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Dear Marion,

British Gas response to Ofgem's consultation on 'Code Governance Review (Phase 3): Initial Proposals'

Thank you for the opportunity to respond to Ofgem's above consultation.

We generally support the ongoing evolution of code governance arrangements, however whilst the current industry codes framework adequately supports incremental improvement, it is not well-suited to the delivery of strategic or transformational change.

The scale and pace of strategic industry reform envisaged over the next few years is unprecedented within the energy industry. Code governance arrangements underpin the industry operational framework and will be utilised to deliver the strategic reform required.

We continue to believe that an overhaul of existing code governance arrangements should be undertaken within the delivery programme for transformational change and should take greater account of the dual fuel retail market for energy. Failure to do so risks ultimately adding time, costs and coordination overheads, and could leave an incoherent collection of legacy codes, many of which may have lost their original purpose.

We note that Code Governance Review (Phase 3) excludes the wider reform of current arrangements from its scope and concentrates on four main areas.

1. _Significant Code Review:_ We do not believe that extending the powers for Ofgem to raise code changes and develop legal text across the industry will have a material impact on the timescales for delivering these very complex changes.

2. *Self Governance:* We support the role of self-governance and are in favour of proposals that increase the scope for modification proposals to follow this route where appropriate.

3. *Code Administration:* We support the majority of the initial proposals identified by Ofgem and believe these will help to increase transparency, consistency and efficiency across codes, although we do not support proposed changes to existing DCUSA voting arrangements.

4. *Charging Methodologies:* Whilst we do not support the use of the formal pre-modification process for all material changes, we agree with the proposal to bring all current charging methodologies forums under the governance of DCUSA.

Our detailed responses to Ofgem's questions on each of these four areas are attached in Appendix 1. Please do not hesitate to contact me if you require any further detail on our response.

Yours sincerely,

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Ofgem's Consultation on Code Governance Review (Phase 3): Initial Proposals – British Gas
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Chapter 2 – Significant Code Reviews

Question 1: *Do you agree that Ofgem should have the ability to lead an end-to-end SCR process, including the development of code change and legal text?*

In the interests of open regulation and consistency of approach, we consider that it is appropriate that Ofgem continues with the current format of the SCR process, namely, by directing a licensee to raise code changes and develop legal text as necessary.

We do not believe that extending the powers for Ofgem to raise code changes and develop legal text across the industry will have a material impact on the timescales for delivering these very complex changes. In our experience, high level conclusions are reached within the SCR process that require detailed design work to be undertaken under the code modification process, this takes a considerable amount of engagement and discussion to ensure a robust working solution is implemented.

We have fully participated in all the SCRs raised to date and do not consider that the process would have concluded in a faster manner, in the electricity SCRs, if Ofgem had had and utilised these additional powers. Any delays in progress during the working group stage of the code change have to gain permission from the Panel, which is only requested where absolutely necessary and generally follows an unforeseen impact or development need.

A better resolution would be to determine the steps that should take place under the SCR process versus the ones that generally happen under the code change process and remove any duplication – Elexon have also stated the need to avoid overlap or duplication between the SCR and modification processes when commenting on the proposed Electricity Balancing SCR in 2010. For example, it seems sensible to leave the full impact assessment to the code change section as the proposal may change over the duration of the SCR, making only a partial impact assessment or even no impact assessment during the SCR a time saving proposition.

The working group stage of the code change would also benefit from a greater interaction and involvement from Ofgem, to ensure that time is not wasted in developing solutions or alternatives that might provide a solution to the issues raised but that are unlikely to be acceptable to Ofgem for a specific reason.

Question 2: *Do you agree it is appropriate to clarify that Ofgem may set timetables for the code change process under an SCR, when the existing, industry-led code development route is used?*

Timetables are currently set under the existing code change arrangements. As the change solution is developed and refined, the working group may make a request to the Panel for an extension to the timetable, to ensure that the change has adequate time for appropriate industry discussion and debate in developing the correct solution.

