

To : [codereform@beis.gov.uk](mailto:codereform@beis.gov.uk)

16<sup>th</sup> September 2019

## **Consultation on Reforming the Energy Industry Codes**

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, and energy supply to end users. We have around five million electricity and gas customer accounts in the UK, including residential and business users.

We welcome the review of the energy industry codes by BEIS and Ofgem. We have, over a number years including in our 2015 and 2016 responses to the CMA, argued that reforms were needed to ensure that these arrangements remained fit for purpose and accessible in a changing market. We support BEIS/Ofgem's ambition set out in this consultation but it is important that any reforms are targeted and practical to ensure that they maximise value for consumers.

We support :

- A practical, single, digitised 'front-end' for all codes to enable industry parties to easily and more efficiently navigate the arrangements;
- Standardisation of code governance rules (including through some consolidation of code managers), so that developing a change proposal entails the same process in all respects, for all codes;
- An early focus on areas of code consolidation that can most quickly and easily be delivered, recognising that radical code consolidation could be a very resource-intensive task, and should be fully scoped, planned and costed. Achievable consolidation of codes could include the technical codes (distribution and grid) and retail arrangements. More radical consolidation (and simplification) of the codes would be a very resource-intensive task potentially with limited benefit given the other proposals;
- The creation of code managers, which are more empowered to manage change, drive timescales including through acting as gatekeeper for new change suggestions, undertaking prioritisation of which suggested reforms go into a managed and timely process, and who work in alignment with Ofgem's and BEIS's strategic directions, with important industry input to ensure workable changes are delivered. The suggested IRMB under model 2 could also achieve this; if so, we suggest that Ofgem comprise the IRMB. We have concerns about the creation of an entirely new strategic body, as new interfaces would be needed. It appears more efficient to ensure Ofgem have adequate resource and capability to support and lead changes to industry codes needed as the energy markets continue to transform.

- We believe that these changes will make the industry codes more accessible and easier to navigate for the growing number and type of industry participants, agile and responsive while recognising existing commercial interests, and forward-looking to ensure the market rules adapt to support the Government's commitment to net zero path.
- There should be an appeal route for decisions of any new independent body, whatever its nature, on code changes, just as there is today. Some of the energy investments that are made on the basis of the known framework, are very material indeed, and there needs to be confidence in the process.
- Our answers to the detailed questions posed, follow in the attachment:
- Should you wish to discuss any of the issues raised in our response or have any queries, please contact Mark Cox on 01452 658415, or Paul Mott on 07752 987992.

Yours sincerely,

**Angela Hepworth**, Corporate Policy & Regulation Director

## Attachment

### Energy Codes Review

#### EDF Energy's response to your questions

**1. Do you agree with our four desired outcomes for the code governance landscape by the mid-2020s (if you disagree, please explain what you consider the outcomes should be).**

While they are all high level, the four desired outcomes provide a useful guide to what a future code governance landscape should look like. In more detail :

Desired outcome 1 : We agree that, as the consultation suggests, the codes and their governance should be forward-looking, and that they should be informed by wider industry/government strategic direction and the path to net zero emissions. This is not controversial. We do believe that changes should be able to be developed with some industry input and scrutiny to ensure that changes are workable.

Desired outcome 2 : we agree that it is important that the code change process can accommodate a large and growing number of market participants, with effective compliance in an inter-dependent system.

The code change process should work in a forward-looking manner, with development of codes in a holistic manner.

The compliance function should best be undertaken by Ofgem: as compliance with industry codes is required/imposed via licence conditions – it is Ofgem that monitors licence compliance and can issue fines for breaches thereof. There seems no compelling reason to change the current approach to compliance enforcement. The new code managers can assist in identifying and highlighting any specific party compliance issues for investigation.

Desired outcome 3 : we agree that code governance should be agile and responsive to change, while able to reflect the commercial interests of different market participants.

Desired outcome 4 : we agree that it should be easy for any market participant to understand the rules that apply to them and understand what these mean.

We support improvements in simplicity, ease of understanding of the rules, and accessibility; our experience is that the time taken to access and understand content of the codes on a given issue, is expanded due to the fact that it is necessary to manually follow cross-references, and look up definitions. We therefore favour the addition of an intelligent,

activated front end (portal) to the codes, which would comprise an effective advance in this area.

Another concept could be to have overarching documents that provide pointers to relevant code content, past modifications, and current guidance notes, that show the roles and responsibilities for each industry activity or sector, showing where the existing detail is defined.

When changes are made to each body of rules, it is important to produce a new baseline ruleset, so that users don't have to read a dated set of rules and a growing number of changes.

