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18 September 2009

Dear Jon

### **Role of Code Administrators and Small Participant /Consumer Initiatives – Initial Proposals**

EDF Energy supports the majority of the recommendations contained within the initial proposals document and welcomes the moves towards enhancing the role of code administrators and the ability of Consumer Representatives to engage more actively with the code modification process. We do however have concerns in respect of the suggested Small Participant Initiatives. These concerns are focused on the definition of a “Small Participant” and the additional activities code administrators may be forced to deliver.

The definition of “Small Participant” appears to be flawed, as rather than solely capturing smaller companies with a modest customer base it will capture the UK representatives of multi national organisations as well as the smaller more relevant organisations. It cannot be reasonable to create asymmetric support arrangements for a proportion of the market that can already adequately manage its own involvement with the industry code modification process. A more appropriate approach to take would be for code administrators to administer market entry processes during which smaller companies could self certify their support requirements. This approach is described in more detail in the attachment to this response

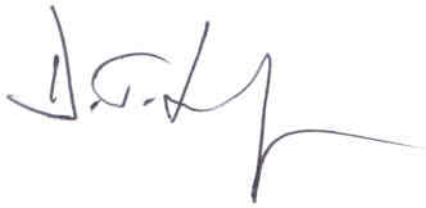
EDF Energy has been actively involved with the Code Administrator Working Group and is fully supportive of the work carried out by the group to date. We agree that a Code of Practice for code administrators is an appropriate mechanism to achieve convergence and transparency. Wherever possible, terminology, timescales and processes should be common across the Codes. We are encouraged by the collaborative and proactive approach taken by Code Administrators to date in relation to this proposed Code of Practice.

In addition we believe that it is vitally important that Ofgem actively engages in the Code Processes to ensure that they operate effectively and issues are addressed in a timely manner. Whilst this may require a reasonable resource requirement from Ofgem, we would note that Ofgem’s code team is probably larger than most of the regulatory teams of the largest energy suppliers. Active engagement from Ofgem will ensure that issues are addressed when required and information provided in the modification proposal and avoid significant delays in the modification process.

In summary, we welcome the approach Ofgem is taking with regard to reforming the industry Code arrangements and support the majority of the reforms set out within this consultation. We have responded to the specific questions in the attachment to this letter.

If you require any further information, or would like to meet with us in person to discuss our response, please contact Rosie McGlynn on 07875 111 488 or myself.

Yours sincerely

A handwritten signature in black ink, appearing to read "D. Linford".

**Denis Linford**  
Corporate Policy and Regulation Director

## Role of Code Administrators and Small Participant /Consumer Initiatives – Initial Proposals

### EDF Energy's detailed responses to questions

#### Chapter 3

#### **Question 1: Which activities should be considered within scope of the “critical friend” approach?**

The critical friend approach should encompass a role for the code administrator to carry out the following activities:

- Ensuring Modification Group and Panel members provide a rationale for their recommendations that is linked the Code objectives; and
- Ensuring terms of reference are specific enough to ensure a modification group does not run the risk of scope creep.

With regard to whether or not code administrators should “challenge” the analysis carried out by the Modification Group this could prove to be difficult as currently certain code administrators carry out analysis to support the development of modifications. If this is a requirement Ofgem intends to mandate then there will need to be a functional separation between the individuals within a code administrator who carry out the analysis and those who “challenge it”. Within the UNC analysis is either carried out by UNC parties or xoserve. The Joint Office does not currently have the vires or the resources to be able to carry out a “challenging” process in relation to UNC modifications and any supporting analysis provided. It is likely that that Code Administrator for the CUSC and UNC will requires additional financial and staff support in order to carry out these enhanced roles.

#### **Question 2: What is the appropriate mechanism to introduce the “critical friend” approach?**

Ofgem should provide a “straw man” of its preferred critical friend model to Code Panels for discussion and development. Once a model has the Panel’s approval Ofgem should raise a licence modification to implement the outcome. If the Codes had an independent company and board structure then these additional requirements could be included within service contracts alongside appropriate performance management tools such as Key Performance Indicators.

#### **Question 3: Should a specific obligation be placed upon code administrators to assist smaller participants and consumer representatives?**

An obligation should be placed upon code administrators to assist all new market entrants through a formal market entry process. This could then be utilised as the mechanism by which parties receive detailed guidance on the code modification process, the obligations relevant to them within the code and dedicated points of contact within the administrator. Each code administrator could provide a specialist advisor role to assist parties with questions on the code modification process etc. Code administrators could facilitate education seminars similar to those currently provided by the BSC and the MRA.