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We do not believe that this process and the ability to apply for extensions where necessary should change. If a fixed timetable were introduced without the ability to extend it, rushed solutions may be implemented that could have unintended consequences, or may not fully deliver the intended change. This could result in further modifications being raised to address such issues.

Question 3: *Do you have any comments on the licence drafting set out in Appendix 3?*

We are very concerned that Ofgem appears to be implementing a fast-track code change process for SCR changes. Given that Ofgem only raises SCRs for significant areas of change, we would suggest that the development of the solution should be allowed to follow the current full procedure. Therefore we do not agree with the licence drafting set out in Appendix 3.

The proposed paragraph 4AA (a) scales back this process by assuming that all BSC parties are aware of the change, does not seek to pay proper consideration to small participants, reduces the number of BSC objectives that have to be bettered by the change and removes the need to develop or consider any alternative proposals.

The implementation of paragraph 4AA (a) introduces a process where open industry debate over the change and the most appropriate solution is severely constrained; we do not consider this to be an appropriate way forward especially as this would only apply to significant code changes that, by their nature, require considerable development and input by the change process to ensure the most appropriate solution is implemented.

This inability to discuss and raise an alternative solution is of significant concern, as alternative solutions have regularly been developed and adopted as the specific impacts and unintended consequences of the original proposal are fully realised; for example BSC modifications 322, 309, 303, 284 and 281 all had the alternative modifications implemented over the original modification proposed.

Question 4: *Should Ofgem be able to directly raise a modification proposal under the standard process (option 2A)?*

We have no evidence to suggest that the ability for Ofgem to directly raise a modification proposal under the standard process (option 2A) would decrease the timescales under the full SCR/Code change process, so we are unclear why this ability is deemed necessary. We can speculate that it may have been proposed to ensure that no delays in this area are experienced in the future and, as long as the ability is restricted to SCR code changes, we see no issue in Ofgem being allowed to raise modification proposals.

Question 5: *Do you have any other proposals for changes to the SCR process?*

We understand Ofgem's frustration with the longer-than-predicted timescales taken to fully complete previous SCRs, however as this is due to both the Ofgem-led and industry-led processes both taking longer than initially predicted, we suggest that the former could be streamlined and the latter could be extended. We suggest that a 6-month timescale for developing the code solution is very tight for such complex areas. This timescale should be revised to a more appropriate period of 9-12 months. Additionally, as mentioned above, it may be possible that given the experience gained from leading the SCR process to date, Ofgem could streamline or condense the initial phase of the SCR process to ensure the current allowed timescales can be achieved.

If Ofgem do decide to introduce greater powers allowing them to raise changes, develop legal text and lead the working groups, we suggest that there should be: (a) enhanced appeal rights for market participants and (b) a narrowly defined ability for Ofgem to raise UNC code changes, as Parliament provided under the Energy Act 2010 in relation to the now completed gas supply security SCR.

Chapter 3 – Self-Governance

Question 1: *Do you agree that requiring a positive identification of why Authority consent is needed (rather than why it is not) could result in additional modifications being developed under self-governance?*

We support the role of self-governance and are in favour of proposals that increase the scope for modification proposals to follow this route where appropriate. Whilst we do not believe that the current industry arrangements restrict, frustrate or prevent proposals from following self-governance arrangements, the introduction of a requirement to identify why Authority consent is needed will ensure that all modifications are appropriately considered for self-governance progression.

Question 2: *Do you agree that guidance on the materiality criteria may assist industry in its assessment of whether a modification should be self-governance or require Authority consent?*

Our experience of existing arrangements is that code panels generally seek to allow modification proposals to follow a self-governance route where possible, but that proposals with either material impacts on consumers or market participants can often prompt opposing and polarised views from industry parties. In such cases it is generally not appropriate for the proposal to follow a self-governance route and this will be evident whether guidance on

materiality criteria is available or not. However, the existence of guidance might be useful to help assess proposals which are less contentious.

