Reforming the Energy Industry Codes

Ofgem/BEIS consultation

Background to ENGIE

In the UK, ENGIE employs 17,000 people in a number of activities across the energy value chain, as well as through its extensive services and regeneration businesses.

In generation, ENGIE owns First Hydro in a 75/25 joint venture with Brookfield Renewable Partners. With a total capacity of 2088MW, it is the UK's largest pumped storage operator.

ENGIE also has a 50% stake in over 80MW of renewable generation and a 23% stake in the Moray East offshore wind project which secured a CfD FiT for 950MW in the 2017 CfD auction. In supply, ENGIE operates an Industrial and Commercial (I&C) and Small and Medium Enterprise (SME) B2B electricity and gas supply business, and a domestic electricity and gas retail offer through its Home Energy business.

It owns the country's largest district heating business, providing district energy solutions to the public, commercial, industrial and residential sectors. A key site is the Olympic Park District Heating facility in London. Following the acquisitions of Balfour Beatty Workplace, Lend Lease FM and the Keepmoat regeneration business, it is also one of the top five service companies in the UK.

Summary

ENGIE does not see the need for a strategic body or the creation of an empowered code manager function. The same outcomes could be achieved through the regulator and /or Ofgem providing a stronger and clearer policy 'steer' against which industry could raise change proposals.

Other than self governance modifications, industry has no decision making ability – there is no need or benefit to be gained in reducing this further. The desire to take decision making ability away from industry seem to be more about the engagement of smaller market participants in the change process. ENGIE has raised numerous modifications to the CUSC and the BSC, has been on the CUSC panel since 2006, the UNC Panel and acted as an alternate on the BSC Panel. This level of engagement is despite being a relatively small player in the UK energy market.

There are a number of 'quick wins' that could greatly speed up and simplify the change process and make it easier for innovators and smaller market players to participate in code reforms. These should be addressed before the wide scale changes being proposed in this consultation are developed any further as it may be that having put in place the quick wins, the wide scale changes are not needed. These are:

- Ofgem or BEIS continue to set the policy direction. This could be accompanied by clear statements as to what they require the market design to look like to facilitate the policy direction. This would provide the 'green light' to market participant to raise changes to deliver that policy direction.

- The code administrator roles being undertaken by bodies set up only for the purpose of code administration and no longer sitting within a wider organisation.

- The principles of the Code Administrators Code of Practice are fully adopted across all codes. Funding is provided where needed to support this.

- Ofgem having much greater involvement on code changes to ensure they remain on track and to provide a 'steer' when needed.

- Standardisation of documents and formats associated with changes across the codes.

- Having a forward workplan set out by the code administrator for each change proposal and a timetable established at the start of a modification with meeting dates, consultation dates and decision dates.

- Adding a further applicable objective to each code that requires a change to demonstrate how it benefits the end consumer.

Response to consultation questions

Rather than answering the individual questions within the consultation, ENGIE has below provided comments on the four aspects of the proposed reform.

Code simplification and consolidation

1. ENGIE agrees that the codes themselves should be simplified with more accessible language and less complexity. The reality is however that the codes seek to govern a complex environment so by necessity are themselves complex. With new parties entering the industry, some with new business models, the codes should be able to incorporate these. However, this is likely to add to complexity and length of codes rather than reduce them.

2. Whilst streamlining and/or simplification (including of language) may also be possible and would be very welcome, the size of the task to do this should not be underestimated – it is likely to take many years during which the codes themselves will in any case be evolving meaning that the simplification process will for some time after be playing catch up.

3. There would be merit in an overarching document / code that signposts, with links, which parts of codes are applicable to certain activities. E.g. a DSR aggregator, a biomethane developer although this signposting comes with limitations if it is relied upon but not entirely thorough. It would also be useful to have a plain English summary of what each section of a code covers.

4. ENGIE supports consolidation in the number of codes but does no see the need for there to be a prescriptive methodology to do this. In upstream electricity, it would seem logical to group together,

the BSC, Grid Code and CUSC with code management of these codes given to an organisation whose only role is code management (ELEXON for example). The new BSC modification P390 could allow this. Potentially the non-retail aspects of the UNC could be included.

