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Dear Colleague,

Licence modifications implementing the Code Governance Review Final Proposals

This letter accompanies our five modifications amending, in accordance with our principal objective, statutory duties and relevant modification processes¹, the conditions of the electricity transmission, electricity distribution and gas transporter licences as appropriate to give effect to our Final Proposals dated 31 March 2010² (the "Final Proposals") on the Code Governance Review ("CGR"), which are published today (together the "Modifications").

Our statutory consultation on the licence modifications required to implement the CGR dated 3 June 2010³ (the "Statutory Consultation") closed on 1 July 2010.

We received nine responses⁴ in total to the Statutory Consultation and no objections. We thank the respondents for their comments, which we summarise with our views in the Annex to this letter.

In light of responses received, we have made minor amendments to the licence drafting set in our Modifications which, for the avoidance of doubt, do not amount to a substantive change to the amendments proposed in the Statutory Consultation but are essentially clarificatory.

Yours faithfully,

Mark Cox
Associate Partner, Industry Codes and Licensing

¹ Sections 3A to 3C of the Electricity Act 1989 and sections 4AA to 4A of the Gas Act 1986 as amended. Relevant modification processes are contained in the Electricity Act 1989, Gas Act 1989 and Standard Special Condition A2 of the gas transporter licence

² The Final Proposals dated 31 March 2010 can be found here:

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=297&refer=Licensing/IndCodes/CGR>

³ This consultation can be found here:

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?file=ConsulationCoveringLetter.pdf&refer=Licensing/Work/Notices/ModNotice>

⁴ One of the responses dealt with both electricity transmission licence proposed amendments and gas transportation licence proposed amendments, so has been referenced twice in the Modification notices, once for electricity transmission and once again for gas transportation.

Annex

In this Annex, we summarise responses received relating to the proposed licence drafting and our views. We have not addressed issues relating to the policy underlying the proposed licence amendments as we consider that we have addressed these issues previously in our Final Proposals and Statutory Consultation.

For the sake of clarity however, we address three points below:

- First, one respondent's assertion that we have 'acknowledged' that our proposed Significant Code Review (SCR) related licence modifications 'undermine' the statutory energy code modification appeals process. We disagree; our Final Proposals set out our view that no additional appeal routes are required. Any modification arising from an SCR direction will follow the usual code modification route (with the panels being able to recommend rejection of a modification proposal to the Authority if they believe implementing that proposal would not better facilitate the relevant code's applicable objectives) and so the same appeal route to the Competition Commission is available as is currently. In Final Proposals, we also noted that the appeals mechanism is provided for in primary legislation and is therefore not within our gift to amend and that should industry wish to add their own additional 'checks' they could pursue this in their code modification rules.
- Secondly, comments received concerning the length of the moratorium on, and potential withdrawal of, code modifications during the SCR phase. In our view, these comments are not a matter for licence drafting and could be adequately addressed in the code modifications that will be raised to reflect the directed licence modifications. Further, our Final Proposals confirmed that when an SCR is launched, a bespoke timetable is set out.
- Thirdly, comments received concerning the possibility of combined code and charging methodology changes. In our view, this is not a matter for these licence modifications and can be addressed through the modification procedures of the codes.

With regard to the drafting of the licence modifications, respondents raised the following suggested minor changes:

- In Standard Licence Conditions ("SLCs") C3 and C10 and SSLC A11, paragraphs 4B(a), 6B(a) and 15B(a) respectively, clarify whether the panels should go through the whole consultation process (set out in subparagraphs 4(b), 6(b) and 9 respectively) before the end of the SCR phase. We confirm that the process contained in subparagraphs 4(b), 6(b) and 9 respectively does not have to be concluded within the duration of the SCR phase. Paragraphs 4B, 6B and 15B provide that any modification proposal raised whilst an SCR phase is ongoing should follow the usual procedures, but subject to the following. The modification rules in the relevant codes must provide that the relevant panel is required to notify the Authority of any representations received and the panel's assessment on whether the modification proposal falls within the scope of a live SCR. The panel shall, only at the Authority's direction, not progress the modification proposal further through the modification procedures contained in subparagraphs 4(b), 6(b) and 9 respectively (i.e. because either the panel and the Authority agree, or the Authority believes, that the modification proposal falls within the scope of a live SCR). We refer you to paragraph 1.23 and 1.24 of Appendix 2 to the Final Proposals. Accordingly, in order to clarify the drafting of the provision, we have made a minor change to the phraseology of paragraphs 4B, 6B and 15B respectively.

