



Lisa Charlesworth, ICL Manager
Industry Codes and Licensing
Ofgem
9 Millbank
London, SW1P 3GE
Email: industrycodes@ofgem.gov.uk

Your ref 123/12
Name Jill Brown
Phone 01793 893598
E-Mail jill.brown@rwenpower.com

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Code Governance Review Phase 2 (CGR 2) - Proposals

Dear Lisa,

We welcome the opportunity to comment on this consultation on the Industry Code Governance Review (CGR) Phase 2 Proposals, 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.

Please find below our responses and comments to the chapter questions.

Chapter 2 – Self Governance

Qu. 1 - Do you consider that a 'fast track' self governance process should be available in the industry codes for minor housekeeping changes?

We are in agreement with this, as we believe that a 'fast track' process of this nature would reduce the administrative burden on industry. In addition, it is necessary to have clearly defined criteria in order to identify minor housekeeping changes, so that no party is disadvantaged. Change Boards and Panels are therefore in a good position to be able to oversee this process to ensure appropriate practice. We also consider that Panel decisions should be unanimous in order for changes to be treated as 'fast-track' self-governance changes.

Qu. 2 - Do you agree that the Agency Charging Statement should fall under the governance of the Uniform Network Code, rather than the Gas Transporter licence?

We would agree and add that in order to create further transparency the ACS should fall under the governance of the UNC which is the qualified industry change route. Funding by the GDNs and recharging through price control effectively means that these costs currently sit within a commercial arrangement which we consider is an unnecessary one. We believe shippers need more control over these costs in order to shape industry change for the benefit of their customers, rather than have a level of service or solution being offered by an organisation that is not customer facing.

RWE npower

Trigonos
Windmill Hill Business Park
Whitehill Way
Swindon
Wiltshire SN5 6PB

T +44(0)1793/87 77 77
F +44(0)1793/89 25 25
I www.rwenpower.com

Registered office:
RWE Npower plc
Windmill Hill Business Park
Whitehill Way
Swindon
Wiltshire SN5 6PB

Registered in England
and Wales no. 3892782

Qu.3 - Do you agree that self governance should be introduced into the iGT UNC and STC, and increased in the DCUSA ?

We are of the opinion that effective self-governance will reduce both the administrative burden and associated costs. We consider that there needs to be a clear definition of what constitutes a self-governance area or modification, and would welcome Ofgem's comments on the current self-governance arrangements and whether the Regulator considers them fit-for-purpose. There may be a need for the decision-making processes in certain Codes and Agreements to be reviewed and if necessary amended, to ensure that the voting arrangements work effectively. Our experience is that there can be a great deal of time spent by workgroups or Panels in deciding if self-governance is applicable.

We also believe that increased self-governance will enable more modifications to be progressed quicker which will be of greater benefit to all involved, considering the current and likely future volume of change within this industry.

Qu.4 - Do you consider it appropriate to apply the same governance principles to the Grid and Distribution Codes as are applied to the 'commercial' codes ?

As a general rule, we feel this is appropriate but ask, that pragmatic considerations are applied throughout, to ensure no significant, unnecessary costs are passed on to users or customers as a result, especially as no particular deficiencies have been identified.

Qu. 5 - Do you consider that both the Distribution Code and the Grid Code should be modified to allow for an open governance framework ?

Are there any other areas of governance that you consider could be improved in the Distribution Code and Grid Code?

We have no comment.

Qu. 6 – Should MRA modifications be subject to a materiality test, to determine whether Authority approval of changes is required?

We would like to understand how materiality will be assessed, and suggest that it might be possible for the MDB (MRA Development Board) to decide if a change has a low, medium or high materiality associated with it. This will aid the avoidance of inconsistent assessments, as well as excessive time and resultant costs being spent on debating materiality in the first instance.

Qu. 7 - Do you consider that it is appropriate to obligate non-domestic gas suppliers to accede to the SPAA ?

We agree that this is appropriate. We consider that there are many industry-wide issues that need resolving, such as theft of gas, and shipperless sites, which are not exclusive to any market sector. Without accession to the relevant codes and full representation across all parties, these issues will not be resolved. It is important to ensure that all suppliers, and not just the 'Big 6', participate in SPAA to help establish the necessary market developments required, and to help embed a more performance-focussed approach.

To date we consider that SPAA has made significant efforts to integrate ICoSS parties, and to facilitate their participation. Until recently we believe many have been unwilling to engage in this process. Streamlining processes across the industry would be both desirable and helpful. We are of the opinion that having the same change process would ultimately improve transparency and deliver coherence.

We note, as there is currently no code within the industry that permits the raising of issues which all Transporters and Suppliers must comply with, we consider this to have been an issue for progressing the problem of gas theft, and will continue to be an issue going forwards unless a solution such as this is implemented.

