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## **Code Governance Review: role of code administrators and small participant/consumer initiatives – Initial Proposals**

Dear Jon,

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 are concerned that the proposals, as they stand will increase the burden of regulation in an industry that is already responding to a number of major regulatory initiatives (such as smart metering) that are required in order to decarbonise the energy industry. We believe that the regulator should identify the key areas that are required for regulatory intervention and we are not convinced that the proposals in relation to the role of code administrators and small participant/consumer initiatives should be a priority area for action.

### **Consultation questions**

#### **CHAPTER: Three**

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

***We are not convinced that either the critical friend or active secretariat roles are required but should this route be followed then we believe that code administrators should act equally on behalf of all participants.***

**Question 2:** What is the appropriate mechanism to introduce the 'critical friend' approach?

***Should this route be taken then a lighter touch regulatory approach would be to include it within the proposed code of practice.***

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

***We do not believe it should be the role of the code administrator to discriminate in favour of some participants.***

**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?

***We do not believe that it is appropriate to discriminate between different classes of party and that the role of the code administrators should be to assist all parties. Should Ofgem decide to create separate thresholds then we do not agree that large organisations with a small presence in this country should be classed as small participants, the reason for doing so appears to be one of an easy classification.***

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

***This would be consistent with electricity and seems to be the appropriate mechanism. We still have some concerns that there may be times when the consumer representative effectively has the casting vote and would suggest that if this were the case then the independent chair should have the deciding vote. Consumer representatives should recognise their responsibility to be fully informed of the issues they are voting on which may require their participation in the development of modification proposals. If they are unclear about issues, or have any material interest in a modification proposal, we would expect them to abstain.***

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

***No comment.***

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

***We have not been convinced that the benefits of this proposal outweigh the costs, but if Ofgem decide to go down this route then we believe the Authority is in the best position to appoint the chairs. As with the consumer representative, independent chairs will have a responsibility to be fully informed of the issues the panel is voting on. The role of the independent chair therefore should extend beyond the simple administrative process of chairing the panel and supervising the vote.***

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

***This would seem to be sensible.***

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

***They should be funded as part of the price control but it should be clear that the chairs are acting independently of the funding organisations.***

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

***The proposal contained within the consultation would seem appropriate.***

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

***We believe that there should be sufficient incentives on all parties, including Ofgem, to ensure the process works such that this is not required.***

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

***Should a code of practice be developed then we believe that this should be part of that code.***

**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?

***No we don't - the test should be, does this add value, and in our opinion it doesn't.***

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

***Some of the proposals within this consultation do not seem to add value but just increase regulatory burden and increase cost, this seems to be a case in point.***

Yours sincerely

Alan McAdam  
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