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23 November 2012

Dear Lisa,

**Re. Code Governance Review (Phase 2) Proposals – Consultation 123/12**

ElectraLink is the Code Administrator for the Supply Point Administration Agreement (SPAA) and the Distribution Connection Use of System Agreement (DCUSA). ElectraLink also facilitates a number of industry forums including the Distribution Charging Methodologies Forum (DCMF) and Community of Meter Asset Providers (CMAP), respectively an open governance forum created to enable and promote open and transparent debate on the development of Distribution Charging Methodologies and a forum for the development of industry initiatives to better improve metering provision.

ElectraLink also manages the Data Transfer Service Agreement (DTSA), which whilst not an “industry code”, contains all the key characteristics of an industry code including open governance, a defined change process incorporating both self governance and Authority approval processes and a Party controlled executive decision board. For the purposes of this response ElectraLink will focus on its role supporting SPAA and DCUSA but will draw on its experience supporting DCMF, CMAP and the DTSA.

We operate at the centre of the industry governance processes and have over 10 years’ experience in establishing and delivering robust governance frameworks and managing industry change. We have been closely engaged with the Code Governance Review (CGR) and remain fully committed to the continual improvement of the governance arrangements and implementing best practice within the codes.



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As the Code Administrator for the two most recently established and rapidly growing self governance agreements, we hope that our insight and direct experience is useful to Ofgem. We are responding to this consultation in our capacity as experts on the provision of governance services, noting that the SPAA Executive Committee and DCUSA Panel are sending separate responses. It is appropriate that the code owners, parties and licence holders respond directly to the proposals that impact them and we have therefore limited our response to general questions and not commented directly on matters that impact specific or individual codes.

Our experience in delivering services to a broad range of parties across the gas and electricity markets gives us valuable insight to the benefits that converged governance and simplification of processes can bring to code users. However, as the code administrator for very different agreements, we can clearly see that whilst there are common elements of best practice, individual differences do justifiably exist. It is important that these differences, which reflect, for example, the content and purpose of the codes, the party members and the funding models, are recognised. Uniform application of principles can be detrimental to the delivery of some services which already operate efficiently.

ElectraLink is fully supportive of the aims of the CGR and believes that a common set of high level principles should be developed. However we are of the opinion that Ofgem should not prescribe the mechanism for delivery and that the level of application should be proportionate to the Code, i.e. reflective of its nature and size. This allows for the code parties and licensees to assess and develop the most appropriate way to deliver the requirements to meet the standard without unnecessary structural change and at minimal cost.

It is crucial that the costs incurred by code parties, and ultimately consumers, from expanding the remit of the CGR, including compliance with the CACoP, are proportional to the additional benefits which will accrue.

Should you have any questions, or wish to discuss our response further, we'd be delighted to hear from you.

Yours Sincerely,

Beth Brown

## **Chapter 1**

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

We agree that modifications that are minor in nature should not be subject to industry consultation or full assessment against the relevant objectives. The implementation of this change should allow parties, especially smaller entities, to focus their limited resources on material modifications that directly impact their businesses. This will ease the administrative burden of managing high volumes of change both for parties and the Authority.

It should be up to the relevant code panel to determine how best to implement the process – e.g. delegation of duties to a sub-committee or code administrator, to best fit within the existing code framework. Parties should have the opportunity to challenge the ‘fast track’ status and / or the decision taken and the process should be managed with the same level of transparency as any standard modification.

ElectraLink has already developed and delivers a successful ‘fast track’ process under the SPAA which allows parties to make changes to gas market domain data (MDD). We have also recently implemented a change process for the Code of Practice for Gas Meter Asset Managers (MAMCoP). The governance arrangements for MAMCoP came under the SPAA in August 2012. The MAMCoP change process is designed to allow interested parties to comment, and affected parties to vote, on changes to the MAMCoP, whilst retaining overall change control for the governance arrangements with SPAA Parties. Both of these examples highlight not only the benefit of a fast track process but the importance of flexible governance arrangements to deliver change efficiently.

### **Q9) Do you have any comments on Ofgem’s guidance for discharging self governance appeals?**

We welcome the publication of Ofgem guidance and are supportive of the drafting.

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

The right of appeal is a critical safeguard and core element of the modifications process. It is essential to have a robust appeals mechanism to allow parties to challenge decisions made under a self governance framework. Progressing changes via self governance has many advantages (e.g. reducing costs and facilitating the faster



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implementation of changes) but can only be successful if parties have confidence in the process and believe it to be equitable. An open and transparent appeals mechanism is an integral part of this.

As the process will sit outside the codes, the ability to appeal a self governance determination should be standardised, even if the mechanism for reaching the determination (i.e. Panel vs. Party recommendation) is not. This will ensure that parties need only manage one process and all appeals will be treated consistently by Ofgem.

#### **Chapter 4**

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

The benefits of the proposal are that it gives transparency of the panels' decision making process; it ensures that panels carry out robust assessment against the relevant objectives; and it provides sufficient information to Ofgem to allow it to make a determination.

We believe that these primarily relate to codes where recommendations are made by a panel rather than parties. Where the outcome of a modification is determined by party voting, each party's decision is more likely to be made against commercial and business drivers than assessment against the relevant objectives which may not necessarily align fully with these external factors.

Mandating the requirement to provide substantive reasons for a vote may increase the administrative burden, particular for smaller players, and reduce participation in the process. Our experience under the DCUSA, where parties are encouraged to provide reasons when voting, is that the majority choose not to. This does not dilute the validity of the change, nor the parties' recommendation.

A more workable and proportionate alternative would be to place the responsibility for assessment on the Change Proposer / Working Group and allow, but not require, parties to indicate their agreement or otherwise with the assessment at the point of voting.

It may also be appropriate to limit the application of this principle to authority consent modifications to reduce the burden of work for parties. Should a self governance appeal be raised, further information could be sought from Ofgem as part of that process if required.



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**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?**

We agree that formalising the “send back” powers of the Authority would be more efficient than the existing process which limits its powers to accept or reject. However, we strongly advocate that Ofgem continues to engage in the change process as each modification is developed and raises any substantive or material concerns about the assessment process or final modification report before it is formally submitted.

**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?**

The CACoP sets out the key elements of code administration best practice and is intended to make processes more accessible for users. We believe that all codes should have regard to the CACoP principles. However, we believe it is for the code parties and licensees to determine the level at which they should apply. For those codes administered through commercial contract, e.g. DCUSA, SPAA and MRA where the changes have an impact on the resource required to deliver the code administration service this would need to be reflected in the contract price. Allowing parties to determine the appropriate application of the CACoP will enable the code administrators to meet the standard determined by industry without unnecessary structural change and with costs proportional to the benefits which will be derived.

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

We believe that the critical friend role is an extremely important part of the CACoP and should be provided by all code administrators. However, it should be implemented in a way that is proportionate for each code i.e. reflective of its nature and size and that the level should be determined by the code parties. It is for parties and licensees to determine if the requirement should be set out in Licence in addition to the general licence obligation to have regard to the CACoP.

**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?**



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The amendments to CACoP were developed at a workshop attended by the Code Administrators to whom they currently apply and Ofgem. We consider these organisations were best placed review the consultation responses and to determine the necessary changes and are supportive of their recommendations.

Given the proposal to require all codes to have regard to the CACoP principles, we consider it appropriate for the process and templates to remain as guidance at this stage. This will accommodate a 'bedding in' period for the additional code administrators and accommodate any differences between the CACoP and existing code rules.