There is benefit to be had from standardisation of code governance rules, so that raising a change and developing it entail the same process for all codes. There are some differences between the basic change governance processes of the energy codes that are confusing, and which would seem easy to correct. For example, the fact that under some codes, workgroup members operate as independents, but that under other codes, workgroup members operate as representatives of their company; also, some codes only allow one variant of a modification proposal, whereas others allow many. Clearly it would be easier to access change processes under the codes if there were a single, standard, model.

There should be an appeal route for decisions of any new independent body, whatever its nature, on code changes, just as there is today. Some of the energy investments that are made on the basis of the known framework, are very material indeed, and there needs to be confidence in the process. This is an important point.

**2. Do you agree with the problems we've identified (in chapter 1 – Background – and in later chapters), and that they present a persuasive case for reform of the current framework for energy codes? Please explain.**

Significant Code Reviews (SCRs) have worked fairly well to date. In terms of strategic direction in this context, we note that Ofgem's own guidance document on the drivers or purpose of an SCR<sup>1</sup> notes that it "would consider whether to launch an SCR in response to various events including, for example.... Government-led policy ...". This gives a sense, and indeed it was the intention, that the purpose of an SCR(s) can be to drive forward overarching government policy/aims across one or more codes.

Ofgem's two electricity charging related SCRs in process at present seem to us to consider well some fundamental issues about how to move towards a level playing field between generators with different connection voltages, and how to ensure that new low carbon

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<sup>1</sup> [https://www.ofgem.gov.uk/system/files/docs/2016/06/scr\\_guidance.pdf](https://www.ofgem.gov.uk/system/files/docs/2016/06/scr_guidance.pdf)

technologies can be accommodated on local distribution networks without immediate costly network upgrades, by encouraging demand side response, and new approaches to network access/capacity. These are difficult and important issues. The SCRs allow for industry engagement in setting the direction, via the resulting workgroup process; Ofgem has the power to set the workgroup phase timing if necessary once SCR-directed modifications are raised. The experience of past, completed SCRs such as TransmiT demonstrates that industry input to these processes is valuable, and ensures that Ofgem's proposals can be turned into workable solutions.

While the SCR process can no doubt be improved it is not clear that these are not appropriate mechanisms to deliver wide-ranging, strategic reforms

**3. Do you have additional evidence on the performance of the current framework ?**

No

**4. Do you agree with our proposed scope of reform? Please explain. If not, which additional codes or systems do you think should be included/excluded?**

We believe that the scope of the review should include the governance of the CM rules, which have a problematic documentation of changes leading to documentation accessibility/comprehension issues, as explained above.

**5. Are there any codes or systems that we should only apply a limited set of reforms to? Please explain.**

See our reply to question 30. We suggest that the BSC and CUSC are particularly complicated codes, that would be highly resource-intensive to radically simplify and amalgamate into other codes.

**6. Do you agree that the four areas for reform are required?**

Broadly, yes.

Strategic direction of changes across the codes/fuels as needed to achieve particular overall politically-set outcomes, is a positive goal. We believe the SCR route is proving useful in the sphere of electricity charging.

We would support the creation of stronger code managers, working in alignment with Ofgem's and BEIS's strategic directions, with industry input, which will be very important in developing workable changes in line with that strategy. We believe the empowered code manager, or strategic body, should be able to act as a gatekeeper for new ideas for rule changes from industry before they enter formal process – if an idea for a change proposal

is definitely going to be rejected by that body at the end of what would have been the workgroup process, it would be more efficient for that to happen at inception, before it enters process.

There is a loose (albeit imperfect) analogy for this under the smart energy code, where a change board scrutinises new ideas for change and can send them back to the proposer with advice. However, the SEC change board cannot ultimately prevent the change proposal being raised.

Independent decision-making is a concept we work to already, with Ofgem having the final say and code panel votes being merely recommendatory, but there should be an appeal route for decisions of any independent new body, whatever its nature, on code changes, just as there is today. Some of the future energy investments that are made on the basis of known framework, are very material indeed, and there needs to be confidence in the process. This is an important point.

Code simplification and consolidation has merit once achieved. It is important to prioritise the things that can be done quickly and easily; radical change would be more complex and quite resource-intensive to achieve, so should be planned / costed before it is undertaken. We support consolidation of codes in the areas of the retail and technical codes, which lend themselves best to this, with the most gains to be had in terms of consolidation, improved accessibility and simplicity.