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

In broad terms, the cost of funding both the modification processes and implementation is borne by the consumer, and is determined by fulfilling the relevant code objectives. If Ofgem determines there is a level of cost which may be deemed “impacting or potentially detrimental” to customers, then a materiality test may therefore aid transparency in the wider industry by requiring Ofgem’s approval to protect the consumer. We would encourage this transparent approach across all Codes and legislation that impacts Suppliers.

As in our response to Qu. 6 above, we would like to understand how materiality will be assessed. In this instance, it might be relevant for the SPAA Change Board to decide if a change has a low, medium or high materiality associated with it.

Qu. 9 - 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?

We have no comments to offer on this.

Qu. 10 - Do you consider that the ability to appeal a self governance determination should be consistent across all codes ?

We would agree with this, and add that aligning processes across all codes would benefit parties by reducing the administrative burden and improving clarity and transparency.

Chapter 3 - Significant Code Reviews

Qu. 1 - 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 ?

We are in agreement and consider that the SCR should be extended to all codes in order to ensure consistency. However, we would urge Ofgem to consider the impact of such an undertaking alongside current large industry charges such as project NEXUS and SMART. We do recognise, however, that it could be considered an opportune moment to change or finesse the governance arrangements alongside these major industry developments.

Chapter 4 – Code Administration

Qu. 1 - Do you agree that all industry code panels (or their equivalent) should provide substantive reasons for their recommendations/decisions?

We believe that there is a requirement for clear guidance to be provided on how detailed the decision record needs to be, but also recognise that some Codes and Agreements already make provision for this. It is our view that all Panels should consist of industry experts acting in this capacity. Substantive reasons should be provided to the industry in order for panel decisions to increase transparency and confidence in the governance processes. In addition, most Codes would also benefit from the introduction of a facility to challenge or dispute a panel decision or recommendation.

Qu. 2 - Do you agree that the MRA should contain objectives against which code modifications are assessed ?

We consider that this would align the MRA with other mainstream codes and encourage reasoned thinking, for raising modifications and for assessing them within a work group. The clarity that the objectives provide would deliver a more focussed response, and therefore a smoother decision process. A wider MRA consultation may be considered appropriate before any such objectives are introduced into licence conditions.

Qu. 3 - 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 would agree with this provided there are clear criteria for the level of analysis required. We consider that this may be necessary on occasion in order to facilitate a decision and to remove any administrative burden from the rejection and re-issuing of a modification. We would encourage Ofgem to be actively involved in the change process by participating in workgroups whenever possible, and being engaged at the earliest opportunity in the change process in order to shape a modification report that fulfils its needs.

Qu. 4 - 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 ?

Our experience is that those Codes which follow the CACoP more closely are administered well, and make the change process more transparent and flexible. Furthermore, the development and implementation of a set of standard principles across the codes removes some of the complexity, and is therefore likely to reduce the costs of administering these processes.

Elxson is a great example of a good "Critical Friend". We find that its' staff will often provide a viewpoint on the impacts of a proposed change. DCUSA and SPAA would benefit from this level of support as well. However, it will be important and necessary to ensure that if the CACoP principles are to be extended, this should not be to the detriment of those codes where a higher level of service is currently provided.

Qu. 5 - Do you consider that a requirement on code administrators to fulfil a 'critical friend' role should be set out in the relevant licence?

We think it is important to determine how the 'critical friend' role will look. We believe the role is not only an essential element in supporting competition and smaller supplier participation in the market, but aids greater understanding to the benefit of all industry parties. However, it must be acknowledged that the role is only of use if appropriate experts are available to provide this service, and the role is likely to increase the cost of service provider contracts.

Qu. 6 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 ?

We are in agreement that the standard process and templates should be for guidance, with a move towards enforcing this status in the future if not adopted. Code Administrators should also be able to share best practice and principles without constraint.

Chapter 5 – Way forward and timetable

Qu. 1 - Do you agree with the timetable proposed ?

In our view, the proposed timetable is too tight, given other changes occurring within the industry at present, and the need to ensure clarity before finalising the arrangements. It might be of greater benefit to all if an initial 'road map' for change is developed for July 2013, with the actual code changes following later on. We consider that the critical path should draw out the key items and changes, such as arranging for ICoSS inclusion in SPAA governance; iGT migration into UNC, and the development of a Performance Assurance Framework for gas, amongst others.

Furthermore, significant changes are likely to result from implementation of the EU Network Codes, and it would be appropriate to consider how the CGR2 proposals sit within the emerging GB code landscape. It would not be the best use of Ofgem's nor industry's time and resources, to implement modifications to a regime ahead of the emerging changes as a result of European legislation and the comitology process.

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

Yours sincerely,

p.p. 

Jill Brown
Economic Regulation Adviser

