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26<sup>th</sup> April 2011

Dear Dora

### **Open Letter consultation on Code Modification Urgency Criteria – 30/11**

I am writing to you as Chairman of the CUSC Governance Standing Group (GSG). The group considered your letter of 11<sup>th</sup> March 2011 at its 24<sup>th</sup> March 2011 meeting and placed an action on myself to submit a response setting out the groups' views.

The GSG welcomes this timely consultation from Ofgem. The criteria to be applied when considering if a Code Modification Proposal is, or is not, urgent is an important element in the change process for the industry Codes, such as the CUSC.

The group broadly supports the proposed changes to the criteria set out in Appendix 1 to your letter.

However, on reflection the group believes that there should be an additional 'qualification' taken into consideration (by both the Code Panel and Ofgem, as appropriate) when applying the criteria to a particular request (from a Code party) for the urgent treatment of their Code Modification Proposal.

The GSG believes that Code parties should be encouraged to raise any Code change request in a timely manner. The group was mindful that, in extremis, a party might deliberately (or inadvertently) delay raising their Modification Proposal if they felt that there was an advantage in it being 'rushed' through the Code change process such that the Code Administrator, the Panel, other Code parties and Ofgem would have less time to consider the merits or otherwise (and, perhaps more importantly, the consequences) that the proposed change would bring, if implemented.

The group recognised that applying this 'qualification' would need to be on a case by case basis and that the proposer should be given some latitude as the circumstances might be unique to it.

However, that having been said, the group felt that Ofgem might find it helpful, in this regard, to have the opinion of Code Panel members as to whether they felt the Code party in question did, or did not, have a reasonable opportunity to raise their particular Modification Proposal at an appreciably earlier date; and thus that the party should not rely on the urgency criteria (at this late stage) to rush through its change request.

As I'm sure you are aware the Code Panel is already required, in any event, to provide a recommendation to Ofgem on the urgency request (in terms of the criteria set out by Ofgem) so adding this additional element was not felt, by the



GSG, to be a particularly onerous addition. Indeed the group felt that it was distinctly possible, depending on the circumstances, that this advice might be forthcoming from the Panel anyway. Including it explicitly as a requirement would, in the view of the GSG, be beneficial to all concerned including Ofgem, Code parties and the proposer as it would clarify that, in the view of the Panel, the proposer could not (or could have) raised their change request earlier.

The group also felt that the addition of this qualification would act as a useful 'check & balance' within the urgency criteria by signalling to Code parties that they should seek to raise any change request in as timely manner as reasonably practical and that they should not rely on (or expect) that if they fail to act (either deliberately or inadvertently) in a timely manner that their Modification Proposal will be treated as urgent.

The GSG hopes you will find these comments helpful. If you wish to discuss them further, then please feel free to contact me on the number above.

Yours sincerely

Garth Graham  
Chairman CUSC Governance Standing Group  
(Electricity Market Development Manager, SSE)

cc: Abid Sheikh, Ofgem Representative, GSG