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Ofgem
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23 November 2012

Dear Lisa,

Re: Code Governance Review (Phase 2) Proposals

Thank you for the opportunity to comment on the proposals contained within the document published on 28 September 2012 titled "Code Governance Review (Phase 2) Proposals".
Corona Energy (CE) is a gas Shipper and Supplier operating in the non-domestic market.

Accordingly our interest in the Code Governance Review (Phase 2) primarily relates to the proposals relating to gas. However, we feel that some of the below comments on the need for Ofgem to adopt a proportionate approach to regulation are equally relevant to the electricity sector.

Ofgem has a statutory duty to ensure competitive markets for both gas and electricity supply. It also has a statutory duty to uphold the interests of consumers. CE feels that both of these purposes are best served through an approach to regulation that only places obligations on market participants when clearly required.

To do otherwise creates additional costs for market participants that are ultimately passed through to consumers. A disproportionate approach to regulation also creates barriers to entry and growth for the smaller participants that are central to the vibrancy of the competitive market.

It must also be recognised that Ofgem has a duty under UK and EU law to regulate in a proportionate manner. This duty must extend to the way Ofgem uses its ability to compel participants to join industry codes, oversee those codes, and make amendments to those codes.

The Industrial and Commercial gas shipping and supply sector is the most competitive portion of the GB gas market. The number of market participants and the level of Industrial and Commercial (I & C) customers' engagement in the market shows that the market is working well. Indeed, this can be contrasted with a domestic market characterised by very poor levels of customer engagement and low levels of market penetration from smaller players.

New entrants to gas and electricity markets already have to adhere to a vast array of regulatory requirements through licence conditions and legislation, and contractual provisions through various industry codes. The Uniform Network Code, for example, runs to well over one-thousand pages.

While many of these provisions are necessary for the proper and safe functioning of the industry, in a proportionately regulated industry the need for a regulatory or code provision must be weighed against the costs and barriers to entry created by such provisions.

An assessment must also be made as to whether codes built largely as a result of dialogue between six dominant players, with large domestic and non-domestic portfolios and large balance sheets, are relevant to smaller non-domestic players. Such players are often less able to build the elaborate systems often required by prescriptive codes but are more able to be nimble, customer-centric and efficient in the running of their businesses.

With membership of industry codes comes an additional commercial imperative to play an active role in change processes under those codes. CE feels that the I & C community and smaller shippers and suppliers often makes very valuable contributions to such change processes. However, smaller participants' ability to actively interact with Ofgem consultative processes and code change processes becomes more challenging with the increase in codes and regulation that Suppliers are subject to.

CE feels strongly that a more proportionate approach to regulation should be adopted by Ofgem across all of its activities. CE is currently producing a detailed paper, which it hopes will stimulate a discussion on proportionate regulation. We look forward to sharing this paper with you over the coming months and embarking upon such a discussion. We hope such a discussion leads to a more proportionate approach to regulation in the future.

Responses to specific questions asked in the "Proposals" document

Chapter 2, Question 2: Do you agree that the Agency Charging Statement should fall under the governance of UNC rather than the GT licence?

CE agrees that the Agency Charging Statement should fall under the governance of the UNC rather than the Gas Transporter licences. CE has long felt that the process for determining charges has required improved transparency and greater focus on the methodologies used for generating charges. While this reform will not address all issues associated with formulating charges, it would be a welcome improvement.

Chapter 2, Question 7: Do you think that it is appropriate to obligate non-domestic gas suppliers to accede to the SPAA?

Given the additional costs to suppliers of compliance with an industry code and the additional cost of engaging satisfactorily with code governance processes (as outlined above) there should be a significant number of identified benefits from code membership before compelling parties to sign up to a code.

Joining any code will impose a cost on the participants that are joining. This cost will inevitably be added to the cost of doing business within the GB market, which ultimately drives consumers' bills up. Due to a smaller customer base the cost of such compliance adds greater cost per customer supplied for small Suppliers than for larger suppliers.

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The result of such compulsion will, consequently, be an erosion of the ability of smaller non-domestic players to be competitive.

It is therefore imperative that a clear requirement and benefit of code membership is identified before considering whether to compel a portion of the market to accede to an industry code. If such a clear requirement is identified, all regulatory and governance options should then be considered and impact assessments conducted.