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

We are not supportive of the proposed definition of smaller participants as it is too broad and captures a large number of multi national companies who are currently able to interact effectively with the code governance arrangements. In particular we would note that this definition would capture BP, Shell, Statoil and GDF Suez as small participants, even though they are the largest gas suppliers in the UK. A better approach would be to have an either/or threshold. E.g. a large participant would be defined as any participant with more than 1 million supply points or who had supplied more than [10]% of the energy supplied to the UK in the previous year. This would ensure that developments in market share were taken account of whilst ensuring that support was only provided to those companies who truly needed it. This could also be combined with an entry processes across the Codes. By facilitating a market entry process code administrators will be able to form effective working relationships with new entrants who should be able to “self certify” as participants who would benefit from additional support for the first 2 years. It is unnecessarily burdensome to place an “obligation” on code administrators to offer greater assistance to a potentially large number of companies who do not actually require it. This will create additional unnecessary expense for the industry.

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

Yes this is the appropriate regulatory mechanism to utilise in order to provide Consumer Focus with a voting role at the UNC Panel. Although greater clarity is required as to how this would be implemented– would this be through the addition of a voting member to the UNC, or would there remain 10 votes at the UNC Panel, one of which was allocated to Consumer Focus. In addition we would question whether this vote should be exercised for self Governance proposals which have no impacts on Consumers?

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

Yes, a voting representative seat should be provided to an Independent Gas Transporter (iGT) – this seat would have restrictions applied to it. For example the iGT representative would only be able to vote on changes to those sections of the UNC or CSEP NExA which have an effect on Connected System Operators. The granting of a voting seat to an iGT representative should propel forward the resolution of governance and process issues between Gas Distribution Network Operators and iGT's.

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

We do not agree that the Authority should appoint the chairs of the UNC and CUSC Panels, as given the potential for Ofgem to draft modifications under the major Policy Review proposals conflicts of interests may arise. We are supportive of DECC appointing independent Panel chairs on behalf of the Secretary of State.

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

If the appointment of independent panel chairs is understood to be a key outcome of this review then this process should be completed within twelve months of the conclusion of the Ofgem Code Governance Review.

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

The salaries should be funded from a price control recoverable cost from users.

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

The proposals should be implemented via a licence condition on all relevant parties.

**Question 11: Do you consider it necessary to include the powers to “call in” and “send back” modification proposals within the relevant licence?**

Including the powers to “call in” and “send back” modifications within the relevant licence would be a pragmatic approach which we support, provided that these powers are only exercised under a restricted range of scenarios. There will need to be reasonableness tests that Ofgem must pass in advance of exercising this new power. However we believe that this should be accompanied by active engagement in the modification process to ensure that they operate effectively and issues are addressed in a timely manner. Whilst this may require a reasonable resource requirement from Ofgem we would note that Ofgem’s code team is probably larger than most of the regulatory teams of the largest energy suppliers. Active engagement from Ofgem will ensure that issues are addressed when required and information provided in the modification proposal and avoid significant delays in the modification process. In particular we would note that Ofgem was actively engaged in all of the meetings of the UNC Review and Development groups that developed the rules for a rolling AQ. They were present at the UNC Panel meetings when the proposal was issued for consultation, and yet they chose to wait until the UNC Panel was about to make a recommendation to raise issues. The outcome has been that this proposal has been left with the modification proposal for several months whilst they wait for Ofgem to identify what additional information they require. EDF Energy believes that this proposal will deliver significant benefits to consumers and needless delays are being caused as Ofgem failed to actively engage in the development process despite being at the meetings.

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

No this requirement can be made more explicit within the relevant modification rules.

**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 code administrators?**

There would be benefits in some form of performance monitoring of code administrators. However there needs to be an improved understanding of who the “customer” is. Would the scorecard be based purely on whether Ofgem is satisfied that for example the requisite number of hours have been spent assisting “smaller

participants”? The code administrators performance should be tested against a range of measures agreed between Ofgem and relevant the Code Panel. The evaluation exercise should be undertaken by an independent agency who should then present the results back to Ofgem and the Code Panel. Action plans should then be designed following the results discussion. An alternative effective performance management technique would be to put the administration of the Codes out to tender every five years.

Codes with existing service contracts in place e.g. the MRA, SPAA and DCUSA already carry out regular customer surveys as a best practice aspect of their service contracts. Once the scorecard/evaluation approach has been baselined for the BSC, CUSC and UNC it would be worthwhile assessing whether those customer surveys should be updated to better align with the scorecard approach.

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

Yes as this will embed a more focused approach to efficient process management.

**EDF Energy**  
**September 2009**