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Dear Lisa,

INDUSTRY CODE GOVERNANCE REVIEW – SECOND PHASE

Thank you for the opportunity to respond on behalf of ScottishPower to the consultation on phase two of the Industry Code Governance Review.

We broadly support Ofgem's amendments to date in respect of code governance and believe the first phase of the governance review has generally improved code processes. Phase one has provided some valuable lessons to take into the second phase review, particularly in terms of self governance within the UNC and BSC, as well as the opportunities which exist to consolidate the various change documentation into one standard form.

Moving forward into phase two, it is of key importance that any change to the governance processes remains subject to robust cost benefit analysis as the cost of change ultimately needs to be borne by the final energy consumer. For example the MRA budget has increased from £4.2m to £7.1m over the past year, largely due to the Green Deal Project and Smart Metering. It remains important that all changes to the current administrative processes have a clear benefit for customers.

In view of the move towards the Smart Energy Code, and given that the SPAA, MRA and DCUSA already follow most of the phase two governance proposals, we would question whether full adoption of the proposals within these codes would be cost-effective at this time. Instead we would recommend that specific aspects are adopted where they can improve existing processes, with a full review of the SPAA and MRA taking place as a sweep up exercise once Smart Energy Code is fully approved.

Finally, we believe that the biggest governance challenge in the industry is one that is not directly addressed by the second phase of the code governance review. Whereas the governance arrangements for electricity generally work effectively, providing the necessary level of transparency and performance assurance, there are significant shortcomings in the governance framework for gas. The consequent lack of transparency and assurance means that gas shippers incur inaccurate gas and associated transportation and settlement costs, potentially resulting in cost volatility, susceptibility to gaming, cross-subsidies between different categories of consumer and

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other inefficiencies. Whilst the code governance review and Xoserve ownership review have a key role to play in reforming the gas governance framework, we do not believe they are sufficient. It is also important that Ofgem uses its influence to help drive forward related industry initiatives such as:

- *Delivering Project Nexus* – as well as concerns around delivery to timetable, we are concerned that the "like for like" replacement scope is not sufficiently ambitious.

- *UNC MOD 421* – this modification takes an initial step towards a performance assurance framework for gas settlements issues, and we believe Ofgem should fully engage in the modification process.

- *Gas correction factor errors* – improving the processes for temperature assumptions to deliver greater cost reflectivity in retail gas pricing.

- *Xoserve governance* – we can see clear benefits from encouraging best practice transfer from electricity arrangements in this area, particularly with regard to improving provision of information and cost benefit analysis to support the modifications process.

Successful delivery of these and other initiatives will underpin a more fundamental improvement in gas code governance arrangements.

We have provided brief answers to the questions in the consultation document in Annex 1 attached. Should you have any questions on the points raised, please do not hesitate to contact me.

Yours sincerely,

Rupert Steele
Director of Regulation

**INDUSTRY CODE GOVERNANCE REVIEW – SECOND PHASE
SCOTTISHPOWER RESPONSE**

Chapter 2: Self Governance

Question 1: Do you consider that a "fast track" self governance process should be available in the industry codes for minor housekeeping changes?

We support the concept of the "fast track" principals and fully support its inclusion within the iGT UNC. However, both the SPAA and MRA change processes generally only take one to two months. If a decision point is required to accept a change as "fast track" this would follow a similar time period as existing minor changes. Furthermore, SPAA already has a fast track process for MDD changes; if changes are raised and no response is received it is deemed as acceptance.

This could be extended to cover housekeeping changes or minor amendments, e.g. SPAA CP 12/206 was raised to change the name Single Centralised Online Gas Enquiry Service (SCOGES) to Data Enquiry Service (DES). This did not need a full change process. This would require a change to SPAA documentations to clearly set out what can and cannot be fast tracked and could be extended to other codes. In summary, we agree in principle with the idea of a fast track self governance process, but have concerns it could actually slow down some of the change processes, particularly the MRA and SPAA.

Question 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 believe much depends on Ofgem's approach to the ACS. As the ACS currently accommodates both Code (i.e. UNC) and non code services (User Pays) charges it is unclear how the User Pays charges could be governed under the UNC while the actual services sit within the User Pays agreement. If the ACS is to fall under UNC governance, it would need to be decided whether the ACS should be part of the UNC or whether it should form an ancillary document.

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

We fully support the introduction of self governance into the iGT UNC as this would follow the same principles as the UNC arrangements.

The case for introducing self governance within DCUSA is not as pressing as DCUSA already operates well with the current Part 1, Part 2 process.

Question 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?

The Grid and Distribution Codes can have a significant impact on market participants and it is important that they are subject to appropriate governance. We can see no strong reason to exclude either code from the governance principles that are applied to the commercial codes, but we would note that they are technical codes, and therefore it may be appropriate to adopt a lighter touch in certain areas.

Question 5: 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, we would be supportive of both the Distribution Code and the Grid Code being modified to allow for an open governance framework.

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

We appreciate why Ofgem would prefer a mechanism in place. However, over recent years, only a small number of MRA changes have required Authority approval so we would question the need to add a step to the change process which does not appear to be required. Additionally, different MRA parties could be expected to have totally different views on materiality, so an arbitration role may be required to avoid the risk of lengthening a process which runs relatively quickly and smoothly at the moment.

