



Maxine Frerk  
Senior Partner,  
Smarter Grids & Governance  
Ofgem  
9 Millbank  
London  
SW1P 3GE

Name Hazel Ward  
Phone 07989 493072  
E-Mail [hazel.ward@npower.com](mailto:hazel.ward@npower.com)

26 June 2015

Dear Maxine

**Re: Further review of industry code governance**

I am writing in response to your open letter of 15th May 2015 in which you set out your rationale for reviewing the current industry code arrangements as well as the aspects of code governance that you propose to review.

RWE agrees that the time is right to assess industry code governance in the light of the scale of impending industry change and in particular how the codes are able to reflect the interest of consumers. We note that Ofgem welcomes the inclusion of Industry Code Governance in the Competition and Markets Authority's (CMA) investigation as a new theory of harm and that potential governance reforms discussed in this letter may go some way to addressing some of the issues the CMA is considering. As such we assume any conclusions made will be consistent with findings of the CMA and an adequate consolidation process will be agreed with the CMA to enable an efficient and clear implementation of any remedies.

We agree that to some extent the changes introduced under the Code Governance Review (CGR) and Code Governance Review 2 (CGR2) have improved the code governance arrangements, particularly in respect of charging methodologies which we consider to be a great success.

However we do believe there is an opportunity to make further changes that would create a more efficient, economic and accessible industry code governance framework that is better suited to the future market model and is better able to manage large scale industry change.

I have set out our recommendations in our response, some of which we proposed in our submission to the CMA on Theory of Harm 5.

I hope these comments are helpful. Please contact me if you need any further explanation or detail. We would be happy to discuss them further with you.

Yours sincerely

*Hazel Ward*

**Hazel Ward**  
**Regulation Manager**

**RWE npower**

Trigonos  
Windmill Hill Business Park  
Whitehill Way  
Swindon  
Wiltshire SN5 6PB

T +44(0)1793/87 77 77  
F +44(0)1793/89 25 25  
I [www.rwenpower.com](http://www.rwenpower.com)

Registered office:  
RWE Npower plc  
Windmill Hill Business Park  
Whitehill Way  
Swindon  
Wiltshire SN5 6PB

Registered in England  
and Wales no. 3892782

## **RWE npower's response to Ofgem's open letter: Further review of industry code governance**

RWE agrees that the time is right to assess industry code governance in the light of the scale of impending industry change and in particular how the codes are able to reflect the interest of consumers. We note that Ofgem welcomes the inclusion of Industry Code Governance in the Competition and Markets Authority's (CMA) investigation as a new theory of harm and that potential governance reforms discussed in this letter may go some way to addressing some of the issues the CMA is considering. As such we assume any conclusions made will be consistent with findings of the CMA and an adequate consolidation process will be agreed with the CMA to enable an efficient and clear implementation of any remedies.

Your letter asks three main questions, your first being:

**'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?'**

We agree that to some extent the changes introduced under the Code Governance Review (CGR) and Code Governance Review 2 (CGR2) have improved the code governance arrangements, particularly in respect of charging methodologies. We were pleased that, within Ofgem's first code governance review, the relevant charging methodologies for network costs were included within the industry agreements. This provided greater visibility to all parties and meant that suppliers could provide input on the way these costs were constructed and notified to the industry. We consider this to be a great success and would not advocate further changes away from this improved position.

The introduction of the Code Administrators Code of Practice (CACoP) was a step in the right direction in streamlining code governance and supporting accessibility to the codes. However, we believe that there are further improvements that could be made. There is, for example, a lack of consistency in the effectiveness of code administrators in respect of the way they carry out their secretariat duties in industry meetings and in the 'critical friend' role - some are better at it than others. The good code administrator plays an important role in breaking down barriers for smaller and newer parties as well as consumer representatives by providing well managed governance, ensuring meetings are effective and in providing a gateway to understanding the codes. Therefore it is important that a best practice culture is embraced by all.

The recent proposal to introduce Principle 13 into CACoP has the potential to improve the change delivery landscape but will need to be robust and ensure that Code Administrators can give evidence of the 'cross code' view.

In our submission to the CMA in respect of Theory of Harm 5 (TOH5) we stated that we do not accept that current code arrangements are skewed in favour of the interests of incumbents or that they represent a barrier to entry or to innovation and we cited some industry changes raised by smaller suppliers. Furthermore, we do not believe that decision making panels are dominated by the larger players. For example, just one of the current twelve members of the BSC Panel is from the six larger suppliers. That said, we are supportive of working towards even greater accessibility to the codes for non-incumbents.

