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23rd June 2015

Dear Ms Frerk

Review: Industry Code Governance

VPI Immingham welcomes the opportunity to respond to the above review. VPI Immingham is a combined heat and power (CHP) plant near Immingham, on the south bank of the river Humber. It is one of the largest CHP plants in Europe, capable of generating 1240MW – about 2.5% of UK electricity peak demand and up to 930 tonnes of steam per hour, which is used by the nearby oil refineries to help turn crude oil into products.

VPI acquired the Immingham power station from P66 in Summer 2013 and we are therefore a relative newcomer to the UK electricity sector. We are party to the Grid Code, CUSC, BSC and try to engage in all relevant modification consultations. However, as a smaller independent generator, we have a small team with no dedicated regulatory resource. Instead, roles and responsibilities are split across the team aligned with other non-regulatory tasks. We would estimate that we have less than 1 FTE focused on regulatory changes.

Our detailed views are set out below, but to summarise our key points:

- Much of the current code governance works well and change should be made in an incremental and co-ordinated manner. However, there are significant issues relating to smaller parties that must be addressed and further engagement with these parties is essential
- Smaller parties often lack the confidence associated with raising modifications and therefore require additional support in progressing change
- Aspects of Elexon's approach to issues and modifications to the BSC should be replicated across other codes, including named individuals and access to detailed information and extensive analysis
- We support the principle of Significant Code Reviews, but think that the current process and approach needs to be revisited as the process takes too long with the end result little changed from the original proposal. This should include the introduction of improved impact assessments
- We do not think that set timeframes, windows of change or backstop powers for Ofgem would improve the existing code governance arrangements
- Better communication of and access to information is required to improve the process. We would also support the introduction of further debate and streamlining of the process, whilst ensuring that adequate consultation with industry and analysis is provided

Although the current arrangements have served the industry well to date, VPI Immingham welcome this further review of industry code governance as we believe that the existing arrangements advantage larger players, those with dedicated Regulatory teams and significantly more resource than we have available. In addition, those established industry participants tend to have individuals who have worked in the market for many years and are experts in the various codes, having helped develop them when first introduced and who understand the modification process in detail. Therefore, the level and resource available to larger players and the inherent knowledge within those teams put them at a significant

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advantage

As Ofgem have identified, the energy industry is evolving rapidly and is going through a period of unprecedented change driven by political and economic reasons. Although we believe that the existing regime works well, Ofgem must ensure that governance evolves to support the “new world” and to ensure that current arrangements do not disadvantage any parties. We would also recommend waiting until the outcome of the CMA investigation is finalised before any major decisions are made.

We recognise many of the issues that Ofgem has identified within its documents as we have issues engaging with the code governance process, partly due to resource constraints, but also due to the lack of clarity regarding where modifications sit within the multiple frameworks. Some over-arching authority or source of material would be useful to identify where specific areas sit.

We welcome the improvements in terms of summaries of the codes, but detailed information and relevant contact details are often hidden within companies’ websites and not always easy to locate. Also, there are various different mailing lists for all of the Codes and it is easy to miss updates if not on the right mailing lists (or even to know which mailing lists to be added to). We would therefore recommend one single repository for all the relevant code and governance information with corresponding contact names. Accountability must be given to ensure that such a repository is kept up to date.

In addition, we believe that smaller players struggle to engage with the actual modification process and to understand how modifications are progressing due to lack of resource and confidence regarding how the process works. To a varying extent, information is made publically available, but there are very few notes and minutes of meetings documented, let alone published. As such, unless someone sits on a work group, it is very difficult to understand the actual discussions taking place. Although we respond to all relevant consultations, there are many consultations across the Codes and the workload involved in understanding all the proposed changes is significant and therefore we prioritise our resource. We do not have confidence in knowing whether we are aware of all of the modifications and consultations at any one time.

