

# Energy UK response to Ofgem's further review of industry code governance

**26 June 2015**

## About Energy UK

Energy UK is the Trade Association for the energy industry. Energy UK has over 80 companies as members that together cover the broad range of energy providers and suppliers and include companies of all sizes working in all forms of gas and electricity supply and energy networks. Energy UK members generate more than 90% of UK electricity, provide light and heat to some 26 million homes and last year invested over £11 billion in the British economy.

## Energy UK response

Code governance varies across the different electricity, gas and retail codes creating a complex, resource intensive regulatory framework which can be challenging for small and large companies alike. This becomes more challenging when multiple large changes occur across the energy industry in a short period of time without being fully considered across the network codes.

The progress in code governance arrangements through Ofgem's Code Governance Reviews (GCR) and GCR2 is acknowledged as being beneficial with progress made towards harmonisation, accessibility and transparency across all codes.

Additionally we note that the Competition and Markets Authority has published its Theory of Harm 5 which looks at the broader regulatory framework of network codes, current governance arrangements as well as how this acts as a barrier to pro-competitive innovation and change. In addition to setting out our comments on Ofgem's GCR and GCR2 we have also set out our views on the current governance arrangements and suggestions for improvement in the future.

## Significant Code Review

The power to direct relevant code licensees to raise complex cross code changes under the Significant Code Review (SCR) process has enabled Ofgem to make changes in line with the direction of energy policy ensuring that the codes are fit for purpose. These changes have taken a significant amount of time and resource both from industry incumbents and independents.

There are improvements that could be implemented to streamline the SCR process in the future. Active participation from the Ofgem representatives early in the SCR process would allow proposals that do not facilitate the SCR to be eliminated before significant time is spent drafting a full workgroup alternative proposal. Which, ultimately, would not be approved by Ofgem.

Table 1 of Ofgem's consultation on industry code governance shows the timings for SCRs launched since 2010. We note that the majority of time has been spent between either between the SCR launch date and Ofgem providing direction or between the panel recommendation date and Ofgem making its final decision. We therefore do not consider that there is a failure in the code modification process.

The issue regarding the number of modification alternatives is also a key element of code modification governance. While limiting the number of workgroup Alternatives (current arrangements under the BSC allow for 1 alternative per modification<sup>1</sup>) may seem efficient, it often restricts choice and results in the least-worst options being progressed as support has to coalesce around a single alternative. Additional modifications would have to be raised if there are several alternative that industry want to progress, again this slows down the time it takes to implement the proposal overall as any alternative proposals would need to be taken forward via a new modification proposal. Although appearing daunting, a matrix solution with multiple aspects, (current arrangements under the CUSC) such as CMP213, can usually be easily resolved when parties identify which aspects best address the defect.

Applying strict timetables to the code modification process can foreshorten debate especially on new issues arising during the course of workgroup discussions, increase the possibility of errors being made and can reduce engagement by industry parties. The effect of this could lead to inefficient outcomes detrimental to the end consumer and the energy industry. We do not support this proposal as being beneficial to the code modification process.

Energy UK also opposes Ofgem having the power to draft its own modification proposals. We consider that this could lead to bias behaviour with Ofgem (as the modification owner) able to decide which workgroup alternative are progressed meaning that more control of the process is retained by Ofgem.

### Role of Code Administrators

#### Code Administrators Code of Practice (CACoP)

Further standardisation of the governance arrangements for code changes across the codes is a simple and beneficial step so that you have a single set of best practice governance

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<sup>1</sup> But we note the number of alternatives is not limited for CUSC modifications with the same applying to UNC modifications unless Ofgem directs that this should be the case

arrangements across all codes; this could bring clear benefits to the accessibility of the codes via the change process. Ofgem has already created a template of best practice arrangements, the CACoP.

There is a case for greater oversight of the performance of the code panels and code administrators against these best practice guidelines. For instance an annual report by Ofgem that set out relative performance across all codes building on the existing code administrators KPIs. This would provide a comparative benchmarking report for both industry and also Ofgem to ensure that the code modification processes were effective and efficient and prompt action where needed. While we note that all of the Code Administrators have signed up to the CACoP, the level of compliance appears variable. Under Principle 12, Code Administrators should be reporting on a series of qualitative and quantitative metrics, including views of recipients of the service. In practice these reports are not easily accessible. We think Ofgem should publish these reports, along with its assessment of performance, to promote transparency and enable benchmarking of Code Administrators' performance. By assessing how effectively the Code Administrators are discharging the roles and responsibilities captured within the principles of the CACoP, the standards of service and, more generally, compliance against the code principles should improve.