We believe that there is still more that can be done to streamline the codes that will make them more efficient and effective as well as enabling greater accessibility for smaller /newer

participants and consumer representatives. In addition, there is an opportunity to improve the management of large scale industry reform that will benefit both the industry and consumers. I have set out our recommendations in response to your second and third questions.

With regard to the Significant Code Review (SCR) process, since its introduction, Ofgem has undertaken three such reviews and each of these have taken much longer than anticipated to reach a conclusion, particularly the Gas Security of Supply SCR which took forty-four months to conclude. Whilst we appreciate this is still a relatively new process that also has time built in for a consultative approach, there seems to be an opportunity to either improve the timeliness of the process or manage the industry's expectation on the realistic length of an SCR.

It is not clear what constitutes the need for an SCR. There have been recent large scale changes that one might reasonably assume would have been eligible for the SCR process such as Project Nexus or the delivery of electricity settlement reform for customers in Profile Classes 5–8, the latter particularly being a cross code issue that is likely to have a significant impact on a specific group of consumers. With this in mind, we would advocate greater clarity from Ofgem on when and why an SCR is required.

Your second questions asks:

**'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?'**

We do agree that there is a need to consider further reforms to the industry code governance arrangements and are supportive of change. We are also mindful of the fact that the implementation of a large scale reform is likely to require significant industry resource, input and cross code working. The implementation approach therefore, should be a considered one with strong central coordination. It may also need to take into account existing open change proposals and industry programmes in respect of the industry's capacity to manage everything concurrently.

Your letter outlines the number of diverse codes in the gas and electricity markets, each one having its own code administrator and governance process. Over the next decade we face an increasingly high volume of large scale industry changes some of which will be cross code changes and many of which will result in significant system, resource and cost challenges for the industry. With this in mind we recommend the following reforms all of which we believe will further streamline the industry codes and their change processes and enable more effective industry management of large scale changes.

A single code administrator for all codes along with an adoption of uniform governance procedures across all codes. This would streamline the codes and provide a window to reduce code complexity.

An independent Industry Change Overview Board providing a cross code Design Authority function with the vires to decide on the optimum go live dates of large scale changes, taking into account the scale and timing of other changes. This would enable a robust and considered release timetable that would benefit both the industry and the end consumer by minimising the risk of change overload, further delays and ensuring delivery costs are kept to a minimum. This function could be supported by the single code administrator and could work with, or as part of, the Independent Adjudicator role we propose in our answer to your third question.

Setting fixed timelines for the processes of code modifications and decision-making would reduce delays and incentivise all parties to work together collaboratively to reach consensus in a timely manner.

As previously mentioned, we are supportive of working towards even greater accessibility to the codes for non-incumbents and with that in mind, set out some recommendations below.

**Code Panels:**

On code panels, we believe that there is a danger that members could become life members simply because they are re-elected on a continuous basis. Whilst we recognise that this may be because the industry believes the members are doing their job well, a lack of fresh blood can lead to stagnation and compromise perceived accountability, independence and transparency. Therefore we propose that panel members should not be allowed to stand for more than two contiguous terms. If this model were to be taken forward, end of terms could be staggered in the manner of the Smart Energy Code (SEC) Panel membership to enable knowledge transfer and ensure continuity in the first few years of the change. We believe that, over time, this would encourage greater participation from a wider industry net and remove any perceived notion that panel membership is a 'closed shop'.

**Panel Independence:**

On panel independence, we support the concept of independent panels across all codes and similarly the concept of independent Chairs of working groups and panels. However, this is predicated on that Chair having expertise of the process and the industry topic that is being discussed since we find that historically these have been the most effective meetings.

**Conflict of Interest Transmission Owner:**

We are also concerned that there are potentially significant conflicts of interest for National Grid and we stated this in our TOH5 submission. National Grid is a privatised company, acting in many capacities (e.g. transmission owner, system operator, metering, onshore/offshore network build/own/maintain, interconnector owner etc). At the same time, it has administrative roles in relation to codes that govern the commercial terms of agreements of which they are the beneficiaries. For example NGT is administrator to the Connection and Use of System Code (CUSC), the Balancing and Settlement Code (BSC) through Elexon and the Uniform Network Code (UNC) through the Joint Office. Therefore we see merit in a closer examination of how such a conflict of interest might arise and the appropriate action to redress.

