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Industry Code Governance Review – second phase

Dear Declan,

We welcome the opportunity to comment on this consultation on the Industry Code Governance Review (CGR) second phase, and our response is set out below.

This response is provided on behalf of the RWE group of companies, including RWE Npower plc, RWE Supply & Trading GmbH and RWE Npower Renewables Limited.

We can see there have been positive changes that have resulted from phase one of the CGR and which have impacted on the BSC, CUSC and UNC code governance arrangements. These have included a general trend towards increased self governance, with improvements in areas such as the ability to raise change proposals in relation to the charging methodology. Where industry has been able to manage the code change process, we see this as a positive move forward as it has removed a potentially unnecessary decision-making level, thereby decreasing timescales involved and resultant costs. We consider it important that self-governance remains an underlying principle of this process, in order to deliver effective and consistent governance arrangements.

Although we see a positive outcome of increasing transparency as a result of the changes brought about by the CGR process, we are aware of a general slowing down of procedure and perceive increasing reluctance by the Regulator to provide informed comments or engage in decision making, resulting in the frequent referrals back to working groups for legal text review. We believe that this lack of steer of how industry should be progressing, is resulting in an inefficient change process overall. This ultimately cannot align with achieving an effective process.

We have always believed that the existing process prior to the instigation of the CGR was an effective system, with a broad enough scope for issues to be addressed such as a Cash-Out Review. We have recently seen a Significant Code Review (SCR) being issued in this particular area, and it is difficult to determine any real differences or benefits between this process and the previous regime. In addition, we do not see that the establishment of the SCR process has brought about any noticeable reduction in timescales for the Code process itself, and which was an important aspect for its introduction. We therefore believe that overall, little has changed to the main governance arrangements to make the process a more efficient and timely one.

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With increasing development of European network codes, the industry is experiencing a movement towards unifying Codes across Member States. Ultimately modifying GB codes could have significant impacts for capital investment required for assets; security of supply; impact of renewable technology, and costs to customers. The Regulator is rightly engaged and taking an active part in this arena. We note that the current consultation on the Code Governance Review process does not mention the European Code changes or how they would sit within the CGR framework. In our view it is vital that, a) the impact on the relevant GB codes is well understood and the necessary modifications brought forward in a timely way; and b) that changes (either "in-flight" or new) that are being considered to GB codes should be mindful of forthcoming European code changes, as it is inefficient to make a modification that then has to be changed to comply with EU legislation.

Although extending the CGR process to cover the additional codes outlined in the consultation would lend the process towards a more consistent format, we query whether some form of cost benefit analysis has been conducted to determine if it is worthwhile to extend the regime to these other codes. Whilst we see some benefits to having a consistent approach across the different codes, it is prudent to remember that these codes are inherently different and we see that any further changes to the process would be time-consuming and costly. We question whether any further intervention in this area provides enough benefit at the present time, considering the increasing burden on industry with the current regulatory policy change, and we ask this to be borne in mind when instigating new reforms in this area.

We hope these views are helpful and if you wish to discuss any aspect of them in further detail, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Jill Brown', with a horizontal line underneath the name.

Jill Brown
Economic Regulation Adviser