The ESO is reported in the consultation to have made an illustrative case study of part of section 6 of the Connection and Use of System Code (CUSC) and found that it could be shortened by 76%. This part, relating to short term TEC, was known to be badly-written, and this finding cannot be generalised across the codes.

Ofgem has sought to make the retail energy code customer-facing, but we feel it is important to avoid an approach where too much essential technical detail is stripped out in an attempt to make the code customer-friendly, or matters will be left ambiguous, which ought to be clear.

Thought also needs to be given to who will undertake this task, and how new changes are handled whilst any consolidation and simplification are being undertaken. The depth of knowledge required and the time that this will take will mean this task will be demanding.

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## **7. Do you agree with the two broad models outlined?**

Model 1 in the consultation entails a powerful code manager function and a separate strategic body. Model 2 entails an Integrated Rule Making Body (IRMB) - the strategic function and the code manager function are held in one single organisation in this latter model. Either model could work, but we have a concern that if the IRMB were not Ofgem,

it might not have Ofgem's statutory duties (consumer protection, environmental etc). A new IRMB entity is not something we'd support; introducing another body in the energy landscape would increase the number of interactions and interfaces with industry participants, and hence would increase risk.

**8. Which model do you believe will best deliver on our desired outcomes? Please explain.**

We prefer model 1, because the integrated rule-making body in model 2 seems to be rolling together too many roles and responsibilities, with new interfaces needed along with clear duties and accountabilities, with scope for misalignment with Government and Ofgem. If it is not Ofgem, the creation of the IRMB represents a more risky change in terms of whether the outcome works well.

**9. Do you agree with the changes to the role of code signatories we are proposing?**

We note from comparing tables 3 and 4, that the code administrators would no longer be accountable to code signatories (achieved partly via code panels at present), and that code signatories would no longer, as they are at present, be able to make recommendations to the independent regulator (which makes the final decision) on changes, which is mis-recorded in table 3 as "approve mods". This implies no more code panels. Please bear in mind that some past change proposals, such as TransmiT, were considerably improved through industry involvement. If code panels are abolished, and if industry input through workgroups were (unfortunately) diminished, then the point about retaining an appeals route would be even more important.

**10. Do you agree there is a missing strategic function for codes development in the energy sector and that introducing a strategic function with the responsibilities outlined in chapter 3 is the best way to address the lack of strategic direction? Who is best placed to fulfil the strategic function and why?**

We recognise the importance of being able to achieve strategic objectives; complex and fragmented code management arrangements can get in way of that. We have seen SCRs working successfully to deliver radical change - the electricity charging SCRs represent bold multi-faceted initiatives that will take forward wider changes and clearly help facilitate an energy transition.

A model we think could work effectively is for the code manager(s) to directly follow BEIS's/government's strategic direction, along with support from Ofgem on how to do this in code space, without needing to create a strategic function as well.

**11. Do you agree with the objectives and responsibilities envisaged for the strategic function, and are there any additional objectives or responsibilities the strategic function should have?**

We agree with the bulleted suggestions in the consultation document here. Sufficient resource will be important to achieve these objectives coherently and effectively.

**12. How may this new function potentially impact the roles and responsibilities of other parts of the framework? Do you foresee any unintended consequences?**

An unintended consequence could be fragmentation. The review aims to remedy fragmentation of codes, but if another body is created with new obligations and accountabilities to manage code change, there is risk of misalignment.

Day to day proposals which may not be clearly aligned with any strategic direction but which are necessary and of merit, must be treated fairly in the prioritisation process.

**13. What are your views on how the strategic direction should be developed and implemented (including the option of establishing a strategy board to aid engagement)?**

The new strategic function will need a clear vision from BEIS on what the new energy system, or policy goals, strategic over-arching code changes are intending to achieve. The strategy board needs the right mix of skills and expertise. No doubt Ofgem will assist it in identifying how the strategy details map onto the way our industry and its rules work – if Ofgem doesn't actually comprise the strategic function (which would be the best approach to the creation of such a function).

**14. Do you think that the scope of the strategic function should be limited to taking account of the Government's vision for the energy sector and translating it into a plan for the industry codes framework, or are there other areas it should address (for example, impact on vulnerable consumers)?**

The impact on vulnerable consumers is certainly something that Ofgem is aiming to take full account of in its SCR on access and forward-looking electricity charges; this consumer protection seems to fit within Ofgem's existing well-established duties.