In its proposals document Ofgem identifies only a single matter that suggests that non-domestic membership of the SPAA would be desirable. The matter in question is addressing gas theft. Ofgem has recently published a new licence condition in this area. The licence condition does broadly two things: first, it requires Suppliers to take all reasonable steps to address and deter gas theft; and secondly, it requires Suppliers to contribute to industry efforts in this important area.

CE is firmly of the view that the licence condition, which is quite prescriptive, is enough to ensure that non-domestic Suppliers will take the proper steps both on an individual supplier level and at an industry level to address gas theft. If a Supplier feels that achieving compliance requires them to form or join an industry group then this is a decision for them to make on an individual basis. Similarly, if a non-domestic supplier wants to look towards the SPAA work on theft for an example of what industry thinks are "reasonable steps" to counter gas theft, it will do this voluntarily as part of its compliance activities under the new gas theft licence condition.

The SPAA was drawn up largely by the six main energy suppliers with their operating model and large balance sheets in mind. Smaller non-domestic or I & C suppliers share some similarities with the operations of the big 6. However, the number of differences is significant. These differences mean that many provisions of the SPAA are either inapplicable to I & C suppliers or would require significant modification to reflect the realities of smaller I & C Suppliers' operations.

If we have regard specifically to the code of conduct on theft that SPAA members are currently formulating there are a vast number of provisions that are not applicable or appropriate to non-domestic suppliers in general and small I & C suppliers in particular. For example, the Licence Conditions in the Gas Supply Licence relating to vulnerable customers apply only to domestic suppliers. The SPAA, however refers to vulnerable customers without differentiating between domestic and non-domestic suppliers.

It is also necessary to look at whether SPAA membership would contribute to barriers to entry and growth in a way that outweighs any potential benefit that may arise from SPAA membership. Having regard again, by way of example, to the draft SPAA theft code of practice it is evident that membership of SPAA would not be a proportionate way of addressing concerns relating to gas theft. This is particularly true now that the licence condition on gas theft will be in effect from January 2013. It is clear that there will have to be a degree of recording, reporting of gas theft and communication between parties and to the customer under the detailed licence condition. To have duplicative and additional requirements for each of these elements under the SPAA creates a significant additional and unnecessary burden for smaller suppliers.

CE is not aware of any additional problem within the industry which would, in order to be resolved, require non-domestic gas Suppliers to sign up to the Supply Point Administration Agreement. Ofgem also fails to identify a need that would be addressed through SPAA membership for non-domestic suppliers other than theft of gas, which is in any event adequately addressed through the recently published licence condition.

Given the costs associated with SPAA membership for smaller I & C suppliers and the lack of genuine benefit that would result, CE is strongly against.

Chapter 2, Question 8 Do you agree that SPAA modifications should be subject to a materiality test, to determine whether Authority approval of changes is required?

Given the dominant position enjoyed by the six main GB energy suppliers it is imperative that Ofgem retains oversight, as custodian of competitive markets, of any measure that may seek to increase or abuse that dominance. Any material SPAA changes should therefore require Ofgem approval. Central to Ofgem's role in approving code changes must be an assessment of whether proposed code changes are proportionate, in particular in how they relate to smaller suppliers.

Chapter 2, Question 9 Do you have any comments on Ofgem's guidance for discharging self governance appeals, and the proposed adjustments to the BSC, CUSC, and UNC appeal windows?

As a gas shipper and supplier CE only has comments under this question relating to the UNC.
It is important that market participants are able to have time to digest changes and consider a response before being required to make an appeal. On the other hand the ability to make timely changes to codes is also very important. In light of these two considerations CE feels that a period of ten working days from the date of publication to mount an appeal is acceptable. CE agrees that publication of the final decision should be the event that causes time to run for the purposes of the appeals window as market-wide visibility is required before time begins to run on the appeals window.

Chapter 4, Code Administration

CE would like to make a broad point relating to the Code Administration Code of Practice.
It is essential for good governance and fairness in gas and electricity markets that Code Administration is transparent, efficient, consistent and accessible.

All documents should be freely available to the public: they must not require login details to be accessed. Similarly, practices should be adopted to make the codes as accessible as possible. In all documents all acronyms, must only be used after they have been introduced to the reader: this should be the case however "standard" code participants feel the acronym is.
Access to change boards must not be limited. This means that prior registration should not be required in order for parties to participate in change boards or panels. To require such preregistration discriminates against smaller players that do not have the same number of regulatory personnel as larger player.

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CE is happy to discuss any of the points made in this response or any related matter. Please email regulations@coronaenergy.com to discuss any of the points made.

Yours sincerely,

Stuart Brady

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