

Ofgem
9 Millbank
London
SW1P 3GE

24 May 2012

Dear Declan

Industry Code Governance Review – second phase

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, combined heat and power plants, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including residential and business users.

We welcome the opportunity to respond to this consultation. The key points of our response are:

- In general we support the extension of common governance arrangements across the codes.
- Based on our experience of the CUSC, BSC and UNC although common governance arrangements and processes have been introduced there has been significant divergence and interpretation on the implementation of these arrangements. It may be beneficial to share approaches and practices so that best practice can be adopted amongst codes.
- We welcome the introduction of self governance arrangements into the additional codes as this enables simple housekeeping proposals to be resolved and implemented swiftly.
- Based on experience of the BSC and CUSC we believe that there may be benefit in expanding the existing scope of self governance arrangements so that more proposals with little, if any impacts on customers can progress through this route for these codes.
- Conversely we note that the UNC has taken a very broad approach to self governance arrangements. There may therefore be value in developing self governance arrangements so a common approach across codes is followed.
- We believe that it is too early to comment on the SCR process as one has not run from inception to implementation yet.

Our detailed responses are set out in the attachment to this letter. Should you wish to discuss any of the issues raised in our response or have any queries, please contact my colleague Stefan Leedham on 020 3126 2312, or myself.

I confirm that this letter and its attachment may be published on Ofgem's website.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Mark Cox".

Mark Cox
Head of Transmission and Trading Arrangements

Attachment

Industry Code Governance Review – second phase

EDF Energy's response to your questions

Has the requirement on code panels to provide rationale for their recommendations been effective in improving analysis to support code changes?

We note that it has always been common practice for the CUSC and BSC to provide detailed reasons for their decision and so this requirement has had limited impact on these codes. In the case of the UNC panel, we note that CGR has been effective in ensuring panellists provide detailed rationale for their decisions. However, we do believe that there is still room for improvement in the elucidation and minuting of UNC panellists' voting rationales as this is not always clear.

Has the concept of 'critical friend' been effectively embraced by the Code Administrators (i.e. an obligation to assist interested parties, particularly smaller participants/new entrants and consumer groups)?

From our perspective the code administrators have always provided assistance to interested parties. Therefore the introduction of this approach has not represented a radical change in behaviour; although we welcome the increased focus and support this has driven from the code administrators. For example, we are aware that the Joint Office now provides verbal briefings on UNC mods to interested parties.

Do you support the Code Administration Code of Practice being implemented under all industry codes, to aid convergence and transparency in code governance processes?

Experience from the CUSC, BSC and UNC suggests that the implementation of the Code Administrators Code of Practice (CACoP) does not have a significant impact on the role of the code administrators. However, we believe that adoption of the CACoP by all industry codes will help to ensure convergence and transparency and enable best practice to be shared.

Is the self governance criteria introduced by the CGR appropriate and has the implementation of self governance been effectively achieved in BSC, CUSC and UNC?

Overall the self governance arrangements introduced into the UNC, BSC and CUSC have worked reasonably well enabling low-impact, "housekeeping" mods to be progressed and implemented in a straightforward manner. In general the panels have worked well in ensuring that proposals with low customer impacts are progressed through this route.

However, we note that there are differing approaches to self governance arrangements between the codes. In particular we are aware that the BSC and CUSC panels have taken quite a strict, rule based approach to classifying proposals as self governance or not. On the other hand the UNC panel has taken a more flexible approach in line with the intent of the self governance arrangements. Although historically we have supported this flexible approach, we do have some concerns with the self governance proposals that recently are being progressed by the UNC panel. We have started to see proposals progress through the self governance route that could have impacts on customers and are seeking to alter core principles of significant regulatory reform – such as UNC proposal 04175. We believe that proposals that either have an impact on customers – either directly or through significant costs – or that impact on core principles should be subject to Ofgem review.

We believe that there is value in expanding the scope of the self governance arrangements so that the BSC and CUSC can capture more low impact proposals through this process. At the same time we believe there is value in developing a common understanding and approach to self governance arrangements across the codes so that they are applied in a standard manner.

Do you consider that introducing or increasing self governance in the codes would be beneficial?

As previously noted we are generally supportive of increasing or introducing self governance to the codes, as this provides a simple route for low impact modifications proposals.

However, for self governance to be effective we believe that this has to be combined with suitable panel representation. This should ensure that the views of industry are considered and not just those of panel members. We would be concerned if self governance were introduced to panels where representation was limited to a subset of the industry – in the past this has been true of the STC and the SQSS Review Body. We await experience of these Panels in their newly-revised form with a limited number of non-TO, non-SO panellists.

Has the SCR process met with your expectations thus far, in terms of frequency of SCRs, timings and process?

Although there have so far been two Significant Code Reviews (SCRs), with a third imminent, it is hard to judge the effectiveness of these as none have run through to completion and the implementation of modification proposals. We therefore believe that it may be more beneficial to review these arrangements when the entire TransmiT SCR process has been completed and modification proposals implemented.

In terms of the processes experienced to date we would note that although the frequency of the SCRs has been in line with expectations the time taken to complete the SCR

process has been greater than expected. Although formally the SCR process ends at the decision stage, we note that from the industry's perspective, the process is not completed, until the modification proposals are implemented. It is likely that the industry will during 2012 be asked to resource three significant reviews at the same time, which we do not feel is appropriate given resource constraints.

We are also unclear how effective the timings and process have been. Although the formal TransmiT SCR process was completed in a timely manner, it is not clear how firm Ofgem's direction to National Grid will be. This runs the risk that although the SCR process completed in a timely manner, the CUSC change process will be significant to address and resolve the issues identified in Ofgem's decision letter. This uncertainty is not beneficial to investment decisions during this period. At the same time we recognise that the TransmiT process has been significantly more effective than the gas SCR, which was the first SCR to be launched, as it is still unclear when the gas SCR will be completed. There would appear to be a need to strike the right balance between allowing sufficient time for an SCR to reach firm conclusions on the majority of issues, whilst also completing this in a timely manner to provide certainty to the industry.

Do you consider that Ofgem's guidance in respect of SCRs has been sufficiently clear and detailed?

In general the guidance appears appropriate and sensible providing a high level overview of the SCR process; however, it is only when a full SCR process, including modification proposal implementation, has been completed will it be possible to identify whether the SCR process as it was operated and applied as a whole was reasonable and effective.

It is also not entirely clear how closely Ofgem has followed the guidance for the SCR processes regarding timing and length of SCRs. Although we recognise that the guidance will be developed and changed as experience of the SCR process is gained, we believe it would be beneficial if Ofgem followed the principles of the SCR process and guidance.

EDF Energy
May 2012