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

Yes, we agree it is appropriate to obligate non-domestic gas suppliers to accede to the SPAA, especially given the increasing scope of the SPAA (Meter Asset Manager Code of Practice (MAMCoP), Theft Code of Practice, Theft Risk Assessment Service (TRAS)).

Existing SPAA parties have made a number of concessions to non domestic suppliers to encourage accession with little success. Based on comments published during the various consultations, it would appear that, even if one of the relevant SPAA changes[1] is approved (or another solution is found to the voting constituencies), a Licence obligation would still be required to ensure that all I&C suppliers accede to the SPAA.

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

See response to Question 6 – this is particularly relevant if non-domestic gas suppliers accede to the code.

Question 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 believe 10 working days seems sensible, as the current window includes the standard 5 working days for the publication of minutes and decisions. The MRA appeal window is already 10 working days from the publication of the relevant minutes.

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[1] CP12/209 – Amendment to Supplier Voting Constituencies and CP12/217 – Creation of Small and Large Supplier Constituencies

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

Yes, all codes should have the same (or very similar) appeal processes, both for self governance and Authority approved changes.

Chapter 3: Significant Code Reviews

Question 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?

In principle, yes, though we would question the need for it at this time. For example, MRA and SPAA are under review as part of the Smart Energy Code development.

Chapter 4: Code Administration

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

Yes. Panel members have to recognise their constituency's views, if the Panel is drawn up that way, and have an explicit requirement to act independently of their own company. Minutes of meetings have to include voting decisions (for or against) and recommendations from each Panel member as this ties back to constituencies (e.g. MDB or SPAA Change Board). Whether Panel members are representing constituencies or are independent industry experts, they must make a decision on each and every change against the relevant code objectives.

From a UNC and BSC perspective, we do still have some concerns about the impartial nature and lack of constituency views of their respective Panels. UNC Mod0399 is a good example. The Final Mod Report (FMR) was rejected by all Shippers that responded. During the Panel vote, one shipper representative voted to accept the Mod, in essence voting against the views of their constituency. The Panel Discussions in the FMR noted the rationale for the overall rejection but made no reference to the reasoning behind the decision of one member to recommend its implementation. A similar lack of transparency recently arose with BSC Mod P274, with the BSC Panel initial assessment highlighting a spilt of views but no detailed information being provided in the minutes.

Going forward we would recommend that the rationale behind both arguments (for and against implementation) should be recorded within the Panel minutes. This is especially important in the case of self governance modifications.

Question 2: Do you agree that the MRA should contain objectives against which code modifications are assessed?

The MRA generally works well at present in improving the efficiency of the electricity flow processes etc without a written objective. If objectives can be introduced to the MRA without significant additional expense and without slowing down the change process we can see no reason why they should not be implemented.

If objectives are to be introduced to the MRA, it will be necessary to clarify the scope of code modifications that must be assessed against the objectives, eg whether it applies only changes to the MRA itself or also the MRA Agreed Procedures (MAPs), Data Transfer Catalogue (DTC) and Working Practices Product Set (WPPS).

Question 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?

Yes but we would expect to have visibility as to what criteria Ofgem would be using to determine a deficiency or flaw, particularly as Ofgem representatives are normally part of the DCUSA, iGT UNC, but not on the MRA or SPAA. Our preferred option would be for Ofgem to fully participate in the change process itself to make sure the time is used as efficiently and cost effectively as possible.

Where Ofgem does have send back powers these should be exercised in a clear and consistent manner, with a full explanation to all concerned of the benefits of the additional work being requested. A recent example would be P272 which both the Working Group and BSC Panel recommended to reject. Ofgem requested additional work to be carried out but after a number of additional meetings and consultation no clear benefits have been proven.

Question 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?

The second phase review should give careful consideration to the self governance processes already in place within many of the codes and avoid duplicating these where they are already satisfactory. If all industry codes are to be taken into the Code Administration Code of Practice (CACoP), it would be sensible to align processes before the Smart Energy Code and the DCC are in place, while recognising the need to keep the costs of administering the codes as low as possible. In addition, we would recommend the review goes further to include all industry agreements, e.g. GDAA and MOCOPA

Question 5: Do you consider that a requirement on code administrators to fulfil a "critical friend" role should be set out in the relevant licence?

This would be a benefit, especially to smaller parties with potentially less resource and who may be disenfranchised from the change process. Consideration has to be given to what Ofgem and code signatories want a code administrator to do, in particular the distinction between experts administering the code and understanding the governance, or providing an opinion on the merit of change proposals. We would have concerns about whether all Code Administrators currently have the skill set to fulfil this role.

Additionally, it needs to be clarified whether suppliers, distributors or transporters should be expected to accept a licence condition based solely on the actions of a third party. Currently the obligations extend to setting up a code and having it administered but the "critical friend" requirement could be seen to introduce an additional level of risk.

Question 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?

See response to question 4.

Chapter 5: Way forward and timetable

Question 1: Do you agree with the timetable proposed?

If the requirements on current code administrators are being increased (e.g. to become critical friend), there could be a need to renegotiate current contracts. This could put pressure on the July 2013 date, particularly if code needs have to be approved before negotiations could take place.

ScottishPower
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