As a result, we believe that a different approach to engagement is required. There is merit in retaining the work groups, so that experts can help develop policy, but they need to be more accessible to smaller players or, at the very least, make up should ensure representation from all industry parties. The same group of individuals make up many of the working groups and whilst these individuals are experts in their fields, introducing different parties with no ways of thinking may result in an improved policy. Most smaller parties currently feed in via consultations, with no other method of having their voice heard, and are therefore not party to or able to inform the debate. Given the voting system, it is easy to see how outcomes may be skewed. We also support the principle of an independent chair, but would also advocate someone responsible for external communication – feeding back if of interest to selected parties. For example, there might be an opportunity to register an interest in a modification although not be part of a working group and therefore have enhanced access to the relevant content.

Although a small independent, we were unaware of the critical friend role and would not know who to contact in this situation. We would therefore suggest that this information is made more readily available – perhaps a contact person by company who can direct queries, almost an “account manager” for each code. There have been occasions where we would have liked to

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discuss modifications ahead of submitting our consultation responses but were unsure where to start.

It is worth noting that we consider Elexon's approach to modifications to be best practice. Whilst improvements can be made, it is always clear who to contact, documents are readily available, communication proactive and decision making timeframes are clear. There may be merit in replicating Elexon processes elsewhere noting that this could be a reflection of funding or organisation structure.

In terms of significant code reviews (SCR), we support the introduction of the new process and agree that Ofgem's expected levels of SCRs feels about right – much major change at any one time creates investor uncertainty and is a strain on resources. However, we do not believe that the process is delivering as intended. Despite taking a very long time to complete and extensive industry engagement, Ofgem seem to be pushing through their original idea. For example, the Electricity Balancing SCR was approved despite the work group and the BSC voting against it (note – we support the implementation of the cash out proposals, but are questioning the process, timeframes and use of industry feedback over the lengthy timeframes).

It is taking too long to get major change approved (and then implemented) and this creates huge, unwanted, uncertainty for investors. However, we do not think that prescribed timeframes are the solution – adequate analysis by those who understand the issues best must be done to make an informed decision. In fact, we would question the adequacy of some of the analysis completed for the SCRs that have completed to date. Therefore, we would propose streamlining the process or potentially having the solution worked up by an industry issues group beforehand, provided the issues group has the correct representatives. Major decisions will invariably result in winners and losers, but watering down solutions to have virtually no impact is not the solution. A consumer focused approach may be a suitable guiding principle recognising that this is not always a purely financial decision, or improved impact assessments that look at impacts across all parts of industry.

As outlined above, general wider stakeholder engagement is required, specifically for SCRs. Given the timeframes associated with these, personnel changes do happen and it is very hard to come into a process that is already in progress or to influence the outcome. More regular industry meetings may be of value and often the best debate occurs when a wide range of parties are represented in a meeting which may be of benefit to Ofgem and working groups. Whilst individual consultations are valuable, there seem to be too many relating to each modification and they only represent one voice in the industry. We do not think that the proposal for back stop powers is appropriate as this is more likely to result in poorly thought through solutions with many unintended consequences.

We do not agree with the proposal to introduce backstop powers for Ofgem. As an independent Regulator, we do not believe that this is appropriate. The current governance process, whilst having its limitations, does present the opportunity for extensive industry engagement and we believe that handing backstop powers to Ofgem could reduce investor confidence in the robust processes currently in place.

We also do not support the idea for having specific windows of change or allowing Ofgem to set a timeframe. We would support the introduction of a forward looking plan, identifying areas of focus, but industry should be able to raise modifications at any point in the year in response to changing market conditions. Alongside other industry players, we have been frustrated by some of the slow pace of change when we are told that change is coming, yet takes a long time to materialise. A solution to this is for industry to raise the modifications themselves which a

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window of change would render impossible hence precluding much needed change. Instead we would focus on streamlining the process whilst ensuring the adequate, independent and suitable analysis is conducted. Costs allowing, there are definitely cases for independent analysis to be conducted in support of modifications. We would also support the introduction of improved impact assessments.

We would be happy to discuss any of our key points outlined above in more detail.

For further question regarding any of the above, please contact:

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