

Cooperative Energy
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26 June 2015

Dear Maxine,

Ref: Further review of industry code governance

Thank you for the opportunity to respond to your open letter dated 15th May 2015. In common with other independent suppliers Cooperative Energy welcomes the focus on industry governance by both Ofgem and the Competition and Markets Authority investigation. Your letter identifies three significant drivers of change in the market. We would include a) increasing competition and consumer choice as an additional driver and b), the impact that the regulatory change will have specifically on the independent supply community.

We also welcome the previous work that Ofgem has done in this area through CGR and CGR2 and provide further comments on the specific questions in the open letter. We have also commented on the areas of potential reform that Ofgem has identified. We also assert that by adopting a Systems Thinking approaches to future changes Ofgem could achieve better outcomes for consumers. The SCR process could be a vehicle for this change of approach.

As a new and growing supplier, it is our view that the extent and scope of regulation and industry codes is a significant barrier to entry and expansion of all independent suppliers. Ensuring sufficient oversight to manage the existing regulatory obligations is a significant and growing overhead. We would urge Ofgem to examine, and reflect on how they can positively reduce this burden.

Changes to the regulatory regime often disproportionately affect the independent supplier sector. Our view is that regulatory changes should meet a relevant objective of assessing the



impact on independent suppliers. This should be applied across industry codes and changes to standard license conditions. Where identified a specific impact assessment on the effect on the independent supplier sector should be produced including cost benefit analysis.

The governance of industry code bodies are dominated by entrenched interests. Information and objectives of the drivers for specific changes are often very narrow or opaque. Only the large suppliers and transporters are able to resource and attend all code workstreams, and thereby largely control code development. Consequently regulators are inclined to seek and accord with the views of larger industry partners when framing policy or regulatory changes. By means of an example, the decision to defer DNO distribution charges in 2013 highlights the unintended consequences of not accounting for the interests of the independent supplier sector. Essentially, certain DNOs intend to recover deferred revenue from suppliers based upon their current market share, as opposed to the 2013 market share data. Given that independent suppliers market share has increased since 2013, the methodology will result in independent suppliers paying significantly more than the benefit they would have received in 2013. This perversely results in a cross subsidy from independent suppliers to the Big 6.

Another implication of the position of large suppliers and transporters on industry code bodies is that changes are specific, complex and often require all suppliers to undertake large IT project expenditure to implement. These costs are easily absorbed by the larger players and disproportionately affect smaller suppliers. Using code change processes in this way is an effective tactic, and a barrier to the expansion of the independent sector.

Undoubtedly the industry is complex and part of this complexity is reflected in the codes. That withstanding we would recommend that code administrators have a specific duty to simplify and rationalise industry codes and subsidiary documents. Although teleconferencing is common for most meetings video conferencing has rarely been used for either panel or workgroup meetings. It is our understanding that cost effective video conferencing is used commonly in European fora and should be introduced by code administrators.

As highlighted above the following pages address the specific questions and proposals highlighted in the open letter. I hope that this response will prove useful, please do not hesitate to email paul.youngman@cooperativeenergy.coop should you have any questions or require any further information.

Yours Sincerely

Steve Rowe
Head of Regulation and Compliance



Answers to the specific questions and comments on Ofgem's proposed solutions.

1: Do you consider the governance changes introduced under CGR and CGR2 have been effective in improving the code governance arrangements. In particular considering the efficiency and effectiveness of code change, the ability for large scale reform to be implemented, and the accessibility of the arrangements for smaller/newer industry participants and consumer representatives?

The reforms introduced through CGR and CGR2 have been partially effective. There is direct evidence that efficiency and effectiveness of code changes has improved through introducing the self-governance modification processes. There is also the impression that there is a more urgent pace to find resolution to more contentious code modifications. The SCR process has not proved to be an efficient process in its current form – the shortest of the three SCRs taking just under three years. The process may have been undermined in that consultation has only resulted in minor tweaks to the original proposal. Finally CGR and CGR 2 have failed to enable independent suppliers and newer industry participants access the arrangements. The lack of accessible forward plans as to code modifications, and insufficient use of ICT such as video conferencing by administrators means that independent suppliers are at a significant disadvantage compared to other industry participants in engaging with relevant code modifications.

2: Do you agree that there is a need to consider further reforms to the industry code governance arrangements? If so, what issues do you consider should be addressed, and what possible solutions do you identify?

There needs to be reform of industry codes governance arrangements. Future arrangements need to nurture competition; have democratic governance arrangements; be forward looking, transparent and consensual.

