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Dear Marion,

Re: Code Governance Review (Phase 3): Initial Proposals

Drax Power Limited ("Drax") is the operating subsidiary of Drax Group plc and the owner and operator of Drax Power Station in North Yorkshire. The 4,000MW station consists of six separate units which together produce around 7-8% of UK generation. Until recently, these units were predominantly fuelled by coal. However, two of these units have been converted to renewable biomass and a third unit is expected to convert in 2016. At this point Drax will be a predominantly renewable generator, having completed the largest decarbonisation project in the EU. Haven Power Limited ("Haven") is an electricity retailer and a subsidiary of Drax. Haven supplies small and medium (SME) sized business customers and larger Industrial and Commercial (I&C) customers. This response represents the views of both Drax and Haven.

Drax welcomes the opportunity to respond to this consultation. Below we draw attention to the main points we would like Ofgem to consider in response to its initial proposals.

Open governance

We are very supportive of the open governance arrangements. This provides greater flexibility for beneficial changes to be made to the industry codes and promotes competition as any party, large or small, is able to propose changes to the arrangements. We strongly support its retention and extension to all industry codes and caution against changes which would dilute its effectiveness.

Code administrator best practice

We consider that the CUSC and BSC operates best practice arrangements and would suggest these are applied to other industry codes.

SCR process

Ofgem led end-to-end process

We consider that the existing SCR arrangements are appropriate. We do not believe that sufficient evidence and therefore justification has been provided to support the adoption of an Ofgem led end-to-end SCR process. In particular, there has been no convincing evidence presented which demonstrates that SCR changes have been unduly delayed. Moreover, the proposed enhancements to the SCR process appears to consist of duplicating the resources and expertise provided by the code administrators.

Ofgem raising modification proposals

We believe that the ability for Ofgem to direct National Grid to raise a modification is adequate. Introducing the ability for Ofgem to directly raise modifications would not produce any additional benefits. However, if Ofgem does receive the power to directly raise modification proposals, we consider that this would call into question the independence of the regulator. We would consider it necessary for an independent adjudicator role to be created to take the final decision on approving/rejecting modification proposals.

Pre-modification process

We believe there are limited benefits associated with a pre-modification process for charging modifications. However we consider there are significant drawbacks. It would be difficult to determine whether a proposal is 'material' or not. The process will significantly increase the administrative burden associated with raising a charging modification. This is likely to disproportionately impact smaller parties who naturally have more limited resources. This will negatively impact competition. Whilst we believe it is helpful to present problems or issues to pre-modification groups, such as the TCMF, to garner industry feedback, we see no compelling reason to mandate this approach.

Independent panel chairs and members

We strongly support policies which ensure the independence of panel chairs and members. Independence guarantees a fairer process for managing the industry codes. It ensures that changes to the code arrangements are made on the basis of the merits of a proposal rather than whether it favours specific and narrow commercial interests.

Panel forward workplans

We do not see how mandating panels to produce forward workplans for charging modifications is compatible with the open governance policy. It is not within panels' control to determine what modification proposals are raised and in what timeframe. Moreover, it will be difficult for panels to determine what modification proposals to prioritise. Importantly we have seen no compelling evidence to suggest that charging modifications are being processed in anything other than a robust manner. Therefore we do not believe there is a compelling case to introduce this procedure.

Self-governance

We believe the self-governance arrangements work well and are used appropriately and as such do not see a convincing case for changes to be made. Ofgem also appear to agree when it states in the consultation document that "we consider self-governance is working well and the self-governance route is being appropriately used".

Detailed responses to the questions raised in the consultation are set out in the Annex below.

Should you have any questions or wish to discuss this response, please feel free to contact me (email: cem.suleyman@drax.com; telephone: 01757 612 338).

Yours sincerely,

Submitted by email

Cem Suleyman
Regulation and Policy

Annex: Detailed response to the consultation questions

CHAPTER: Two

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?

No. We consider that the existing SCR arrangements are appropriate. We do not believe that sufficient evidence and therefore justification has been provided to support the adoption of an Ofgem led end-to-end SCR process. In particular, there has been no convincing evidence presented which demonstrates that SCR changes have been unduly delayed. There is certainly no evidence that industry participants have maliciously delayed the process.

