratic, prescribed and time stamped process. The ‘send back’ process adds an unacceptable level of uncertainty, time and cost in direct opposition to the core objectives of this review. In addition the consultation once again does not address the issue around the need for Ofgem or the Authority to make timely decisions. The industry must work within clear time limited procedures to progress all change proposals it is appropriate for Ofgem to adopt the same approach. As an example of Ofgem adopting bad practise in this respect we note that CAP148, progressed via the industry process within the agreed eight month timescale and has now been with Ofgem awaiting Authority determination for almost **two years**. In addition we require clarification about who would be required to undertake any additional work following a ‘send back’ situation? Would this be industry via a modification/working group or code administrators?

Question 12: Do you consider that a licence modification requiring more explicit provision of reasons for recommendations is appropriate?

Members believe this to be an unnecessary regulatory burden as panels have adopted this practise already if they weren’t already undertaking the practise as the norm

Question 13: Do you consider that a regular scorecard evaluation of the code administrators’ conducted by Ofgem would be of value, particularly in influencing the behaviour of the code administrators?

This is not really Ofgem business. Code signatories who are paying for the services of the code administrators should be tasked with setting out their requirements, best undertaken by the elected panels that oversee the process on behalf of those who pay for the service. Ofgem, by its own admission has chosen to remain distanced from the process

Question 14: Do you consider that code administrators’ should be required to obtain and maintain ISO9001 accreditation for their processes?

Members would like to better understand what this would add and would therefore like to know how Ofgem obtained and maintains it’s ISO9001 if it has sought to obtain this certification