

Legal & Regulatory

Lakeside West

30 The Causeway

Staines

Middlesex TW18 3BY

Telephone 01784 874 000

Facsimile 01784 878719

www.centrica.com

Mark Cox
Associate Partner, Industry Codes and Licensing
Ofgem
9 Millbank
London
SW1P 3GE

8th December 2009

Dear Mark

RE: Codes Governance Review Initial Proposals – illustrative licence modification drafting

We strongly support the principles of the Code Governance review, and continue to believe that without appropriate reform there is a risk that future developments in the UK energy market could be hampered. We are therefore pleased that Ofgem are now considering the changes which will be required to industry arrangements in order to give effect to these proposals, and we confirm that the drafting as outlined in your letter of 27th October broadly accords with our understanding of the changes. We do however have a number of general comments which we believe need to be addressed before any drafting is formalised. These are set out below, with some more specific comments on the drafting contained within Appendix One (attached).

1. We have previously requested that Ofgem do more to document the process and procedures which will dictate how the MPR process will operate in practice and how individual parties' rights will be guaranteed. For example, it is essential that Ofgem set out in advance of the formal licence drafting how a topic will be chosen for an MPR, how the pathway for industry change will be determined, under what circumstances will Ofgem exercise the proposed backstop powers and how Ofgem will undertake to have effective consultation during each MPR. These points are expanded on further in our response to Andrew McFaul on Ofgem's initial proposals, dated 18th September, but are vital if parties are to have confidence that the process has the sufficient controls within it to make it work effectively.
2. Furthermore we are concerned that it is still not clear how Ofgem will provide an effective right of appeal over any change proposal an MPR will produce. We have a different interpretation of the appeal rights currently contained within The Electricity and Gas Appeals (Designation and Exclusion) Order 2005, and believe that under section 4 of the Order any appeal to the Competition Commission can only proceed if Ofgem reject a modification. It is vital that an Ofgem decision to accept a modification resulting from an MPR is subject to the right of appeal, and we believe that Ofgem need to set out measures now to ensure that they do not act as the appellate body where it has decided to accept what is in effect their own modification.
3. We also note that in the proposed licence drafting (Appendix Three of your letter) Ofgem propose to provide a mechanism for them to directly raise modifications following the completion of a Major Policy Review, without reference to any other industry party. Our understanding was that Ofgem would instruct an industry party to raise the modifications necessary to give effect to their high level proposals. We consider that this approach offers great flexibility for parties to find the solution which works best in the relevant code, and are concerned to see that Ofgem may now provide a route to ignore this in favour of a more centralised approach. In addition, the drafting should provide limitations on Ofgem's power to raise a modification such that it only occurs where

they can demonstrate the proposals raised by the industry are inadequate or fail to achieve the desired outcome of the MPR.

4. Finally, and in respect of Ofgem's proposed changes to facilitate changes to charging methodologies, we would like to stress the importance of placing obligations on Network Owners to provide all relevant information parties may require in order to raise modification proposals. Without this obligation being included in the proposed drafting any reform in this area will be ineffective and merely serve to entrench the issues which suppliers face today.

We consider these issues can be easily resolved between now and the finalisation of Ofgem's proposals, and are happy to work with you in order to achieve that goal. If you would like to discuss this, or any aspect of Centrica's position, please telephone me on 07789 570501.

Yours sincerely


David Watson
Regulatory Manager, British Gas

Appendix One - Detailed points on Licence Drafting.

These comments apply equally to the BSC, CUSC and UNC licence drafting.

5. Major Policy Reviews

- 5.1 We note that alternative modifications raised during the Major Policy Review Proposal Period must be "*sufficiently developed*" in the opinion of the Authority before they can progress, and would like to make stress that the CUSC, BSC and UNC already have existing procedures in place to ensure this. Any new Ofgem power in this area should not negatively impact these procedures.
- 5.2 We welcome moves by Ofgem to ensure that Panel members' discretion is not fettered when considering modifications which have resulted from an MPR process. We would, however, like to see this extended to all Code users and relevant industry working groups as they will also be required to help develop the appropriate modifications, but should not be prevented from dissenting.
- 5.3 As we have mentioned in the main body of this response, the ability of the Authority to propose modifications should be limited to where the industry has demonstrably failed to raise or develop appropriate modifications.
- 5.4 Within the BSC licence drafting, paragraph 13B(b) should have the word "*better*" inserted before the word "*facilitate*".
- 5.5 We note that the Energy Bill is starting to progress through Parliament and note that there may be need to revisit the proposed licence drafting in this consultation once the provisions of this Bill become clearer.

6. Code Administrators and Small Participants/Consumer Initiatives

- 6.1 We do not believe it is necessary for small participants and consumer representatives to be specifically referenced when considering how the Code Administrator ensures modifications are communicated, as the existing phrase "*BSC parties and such other persons as may have an appropriate interest in it*" suffices.
- 6.2 We believe it would be helpful that when referring to the obligation on Code panels to report the rationale of any modification decision to Ofgem, the word "*detailed*" is defined.
- 6.2 We believe that the definition of a "*small supplier*" should be amended so as also to reflect either group turnover or volume of energy traded. The current definition has the unfortunate consequences of defining some of the world's largest companies as "*small suppliers*".