We consider that accessibility of the codes is critical for new entrants and smaller companies; this could be facilitated through a web based service which compiles the relevant sections of each code as applicable to the user. We note the UNC holds a pre-modification panel telecom which is open to anyone, this describes new proposals and those at key decision points, it may helpful if this is adopted by other codes. Additionally, wording and definitions across codes should be harmonised to ensure meanings are not misunderstood. We would also support a move towards independent panel members and the option to elect an independent workgroup chair if considered necessary, however the cost of this approach would need to be considered.

The definition of the "Critical Friend" role is not consistent across industry codes with some able to not only support the drafting and progressing of modification proposals but also being able to provide technical support for parties who are either new entrants or have less experience with the code. In our opinion the code administrator's critical friend role should be twofold:

- Administration function – This would provide support in with conventional code administrator functions such as code modification drafting, document identification and industry liaison.
- Technical function – This would allow the code administrator to act as a code expert and thereby provide impartial advice to industry participants whether small or large when discussing potential change proposals or how current modifications work and what the impacts will be on the code itself.

### Self-Governance

The progression of the Self-Governance provisions within the codes has streamlined the process of approving modifications that do not have a material impact on the code by removing the need to progress changes through the full workgroup process. There may be further opportunity to progress such changes without the need for Ofgem's final approval in the future which, were appropriate, would additionally speed up the process and reduce the resources committed by Ofgem.

### Charging Methodology governance

The inclusion of charging methodologies within the governance of industry codes has been beneficial in allowing industry led improvements to charging arrangements across codes.

We agree that charging forums are useful for discussing change proposals and allow the proposer to test ideas prior to an official modification proposal being raised. Any pre-modification process would need to be optional and although potentially beneficial to the development of the modification we consider that the proposer would still retain control of the ability to raise the modification regardless of discussions held at charging forums.

We support greater cross code coordination and note that with changes to how electricity is generated and supplied on the transmission and distribution systems it is inevitable that charging arrangements will become more intertwined and therefore further consideration is needed as to how this is effectively managed in the future.

The idea of a charging window could potentially provide a more efficient change process not only for charging modifications but also for non-charging related modifications. However, we have a number of concerns around how practical this would be to implement;

- A single combined charging modification could be very complex and difficult to assess. There is also the possibility that simple changes would have to wait for the complex aspect of the modification to be developed before being progressed which would cause delays;
- Similar concerns would apply if there were multiple modifications on related topic being progressed in parallel;
- A timescale for workgroup development would need to be prescribed – this could limit full discussion of the issues and exploration of the impacts through detailed analysis;
- This would limit participants being able to raise modifications proposals when they consider it appropriate to do so, reducing flexibility and potentially limiting the delivery of benefits;
- A process would be required for urgent changes including those that may arise from EU Regulations.

### Other Considerations

Design Authority

There have been several large modifications progressed through the code modification process in recent years with the Authority's SCR aimed at identifying large changes and implementing these through the codes modification process. The impact of several large modifications being progressed along with other smaller modifications has created a significant amount of work for market participants with resources being stretched (for both large and small companies).

The establishment of an overarching Design Authority could benefit the code modification process by delivering a joined up approach to code changes which may deliver efficiencies in implementation, development and structure of the codes. This in turn would allow market participants to allocate staff more effectively, understand the direction of the code framework and better prepare for change. The governance, remit and representation on this body would need careful consideration to ensure it does not simply add further bureaucracy. We note if implemented, this should be industry led with sufficient representation from across the network codes. It should also not preclude parties from raising modification proposals at any time.

#### Code Mapping

It would be better to have fewer codes and, where possible, to rationalise their content and identify synergies. The challenge with this is that it would take a lot of work / resource to rationalise the codes. It is most likely to be cost and resource-efficient if delivered alongside other change programmes that affect the codes. Therefore we believe that there should be a clear vision of the optimal structure and number of industry codes which sets the direction of travel and then steps taken to achieve this vision at suitable opportunities.

#### Accessibility

We also suggest enhancing Ofgem's website which currently contains limited information on Codes. In addition to the names of the various Codes and links to the relevant administrators' websites, it would be useful if Ofgem could provide an easy to follow introductory guide providing an overview of Codes including, for example, which codes parties need to sign up to, the code modification process, appeals process, collateral and compliance requirements, and the relevant objective(s). This would be particularly useful for new entrants.

From an end-user's perspective, it is much easier to have a single website that hosts all the relevant industry code information in one place, rather than having several sites hosted by different Code Administrators and with completely different layouts. Navigating through complex sites, especially when the required information is sometimes unavailable, is a frustrating and unproductive experience shared by users, both large and small. We believe that Code Administrators should be required to develop a single hosting website that is easy

to navigate. This will reduce the complexity to market participants and would be particularly useful for new entrants.

Energy UK welcomes the opportunity to further discuss the points set out in this response with Ofgem. Should you require further information or clarity on the issues outlined in this paper then please contact Kyle Martin on 020 7747 1834 or [kyle.martin@energy-uk.org.uk](mailto:kyle.martin@energy-uk.org.uk).

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