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Statutory consultation on licence modifications to implement Code Governance Review (Phase 2) final proposals

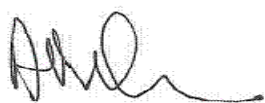
EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including residential and business users.

EDF Energy is generally supportive of the final proposals set out in the statutory consultation document. We have identified some issues that do not necessarily reflect the policy accurately. We have also identified a number of formatting, editing and incorrect referencing issues which we believe should be clarified in advance of Ofgem's direction to modify the licence conditions. Our detailed responses are set out in the two attachments to this letter.

Should you wish to discuss any of the issues raised in our response or have any queries, please contact Natasha Ranatunga on 020 3126 2312, or me.

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mark Cox'.

Mark Cox
Head of Transmission and Trading Arrangements
Corporate Policy and Regulation

Attachment 1

Statutory consultation on licence modifications to implement Code Governance Review (Phase 2) final proposals

EDF Energy's response to your questions

Q1. Do you consider that the licence drafting would achieve the policy proposals set out in the CGR 2 consultation?

The licence drafting achieves the policy proposals as detailed in the final proposals but it does not reflect all the proposals in the CGR2 consultation.

EDF Energy believes that Ofgem's proposal for only 'relevant provisions' of the SPAA obligation to be placed upon non-domestic suppliers would have gone some way to address the long-standing accession issues within SPAA. The inclusion of non-domestic suppliers into SPAA would ensure that effective and efficient governance of industry developments (AMR, SMART and Theft processes) and ensure that these are developed in a consistent and coherent manner. The numerous SPAA led attempts to resolve this issue have been unsuccessful, Ofgem intervention would have helped to move this issue forward and ensured full participation of relevant parties in the development of industry protocols.

On a detailed drafting point, paragraph 2.38 states that the time to be allowed for code administrators to publish final modification reports in respect of self-governance modifications is within five days of the panel's decision. However, we believe that the intent is the final modification reports are to be published within five working days.

Q2. Have you identified any or other consequential changes that would be required to implement these proposals?

No

Q3. Have you identified any unforeseen consequences of the licence drafting?

Yes, please see attachment 2

Q4. Do you agree that, where licence drafting differs between licence conditions, the substantive effect is materially the same?

Yes

Q5. Are there any elements of the drafting that you do not understand or that you consider inappropriate?

Please see attachment 2

Q6. Do you agree with our preservation of existing provision numbering?

Yes

Q7. Do you agree with the alignment of terminology across the licence conditions?

Yes

Q8. Have you identified any other housekeeping amendments that may be required?

Please see attachment 2

Q9. Do you have any other (non-policy related) comments on the proposed licence drafting?

Please see attachment 2

**EDF Energy
April 2013**

Attachment 2

	Licence	Ref	CGR2 FPs	Suggestion
1	GT's Licence SSC A11	13 (d)	Typographical error	in accordance with paragraph 15G (the <u>"fast track self-governance route"</u>) Deleted: "
2	GT's Licence SC 9	12(a)(iv)	Panel is defined in SC 7(h) it is not a defined licence term. However, the proposed licence drafting in 12(a)(iv) suggests that it is.	... "including a recommendation (or, in the case of a proposal falling within the scope of paragraph 12D, a determination) by the panel..." Deleted: P
3	GT's Licence SC 9	12(b)(ii)	Proposed wording potentially provides the Authority with greater 'send back' powers than when a deficiency/flaws in the report is identified. The suggested licence re-drafting is based on what is currently in SSC A11 to ensure consistency across all the codes.	to revise and re-submit a report provided in accordance with paragraph 12(a) to <u>reflect the additional steps (including drafting or amending existing drafting of the amendment to the network code/uniform network code), revisions (including timetable revisions), analysis or additional information specified in the direction to enable the Authority to form an opinion on the approval of the modification</u> Deleted: where the Authority determines that it cannot properly form
4	GT's Licence SC 9	12G(d)	Minor amendment to match what is proposed in SSC A11 15G(d).	none of the persons named in sub-paragraph (c) have objected to the <u>proposal</u> modification being made via the fast track self-governance route in the fifteen (15) working days immediately following the day on which notification was sent; and
5	Gas Supplier Licence SC30	30.6 (e) and (f)	The proposed licence modification has switched 30.6 (e) and (f) - no rationale has been provided. Suggestion is to maintain existing licence drafting.	"... <u>(e) securing compliance with standard condition 12A; and (f) the establishment, maintenance and operation of the Meter Asset Manager arrangements</u> Deleted: (e) the establishment, maintenance and operation of the Meter Asset Manager arrangements; and (f) securing compliance with standard condition 12A
6	Gas Supplier Licence SC30	30.7(b)	Sentence does not make sense, not sure what the intent is.	Deleted: (e) the establishment, maintenance and operation of the Meter Asset Manager arrangements; and (f) securing compliance with standard condition 12A
7	Gas Supplier Licence SC30	30.8	The current licence drafting does not require the panel body to have an independent chairperson and a consumer representative. This is a requirement for the UNC, although we recognise that for smaller codes this may not be necessary. However, Ofgem's position has not been fully explained in the previous consultations, if the intent is to apply the same principles across the	(a) a panel body, as specified in the SPAA (the "panel") whose functions shall be the matters required by this condition and as set out in the SPAA <u>and whose composition should include an independent chairperson approved by the Authority; and a consumer representative (appointed by the National Consumer Council, or any successor body) and any other consumer representative as may be appointed by the Authority,</u>