Question 3: *Do you agree that any potential guidance is something that panels and code administrators should develop, based on experience to date of using self-governance?*

It would be sensible for any guidance material to be developed by panels and code administrators. Code panels currently assess each modification for potential self-governance and are therefore best placed to undertake such an activity utilising their experiences to date.

Question 4: *Do you have any other proposals that may improve the self-governance processes under the codes?*

The proposals raised within the consultation appear to be sensible; we are not convinced that anything further than these are required.

Chapter 4 – Code Administration

Question 1: *Do you agree that updating the guidance in CACoP and ensuring best practice across all codes would enhance the role of the Critical Friend?*

The Critical Friend role undertaken by Code Administrators is a service that is useful for all suppliers, however we concur that some suppliers, particularly smaller suppliers, may not be fully aware of the full range of Critical Friend services that are available to them.

The scope and complexity of each code differs significantly; the approach taken by each Code Administrator to provide this service also differs. We agree that updating the guidance currently detailed within CACoP Principle 1 and the sharing of best practice across Code Administrators, is a sensible proposal that should lead to a more consistent offering of Critical Friend services across the industry codes landscape.

Question 2: *Please provide your suggestions as to how the Critical Friend role could be better advertised and what information each code administrator should include on its website.*

The approach to publicising the Critical Friend services provided by Code Administrators is not consistent. We agree that increased visibility within Code Administration websites, including the inclusion of a dedicated page explaining in detail the Critical Friend role and the services that can be utilised by code parties would be beneficial.

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This approach would introduce consistency of arrangements and transparency across all industry codes.

Question 3: *Could a self-governance process be introduced for the CACoP?*

The introduction of a self-governance process to enable minor, non-material changes to be made to the CACoP without Authority Consent is a welcome proposal. This will enable changes which may enhance or standardise best practice across all Code Administrators to occur in a timely manner.

It is essential that Code Administrators continue to work closely with their respective Code Panels or Executive Committees to agree and co-ordinate cross-code amendments to the CACoP which can positively impact relevant codes and agreements.

Question 4: *How often should the CACoP be reviewed?*

The progression of change across the energy industry is fast-paced; therefore whilst the introduction of self governance arrangements would enable the industry to act swiftly where beneficial changes to CACoP are identified, we believe that the existing arrangements for an annual review would continue to be a useful checkpoint.

Code Administrators, Code Panels and Executive Committees continually review the operation of their individual code arrangements and activities; however an annual holistic cross-code review will continue to ensure best practice across all codes and agreements.

Question 5: *Do you agree that greater visibility of the CACoP can be achieved by having clear links available on all code websites to a dedicated CACoP page?*

We agree that the inclusion of appropriate links from all Code Administration websites to a dedicated CACoP page would be helpful to improve visibility and access to information. The development and implementation of this proposal should be relatively easy for Code Administrators to achieve and could include functionality for parties to provide direct feedback outside of the annual satisfaction survey process.

Question 6: *How could the quantitative metrics be improved?*

We support the provision of performance metrics by Code Administrators and believe that they can help deliver some transparency on the performance of various service providers.

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We also support the continued measurement of the current quantitative performance metrics. We note that the initial proposals have proposed a regular report to compare performance; a suggestion we support.

Question 7*: Should a single body send out one qualitative survey across all codes? If so, who would be best placed to undertake this role?*

We believe that the process for collecting qualitative responses from market participants could be streamlined so as to avoid multiple surveys being completed by all market participants. We would also support expanding the range of questions asked to cover, for example, meeting conduct, the preparation of meeting materials and level of industry knowledge.

Question 8: *Do you agree that the modification process and template should be standardised across all codes?*

We recognise that efforts have been made over the last couple of years to introduce a more aligned approach to the modification process and change templates used via the CACoP.

