

18<sup>th</sup> September 2009

Andy MacFaul  
Head of Better Regulation  
Office of Gas and Electricity Markets  
9, Millbank  
London  
SW1P 3GE

Dear Andy,

**Code Governance Review: Major Policy Reviews and Self Governance Initial Proposals**

Energy Networks Association is funded by the major licensed electricity and gas transmission and distribution companies in the UK. We welcome the opportunity to respond and contribute to the Code Governance Review regarding Major Policy Reform and Self Governance Initial Proposals.

Overall we support the proposals made to introduce the two additional modification pathways, Major Policy Review and Self Governance across all codes. We believe that this change will ensure a more efficient modification process across codes enabling greater Ofgem focus on the current environmental and security of supply challenges.

There are however areas where we need further clarification including the MPR process to be followed by Ofgem, licence changes and the modification consultation/decision process following an MPR. Please see further information in our detailed response below.

Our detailed response is structured along the themes of the consultation document:

- Code Modification Pathway (Filtering Process)
- Major Policy Reform (MPR)
- Self Governance

Code Modification Pathway (Filtering Process)

We support the proposal made that the industry allocate the modification proposals, as it will minimise constraints on Ofgem's time, whilst allowing the industry panels to exercise their expert knowledge to allocate modifications correctly. We support Ofgem being able to override any decision made by the industry and allocate a modification as an MPR. We would however expect that any re-allocation by Ofgem should be carried out in a timely manner to ensure the modification is not subject to repeat processes.

With regard to the filtering criteria for Path 2 we support the addition of “non-trivial impacts on the operation of the relevant gas or electricity system”, ensuring that the networks are considered.

We fully understand and agree with Ofgem’s reasoning for proposing to subsume related modifications into an ongoing MPR process, but would expect that any representations made to raise an urgent modification and Ofgem’s decision, should be visible to the industry. However an appeals process should also be in place for code signatories to utilise if Ofgem were to reject the modification.

Redirecting any modification until a decision is taken is a reasonable process to ensure the change is considered in an appropriate way. The number of redirections however must be monitored as too many redirections may imply that the filtering process may need review.

### Major Policy Reform

As stated in our response to the initial consultation we are fully supportive of the MPR process but do not feel that the current proposals are robust. The proposal to enable Ofgem to direct the topic of an MPR, carry out the review, raise or give detailed instruction for modifications and have the final decision does not engage industry nor, we believe, serve the wider interest of the market. In effect this proposal gives Ofgem judge and jury status.

We appreciate that Ofgem have, in this consultation document, expanded on the appeals mechanism and the rights of parties obliged by licence to raise modifications. We would like to emphasise the importance of a need for an individual company right of appeal to safeguard the industry whichever of the options is chosen.

Although we are pleased that Ofgem plan to consult throughout the MPR process and have set out some possible steps to be taken, we believe that more detail of what Ofgem propose to do is required. MPR items will have a significant impact and direction on the future of the industry e.g. smart metering, and therefore should follow a robust and transparent process. At the very least we would expect this to include a set high-level process for each MPR, including a timetable of events and decisions. This will give industry the assurance that Ofgem will follow a robust procedure and timetable, thus ensuring effective industry participation and resource, dovetailing with other relevant industry change processes.

In our response to the December consultation we stated that further information regarding the licence changes was needed for Options 1 and 2 and do not believe that this has been satisfactorily resolved through the recent consultation document. We still believe that clarification is required around the suggested licence changes, such as which licence will be affected and how this will affect resourcing for the affected parties.

We would also like clarification around paragraphs 4.36 and 4.37 as these imply that industry drafted modifications through licence obligation, following an MPR, will be sent directly to the Authority for decision. At the same time the document suggests that if modifications are drafted by Ofgem they will follow the set industry change processes. We would like to stress in the strongest terms that all modifications should follow the set industry change process and proceed through formal governance arrangements.

It is positive that Ofgem propose to allow a time window for alternative modifications and that no restrictions have been placed on modifications following the conclusion of an MPR. We support this proposal, as this will allow the industry to raise and consider alternative modifications and in turn will ensure that any issues identified following the decision to implement an MPR modification can be resolved.

### Self Governance

ENA welcome the proposal that industry will be able to decide on the panel and voting structures for self governance.

Although we agree with the proposal that consumer representatives should be involved in the modification process and be able to raise modifications, this does seem superfluous in regards to self-governance as the modifications in this area will have no impact on customers as per the filtering criteria.

We are pleased that an appeals process will be in place and are happy with the criteria outlined. In addition the proposal to create a Forum to assist in resolving issues before these reach Ofgem is a positive step and has already proven to work well in existing code arrangements, which have such a facility. We do however consider that criteria should be set in order to define what constitutes a "frivolous" appeal, which would be rejected by Ofgem. We believe that further thought is warranted on the time period in which an appeal can be made. This should consider the time required by industry, through the Forum, to hold discussions to try to resolve the issue and secure that appeals do not arise due to time constraints on industry parties.

We hope that you find these comments useful.

Yours Sincerely

A handwritten signature in blue ink that reads "David Smith".

David Smith  
Chief Executive  
Energy Networks Association