**15. Do you agree that in addition to the current responsibilities that code administrators have, that the code manager function should also have the following responsibilities?**

**a. identifying, proposing and developing changes (analysis, legal drafting etc.), including understanding the impacts;**



- b. making decisions on some changes, or making recommendations to the strategic body; and**
- c. prioritising which changes are progressed.**

Yes. Industry would still need to have the ability to suggest change proposals, as it is its capital being invested, albeit that the code manager would be able to determine which suggested change proposals formally came into process, and which were rejected at inception.

**16. What is the best way to ensure coherent end-to-end changes to the codes and related systems? For example, is it through having end-to-end code and system managers?**

Existing code administrators such as Elexon and the ESO make their own system changes, to systems that they own or manage. This works well. Where an entirely separate system provider is used, as in a part of the gas arrangements, there is a need for excellent communications from the code manager to the IT system maintainer/operator/builder, of forthcoming changes; it would be hard for it to work quite as well as the end-to-end code manager approach.

**17. Should the approach differ on a case-by case basis (i.e. depending on the code or system in question) ?**

That would be an unfortunate outcome, as the one thing that should be achievable, regardless of the extent of code consolidation, is a common approach to the governance of codes, to aid user comprehension and accessibility. There would need to be a compelling reason for any exception to this.

**18. Do you agree that the code manager function should be accountable to the strategic body and that this should be via a licence or contract?**

Yes, it makes sense that the code manager function should be accountable to the strategic body, so that a direction can be set with confidence that it will be adhered to. The obligation would presumably have equal force whether via licence or contract, but the licensed route is easier to understand, and allows for more flexibility than a contract, which may with hindsight be drafted so as to give unintended and unfortunate consequences.

***Please note questions 19- 26 only apply in respect of Model 1 (code managers and a strategic body).***

**19. Are there more effective ways that the code manager function's accountability to the strategic body could be enshrined other than in a licence or contract? Please explain.**

We cannot envisage an alternative means of documenting and applying this accountability.

**20. Do you agree that we should not consider further a model whereby the code manager function is accountable to industry?**

It is important for the code administrator to be publicly accountable - for progressing changes to certain standards and timescales, for instance. Whether this is viewed as being "accountable to industry" is a moot point. Looking at the Low Carbon Contracts Company, there is a lack of specific delivery incentives on them; this is not the ideal model. Of course, complete accountability to industry would impede or prevent increasing independence of decision-making. We therefore believe that the code manager should be accountable to both the strategic body and to industry.

**21. Do you have views on whether the code manager function should be appointed following a competitive tender process or other competition?**

A competitive tender process seems the best approach. Where existing licensees are bidding into the tender, the process should take previous experience, past performance, confidence in future delivery and industry satisfaction into account. The duties and goals that the code manager are required to fulfil and how they will be incentivised to achieve these goals should be clear ahead of the tender.

It is hard to envisage what sort of competitive appointment process wouldn't be able to also be described as a tender.

**22. Do you think the code manager function should be established by the strategic body creating a body or bodies? If the code managers were established in this way, would we need to consider any alternative approaches to funding or accountability?**

If instead of appointment by tender, the strategic body under model 1 created a body or bodies with appropriate skills and incentives to comprise the code manager function, it would still need to be independent, and appropriately-skilled. This centralist approach is unlikely to be the best way to form the new function.

**23. In terms of establishing/choosing the code manager function, do you agree that we should not consider further:**

- a. requiring an existing licensee to become the code manager; and/or**
- b. requiring a licensee (or group of licensees) to create the code manager?**

We cannot see any benefits in requiring a licensee or group of licensees to create, or become, a code manager. There are a number of code administrators which would be very likely to bid to become code managers. The competitive/tender approach is best, although of course the cheapest tender should not necessarily be the one that is accepted; confidence in service delivery is critical.

**24. What would be the most effective way to ensure the code manager function offers value for money (for example, through price controls or budget scrutiny)? More broadly, what is the right incentive framework to place on the code manager function? Please explain.**

Value for money will arise first from a suitable appointment process. Insofar as expenditure across the appointment period isn't set in the appointment process, proposed annual expenditure needs to be scrutinised and approved or not by the strategic body (or by Ofgem on behalf of consumers), and/or a price control approach needs to be used. Performance as well as expenditure is also a critical factor.

**25. Are there any factors that:**

- a. would stop parties (including code administrators) from becoming a code manager?**
- b. should prevent parties from becoming a code manager (e.g. do you agree that licensees should not be able to exercise control of the code managers)?**

Careful consideration of conflicts of interest is needed where a bidder seeking to become a code manager has an affiliation to an existing party to the industry codes.