We concur with Ofgem that the introduction of a more standardised process across all codes would be beneficial to all parties, particularly for parties who have not previously had experience in raising industry change. The use of a consistent change template across codes would also further simplify existing arrangements; however consideration would need to be given to the specific requirements of each code and whether a one-size-fits-all approach will work in all cases.

Question 9: *Is it appropriate that all panel chairs be completely independent of industry?*

We agree that code panels should have an independent chair; however consideration should be given to the differing arrangements between codes. For example, SPAA has an Executive Committee and Board arrangements which oversee the operation of the code but which does not engage with the modification process. The existing arrangement for chairmanship currently works well and the inclusion of an independent chair may not therefore improve arrangements but would increase costs.

Question 10: *Is it appropriate that all panel members are required to be impartial, i.e. not to represent the interests of their company?*

We concur that it is essential that all panel members should act independently and not represent the interests of their employer or constituency. Whilst already expected under some

arrangements, this is not always evident in practice. Therefore appropriate controls must be introduced to ensure that all panel members do indeed act independently. There is a clearly a role for Ofgem to undertake, to address any concerns raised by parties with regard to panel member participation.

We agree that whilst panel members require the relevant experience and should act impartially, the inclusion of independent non-industry members is not required.

The arrangements for appointing panel members should also be reviewed for some codes. For example, the UNC, where existing arrangements are such that they 'facilitate' constituency block voting, which could skew the make-up of panel representatives.

Question 11: *Should DCUSA voting be undertaken by panel, rather than all parties?*

Both DCUSA and SPAA do not currently utilise panel voting arrangements when considering modification proposals.

We do not agree that DCUSA voting should be conducted by the panel. The current DCUSA voting process provides a clear and unambiguous rationale as to why any particular change proposal has been recommended for acceptance or rejection. The rationale is based on transparent industry party voting. We believe that Panel voting is less transparent and views of industry are not always reflected when recommendations for acceptance or rejection are made.

Although the SPAA does not utilise Panel voting we believe that improvements are required to the SPAA governance process. There have been examples where modification proposals have been raised where, from the outset; it was evident that the proposal would not receive the percentage of votes necessary for approval. When this situation arises, parties can only progress a change for Authority decision by following the individual code appeal process and a subsequent appeal to the Authority. This takes time and does not facilitate an efficient modification process. The SPAA arrangements should be changed to allow parties to recommend that a change proposal should be determined either by self governance or by the Authority at the outset.

Question 12: *Should code administrators provide a chair for workgroups?*

Establishing effective modification working group chairs is vital in improving the efficiency of code governance process. Whilst we believe independence is beneficial, we consider that effectiveness is more important, for example in terms of ability to manage a debate and project manage proposals through to conclusion.

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Whilst we see many examples of good practice today, we also see example where chairs do not add sufficient value, or either lack the skills necessary to manage difficult discussions or project manage the development of modification proposals. In particular, our experience is that there is considerable improvement to be made by chairs in managing the process outside working groups, for example by ensuring that actions are completed before the next meeting and the timeframe for development of modifications are not elongated.

Some codes already provide for independent chairs of modification workgroups, something that in our experience generally works well. Ensuring that chairs are both independent and possess the right skills would help improve the efficiency of code governance.

Question 13: *Would including a consumer impacts section on each change proposal form help to ensure consumer interests are discussed and published?*

We agree that it is important that the impacts to consumers are fully understood for any modification. Therefore we support the proposal to include a consumer impacts section on every change proposal form as this would help to ensure impacts are considered through the entire modification process.

Given modification proposals often benefit one subset of consumers at the expense of another, any impact assessment needs to transparent, consistent and objective.

Question 14: *Do you agree with the housekeeping changes we have proposed?*

We agree with the housekeeping changes proposed.