5. Elsewhere, there is scope for code consolidation on a functional basis. For example, due to the requirement for a simultaneous change of supplier process, it is pragmatic to consolidate the Master Registration Agreement (MRA) and the Supply Point Administration Agreement into the Retail Energy Code (REC). This could be extended to include the functional elements of the BSC and UNC. Care is needed that parts of codes are not lost if they are recombined in a different way. Reducing the number of code administrators and the consolidation of codes would have the benefit of allowing cross code issues to be considered and modifications to be progressed more quickly. ENGIE sees this as a quick win in improving code governance.

Strategic direction

6. Whilst we support some aspects of code reform, the creation of a strategic body is not one of them. It adds an extra and bureaucratic step in the change process and this body will still need to be guided on what change is needed. It seems to be replicating what Ofgem largely does either through the SCR process or through the guidance that Ofgem provides and looks more like a rebranding rather than adding any tangible benefit.

7. The idea that the code changes process should be forward looking is somewhat nebulous. What innovations should code changes be targeting if the innovations have not yet made it to market? What exactly will the energy transition look like so that the correct code changes can be made? In trying to pre-empt what the market design should look like, a lot of effort could be wasted. It is better to have a reactive process where those that see the need for change can continue to direct or propose change (whether this be Ofgem through their SCR process or code signatories raising changes).

8. In order to keep pace with the changing energy system, ENGIE believes it is sufficient for Ofgem or BEIS to set the policy direction. This could be accompanied by clear statements as to what they require the market design to look like to facilitate the policy direction. This would provide industry with a 'green light' on where they should focus their efforts to reform the market design rather than trying to second guess the boundaries of areas of reform that would be acceptable to the regulator.

9. To use the energy transition as an example the extra clarity could have recommended that to achieve the policy direction, meter splitting is needed, BM access must be widened, behind the meter issues such as x,y and z must be addressed, storage inequities removed etc. It would then be for industry to identify what is needed to deliver these policy steers via the modification process and propose the changes This may result in variations on a theme but this ensures robust debate and industry as the main custodian of intelligence on the detail of the codes is best placed to do this. These options can then be put before Ofgem for decision as they do now.

10. There are already examples of industry identifying future needs – BSC mod P379 which allows meter splitting will have far reaching consequences and will likely seed other changes once a solution is developed to give effect to the proposal. BSC Mod P344, which will be implemented this December, allows non BMUs to participate in the market. These are the kind of changes that enable the energy transition – they should be welcomed.

11. If however, a decision is made to create this new function, the role should be given to an independent organisation. The ESO is not for example independent. It would also not be appropriate for Ofgem to take on this role as it would conflict with it also being the decision maker.

Empowered and accountable code management

12. With a clear policy steer from Ofgem/BEIS, ENGIE does not see the need for a mechanism to ensure that the strategic direction is delivered through an empowered code manager function. Industry is the custodian of expertise on the codes and best placed (along with dedicated code managers) to develop the technical solutions.

13. The same organisations (e.g. the ESO, BSC central services, xoserve), will remain responsible for the implementation of system changes regardless of whether an empowered code manager is created. It would be helpful to understand the end to end timing of change proposals (time spent in the SCR if this applies, time in a working group, time with Ofgem for a decision, implementation) as this may focus attention on where resource is used in the change process and where efforts need to be made to speed up change.

14. ENGIE agrees that the number of code administrators could be reduced with these roles given to organisations that do not operate in the energy market – the consultation best describes this as bodies set up for the purpose of code administration (ELEXON for example). The ability to finesse change proposals and advise and/or develop technical solutions should sit with the code administrator. This is the case with ELEXON and the BSC but not for example with the CUSC where modification group members must provide the technical solutions.

15. Having code administrators dedicated only to that role and funded to carry it out would go a long way to addressing the current fragmentation and lack of co-ordination across codes, without a complete overhaul of the codes or the creation of a 'super administrator'. This could actually delay reform as it adds a further layer of decision making

16. The modification process and Code Panel structure varies between codes –to give an example, the BSC only allows one alternative to be developed, the CUSC an infinite number. Best practice should be examined and adopted across all codes. Whist a code administrator code of practice(CACoP) sets out principles for the administrators of the industry codes, there stark differences between how this is applied to individual codes. This is not only in how the administrators go about their day to day functions and tasks and provide support but also in how they are funded to carry out their role. Anecdotal evidence also suggests that the code administrators are not funded to fully implement the CACoP. Financial support may be needed to introduce some basic reforms such as having the same

form format, working group approach, document style and consultation process. All of these simple changes would make the task of raising and progressing code changes easier.