- The following comma changes have been suggested for SLCs C3 and C10 (paragraphs 13A(a)(i)) and Standard Special Licence Condition (“SSLC”) A11 (paragraph 15D(a)(i)): (i) deletion of the commas after ‘meets’ and ‘criteria’; and, (ii) insertion of a comma after ‘panel’ in the first line. We agree with this minor amendment and have made these changes.
- It was suggested that SLC C5 (paragraph 4) refer to 30 June and not 30 December. As the Modifications state that the new licence provisions will come into effect on 31 December to coincide with the implementation of the code modifications reflecting these changes, we do not propose to make this amendment.
- Correction of a typographical error in SLC C10 (paragraphs 13B(a)(ii)(1) and (2)) and SSLC A11 (paragraph 15E(a)(ii)(1) and (2)). These paragraphs incorrectly refer to the Balancing and Settlement Code (“BSC”) objectives and not the Connection and Use of System Code (“CUSC”) and Uniform Network Code (“UNC”) objectives respectively. This correction was also suggested by two other respondents. We agree that this is a typographical error and have amended this accordingly.
- It was suggested that the reference to SLC C5 in sub-paragraph (a) of the definition of ‘charging methodologies’ to be inserted in SLC C10, should be a reference to SLC C4. We agree that this was a typographical error in the condition reference and have amended this accordingly.
- A respondent commented that in their understanding the appeal window in respect of self-governance determinations is 15 working days and this should be clarified in the licence modification. This opinion was discussed/agreed with by industry representatives at the joint BSC and CUSC workshop held on 23 June 2010 to consider National Grid Electricity plc’s draft code modification proposals to give effect to the CGR Final Proposals. We confirm that it was our intention that the self-governance appeal window be 15 working days. Accordingly, we have added the word ‘working’ into paragraphs 13A(e)(i) and 13B of SLCs C3 and C10 and paragraphs 15D(e)(i) and 15E of SSC A11 for clarification. We do not propose to make any other additions of either ‘working’ or ‘calendar’ days into the licence drafting, as the current house style is not to specify.
- A respondent suggested inserting a definition of code administrators (“CAs”) setting out who these were to clarify whether the CAs, when acting together to review the Code of Practice, should be liaising across energy types. In our view, this letter provides clarification that the reference to ‘in conjunction with other code administrators’ should be read as being all other CAs expressly referred to in the introduction of the Code of Practice at that time.
- A respondent also suggested that paragraph 20A and the definition of ‘industry code’ were unnecessary. In our view, these set out the need to consider whether any consequential changes (including across codes for other energy types) arise from code specific modifications.
- A further respondent suggested that we add ‘relevant’ before ‘EU law’ in the definition of SCR in SSLC A11. We have made this change as we note that this is an omission as the definitions of SCR in SLC C3 and C10 include the word ‘relevant’.
- The final two comments received related to:
 - (i) Paragraph 8A of SLC 21; the respondent suggested that we change ‘shall’ to ‘must’ to reflect terminology elsewhere in SLC 21. We have made this suggestion to keep the current house style of this licence condition intact.
 - (ii) Paragraph 9A of SLC 22; the respondent suggested that the word ‘Objective(s)’ be changed to ‘Objectives’. We have left this unchanged as the

brackets reflect the fact that some modifications are discussed as furthering or not furthering only one, or some of the Applicable Objectives.