Rather our experience indicates that delays associated with the two electricity SCRs did not materialise from the industry code led part of the process. Delays to the implementation of these SCR Directions should be attributed to the Ofgem led elements of the SCR process. In the case of Project TransmiT, both Ofgem led sections, before and after the raising of CMP213, suffered from significant delays. In the case of the Electricity Balancing SCR, the Ofgem led stage ahead of the raising of both P304 and P305 also suffered from significant delay. However, in both cases these delays were not necessarily unjustified. The changes implemented by both SCRs were contentious and material. As such there was reasonable justification for taking the time to ensure that the changes were well evidenced and justified.

Moreover, the proposed enhancements to the SCR process appears to consist of duplicating the resources and expertise provided by the code administrators. This is inefficient. It is sensible to make use of the existing resources and expertise available rather than recreating what already exists.

With regards to drafting legal text, Ofgem currently has the ability to draft as detailed a SCR Direction to National Grid as it wishes. In any case, our experience of raising changes to the industry codes suggests it is best not to set out in too great a level of detail the solution to the identified defect. Rather the best approach is to clearly set out the defect that is to be addressed and allow the modification working group the opportunity to consider the various options available to solve the identified defect. Allowing a more flexible approach results in a more effective process for making required changes.

We believe the legal text of any change to the codes should only be developed at the end of the modification working group's deliberations. As such we do not see any benefit associated with Ofgem drafting the legal text ahead of the deliberations of modification working groups. The expertise in drafting legal text resides with the relevant code administrator and, alongside the modification working group, should be responsible for drafting the legal text.

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?

We consider that the current powers under the BSC are appropriate and provide Ofgem with sufficient power to ensure that code changes are not unduly delayed. We would be supportive of the provisions in the BSC being extended to other industry codes. In any case there is no evidence demonstrating that the SCRs undertaken were unduly delayed.

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

The Licence drafting should be rewritten to take into account the comments we have made in this response.

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

No. We believe that the current SCR process, specifically the ability for Ofgem to direct National Grid to raise a modification, is adequate. Providing Ofgem the ability to directly raise modifications would not produce additional benefits. However, if Ofgem does receive the power to directly raise modification proposals, we consider that this would call into question the independence of the regulator. We would consider it necessary for an independent adjudicator role to be created to take the final decision on whether to approve/reject modification proposals. This is in line with one of the CMA's possible remedies.

Ofgem's capacity to judge modification proposals would clearly be compromised and this duty would need to be modified as a result. This would ensure fair and just decisions are taken on the merits of modification proposals and ensure the industry retains confidence in the fairness and impartiality of the industry's commercial arrangements.

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

No. We do not consider that any changes to the SCR process are required. The current arrangements function well in our opinion. The main problems identified with industry code administration centre on problems with introducing half hourly settlement and P272. These problems could have been avoided if the SCR process had been used to progress the required changes.

CHAPTER: Three

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?

No. This will not make a significant difference to the Panel's assessment of the merits of employing self-governance. The materiality criteria for self-governance is the crucial determinant of the quantity of modifications which take the self-governance route. Only changes to this criteria will significantly change the quantity of modifications that are processed under self-governance.

In any case, we do not consider that 30% of modification proposals being processed under self-governance is an indication of a lack of willingness for code panels to use this route. The 50% forecast of self-governance utilisation that Ofgem quotes does not appear particularly robust. Therefore we are unconvinced that there is a problem that requires addressing. Ofgem also appear to agree when it states in the consultation document that "we consider self-governance is working well and the self-governance route is being appropriately used".

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?

Potentially, but ultimately an assessment of materiality is a subjective judgment. It is for each code panel member to decide whether a modification proposal is material or not and make a judgment on the use of the self-governance process. Guidance may assist the panel member in his/her assessment but it is ultimately an individual judgement call.

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?

We are content for the panels and code administrators to consider the development of guidance on materiality.

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

No. We believe the self-governance arrangements work well and are used appropriately and as such do not see a convincing case for changes to be made.

CHAPTER: Four

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?

This sounds sensible. Best practice should be promoted via the CACoP.

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.

We agree with proposals to enhance Ofgem's website to include key information on the various network codes. As suggested by Energy UK, in addition to the names of the various codes and links to the relevant

administrators' websites, it would be useful if Ofgem could provide an easy to follow introductory guide providing an overview of codes. This would include which codes parties need to sign up to, the code modification process, appeals process, collateral and compliance requirements, and the relevant objective(s). This would be particularly useful for new entrants.

