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23rd November 2012

**Re: Codes Governance Review (Phase 2) Proposals**

Dear Lisa Charlesworth,

SmartestEnergy welcomes the opportunity to respond to the second phase of proposals for the Codes Governance Review (CGR). First we address two main points that we feel are important to the spirit of this review in general, then our answers to individual questions follow.

We would like to highlight that at some point it would be beneficial to review the workings and relations of all the codes. This is because there is overlap between the codes with regards to either the parties involved or the issues that are dealt with. Extending the principles of open governance to other codes is a laudable aim, but there are practical consequences of a proliferation of open codes for the regulatory functions of participants, especially smaller ones. We have always advocated the combining of MRA and BSC for a more co-ordinated change process to metering and settlement; DCUSA also deals with issues which have an impact in the realms of the MRA and BSC; DCUSA and MRA both affect the same parties (suppliers and distributors) which reinforces their compatibility; and the BSC and CUSC both affect suppliers and generators. Furthermore, it is possible to have a modification which affects several codes. Therefore it is our opinion that there should be a significant code review on combining the codes themselves to ensure effective organisation. This is especially important with the advent of smart metering which will impact the SEC and BSC.

If there is not significant combining of codes then there at least needs to be a mechanism to allow a modification to be assessed in more than one code simultaneously. This is because there has on occasion been a modification which either impacts, or is impacted by, more than one code. For example, P272 argues that half hourly settlement should be mandatory for Profile Classes 5-8. This is being considered under the BSC (and is about to be passed from the Panel to Ofgem for final determination.)

However, at the moment there are additional costs to being settled half-hourly due to conditions presided over by DCUSA. There is not yet a mechanism in place that can

assess this proposal alongside associated changes to decide to reject or implement changes on both codes. Changes are required to be raised separately and considered by the separate processes and people which can lead to parties unwilling to support a change as there is no guarantee it will be made more favourable by subsequent alterations in other codes.

**Questions**

**CHAPTER: Two**

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

This appears a sensible solution if the issues which qualify are truly minor and non-controversial. However, if changes are minor they will not be urgent and therefore do not really need to be fast-tracked. Also, in the interest of transparency and fairness we would like to see a requirement to make any fast-tracked changes clearly apparent to all relevant industry parties so that there is the opportunity to object. There is the danger that they are hidden/missed when bigger issues are being debated or announced to the industry and then it would be more difficult to revoke the change once it took effect.

**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 have no issue with this proposal.

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

We believe self governance in the DCUSA is a cause for concern for two reasons. Firstly, any deadlock between "classes" needs to be arbitrated on, regardless of whether the change is administrative or otherwise. It can happen that a proposal may win over the majority of suppliers but not distributors (or vice versa) and therefore does not get passed as there is no neutral party to decide. Secondly, usually independent proposals that are raised are not "house-keeping" in nature. It should be up to the proposer to decide whether their change is appealable to Ofgem, not the Panel's decision. Therefore, if self governance were to be increased we would like Ofgem to become involved when there is disagreement between the separate groups, and also for the proposer to retain the choice of classification as safeguards.

With regards to the STC and the iGT UNC we do not have any serious concerns about introducing an element of self governance.

To be clear, in general we do not object to self governance as long as there is always the ability to appeal the classification and decision. Also, we would like to point out that since the days of the Pooling and Settlement Agreement Ofgem has sought more control in the industry and we would not like to see any reversal of this development.

**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?

Yes

**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?

We believe that in principle this is a good aim. However, we believe this would be timelier after a review of the codes occurs (as mentioned in our introductory paragraph). This is because some amalgamation could occur which would render this improvement work unnecessary e.g. Distribution Code could be administered under DCUSA, Grid Code to CUSC.

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

We do not have an issue with materiality tests in principle. However, we believe there would be some difficulty in applying a materiality test especially around changes to d-flows. If something improves a process but is costly, would this fail a materiality test?

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

We are a very small non-domestic gas supplier. We would have to set up manual processes to comply with the reporting obligations and dedicate resources to interacting with the Code to assess Change Proposals and the evolution of the Code to ensure compliance. In future, we are concerned that obligations may increase and it could cost a significant amount of money to invest in I.T. systems.