Competition is the key to lowering the cost to consumers and improving customer service. Nurturing a healthy competitive independent energy supply sector is essential to drive consumer benefits. Independent and new suppliers have limited capacity to engage with all code changes that can significantly undermine the competitiveness of the sector. We recommend a relevant objective to accompany code changes and SCRs to specifically identify the impact on independent suppliers. Where identified, a specific impact assessment on the effect of changes on the independent supplier sector, should be produced including cost benefit analysis. On the issue of governance we would welcome further proposals from Ofgem on aligning the respective change and panel arrangements across codes to ensure representation is equitable and that a level playing field exists between the transporters, large suppliers and independent suppliers. We support the principle that individuals should be appointed to code change panels to represent the interest of the whole of industry not just the position of their company. We also think it reasonable that costs should be recoverable for panel positions as companies would be providing industry representation. We would also recommend that code administrators



provide video conferencing at all workgroups and of panel meetings, to ensure greater transparency and that representation can be provided cost effectively.

3: In addition to a post implementation review of our CGR reforms and potential changes discussed in this letter, are there any other areas of industry code governance that should be considered in this review?

We have highlighted the importance of ensuring that governance arrangements nurture competition and the development of independent suppliers; provide a level playing field for industry participants. In addition we agree with Ofgem that code administrators should provide a forward plan of activities and actions. We have also highlighted below where we agree with Ofgem's proposed remedies.

Ofgem proposed remedies

Significant Code Reviews:

Specify a timetable that any code modification which we direct should follow

We do not believe this will significantly improve decision making or speed up the SCR process. A more effective process may be modelled on the ACER / ENTSO model where Ofgem could highlight the outputs that it desires from an examination or strategic development of the Codes. The relevant code administrator develops an open workstream to define the options and reach an acceptable industry consensus on the appropriate code changes.

Draft a modification proposal in some circumstances, rather than this being undertaken through the standard industry process following our direction. In such circumstances, we would expect industry parties to continue to be closely involved in the development of any such modification, and for the panels to continue to have a role in voting on recommendations.

We do not believe the inefficiency of the SCR process is due to the time used to produce modification text. A large amount of time and effort is utilised by the regulator in developing the expertise and arguments to support its views when industry presents counterfactual evidence. This can lead to entrenched positions and an inability for parties to establish a working consensus to move comprehensive change forward.

Code Administration

More 'strategic' panels/proactive industry management of the modification process: we welcome views on how code panels, code administrators and the wider industry can work more strategically to improve the code modification process. For example, this could be through providing a forward work plan for the year to enable more efficient planning and allocating of resources throughout the year. Another option may be to have a more managed process for bringing forward change (eg a change window) in some areas.



As highlighted above we believe the SCR process should be refocused to provide the strategic/proactive industry management highlighted by Ofgem. We also welcome the provision of forward work plans by code administrators and proactive use of ICT to ensure wide engagement and transparency. Although an option, we do not feel that prescriptive change windows should be used, as this could result in poor decision making and incoherent implementation of modifications.

Independent panels: We note that some codes require independent panel members, (i.e. where voting members must act impartially and not represent the interests of their employer and/or constituency) whereas other panels rely on representative voting. There may be benefits in extending the independent panel member requirement to other codes, to ensure that code modification decisions and recommendations are made on an impartial/objective basis.

We agree that individuals on change boards and panels (normally elected) should serve impartially with costs for participation redeemed. Working groups should be open to all companies. Working groups should operate on the basis of establishing the broadest consensus for a proposal (this does not mean agreement). We note that many of the panel and change boards are dominated by the interests of either transporters, or the largest suppliers and would urge Ofgem to consider if this imbalance is in the best long term interests of the whole industry and consumers.

Improvements to work group processes: We note that some codes provide independent chairs at work group meetings and there may be merit in requiring that all work groups have an independent chair. This may help support smaller party representation. There may also potentially be benefits in requiring that independent and impartial expertise is appointed to work groups in certain circumstances.

At a working group level we believe that companies should act in their own interests. It may be beneficial that workgroups are independently chaired. As highlighted above there is a requirement that ICT investment occurs to enable video conferencing for all workgroups.

Consumer impacts: we would like views on how the industry can better report on consumer impacts of proposed modifications in order to aid engagement of all relevant parties. For example, a section could be added to all modification reports to give a description, where relevant, of how the modification would affect consumers, what type of consumers would be affected and an approximation of how many consumers would potentially be affected. Potential consumer impacts could initially be identified by the proposer of a modification and updated as necessary throughout the modification process, allowing all parties to effectively engage with the development of the potential solution.

We agree with this proposal and have argued above for the inclusion of a similar proposition to assess the impact on the independent supplier sector of proposed modifications.