**Panel Performance:**

To ensure a more proactive approach to code governance and management of industry change, it is our view that every panel and possibly its sub-committees, where appropriate, should have its own strategic priorities and forward work plan, along with key performance indicators to demonstrate how well they have performed against their objectives. These should be shared with the industry in order to demonstrate their effectiveness and to provide transparency. We believe this would also encourage participation from smaller/newer market participants as they would be able to see what they could do for the industry, and what the industry could do for them, by getting involved in code governance.

Furthermore, code panels could take a more proactive stance in promoting greater discussion across the industry on the resolution of cross code issues and to develop a greater understanding of the impacts that changes may have across the market. This would also reduce the risk of consequential changes being raised that could bring about additional delays to the implementation of changes within the market.

**Consumer Benefit:**

In respect of consumers, the codes do not generally have a specific consumer objective and we support Ofgem's recommendation that there may be scope for consumer impacts to be better considered during the code modification process. Our view is that all code panels and administrators should take some accountability for independently ensuring that the operation of that code and/or changes to it do not negatively impact consumers, for example, by

undermining competition and economic efficiency. As such we would advocate a consumer objective is enshrined in each code consistent with such a focus.

**Ofgem - Modification Process:**

We do not believe that Ofgem should have the ability to specify timetables and draft code modifications themselves. Whilst Ofgem undoubtedly have a significant amount of regulatory and industry expertise, this process should be undertaken by a body that has the appropriate level of experience required to understand the full impacts of large scale industry change such as the way suppliers interact and contract with customers and, in some cases, how customers themselves interact with energy. Without this understanding we are likely to see unrealistic proposals and dates imposed on the industry that will negatively impact consumers. BSC modification P272 is an example of such an issue.

In addition, in order to assess credible timelines some understanding of the technicalities of IT change programmes is required. Without it timescales are imposed that the industry cannot meet in spite of its best efforts. Project Nexus is a good example of this.

Furthermore, Ofgem's drafting of code modifications seems to be in conflict with its longer term general direction of travel, in respect of regulation, which is to move away from a more prescriptive approach.

Ofgem currently have some powers to direct timescales via the implementation date in certain cases and if necessary, statutory powers already exist to direct the industry. We believe this is sufficient. We also believe that it is inappropriate for Ofgem to both raise modifications and then approve them.

We do however believe that Ofgem could play a more proactive role in industry working groups, particularly in offering guidance and working constructively with the industry generally. This would be beneficial for the industry and help to reduce delays and misunderstandings. In return it would allow Ofgem to have greater input to the respective industry change.

Your third question asks:

**'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?'**

In our submission to the CMA in respect of TOH5 we recommended an independent Codes Adjudicator on the basis of the following rationale:

Firstly, RWE believes that Ofgem's role in code governance can sometimes act against the interest of consumers. Ofgem's broad set of statutory objectives mean it has to use a single policy tool (code modifications) to pursue multiple goals. This leads to inefficiency and confusion. Code modifications should be consistent with the objectives of promoting competition and economic efficiency, while other policy aims (sustainability, security of supply) are best attained through the use of dedicated instruments.

Secondly, requiring Ofgem to weigh up conflicting objectives has at times led to opacity and regulatory uncertainty. RWE believes this problem should be resolved by having decisions on codes made by an Independent Codes Adjudicator, independently of Ofgem. This adjudicator should make its decisions consistent with the objective of promoting competition and economic efficiency.

Additionally, Ofgem works “in partnership with government” and is sometimes pressured through that relationship to introduce new policies via the codes that are economically unsound and inefficient which can be to the detriment of consumers. The case of BSC Modification P272 provides one example where Ofgem’s broad set of statutory duties has led to an economically inefficient outcome that imposes costs on the industry without providing a corresponding consumer benefit.

We believe an Independent Adjudicator would be in a better position to take a long term view of industry change, unhindered by the need to meet short term political objectives. Therefore we stand by our recommendation believing it to be an enabler in reducing costs and complexity, avoiding potential for conflict of interest, and accelerating decision-making, for the benefit of consumers. We strongly recommend Ofgem considers this proposal further

**RWE npower**

Trigonos  
Windmill Hill Business Park  
Whitehill Way  
Swindon  
Wiltshire SN5 6PB

T +44(0)1793/87 77 77  
F +44(0)1793/89 25 25  
I [www.rwenpower.com](http://www.rwenpower.com)

Registered office:  
RWE Npower plc  
Windmill Hill Business Park  
Whitehill Way  
Swindon  
Wiltshire SN5 6PB

Registered in England  
and Wales no. 3892782