



Industry Codes & Licensing  
Ofgem  
9 Millbank  
London  
SW1P 3GE

23 November 2012

## Code Governance Review (Phase 2) Proposals

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, 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 this consultation and support extending the changes arising from the first phase of the Code Governance Review (CGR) to the other industry codes. We believe this will lead to more effective, efficient and robust decision-making and enable industry and consumers to achieve more value from the code arrangements.

In particular, we welcome the proposal to obligate non-domestic suppliers to accede to the SPAA.

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 Mark Cox on 01452 658415, or myself.

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

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'D. Linford', with a long horizontal flourish extending to the right.

**Denis Linford**  
Corporate Policy and Regulation Director

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## Attachment

### Code Governance Review (Phase 2) Proposals

#### EDF Energy's response to your questions

#### Questions

#### CHAPTER: Two

**Q1. Do you consider that a "fast track" self governance process should be available in the industry codes for minor housekeeping changes?**

Yes, we support the introduction of a fast track process that allows for genuine minor housekeeping issues to be addressed in an efficient matter. However, we agree that decisions on such issues need to be transparent and subject to a degree of scrutiny. We believe that a requirement to obtain unanimous support of the Panel should provide an appropriate level of comfort for code parties.

**Q2. Do you agree that the Agency Charging Statement should fall under the governance of the Uniform Network Code, rather than the Gas Transporter licence?**

Yes, this would appear to be sensible and would be consistent with other codes.

**Q3. Do you agree that self governance should be introduced into the iGT UNC and STC, and increased in the DCUSA?**

Yes, self governance should be extended to the above codes in the form that exists already in other industry codes.

**Q4. Do you consider it appropriate to apply the same governance principles to the Grid and Distribution Codes as are applied to the commercial codes?**

Yes.

**Q5. Do you consider that both the Distribution Code and the Grid Code should be modified to allow for an open governance framework? In particular, allowing code users to raise code modifications; enabling code panels to have a more formal role in evaluating and recommending code changes; and the governance procedures brought into the codes? Are there any other areas of governance that you consider could be improved in Distribution Code and Grid Code?**

Yes. Currently, only NGET can raise a Grid Code Modification, but a relevant party can raise an issue for consideration at the GCRP. Although this process appears to be working, we believe allowing code users to raise code modifications will enhance the perception of open governance which has value in itself.

The consultation notes that it may be impractical to introduce self governance under the Grid Code (and the Distribution Code) at this stage, as the current arrangements do not provide for a panel recommendation, and therefore there is no established process whereby the panel could reach a decision. (Currently, the Authority is presented with a recommendation by NGET.). We believe it will be appropriate to amend the current modification process with a more inclusive recommendation from the panel to the Authority.

**Q6. Should MRA modifications be subject to a materiality test, to determine whether Authority approval of changes is required?**

We believe where appropriate consistent code modification arrangements should be applied across all the industry codes. We therefore, see no reason why a materiality test should not be introduced in to the MRA.

**Q7. Do you consider that it is appropriate to obligate non-domestic gas suppliers to accede to the SPAA?**

Yes. We would be in favour of Ofgem ensuring that all shippers accede to SPAA without changing the voting mechanism.

As noted in the consultation, there have been several attempts to encourage non-domestic shippers to participate in the SPAA (with little success). The inclusion of non-domestic shippers will alleviate some of the challenges we faced in the past and also ensure that they have the opportunity to influence the development of any new or existing provisions.

Additionally, SPAA will contain the new Theft of Gas Code of Practice and therefore to be robust, all non-domestic shippers must also adhere to the Code. Theft is an operational issue affecting the whole industry and by obligating non-domestic shippers to accede to the SPAA, all shippers will be incentivised to identify sites illegally off-taking gas and benefit from an improved regime.

**Q8. Do you agree that SPAA modifications should be subject to a materiality test, to determine whether Authority approval of changes is required?**

Yes.

**Q9. Do you have any comments on Ofgem's guidance for discharging self governance appeals (Appendix 7), and on the proposed adjustment to the BSC, CUSC and UNC appeal windows?**

The guidance document that is attached as Appendix 7 sets out a form and documents the existing possibility of appeals (to Ofgem) that any CUSC Party can make against self governance modification decisions. It seems to represent good process, to lay this out. The guidance document does not attempt to in any way alter the grounds for appeal; it is appropriate for these to remain as set out in the relevant code and/or licence.

The guidance states that code parties, code owners or third parties that would be allowed to raise a code modification proposal under the relevant code are eligible to appeal a self governance modification decision. Eligible parties have an equal right to appeal. However, we note that not all codes appear to be the same in respect of who can appeal a self-governance modification. For example, in the BSC it is only a Party to the Code which can appeal, contrary to what the guidance note says. Whereas in the CUSC, it is a Party, Consumer Council or BSC Party in respect of non-charging methodology self governance modifications are eligible. With regards to the UNC appeals process a User, Transporter or another party materially impacted may appeal a self-governance modification. Ofgem's guidance is inaccurate in this respect as it does not make a distinction between the codes.

**Q10. Do you consider that the ability to appeal a self governance determination should be consistent across all codes?**

Yes. Note comment in reply to question 9 above about an existing inconsistency in this area.

**CHAPTER: Three**

**Q1. Do you agree with the proposal to extend the Significant Code Review process to DCUSA, iGT UNC, MRA, SPAA, STC, Grid Code and Distribution Code?**

Yes. We believe where appropriate consistent code modification arrangements should be applied across all the industry codes. This should ensure that complex or cross-code changes are achieved most efficiently.

It is, however, difficult to comment on the effectiveness of Significant Code Reviews (SCR) as they have been limited to date. We also question whether in practice, the above codes are likely to fall within the remit of a SCR.

**CHAPTER: Four**

**Q1. Do you agree that all industry code panels (or their equivalent) should provide substantive reasons for their recommendations/decisions?**

Yes. The CUSC Panel has been particularly good in this area.

**Q2. Do you agree that the MRA should contain objectives against which code modifications are assessed?**

Yes. There is no reason why it should be the only code not to have any.

**Q3. Do you agree that the Authority should be able to "send back" final modification reports in all codes, where a deficiency/flaw in the report is identified?**

Yes. This provision is preferable to the sub-optimal choices of either accepting a flawed proposal or rejecting one which is sound in principle.

**Q4. Do you agree with the proposal to require all codes to have regard to and, to the extent relevant, be consistent with the CACoP principles?**

Yes.

**Q5. Do you consider that a requirement on code administrators to fulfil a 'critical friend' role should be set out in the relevant licence?**

Yes, but the code administrator needs to act in an independent and transparent manner and favour no individual or class of party.

**Q6. Do you agree with the amendments to the CACoP (Appendix 2) and do you consider that the standard process and templates described by the CACoP should have the status of guidance (rather than being mandatory) at this stage?**

These proposals seem sensible and pragmatic.

#### **CHAPTER: Five**

**Q1. Do you agree with the timetable proposed?**

Yes.

**EDF Energy  
November 2012**