**26. How should the code manager function be funded (for example through licence fees or by parties to the code(s))?**

The key is for the costs to be shared fairly between all parties. It will be important to consult once you have proposals on the formula for the apportionment of costs among industry parties.

**27. Are there any quick wins that could be realised in terms of code consolidation and simplification?**

Yes. Giving Ofgem sufficient resources to allow more consistent participation by its staff in code change working group meetings would also be a very beneficial development, as it could avoid the use of send-back powers when Ofgem feels that a final modification report is in some sense inadequate or lack analysis/evidence in certain areas, yet, through not attending the workgroup, had no means to signal this at an earlier stage that uses time more efficiently.

Adopting a common approach to governance of changes would not be too hard to do, and would have immediate merit.

Creating the common interactive “golden thread” portal to the codes should be a very good deal quicker and far less resource-intensive to achieve than fundamental code simplification and radical consolidation options.

**28. How many codes would best deliver on the outcomes we are seeking under these reforms?**

We do not offer a precise answer here, but have already expressed caution about the resource needed in fundamental simplification and genuine consolidation of codes. Therefore Option C is likely to lead to the best outcomes, with a dual fuel code for all retail elements and a number of separate gas and electricity codes for wholesale and for networks. Merging gas and electricity codes for wholesale and networks would significantly increase the requisite expertise at both the code management and industry engagement level. This risks making the code governance framework harder to engage with for new market entrants operating only in gas, or only in electricity. There are separate operators for the gas and electricity networks that are allowed very limited interaction in operational timescales, so it is difficult to see what benefits could be achieved. On the other hand, it will sometimes be necessary to consider cross fuel issues. This could be addressed by a new relevant objective in each gas / electricity code to consider the impact on the other market / customers, or on efficient interaction of the markets.

**29. Which option (one code manager versus multiple) would best deliver on the outcomes we are seeking under these reforms?**

It may be partly because of having a code manager per code that we have different basic change governance between codes – a single code manager might have highlighted the difference and attempted to harmonise them. On the other hand, if there were only one code manager it might not be a credible threat that they be replaced at time of re-appointment, as there might not be credible competitors. This could lead to performance issues. Having more than one code manager would retain the ability to benchmark code manager performance. Full merger into a single code manager is thus unlikely to represent the optimal, least-risk outcome.

**30. Which of our consolidation options would best deliver the outcomes we are seeking to achieve?**

See our answer to question 28. We would prefer Option C: partially consolidated by industry activity type, partially consolidated by fuel. Here, a dual fuel code is proposed for all retail elements, which feels appropriate. However, remaining codes would then be split

across gas and electricity respectively, with some mergers. Major, radical consolidation of the other codes would be a very resource-intensive task, to the point where its practicality is in question. It would take a good deal of time to do, and the question then arises as to how to process new change proposals during that time – are these changes made to the old, or the new, shorter and pan-code-consolidated, text? Added complications would arise from this.

We caution to undertake a cost benefit, and have absolute clarity on the resource involved and where it is coming from, before undertaking radical code consolidation options.

**31. Do you agree that the codes should be digitalised?**

Yes, clear advantages in code accessibility would arise, as we have explained in earlier answers.

**32. What role should industry have in monitoring code compliance or making decisions on measures needed to address any identified non-compliance?**

It may be that where compliance is not absolute, but is in terms of operating systems to a high standard, as in metering and reconciliation issues for Suppliers, industry will be able to contribute useful views as to what very good practice comprises – assisting in identifying a proportionate, transparent and fair approach to compliance. Non-compliances should be reported to Ofgem by industry participants, if not otherwise apparent, and can also be reported for investigation to Ofgem by code managers and system operators. Measures required to address non-compliance including the ability to issue fines under licences (the means of requiring code compliance) currently reside with Ofgem and should remain there.

**33. Which of the two models we propose would better facilitate effective monitoring and compliance arrangements? Please explain.**

We do not have a view on this question.

**34. With Model 2 - integrated rule-making body - should the IRMB have responsibility for imposing measures (where a party is non-compliant with the code) or should this be for another organisation? Please explain. Please note this question only applies in respect of Model 2 (integrated rulemaking body)**

Under Model 2, the IRMB (integrated rule-making body) is proposed to be responsible for identifying what compliance action should be taken in the event of a non-compliance with each code. This would give the integrated rule-making body a lot of roles in total. We would continue to be required by our licences to comply with the relevant codes. Ofgem would presumably therefore have some role in terms of licensees' compliance with the

codes, which would leaves uncertainty as to the scope of compliance work for either the IRMB under model 2, or the empowered code manager under model 1.

**EDF Energy September 2019**