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

Yes, potentially. We consider that the self-governance process adopted by the CUSC represents best practice and would urge all code administrators to adopt this approach.

Question 4: How often should the CACoP be reviewed?

Once a year appears sensible, although there should be some flexibility to allow for the ability to undertake ad-hoc reviews on particular issues if special circumstances arise.

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 believe this proposal would certainly increase visibility of the CACoP.

Question 6: How could the quantitative metrics be improved?

We consider these are currently appropriate, but we are open minded on further metrics.

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?

This could reduce the administrative burden. Any of the code administrators should be able to undertake this task.

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

There could be some incremental benefit from making this change. We consider that the CUSC process and template represents best practice. The BSC process and template is also good, although we believe the limitation of one alternative modification proposal under the BSC unduly limits viable solutions to identified problems and as such represents a less efficient process.

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

Yes. This guarantees a fairer process for managing the industry codes. We believe there has been improvements in the Panel management of the CUSC following the appointment of an independent Chair.

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

Absolutely. We consider this is important feature of the BSC and CUSC and should be extended to all code panels. This approach better ensures that changes to the code arrangements are made on the basis of the merits of a proposal rather than whether it favours specific and narrow commercial interests.

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

Yes DCUSA voting should be undertaken by the panel, but the voting should be undertaken by a reformed panel constituted in similar fashion to the CUSC Panel. Most importantly, the reformed Panel would be required to act impartially of any commercial interests.

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

This works well under the BSC and CUSC. However, in the CUSC the Code Administrator employee is an employee of a firm with a significant commercial stake in the CUSC arrangements. Therefore, some consideration could be given to either requiring an independent Chair to be appointed to CUSC Workgroups or requiring the appointed Code Administrator Chair to declare his/her impartiality (in a similar fashion to that

required by CUSC User Panel Members). However, we have not detected any significant bias in the handling of CUSC Workgroups by Code Administrator Chairs, so we are unconvinced that either of the suggested requirements is necessary at present.

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 to identify the impacts that a modification proposal may have on consumers. In our experience impacts on consumers are often discussed in depth by the modification workgroup (for example, CMP201, CMP224, CMP227, CMP243, CMP244, CMP250 etc.) and are even sometimes mentioned in a modification proposer's proposal form. However, if it is considered that a specific section on consumer impacts is required to ensure better presentation of consumer impacts and to ensure that consumer impacts are consistently considered across all codes, then we do not see any major disadvantages associated with implementing such a proposal. However, a consumer impacts section should not become a substitute for Ofgem's assessment of consumer impacts when considering the merits of modification proposals.

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

Yes these changes are sensible.

CHAPTER: Five

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?

No. Firstly, it would be difficult to determine what is 'material' and what is not, particularly before the modification solution has been sufficiently developed. Secondly, this appears to significantly increase the administrative burden associated with raising a charging modification. This is likely to disproportionately impact smaller parties given their limited resource, negatively impacting competition. We believe it is helpful to present problems or issues to pre-modification groups, such as the TCMF, to garner industry feedback. However, we see no compelling reason to mandate this approach, only significant disadvantages.

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

CACoP Principles 5 and 6 are well applied in the TCMF and in instances where charging modifications are proposed to the CUSC.

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?

We do not see how this approach is compatible with the open governance policy. It is not within a panel's control to determine what modification proposals are raised and in what timeframe. Moreover, it will be difficult for panels to determine what modification proposals to prioritise – modification proposals tend to impact each party to a differing degree.

We have seen no compelling evidence to suggest that charging modifications are being processed in anything other than a robust manner. We believe the CUSC and BSC Panels already prioritise modification proposals by setting timetables depending on the urgency associated with the specific issue that is seeking to be addressed.

For the avoidance of doubt, we are very supportive of open governance. This provides greater flexibility for beneficial changes to be made to the industry codes and promotes competition as any party, large or small, is able to propose changes to the arrangements.

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?

Yes, this proposal appears sensible. However, we consider that most charging modifications will be material as they are likely to impact the competitive conditions of the market.

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 have no comments on this proposal.

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 have no comments on this proposal.

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

We consider that the CUSC and BSC operates best practice arrangements and would suggest these are applied to other industry codes.