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Code Governance Review: Major Policy Reviews and Self-Governance – Initial Proposals

Dear Andy,

Thank you for the opportunity to comment on the above consultation. This response is provided on behalf of the RWE group of companies, including RWE Npower plc, RWE Supply and Trading GmbH and RWE Innogy.

We provide detailed comments on the consultation questions below but would make some general observations on regulation.

We do have concerns about any proposals that would provide the Authority with more control on Major Policy Reviews. Our experience at the moment is one of increasing regulation in an industry that is finding it difficult to operate in the current climate and is also trying to transform itself into a low carbon future.

We believe that role of the regulator should reflect the current market conditions and the transformation within our market that is required to deliver the low carbon future whilst maintaining security of supply, and not one of responding to increased political pressure.

Consultation questions

Chapter 2: Key issues and objectives

Question 1: Do you agree with our assessment of the deficiencies of the codes governance arrangements and do you agree that there is a case for reform? Are the proposed reforms a proportionate response to the problems with the *status quo* that we have identified?

At a time when the energy industry is responding to the challenge of transitioning to a low carbon economy, the need for more regulation should be balanced against this. We are at present experiencing a significant increase in the regulation coming out of Ofgem which seems in part a response to increased pressure being put on Ofgem from a number of agencies, including government.

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We believe that the code governance process has evolved to meet the changing needs of the energy market and will continue to do so, given the chance. Therefore we do not believe that the proposed reforms provide a proportionate response.

Question 2: Would the MPR process enable key strategic issues to be progressed more effectively and efficiently with consequent consumer benefits?

We believe that there is sufficient flexibility within the current codes to enable a process similar to the MPR process to take place. We have seen a number of such processes over the years; gas exit reform, cash-out review. The recent TAR process had many attributes in the way the process ran and it could be argued that if not for one issue, it may have reached a conclusion without the secretary of state taking his powers under the Energy Act 2008. There is a remedy for this issue outside of the MPR process. Therefore on balance we do not believe that the MPR process described will add to the existing processes.

Question 3: Would a self-governance route be suitable for a significant proportion of modification proposals?

We agree that the self governance route described will create a more efficient process but believe that Ofgem has over estimated the number of modification proposals that will follow this route.

Question 4: If both the MPR and self-governance routes were implemented, is there a case for retaining an improved *status quo* path?

We believe that should both the MPR and self-governance routes be implemented then the “improved status quo path” is essential.

Question 5: If this package of reforms is implemented, should it apply to all codes? If not all, which? Should the introduction be phased?

As MPR’s are likely to impact across more than one code then it is important that the process is consistent across all codes, therefore we believe that it should apply to all codes.

For similar reasons the self governance proposals should extend to all codes.

Chapter 3: Determining the code modification pathway

Question 1: Do you agree that, once a modification has been raised, the filtering decision should be taken by the relevant panel, subject to an Ofgem veto that could be deployed at any point before a final decision on the proposal has been made?

This would seem to be the most efficient process.

Question 2: Do you agree with the proposed criteria that should be applied to assessing whether a modification falls into Path 1 or Path 2? Is further guidance necessary?

We believe that the criteria as defined should be adequate, should it prove necessary to issue further guidance then this can be issued at a later date.

Question 3: Do you agree with our proposals for redirecting modification proposals between Paths 3 and 2?

This would seem to be a sensible proposal.

Question 4: Should code parties be able to make requests to Ofgem at any time that they can raise an urgent modification proposal to existing arrangements that are the subject of an MPR? Do you agree that there should be a moratorium for non-urgent modifications to existing arrangements that are the subject of an MPR?

We would hope that the proposed MPR process would be flexible enough such that the raising of urgent or non-urgent proposals was not required. If a party has a relevant issue to the MPR we would hope that this would be included, if it is not relevant to the MPR then it should be subject to a stand alone modification proposal.

Chapter 4: Major Policy Reviews

Question 1: Do you agree that Ofgem should retain the flexibility to vary the MPR process according to the complexity of the issues involved?

Flexibility can be built into a more structured process; we would prefer to see more detail in this area.

Question 2: What are your views on the options for determining the outcome of an MPR?

It would seem sensible to maintain flexibility in the level of detail provided as the outcome of a MPR.

Question 3: Do you support our proposal that the industry should be given the responsibility of drafting appropriate MPR-related code modifications, with Ofgem having a power to draft them only if the industry fails to do so within as specified time period?

We believe that this is an appropriate balance with the Ofgem power providing the appropriate incentive, having said that, we would like to see further clarity on how this would work in practice. A licensee may be directed to raise a modification which they did not fully support and may want to subsequently use the appeal route. It would be useful understand Ofgem's thinking on this possibility.

Question 4: What safeguards and appeal mechanisms should be in place?

We believe that the present appeals mechanism is most suitable to this process.

Question 5: Do you support our proposal for a time-window in which subsequent code modifications could be proposed after the completion of an MPR?

We would hope that whilst this proposal is needed as a back stop, that in practice it would not be required, on the basis that the MPR process is open and inclusive.

Question 6: Do you agree that Ofgem should be able to revise its MPR conclusions in the light of subsequent new information?

Again, whilst this clause is probably necessary we would consider that the MPR process has failed if anything other than minor changes were made via this route.

5. Self-governance

Question 1: Do you agree that the industry should draw up proposals for panel and voting arrangements and submit them as part of a self-governance package to Ofgem for approval?

We must be careful that what is proposed here does not overlap with the work that CAWG is carrying out in developing a code of practice.

Question 2: Do you agree that there should be general appeal rights equally applicable to all code participants? Do you agree with the proposed appeal grounds?

We agree that there should be a general right of appeal applicable to all code participants, the grounds of appeal outlined in the document would seem appropriate.

Question 3: Do you agree that Ofgem should hear appeals of self-governance modification decisions? Do you support the proposals in respect of interim forums, time limits and frivolous or vexatious appeals?

We agree that in terms of the self-governance arrangements, that Ofgem should hear the appeals. The proposals in respect of interim forums, time limits and frivolous or vexatious appeals would appear sensible.

Yours sincerely

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Economic Regulation