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8 December 2009

Dear Mark

### **Codes Governance Review Initial Proposals - illustrative licence modification drafting**

The key points of our response to your consultation are as follows.

- We continue to support in principle a governance process which allows the consideration, production and implementation of major policy issues in a robust and efficient manner.
- We recognise that the illustrative licence drafting has been issued in advance of Ofgem's consideration of individual party responses to the consultations on Code Governance and does not therefore represent Ofgem's final thinking on how to modify the affected licences.
- Our comments on the illustrative licence drafting are provided without prejudice to our earlier comments on Ofgem's initial code governance proposals.
- We do not consider that Ofgem's current proposals for Major Policy Review contain appropriate regulatory checks and balances given the increased powers Ofgem would have to direct change.
- We support the proposals on self governance as the efficiencies derived will deliver benefits to all parties and ultimately customers.
- We support option three out of the proposals on charging methodologies, as the proposed changes will deliver cost and resource efficiencies. They will also support greater independent accountability of the governance of charging methodologies.
- We would prefer new discrete licence conditions to be drafted to implement these initiatives, rather than for it to be done by amending existing licence conditions.

The majority of our comments relate to the drafting associated with Major Policy Reviews, as this initiative has the greatest potential impact.

The method by which the Authority will initiate and undertake a Major Policy Review is still unclear. In particular, there should be a credible process by which Ofgem

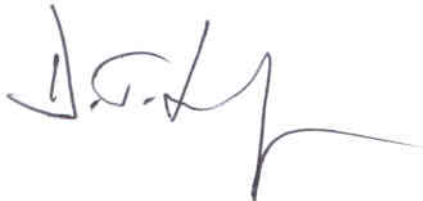
demonstrates to the industry and to the Authority the necessity of the MPR. While we understand the attraction of a flexible MPR process, Ofgem should clarify the process within Ofgem by which papers will be submitted to the Authority; these papers should also be provided to the industry and made available to the respective Code Panels. There will need to be a more concerted communications approach than simply referencing potential topics for an MPR within Ofgem's Corporate Strategy. Ofgem also needs to commit to working collaboratively with industry experts in order to achieve the most expedient outcome for all. We are concerned that the MPR process is still in development stage and there remains a risk of a partially thought through policy objective being imposed on the industry that increases regulatory risk and undermines investor confidence.

Further work is required on the proposals for the Role of Code Administrators and the Governance of Charging Methodologies; however, this should be relatively straightforward. Amendments are required to remove the definition of Small Participant and to create an overarching obligation on Code Administrators to offer assistance to all parties. For charging methodologies, additional work is required to define when parties can raise changes and how the relevant objectives of the Codes can be aligned.

We have provided commentary against each Annex in the attachment to this letter.

If you require any further information or would like to meet with us in person to discuss our response please contact Rosie McGlynn on 07875 111 488 or myself.

Yours sincerely

A handwritten signature in blue ink, appearing to read "D. Linford".

**Denis Linford**  
Corporate Policy and Regulation Director

## Attachment

### Codes Governance Review Initial Proposals - illustrative licence modification drafting

#### Annex 1 Major Policy Reviews and Self Governance

##### General commentary

Does the definition of Major Policy Review need to be widened to take into account Ofgem's intentions that issues that required changes to multiple codes could be encompassed within one package?

Where the Authority "vary or revoke that direction" i.e. as found in para 4C of SLC C3 it would be helpful for additional guidance to be provided – how materially can the direction be varied? If the variation is substantial will a secondary approval process have been followed by Ofgem? Also Ofgem should provide an explanation as to why the direction has been varied or revoked with reference to its principal objective and/or statutory duties.

Ofgem has indicated that any modification raised following a Major Policy Review will be subject to the standard modification development and review process – this needs to be explicitly stated within the relevant licence conditions.

##### Drafting commentary

Where common drafting has been used across the BSC, CUSC and UNC please take our suggestions set out in relation to the BSC to be common also.

#### Electricity Transmission Licence: Condition C3. Balancing and Settlement Code (BSC)

4.a the drafting should read "the Authority in accordance [with] paragraph" rather than "the Authority in accordance paragraph"

4B remove (as may be specified in the BSC) as it is obvious that the "relevant panel body" will be the Code Panel. This approach should be applied throughout the drafting. The square brackets should also be removed.

13A the panel body should be required to consult parties as to whether a modification proposal should be classed as trivial and subject to the self governance regime prior to finalising its view.

14 self governance notice period – this needs to be better defined as it is unclear exactly when the Authority will decide to accept or reject a Panel Recommendation

#### Annex 2 Code Administrators and small participants/consumer initiatives

We are supportive of the suggested amendments to the licences required in order to implement the enhanced roles of code administrators other than in the following areas:

### *Definition of Small Participant*

As discussed at length at the Code Administrators Working Group the definition of small participant is problematic and may be create unnecessarily bureaucratic and burdensome activities for Code Administrators. We do not support the introduction of volume or customer number thresholds into the Codes, rather we would prefer a generic obligation on Code Administrators to provide support to all parties. The definitions of small distributor/generator/supplier should therefore be removed from the drafting.

### *Independent Panel Chairs*

In our response to the Role of Code Administrators consultation we made our preference clear that DECC should approve and appoint Independent Panel Chairs to Industry Code Committees and this remains unchanged.

### **Annex 3 Charging Methodologies**

We are supportive of the suggested amendments to the licences required in order to implement option three to support revisions to the governance of charging methodologies other than in the following areas.

#### *Time Period/ Window for Proposing Changes*

We believe that it would be more appropriate to allow proposals to be raised at any time, with an expectation that any decision notice would align with the change notification timescales.

#### *Relevant Objectives*

Further work needs to be undertaken as to how the relevant objectives within the codes will be aligned/updated. In particular we would note that the relevant objectives for code proposals are different to charging methodologies.

**EDF Energy**  
**December 2009**