	Licence	Ref	CGR2 FPs	Suggestion
			codes then the current licence drafting needs to be amended further.	
8	Gas Supplier Licence SC30	30.9(b)	Proposed wording potentially provides the Authority with greater 'send back' powers than when a deficiency/flaws in the report is identified. The suggested licence re-drafting is based on what is currently in SSC A11 to ensure consistency across all the codes.	where the proposed modification requires Authority approval in accordance with the provisions of the SPAA, <u>to reflect the additional steps (including drafting or amending existing drafting of the amendment to the SPAA), revisions (including timetable revisions), analysis or additional information specified in the direction to enable the Authority to</u> an opinion on the approval of the modification proposal;
9	Electricity Transmission Licence SC B12	4(c)	The current licence drafting does not require the panel body to have an independent chairperson and a consumer representative. This is a requirement for the CUSC, although we recognise that for smaller codes this may not be necessary. However, Ofgem's position has not been fully explained in the previous consultations, if the intent is to apply the same principles across the codes then the current licence drafting needs to be amended further.	a panel body, as specified in the STC (the "panel") whose functions shall include the matters required by this condition and as set out in the STC <u>and whose composition should include an independent chairperson approved by the Authority; and a consumer representative (appointed by the National Consumer Council, or its successor body) and any other consumer representative as may be appointed by the Authority;</u>
10	Electricity Transmission Licence SC B12	6(e)	Proposed wording potentially provides the Authority with greater 'send back' than when a deficiency/flaws in the report is identified. The suggested licence re-drafting is based on what is currently in SC C10 7(aa) to ensure consistency across all the codes.	<u>If a report has been submitted to the Authority pursuant to the procedures set out in paragraph 6(b)(vi) and if the Authority determines that the report prepared in accordance with paragraph 6(b)(vii) is such that the Authority cannot properly form an opinion on the approval of the modification proposal, the Authority may issue a direction to the panel:</u> (i) <u>specifying the additional steps (including drafting or amending existing drafting of the amendment to the STC), revision (including revision to the timetable), analysis or information that it requires in order to form such an opinion; and</u> (ii) <u>requiring the report to be revised and be re-submitted.</u>

Deleted:

Deleted: for the revision and resubmission of the modification report upon, and in accordance with, a direction issued to the panel by the Authority where the Authority determines that it cannot properly for the revision and resubmission of the modification report upon, and in accordance with, a direction issued to the panel by the Authority where the Authority determines that it cannot properly form

