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16th September 2019

Consultation on Reforming the Energy Industry Codes

Dear Colleagues

SSE welcome the opportunity to respond to the joint BEIS and Ofgem consultation on reforming the Energy Industry Codes.

Please note that this response is provided on behalf of SSE's retained Energy businesses, following the recently announced sale of SSE Energy Services Ltd. (our domestic Supply business) to Ovo Energy Ltd. (subject to the necessary regulatory approvals).

SSE Energy Services Ltd. will be providing their own separate response.

SSE's Energy Networks businesses will also be providing their own separate response, in line with business separation policies.

Summary Comments

SSE agree that there is merit in reviewing the Energy Codes arrangements to ensure that they are fit for purpose and enable the whole energy system to meet decarbonisation targets.

SSE agree that the four desired outcomes set out a sensible package of aims to be delivered by reform; but would urge BEIS and Ofgem to fully consider some of the potential

unintended consequences that might arise from the tools consulted upon to deliver those outcomes.

We caution that there must be a sensible balance struck between the need to set out the current day needs, roles and responsibilities to support industry arrangements; and the forward-looking needs of policy objectives.

SSE are mindful that the Energy Codes are multilateral Commercial Agreements that provide layers of detail and context supporting the efficient operation of industry trading arrangements; as well as assigning rights and responsibilities of those actors taking part. They are a crucial element required to ensure that legislation and license requirements can be supported through the detailed operation of commercial processes and information systems, by both industry participants and central service providers alike. They allow the establishment of a workable set of rules that facilitate the running of orderly competitive markets to the benefit of consumers.

The primary function of the Industry Codes in our view is to set out the detailed rulebook required to describe how things are done on a day to day (or periodic) basis in order to achieve an efficient and equitable outcome; detailing who is required to do what, and by when and on occasion how. They are complex documents, but this somewhat reflects the complexity of the commodities and the networks through which they are delivered to end consumers; and the incremental nature of change over several years since the last major reform of rules and systems. We welcome the opportunity to rationalise and reduce complexity where possible, but this should not be at the expense of clarity of obligations, or by simply moving obligations from one document to another, as this does little to reduce the stated burden driving the case for change.

In doing this the Codes should not pick winners (and by implication losers), but instead should provide a level playing field for all to be able to participate and compete in a fair and transparent manner. Effort should be focussed to ensure that current Industry Codes achieve this.

Whilst opportunities to rationalise redundant or duplicate process obligations across Codes are welcomed, there is a limit to what can be achieved without causing significant extra uncertainty, risk and cost. Industry Codes must remain legally enforceable commercial agreements and must allow Code obligations to be translated into a set of business requirements against which participants can engineer information systems and business processes.

Any proposed reform is likely to take a high degree of effort, time and cost to deliver and therefore must in our view provide a demonstrably better mechanism for co-ordinating policy driven change than allowed by the current Significant Code Review (SCR) process. A quantitative assessment of the cost/benefit should be outlined, identifying the incremental benefits when compared to an SCR-led process (as currently set out and as enhanced to deliver more efficient outcomes). Equally a thorough root cause analysis should be conducted to ensure that the true reasons for delay in change, rather than the symptoms, are understood and therefore addressed by reform.

To ensure that decarbonisation targets can be met, time is of the essence to ensure that new innovators and business models feel that they can engage with, access and progress change to Energy Industry Codes on a fair and transparent manner in the timescales

needed to effect meaningful change. SSE would therefore urge BEIS and Ofgem to look at augmenting the existing institutional framework and change processes by introducing some quick wins and aligned objectives, rather than the more sizeable reform set out in consultation, in order to bring a more timely reform to the arrangements.

As a quick win, SSE see merit in exploring some of the current perceived weaknesses of the SCR process to deliver strategic change, with the aim of enhancing the toolkit to allow strategic change to be progressed in a coherent and accessible way. Additionally, we see merit in boosting provision and funding of accessible CACOP services to ensure better co-ordinated delivery of change (along with introduction of new or aligned Code objectives), and a better engagement with change for industry actors.

