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Dear Mark

## **Codes Governance Review Initial Proposals – Illustrative Licence Modification Drafting**

Thank you for the opportunity to comment on the above paper.

We welcome the publication of illustrative licence drafting in order to aid understanding of Ofgem's initial proposals for Major Policy Reviews and Self Governance, the Role of Code Administrators and Small Participant/Consumer Initiatives, and the Governance of Charging Methodologies. We set out our views on Ofgem's initial proposals in our responses to the consultation papers (18<sup>th</sup> September and 9<sup>th</sup> October) and we will not therefore repeat them here. However, we do have a number of specific comments in relation to each Annex which we have set out in turn below.

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

We note in the covering letter that Ofgem refer to the STC in the list of codes which will require associated licence amendments. As we have stated in earlier responses, we would be strongly opposed to the STC being included within the scope of this review as it is a tripartite agreement with legally defined property rights defining how the parties carry out their licence obligations. The arrangements in the code are purely procedural between the parties, do not affect other industry players and in any case are subject to regulatory oversight. As such, the STC should not form any part of the review of the multi-participant governance codes and we would welcome confirmation from Ofgem that the STC will not be included in any final proposals.

As you know, we have significant concerns about Ofgem's proposal to introduce an open-ended, generic licence condition under the Major Policy Review proposals. We note that the majority of respondees to Ofgem's initial proposals on Major Policy Reviews expressed similar concerns with such a generic licence condition. Should, following these responses, Ofgem decide to amend their proposals to provide for Ofgem to raise modification proposals itself (but not direct licensees to raise modifications on Ofgem's behalf), this would simplify the licence drafting considerably.

We would also welcome clarification from Ofgem on which companies' licences would be amended to enable Ofgem to direct a licensee to raise modifications on its behalf. That is, we believe that it should only be NGET for the BSC and CUSC (as per the illustrative licence changes) rather than all distribution, supply and generation licensees. Similarly, the changes required under the UNC should only be applicable to the DNs and the NTS, not shippers.

In our earlier response we highlighted the need for Ofgem's proposals to include an individual company right of appeal to apply in the case of modification proposals raised by (or on behalf of) Ofgem. Again, we note that a significant majority of respondents supported the need for stronger appeal rights in Ofgem's proposals. We were therefore disappointed that no illustrative drafting or comment has been provided by Ofgem on how such a right of appeal could be introduced (albeit recognising that such a change would need to be introduced in conjunction with DECC).

For the avoidance of doubt, we do not consider a right to appeal Ofgem's decision to *initiate* a Major Policy Review sufficient to preserve an appropriate and reasonable balance of rights across parties. In our view, a right to appeal Ofgem's decision to *accept or reject a modification proposal* raised either by or on behalf of Ofgem would be the minimum protection required in order to ensure that individual parties' interests are not unjustly diminished.

#### Annex 2: Code Administrators and Small Participants/Consumer Initiatives

Annex 2 sets out illustrative licence drafting to incorporate Ofgem's specific proposals for Code Administrators. However, we are strongly opposed to such changes being incorporated within the relevant licences. This does not represent "light touch" regulation and, in our view, would be a retrograde step in Ofgem's approach to regulating industry. Rather, we believe that such measures should be introduced under the auspices of the proposed voluntary Code of Practice for Code Administrators. This would also minimise complexity in the licence drafting.

#### Annex 3: Charging Methodologies

We note that Ofgem has provided illustrative licence drafting for both Option 2 (refining the existing licence arrangements) and Option 3 (incorporating the methodologies into the existing industry codes) for charging methodology governance. As we have previously stated, we strongly support opening up the Transmission charging methodologies to change proposals by network users and customers and we believe that there is a clear case for implementing Option 3 rather than Option 2. We note that the majority of respondents (10 out of 17) favoured Option 3 over Option 2 and we would therefore urge Ofgem to adopt Option 3.

Ofgem has previously discussed a number of potential risk mitigation measures to minimise costs and uncertainty (both to network users and NWOs) in opening up the charging methodologies to market participants. We agree with Ofgem's view that appropriate safeguards can be put in place to protect against these risks and as such, we support the introduction of bi-annual change implementation dates.

However, we also believe that a further safeguard is necessary in order to protect the integrity of NWO's price control settlements. That is, for example, modification proposals seeking to change the boundary between use of system allowed revenue and the customer contribution

element should not be allowed mid-price control, as this would effectively re-open the price control settlement. If such modifications are not prohibited during a price control period, a change to the boundary could result in windfall gains/losses to NWOs. As a consequence, the relevant price control may require to be re-opened which would be impractical and would run a number of additional regulatory risks. We therefore believe that the most effective solution would be to simply prohibit modification proposals on changes to the boundary mid-price control (this would not prevent such modification proposals being raised and given due consideration at the time of price control discussions).

We have been fully engaged in the industry code governance review process to date and we hope that we can continue to work together to resolve these ongoing issues with a view to developing a robust and fair package of reforms which is acceptable to both Ofgem and industry.

Yours sincerely

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