



Jon Dixon
Head of Industry Codes & Licensing
Ofgem
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Dear Jon,

CODE GOVERNANCE REVIEW – ROLE OF CODE ADMINISTRATORS AND SMALL PARTICIPANT/CONSUMER INITIATIVES – INITIAL PROPOSALS

Thank you for the opportunity to respond to this Consultation Document. This response is submitted on behalf of ScottishPower Energy Management Ltd, ScottishPower Generation Ltd, ScottishPower Renewable Energy Ltd and ScottishPower Energy Retail Ltd.

We agree with Ofgem that the deficiencies identified with the current codes procedures in relation to the role of code administrators and small participants can be addressed through relatively straightforward changes to the way in which code administrators and panels operate and do not require fundamental changes to their structure or funding. The current code governance review has highlighted areas of best practice and this is now being progressed without the need for formal licence modifications.

In our experience the governance arrangements under the Balancing and Settlement Code (BSC) are the most effective and we can see benefits from aligning the Connection and Use of System Code (CUSC) and the Uniform Network Code (UNC) arrangements with those of the BSC where appropriate. We believe that all the changes which would be beneficial can be implemented by the industry and code administrators through changes to the code modification rules.

We agree with the aims of Ofgem's proposed 'critical friend' approach but do not consider there is a need to formally embed this in the codes.

We believe that the key to ensuring small participants and consumer representatives are not disadvantaged is the quality of the modification reports. Provided these reports produced at the different stages of the modification process set out clearly and in understandable terms the arguments for and against the modification together with the estimated impact on all parties then no party should be disadvantaged. We agree it would be worthwhile to ensure each code has the required resources to produce reports to this quality. This would benefit major players as well as small participants and consumer representatives as the impact of proposed modifications would be clearer with less resources needing to be provided by each major player.

Our responses to the detailed questions in the consultation document are attached below.

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I hope you find these comments useful. Should you have any queries on the points raised, please feel free to contact us.

Yours sincerely,

Alex MacKinnon
Regulation and Trading Arrangements Manager

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

We agree with the activities set out in the initial proposals as being within the scope of the ‘critical friend’ approach. All modifications with significant impacts on code signatories are assessed through working groups or expert groups and thus the question is whether these groups provide the services to be included in a ‘critical friend’ approach. In our experience this has been the aim of all of the groups with which we have been involved.

Question 2: What is the appropriate mechanism to introduce the ‘critical friend’ approach?

We do not consider that there is a need to formally embed and describe the ‘critical friend’ role within the CUSC, UNC and BSC. If the situation arises where Ofgem feels a modification report falls short of the ‘critical friend’ standard then under the current framework Ofgem can reject the modification or seek to remedy the situation through its own impact assessment. In our experience very few such situations have arisen. We do however accept that each code may require more resources to ensure that all reports meet the ‘critical friend’ standards.

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

We do not see the need for a specific obligation to be placed upon code administrators to assist smaller participants and consumer representatives. For all modifications with significant impacts on any code signatories there is a requirement for the modification report and any Ofgem impact assessment to assess the impact on all signatories including small participants and customers through their suppliers. Small participants and consumer representatives have access to the modification reports and impact assessments and thus the key factor is for these reports to clearly set out the impact on all classes of signatories.

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

Code administrators do not discriminate between signatories impacted by changes and we do not believe it would be correct for them to do so. It would be very difficult to appropriately identify a threshold in relation to a specific code under which a signatory would receive special support. It is the nature of the energy industry that some parties with a low market share in one area of activity are significant players in other parts of the energy industry or indeed other non-energy sectors. It would not be appropriate to give large companies special support.

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

In our experience the governance arrangements under the BSC and CUSC are the most effective and thus we support aligning the UNC arrangements with those of the BSC and CUSC where appropriate. We agree it would be appropriate for consumer representatives to have voting member status on the UNC but there may also be other changes required to align UNC governance more closely with that for the BSC and CUSC.

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

We do not consider that any other bodies need to be considered in addition to Consumer Focus to align UNC governance with that for the BSC and CUSC.

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

We agree that the Authority should appoint the independent chairs of the UNC and CUSC Panels in addition to the BSC. Independent panel chairs would be key in delivering the 'critical friend' approach without the need to formally embed and describe the approach within each code.

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

We agree that any such appointments should only be made at the end of the current chair's ordinary tenure.

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

The salaries and associated costs of the independent chairs of the UNC and CUSC Panels should be recovered on the same basis as other costs associated with modifications through the relevant price control from all users of the transmission systems.

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

We do not see the need for licence modifications to National Grid's licence and to the gas transporters' licences for National Grid and the gas distribution networks to give effect to these proposals. The procedure for appointing the chair of the BSC and the chair's voting rights are set out in the BSC and a similar approach could be adopted for the CUSC and UNC bringing these arrangements into line with the BSC through code changes.

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

We do not see the need to include powers to 'call in' and 'send back' modification proposals within the relevant licences. We can see a case for 'send back' powers in order to avoid the delay resulting from a formal veto but believe this could be set out in the relevant codes. We do not see the need for formal 'call in' powers as there are many opportunities within the current framework for Ofgem to influence the process. Improved engagement by Ofgem would obviate the need for such powers.

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

We do not consider a licence condition requiring more explicit provision of reasons for recommendations is appropriate. The current practice under the BSC in this regard is sufficient and should be adopted by the other codes. We feel it is sufficient for panel members' views to be reflected in the final report as at present and for the panel as a whole to explain the reasoning behind its decision.

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?

We feel a scorecard evaluation of the code administrators is a step too far. We feel increased dialogue between the code administrators on best practice is the key.

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

We are unsure as to what this would add.