



Energy for  
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## **ESB response to Ofgem's Code Governance Review open letter**

ESB welcomes the chance to respond to Ofgem's open letter on Code Governance. Although we have interests and interactions with the majority of industry codes we are most engaged in the CUSC, therefore the majority of our views relating to code governance will be in reference to our experiences of CUSC processes.

For the sake of clarity our response addresses the questions raised in Appendix A rather than directly addressing the three questions put to industry in the letter itself.

### **Amendments to SCR process**

#### Timescales and engagement

We note Ofgem's concerns regarding the timescales for completion of SCRs. Although it is clear from the evidence presented that the three SCRs carried out to date have overrun expected timescales this may simply be down to Ofgem initially underestimating the time that significant and complex industry change takes. Having said this, if Ofgem wishes to see these timescales come closer into line with their initial estimates there are steps that we believe could be taken to streamline the process.

The first of these relates to the Ofgem stage of the process. It is vital that at this stage Ofgem carries out as much analysis and impact assessment of the SCR as possible. This will help identify any potential bottlenecks in the process and provide clearer information to industry as to the overall objectives of the SCR and what is expected once the change enters the industry stage.

The second improvement relates to analysis requirements. The analysis required as part of an SCR can take up a significant amount of time and we feel that it is not appropriate for Ofgem to place the burden of this analysis solely on industry. Even amongst larger industry participants there are limited resources to carry out analysis (and it is particularly hard to incentivise parties to carry out analysis that could be seen as beneficial to an SCR that they are opposed to). In order to prevent bottlenecks through delays in analysis we feel that Ofgem could do two things. Firstly, identify any analysis required at the earliest possible stage, clearly defining the data requirements in order to maximise the time industry has to gather data. Secondly, for significant pieces of analysis Ofgem should more proactively consider engaging with third parties (consultancies etc.) to deliver analysis. To ensure third party analysis is effective, Ofgem should engage with industry to identify appropriate parties and collaborate in developing a scope of work. This would reduce the burden on industry and have the added benefit of providing impartial analysis that takes into account the views of a broader spectrum of industry, not just those with the resource to carry out in-depth analysis.



A further benefit of such an arrangement would perhaps be to enable Ofgem to make quicker decisions when modifications are sent to it at the end of the SCR process. On a number of occasions Ofgem has stated that the reason for delays to its decisions is additional analysis it purportedly requires to make its final decision. If this analysis has been specified and undertaken at an earlier stage it would furnish Ofgem with all the information it requires to opine on the modification.

#### Ofgem drafted modifications and timescales

At this stage of the proposal, there is limited clarity on how the process would work. As such, the industry is unable to test the proposals further. However, we do not support the principle that Ofgem should have powers to raise modifications. - When the SCR process was developed there were concerns from industry that such a power may put into question Ofgem's impartiality in the decision-making process for modifications it has raised and developed itself and we believe that this question remains pertinent. From the open letter it appears that the justification for giving Ofgem powers to raise a modification centre on the fact that it would expedite the SCR process. As outlined above, we feel that this issue is best resolved by providing clear direction to the party instructed to raise SCR modifications as to Ofgem's expectations. Should Ofgem seek to develop proposals on this matter, a further consultation with significantly more detail should be carried out as a priority.

With regards to timescales, we support Ofgem providing indicative timescales with key milestone dates to provide industry with a view of the expected progression of an SCR, however, we believe these should remain purely indicative. If enforced timescales were introduced there is a real danger that they would drive incomplete analysis and hurried decisions, resulting in sub-optimal outcomes.

While indicative timescales can often be useful, Ofgem could also contribute to the efficiency of the process by providing more detailed views or early indications of its interim position, where appropriate and possible. This would provide better direction to the modification and increase the likelihood of the process focusing on the necessary analysis. Consequently, we envisage this delivering a more streamlined and efficient process.

#### **Self governance**

We agree that the introduction of self-governance into the CUSC process has led to improvements in the effective administration of the codes and therefore support the continuation of these arrangements and their wider implementation into other codes. We note that the number of modifications being implemented through self-governance is below Ofgem's expectation. We would caution that level of uptake is not necessarily the best indicator of the success of self-governance modifications and all things being equal we would expect the number of modifications being put



forward as self-governance to drop as there is a limited number of modifications that can be classed as self-governance and as these are addressed that number will get smaller.

## **Code Administration**

### Critical friend

We believe that the industry, and in particular the codes process is necessarily complex and appreciate that this could cause barriers to participation for smaller players in some instances. Attempting to increase engagement through the simplification of industry codes and processes may lead to unintended negative consequences and should be avoided. We therefore support mechanisms such as the role of the code administrator as a critical friend in supporting smaller players. We note that Ofgem feel the critical friend route is being under-used and agree that more could be done by the code administrators to publicise this role. However, we believe there could also be more industry led solutions to the issue of small party engagement, reducing the reliance on the critical friend.