Comments on Proposed Reforms

1. Strategic Direction

SSE agree that there is a case to provide better strategic direction, providing sufficient steer to industry to progress and deliver changes.

SSE believe that the existing SCR powers should be utilised to deliver strategic change; or enhanced SCR powers if current powers are deemed insufficient.

2. Empowered and accountable code management

SSE agree that there is scope for improvement of Industry Code management arrangements, particularly with respect to standardisation of processes, governance, accountability, funding and cost recovery.

We agree that there may be room for an augmented role for Code Administrators to act as Code Managers to ensure delivery of Code requirements and monitor and report on compliance.

We do not agree that Code Managers should be able to raise change to Codes themselves, other than in a very limited set of circumstances, e.g. housekeeping modifications. It is not enough for Code Managers to be operated in an independent way – they must be seen to be impartial and acting as neutrals in developing solutions to any change brought forward by market actors. SSE would be highly concerned with how potential conflicts of interest and limitation of liability of any direct financing obligations might work to create significant additional risk in a model where Code Managers can raise, develop and approve change, all within their own gift.

3. Independent decision making

SSE consider that industry have an important but ultimately limited role in decision making currently.

SSE believe that GEMA is the existing independent decision-making body; established as such by Statute and EU law, with associated legal obligations that flow from their performance of their role. GEMA is responsible for making decisions on the majority of modification proposals, certainly those with significant commercial, competition or customer impacts. SSE do not believe it is necessary to provide a further decision-making body given that one already exists. It is also not clear how a further decision-making body would function within the Statute and EU law framework that GEMA currently functions within.

Industry's role in decision making on Industry Code modifications is limited to self-governance modifications (which are subject to meeting specified criteria, and by design therefore are less material in their impacts); and in making recommendations on more substantial proposals to GEMA for consideration in their decision making process. Important checks and balances are provided as part of the process that provide appeal rights where parties feel a flawed decision has been reached.

SSE are opposed to removing decision making from industry fully; indeed, it seems to completely reverse the recent direction of travel through three successive Code Governance Reviews undertaken by GEMA, to increase the levels of industry self-governance. It would be a step backwards and increase the burden and costs on the decision-making body unnecessarily for routine decisions.

Additionally, it would leave those taking the commercial risks in the market with little or no influence in the decision-making process, increasing regulatory risk and potentially risk premia within product pricing. SSE believe that industry needs to retain a role in its own destiny.

4. Code simplification and consolidation

SSE agree that there is scope to simplify and consolidate Codes, whilst noting however that the complexity of the Codes reflects the complexity of the industry coupled with incremental development of solutions over a long period of time.

SSE fully support the removal of redundant or unused provisions and the rationalisation of duplication as quick wins to focus on in simplifying Codes.

SSE also believe that it may be worth exploring at a later point the consolidation of electricity Codes into Retail (dual-fuel with gas), Wholesale and Networks codes. We do not consider that there is a strong case to consolidate gas and electricity Wholesale and Networks arrangements as there is very limited synergy to standardise rules given the fundamental differences in these two commodities, the supporting Wholesale arrangements and how they are transported over their respective Networks.

The remaining set of rules must continue to provide a set of workable processes across multiple industry players that supports competitive market needs, whilst allocating benefits and costs equitably. The remaining set of rules must maintain a legally enforceable Commercial Agreement that clearly assigns roles and responsibilities, setting out who is required to do what and by when.

Our detailed response to each question asked within the consultation document is attached.

If you wish to discuss further any of the points made or issues raised in our response, then please contact in the first instance Andrew Colley, Market Development Manager on 01189 534276 or 07799 002581 (e-mail: andrew.colley@sse.com).

Yours faithfully

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

Andrew Colley
Market Development Manager
Regulation
SSE plc.