	Licence	Ref	CGR2 FPs	Suggestion
11	Electricity Transmission Licence SC C3	4(af)	Incorrect reference – fast-track criteria is detailed in 13D not 13E.	(af) for the implementation of modification proposals without the Authority approval in accordance with paragraph <u>13D</u> , (the “fast track self-governance
12	Electricity Transmission Licence SC C14	1	Do not understand the rationale for amending the reference from paragraph 11 to paragraph 12. Has this been correctly changed – surely the referencing should remain the same.	
13	Electricity Transmission Licence SC C14	1A(b)(iv)	The first bullet point is different to what is in the CUSC.	– <u>drafting a modification proposal</u> ;
14	Electricity Transmission Licence SC C14	4A(a)	Proposed wording potentially provides the Authority with greater ‘send back’ powers than when a deficiency/flaws in the report is identified. The suggested licence re-drafting is based on what is currently in SC C10 7(aa) to ensure consistency across all the codes.	“...where the Authority determines that it cannot properly form an opinion on the approval of the modification proposal <u>the Authority may issue a direction to the panel:</u> (i) <u>specifying the additional steps (including drafting or amending existing drafting of the amendment to the STC), revision (including revision to the timetable), analysis or information that it requires in order to form such an opinion; and</u> (ii) <u>requiring the report to be revised and be re-submitted.</u> in accordance with paragraph 4;”
15	Electricity Distribution Licence SC C21	21.7A	The current licence drafting does not require the panel body to have an independent chairperson and a consumer representative. This is a requirement for the CUSC, although we recognise that for smaller codes this may not be necessary. However, Ofgem’s position has not	“...a panel body, as specified in the Distribution Code (the “panel”) whose functions shall include the matters required by this condition and as set out in the Distribution Code and any ancillary documents <u>and whose composition should include an independent chairperson approved by the Authority; and a consumer representative (appointed by the National Consumer Council, or any successor body) and any other consumer representative as may be appointed by the</u>

Deleted: for the revision and resubmission of the modification report submitted to the Authority pursuant to sub-paragraphs 6(b)(vi) and 6(b)(vii) upon, and in accordance with, a direction issued to the panel by the Authority where the Authority determines that it cannot properly form an opinion on the approval of the modification proposal.

Deleted: 13E

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	Licence	Ref	CGR2 FPs	Suggestion
			been fully explained in the previous consultations, if the intent is to apply the same principles across the codes then the current licence drafting needs to be amended further.	<u>Authority,</u> Deleted: ; and
16	Electricity Distribution Licence SC C22	22.9B	Please provide additional clarification as to what A3(f) points to.	"...The procedures must provide for the proper evaluation of the suitability of the self-governance route for any particular modification proposal in accordance with the criteria Specified pursuant to paragraph A3(f) <u>of Appendix 1.</u> "
17	Electricity Distribution Licence SC C22	22.9F(e)(i)	For consistency with other codes, the licence should allow 15 days following the panel's decision for no appeal to take place.	"...no appeal has been raised up to and including <u>15</u> working days after the publication of the parties' determination pursuant to paragraphs 22.12A and in respect of such a modification proposal in accordance with paragraph 22.9G, or Deleted: 10 Deleted:
18	Electricity Distribution Licence SC C22	22.9G	As above.	"...The procedures must provide that those persons set out at paragraph 22.5(a) may appeal to the Authority the approval or rejection of a modification proposal determined pursuant to 22.9F, provided the appeal has been made up to and including <u>15</u> working days ..." Deleted: 10
19	Electricity Distribution Licence SC C22	22.13B	Proposed wording potentially provides the Authority with greater 'send back' powers than when a deficiency/flaws in the report is identified. The suggested licence re-drafting is based on what is currently in other codes, and therefore, will ensure consistency across all the codes.	"... where the Authority determines that it cannot properly form an opinion on the approval of the modification proposal <u>the Authority may issue a direction to the panel:</u> (i) <u>specifying the additional steps (including drafting or amending existing drafting of the amendment to the DCUSA), revision (including revision to the timetable), analysis or information that it requires in order to form such an opinion; and</u> (ii) <u>requiring the report to be revised and be re-submitted...</u>
20	Electricity Transmission Licence	6B(b)(i)	Currently states "any representations received in relation to the suitability of the significant code review route; ...".	Amend Electricity Transmission Licence to ensure consistency.

	Licence	Ref	CGR2 FPs	Suggestion
			However, licence drafting in other electricity codes differs and states: "any representations received in relation to the relevance of the significant code review; and ..."	
21	Gas Transporter Licence	15B(b)(i)	<p>Currently states "any representations received in relation to the suitability of the significant code review route; ...".</p> <p>However, licence drafting in other gas codes differs and states: "any representations received in relation to the relevance of the significant code review; and ..."</p>	Amend Gas Transmission Licence to ensure consistency.