One such solution could involve including a representative of small suppliers/generators as a voting member on each code administration panel (in a similar way that the CUSC has a mandated consumer representative). This representative could come from the small players themselves or be from a third party nominated and funded by a pool of smaller players and/or industry in some way. The representative could also attend workgroups and panel meetings on behalf of smaller parties, providing digests, analysis and consultation responses on their behalf. The representative could also have Panel voting rights on behalf of its constituent members. In instances where there is no consensus among the group they represent, they could simply provide feedback to be taken into account by Ofgem in any decision making processes. Such an arrangement would ensure the views of small parties were expressed with least impact on small players' time and resources. The representative party would not preclude an individual representative from a smaller party attending industry meetings but could play a part in helping to promote wider representation of smaller industry parties and to make sure their views are considered.

### CACoP

In order for the industry to operate in an effective and efficient manner it is vital that there is, wherever possible, alignment in code administrator processes and cross-code co-operation. We agree with Ofgem's view that greater code alignment will allow for better cross-code participation and reduce the burden on smaller parties.



The majority of ESB's engagement with the code administration process comes from our interaction with the CUSC, so it is difficult to comment on how the principals of CACoP have been implemented across other codes. We do however feel that the recommendations of the CACoP have been faithfully incorporated into the CUSC process and are working well. In our, albeit limited, experience of dealing with other codes and discussion with industry colleagues more closely engaged with those codes it appears most of them have not taken the principals of the CACoP as far as the CUSC and would therefore suggest that Ofgem pushes for greater incorporation.

Alignment of codes is not the full solution to better cross-code interaction and Ofgem should consider further amendments to the CACoP that formalise cross-code interaction, such as strengthening the participation and/or representation of each code at other codes' Panel and workgroup meetings. This would give increased visibility at all stages of modifications, from proposal through development to Panel decision.

A further addition to the CACoP could be to mandate the various code administrators to meet on a periodic basis (for example bi-monthly) to discuss current and forthcoming modifications, highlighting issues that could have cross-code implications. When developing the Terms of Reference for modifications, it is good practice to discuss possible implications for other codes. These discussions could form the basis of reports to a joint code administrators meeting. As modifications develop and cross-code interactions are discovered, these could be presented for early discussion and progress reporting at such a meeting.

#### Governance of charging methodologies

Whilst understanding the rationale behind Ofgem's desire for a more planned and strategic approach to charging modification management we feel that this is practically difficult due to the unpredictable timing of parties having to raise modifications in response to identified defects. It is our strong view that open governance works best when parties are able to raise modifications at any time rather than in pre-defined windows or to fit around on-going modifications and any attempt to change this would undermine the benefits of an open governance framework. If, as suggested, charging modifications could only be raised during a modification window there would be a surge in workgroup attendance, putting a potentially unmanageable administrative and resource burden on code administrators and industry participants.

In addition, require parties to raise charging modifications in windows will likely lead to periodic material step changes in charges. Forcing charging modifications to be raised in windows will result in many varied issues being addressed which makes forecasting charges impossible year-on-year. Network owners and operators,



particularly National Grid, have, in recent years made efforts to provide transparency, stability and foresight of charges. For the reasons stated above, we believe the introduction of charging modification windows would be a backward step in this regard.

We agree with Ofgem's views on the use of the existing charging fora to identify areas of concern and then develop and filter charging modifications before they enter a formal working group process. ESB actively participates in National Grid's TCMF and we are strongly of the view that it provides an open forum for such discussion. We note, however that there are other codes that are less open to industry participation and are perceived as somewhat closed door to industry participants outside the network owners. We would welcome the open principles adopted in some network charging groups extended to them all.

#### More strategic panels

We agree with Ofgem's view that there is a merit in considering the framework for more 'strategic' panels and more proactive industry management of the modification process. We believe this is an area that has some potential to address some of the concerns outlined above, such as participation of smaller parties in industry processes as well as cross-code coordination of industry changes. One way to promote a more strategic approach amongst the codes could be through providing an indicative forward work plan for the year or two years. The plan could include the areas that are likely to be the focus of the industry change and the underlying issues or concerns to be addressed under each area. The plan could be based on the analysis of on-going work, policy and market developments as well as changes that are likely to be raised as a result of European policy developments.

The plan would also identify the relevant working groups and sub-committees that would be responsible for each area of the work. This will help in streamlining communication across codes and encourage a more robust process of identifying impacts of industry change proposals. Strategic plans should be accessible to the industry and stakeholders, and allow parties to register their interest for a specific subject matter. This would promote simplicity, transparency and accessibility for the industry to participate effectively in the market and have a say in the matters that affect their operation.

That said, it is crucial that any obligations under the current proposal do not put unnecessary additional burden on code administrators. Our preference would be for this or an equivalent solution to be developed within the current practices and existing requirements of code administration.



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### Independent panels

We strongly support independent panels comprising of individuals who represent as wide a range of industry participants as possible. We also strongly support the use of independent workgroup chairs wherever possible as they are best placed to steer discussion and analysis with least bias.

We would be happy to discuss the views expressed in our response in more detail if Ofgem so wish.

Regards,

Will Chilvers

Regulatory Analyst