We would consider that there is advantage to implementing a threshold so that those who do not have a significant presence in the gas market are not required to accede to the SPAA. Otherwise, this would add another layer of complexity to becoming a gas supplier and hence it could create a barrier to entry.

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

No comment.

**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 the Ofgem guidance on the self governance modification appeals process is clear. However, we are concerned by the sentence which refers to the grounds for appeal being set out in the relevant code and/or licence. In the case of DCUSA, for proposals which are deemed Part 2 matters the grounds for appeal are based on contesting the classification. We believe that appeals should be eligible on the basis of the proposal meeting (or not meeting) code objectives as Ofgem sets out.

With regards to the second part of the question, we understand that there is the proposal to shorten the appeal window from 15 working days to 10 working days. This puts greater pressure on parties to identify controversial decisions quickly. This could be more difficult for smaller parties as they are more resource constrained and there are many on-going changes in the industry to keep abreast of. We believe that the appeal window should only be shortened where there is reason for the modification to be implemented quickly i.e. it has previously been granted 'urgent status'. In these cases it could be useful to have an optional extension whereby a party who thinks it is likely to appeal but is restricted by time can request a delay. This would then allow obvious and urgent modifications to progress to implementation quickly whilst still providing a safety mechanism.

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

Yes, this would seem a logical way of making the appeal process more accessible and would go some way in protecting against the risk of the self governance process making inappropriate determinations. Note that our support rests on the understanding that this would make determinations appealable (by removing some of the restrictions present in certain codes) rather than making them harder to contest.

The interesting question here is whether the right to appeal should be before any modification is assessed or afterwards. In order to avoid unnecessary appeals (effectively on process) it would make sense if the self-governance decision is appealable only after the Panel (or equivalent) has made its decision on the modification itself (not whether it was self governance).

**CHAPTER: Three**

**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?

Yes. SCRs have been utilised for significant issues such as transmission charging and balancing and we anticipate that there will need to be one for Smart metering/settlement as well. Some of the codes under consideration in the question may not require SCRs in their own right at any point in the foreseeable future but it is correct to include them as the codes are interlinked and they could have the potential to be part of wider "cross code" reviews. The SCRs to date have not been very "cross code" in nature but this is where we believe the real benefit lies.

**CHAPTER: Four**

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

Yes, as long as this is proportionate. This has been an improvement in the codes altered so far; it shows respect to the proposing party, aids transparency and helps improve future proposals. It also assists Ofgem in their assessment.

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

This would remove the anomaly and could assist in predictability. In our experience, objectives have been useful in focusing debate in working groups where all members are supposed to be impartial. We are unsure of their value when used in industry consultations though.

**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. This is better than a modification being rejected due to poor reporting. Obviously it is better if Panels are able to identify what standard is required to prevent this from occurring but with direction from the Authority and experience hopefully the option of "send back" will eventually not be required.

We would like to clarify that we believe the arrangement whereby Ofgem has different objectives to consider to the Panel has merit. It is beneficial to assess the narrower objectives of the BSC (covering efficiency and competitiveness) before it is given to Ofgem to assess the wider impact (Ofgem's considerations cover social and environmental guidance, sustainable development, and have regard to the principles of best regulatory practice). If objectives were to converge it would be difficult for Parties to take a view between wide-ranging objectives. Also Ofgem may want to be careful that they do not leave themselves open to the accusation that they are using the process to get another party to undertake their impact assessment.

**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?

We believe that convergence and transparency are desirable and therefore support this. Where codes are achieving standards above the requirements we would hope there would not be an erosion of performance.

**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?

Yes, the service offered to participants by Elexon has always worked well under the BSC and it has also worked well under the CUSC more recently.

**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?

Yes. This would reduce the burden and allow them to be gradually taken up.

**CHAPTER: Five**
**Question 1:** Do you agree with the timetable proposed?

Yes.

Should you wish to discuss any aspect of these issues further, please do not hesitate to contact me.

Yours sincerely,

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