17. Ofgem could also do much more to keep modifications on track. This can be through Ofgem's attendance and participation at working group meetings to keep pace with the developing solution which could help to speed up decision making, to providing a steer if change proposals are not heading in an appropriate direction. This does not happen on a consistent basis and Ofgem attendees are not always able to offer advice on the spot or do not want to in case they 'fetter their discretion' (this is despite GEMA being the decision making body and not Ofgem.

18. The CUSC modifications CMP280 and 281 are a good example of the benefit of greater Ofgem involvement. The publication of the smart flexible energy system document in 2017 encouraged industry to raise modification to address storage charges. CUSC modifications were raised in June 2017 and initially just focussed on transmission connected storage. These were widened out via the Working Group to encompass all transmission connected generation. After repeated requests by the Working Group as to what types of market participant the modification should capture, over a year after they were first raised, Ofgem provided direction that they should focus only on storage but should also address embedded storage (requiring a BSC modification to be raised). Had this guidance come sooner, many meetings could have been avoided and a solution developed much more quickly that met Ofgem's 'steer'.

19. Another simple improvement would be to have a forward workplan set out by the code administrator for each change proposal and a timetable established at the start of a modification with meeting dates, consultation dates and decision dates. The provision of such a timetable is not consistent across the codes.

20. Whilst code administrators do not have the power to ensure that modifications are implemented by participants in a timely manner, failure to do so could at worse result in a licence breach and fines of up to 10% of turnover. It should not be for code managers to decide on measures in the event of non-compliance. Failure to implement changes may in any case prevent or reduce a participant's ability to be able to compete in the market. It isn't clear that giving implementation oversight to the code administrator would add anything here.

<u>Independent decision making</u>

21. The consultation considers that decision making needs to be rebalanced away from industry control. Other than self governance modifications (of which there have been few and these can have no commercial impact on code signatories), industry has no decisionmaking ability. It makes recommendations to Panels (which are themselves populated to represent to interest of all signatories that a code governs) who then make recommendations to the Authority. The final decision on whether to approve changes rests with GEMA. Individuals can nominate themselves (or a representative) to sit on working groups to develop modification proposals and can also respond to consultation but only in very limited circumstances do they approve or reject modifications.

22. The desire to take decision making ability away from industry seem to be more about the engagement of smaller market participants in the change process. The ability to influence the change process and sit on code Panels is there for the taking should code signatories wish to engage. ENGIE has raised numerous modifications to the CUSC and the BSC, has been on the CUSC panel since 2006, the UNC Panel and acted as an alternate on the BSC Panel. This level of engagement is despite being a relatively small player in the UK energy market.

23. Participation in working groups can be a resource intensive process and it does require detailed knowledge of the codes and of the process for making changes. If these are the blockers to the participation of smaller participants, then they should be addressed (consolidation and simplification of the codes is one of the arms of this consultation) but it has to be accepted that the codes govern a complex environment and are legal documents.

24. It is worth noting that the CACoP does contain many principles which are meant to be consistently adopted across codes (supporting prospective energy innovators including those that have not acceded to a code, being critical friends, use of plain English, processes to access a 'pre-Modification' process to discuss and develop Modifications, facilitating alternative solutions). These 'basics' should be put in place across all codes as they would address many of the issues raised in the consultation.

25. Removing or reducing the involvement of industry in the change process is not the solution and could lead to disengagement (and the loss of a huge amount of good will and expertise) if industry believes that its contribution is no longer as valued or as welcomed. ENGIE is strongly against reducing further the already limited decision making powers of industry.

26. Looking at the current applicable objectives, the CUSC, BSC and Grid Code (as examples), do not specifically reference consideration of the benefits to the end consumer. Applicable objectives could have a specific obligation that change must be beneficial to consumers. Ofgem's primary duty is to protect consumers so the benefits to consumers of accepting a change must also be paramount in its mind. The combination of these two checks would seem to be sufficient to ensure that the interests of consumers are facilitated.

27. Just as code administrators should exist purely for that purpose. the new strategic direction function if it is to be created, should also exist for that purpose only and not sit within a wider organisation. This will allow it to be focussed and independent of competitive markets. The body should be independent of any other organisation and independent of Government - politics must be kept out of the directions it gives to ensure that the body basis its decisions on robust economic analysis rather than having to adapt to ever changing Government policy.

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