Chapter 5 – Charging Methodologies

Question 1: *Should all 'material' charging modifications proceed through pre-modification processes and demonstrate some initial evidence against the relevant charging objectives prior to being formally raised?*

We do not believe it would be beneficial to mandate that all 'material' charging modifications process through formal pre-modification processes, including presenting to the appropriate charging forum. Modifications should be well-justified when presented, including a consideration of the relevant charging objectives. However, if a party believes that a modification is already sufficiently developed it would clearly be inefficient to build in an extra step of a pre-modification process. If a modification is presented that is poorly justified then the Panel, if in full agreement, could send back the proposal with a recommendation to take to the charging forum.

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Waiting for scheduled charging forums may also lead to unnecessary delays to the submission of modification proposals which may in turn adversely affect implementation dates (especially when charges are set with 15 months notice as is the case under DCUSA). The issues, such as cost-reflectivity, that such modifications seek to address are likely therefore to take longer to resolve. The introduction of such a process is likely to add to the time and resource required for individual parties to submit charging modifications which could result in less engagement by smaller Parties.

The ability of Panels to send back proposals should be limited to situations where there is unanimous Panel recommendation that the change is poorly justified and unlikely to better facilitate the objectives. This should allow Panels to filter out proposals which have not been well thought out whilst providing protection to industry parties against Panels unnecessarily holding up proposals.

More effective use of the Critical Friend role is a better way to ensure modifications are appropriately thought through prior to submission.

Question 2: Could the current pre-modifications processes for charging code changes be applied more effectively in line with CACoP Principles 5 and 6?

The current situation where parties are free to raise modifications without any pre-modification process, with forums available to parties who require them, is reasonable. We would not support any restrictions being placed on parties' ability to raise modifications.

Question 3: Should panels develop forward workplans for charging modifications in line with agreed priority area(s) to provide a more robust approach to managing modifications?

There is a risk that this could lead to those parties more engaged in the industry having their proposals granted 'priority' status over those less engaged in the industry, despite the issues not warranting 'priority' status. A transparent process, engaging widely, to establish priority areas would be required.

To an extent, a modification being raised is the clearest indication of a party viewing an issue as priority. A separate process may lead to modifications for modifications sake i.e. simply because a process has been set up which requires a 'priority' list to be progressed expediently despite the issues not being a genuine priority for the industry.

Question 4: Do you agree that charging modifications which are 'not material' (in line with self-governance criteria) should be progressed through the self-governance route?

All changes that affect the charges made by end-users must be treated as material. If the immediate impact on classes of customers appears small, the impact on individual customers can be much larger and, due to complex nature of the charging, the longer-term impact of changes will not certain at the time, and may be significant. The DCUSA already allows modifications that do not affect charges to be progressed through the self-governance process, where appropriate.

Question 5: Do you agree that bringing all current charging methodologies forums under DCUSA governance could help to improve stakeholder engagement and increase the consistency of processes for charging modifications?

We agree the proposal to bring all current charging methodologies forums under the governance of DCUSA.   We believe that this should lead to overall efficiencies, however, for customers to benefit any required increase in DCUSA funding should be borne entirely by DNOs to avoid customers funding costs twice – through DNO base revenue allowances and through increased supply charges resulting from increased DCUSA costs.

Question 6: Do you agree that having a panel sponsor would help the DCUSA Panel better understand the origins of charging modifications and the DCUSA Panel would be more accountable for, and engaged with, efficiently progressing them?

We agree that the inclusion of a Panel sponsor is a sensible proposal to assist with understanding but believe, as described below, it may be beneficial to have a separate panel for charging modifications.

Question 7: Please set out any other proposals you may have for improving the governance for charging methodologies under open governance arrangements.

It is worth considering whether a separate Panel, or sub-Panel, is required for charging modifications. Due to the broad scope of the DCUSA especially, and the specialist nature of network charging, it may be unreasonable to expect Panel members to be able to engage fully will all types of modifications.