

Andy McFaul  
Head of Better Regulation  
Ofgem  
9 Millbank  
London  
SW1P 3GE

25 September 2009

Dear Andy,

**CODE GOVERNANCE REVIEW: MAJOR POLICY REVIEWS AND SELF-GOVERNANCE – INITIAL PROPOSALS**

Thank you for the opportunity to respond to your Consultation Document of 24 July 2009. This response is submitted on behalf of the ScottishPower Group and ScottishPower Renewable Energy Limited.

We are supportive of an efficient system for dealing with code modifications and accordingly welcome the opportunity which the current review brings for looking again at the process. In particular, the proposal for self-governance on minor issues, with appeal to Ofgem, looks to us to be a great improvement.

We think more work needs to be done on the major policy review issue. Ofgem has portrayed the problem as one of “tackling head-on the scope for vested interests to delay key rule changes” (Lord Mogg, 28 July 2009). However, this may not be the entire picture. From the industry side, the problem has been that Ofgem sometimes has a view on the ideal solution which does not garner support from other stakeholders. In many cases, when the issue has been put before an independent party for a decision, that party has backed the industry view.

Ofgem’s initial proposals have been usefully refined from earlier ideas, in that they now recognise that the rights of appeal to the Competition Commission ought not to be abridged. However, we doubt that the current proposals will have the intended effect of speeding decisions. In particular:

- The MPR process adds numerous extra stages to the modification process, potentially slowing rather than speeding the process
- We question whether an obligation to prepare a modification to implement MPR conclusions is workable. A party asked to draft something to which it objects is hardly likely to come up with a prompt, well crafted and effective option. The current “informal” process seems to work and we would have no objection to Ofgem being permitted to draft its own modifications as a backstop.

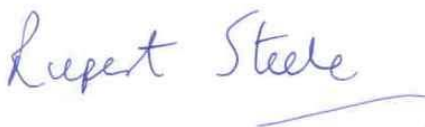
- We are concerned that the MPR process will cause the debate to be tramlined prematurely into the solution proposed by Ofgem without an adequate opportunity to consider alternatives which may well be more efficient. This remains a problem despite the introduction of an alternatives "window" in the Initial Proposals. Such exclusion of alternatives could lead to sub-optimal outcomes and/or to more appeals to the Competition Commission, which might lead to the initiative being lost altogether.

We recognise that there is a benefit in bringing together work across multiple codes where a piece of policy is complex. Ofgem could helpfully take a lead here and we have no objection to it bringing its solutions to the table, either in its own name or with help from others. But we think such proposals need to be *pari passu* with other options, equally subject to review by working groups and the possibility of alternatives. MPRs along these lines would be a practical enhancement of the current governance.

In summary, we think there is room for enhancement of the arrangements for dealing with controversial or complex code modifications. But we think that the proposed MPR process should be simplified into something with a lighter touch. This would be much more likely to be swift and effective.

Our responses to the detailed questions in the consultation document are attached in the Annex below. We would be grateful for an opportunity to discuss these issues with Ofgem, but in the meantime if you have any questions please contact me using the details printed on the previous page.

Yours sincerely,



**Rupert Steele**  
Director of Regulation