



Marion Quinn
Industry Codes & Licensing
Ofgem
9 Millbank
London
SW1P 3GE

Email to: industrycodes@ofgem.gov.uk

18 December 2014

Code Governance Review Phase 3 (CGR3): Initial Proposals

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 over five million electricity and gas customer accounts in the UK, including residential and business users.

We agree with many of Ofgem's proposals and believe that they should be taken forward as part of the CGR3 Final Proposals, with some refinements. We summarise our high level views of each chapter below:

- **SCR process:** We support Ofgem's proposal to enable Ofgem to clarify that it may set timetables for the code change process under an SCR, provided that there is some flexibility and leeway. We also support the introduction of option 2A where Ofgem can raise the modification proposal and legal text which then feeds into the industry process.

One area we do not support is the proposal to enable Ofgem to lead an end-to-end SCR process. We are not convinced that this will necessarily result in a more efficient process. In our view, the industry-led process is more transparent and well-understood compared with the proposed Ofgem led approach; the industry-led process incorporates a wider range of checks and balances to limit any unintended consequences; and is more accessible to industry participants. We explain our reasoning in more detail in the attachment to this letter.

- **Self-governance:** We support the changes to the assessment of the self-governance criteria to increase the use of the self-governance route. We also support the further development of guidance on materiality to facilitate greater use of self-governance.
- **Code administration:** We support updating the guidance in the Code Administration Code of Practice (CACoP) and ensuring best practice across all codes. We also support the standardisation of the modification process and template across all codes.

In particular, we welcome the inclusion of a consumer impacts section on each change proposal form. We would suggest going further than simply including a consumer impacts section on the form; consumer benefits should be discussed proactively by the workgroup and the Panel as part of the assessment process.

EDF Energy
40 Grosvenor Place, Victoria
London SW1X 7EN
Tel +44 (0) 20 7752 2200

edfenergy.com

*EDF Energy plc
Registered in England and Wales.
Registered No. 2366852.
Registered office: 40 Grosvenor Place,
Victoria, London SW1X 7EN*

- **Charging methodologies.** We agree with Ofgem that 'not material' charging modifications (in line with self-governance criteria) should be progressed through the self-governance route. We think it is always useful to have some sort of pre-modification discussion prior to a modification being formally raised but do not think it needs to be a mandatory process.

We agree with Ofgem that it would be helpful if Panels can develop forward work plans in general. However, there should always be space to accept change outwith the workplan. Events happen and priorities change during the course of a year and it is a key merit of the existing open governance industry codes process that allows the rules to evolve flexibly.

One area that this consultation does not consider is project management. A key learning from Project Nexus is the importance of good project management at the beginning of the implementation phase. Before jumping straight into designing the detailed solutions of the SCR, it is important to consider what resources are necessary, what issues need to be resolved, whether there are any dependencies, whether there are any cross-code issues, etc. This function could be performed by Code Administrators or a third party. The Initial Written Assessment that Elexon produces as part of its code modification process fulfils a similar function and we believe a similar assessment should be conducted by all code administrators.

We hope that Ofgem will be persuaded that the industry-led phase of the SCR process can be improved by the suggestions we make in this response and also have made in previous responses.

Our detailed responses are set out in the attachment to this letter. 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 me.

I confirm that this letter and its attachment may be published on Ofgem's website.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Angela Hepworth'.

Angela Hepworth
Corporate Policy and Regulation Director

Attachment

Code Governance Review (Phase 3): Initial Proposals

EDF Energy's response to your questions

CHAPTER: Two

Q1. 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 believe the industry-led process is preferable to the Ofgem-led process and will be in the best interest of consumers for the following reasons.

- **The industry-led process is more transparent.** Using the Balancing and Settlement Code (BSC) as an example, its Modifications Procedures are set out in detail in Section F of the BSC and also summarised in the BSC Simple Guides. The legal frameworks, the role of the Panel, the Modification Proceedings etc., are clearly set out in legally binding documents. Moreover, participation at workgroup meetings is open to any BSC party and modification proceedings are publically available via the code administrator's website which ensures transparency. Since one of the proposals under this consultation is to standardise the modification process across all codes, the same level of transparency should be achieved across the other codes.

The consultation suggests that the new Option 2A (Ofgem raises modification proposal and text) and Option 3 (Ofgem leads end-to-end SCR process) will sit alongside the existing options. However, it is not clear from the consultation what criteria Ofgem would use to decide which option would be selected for the second phase of the SCR. This creates uncertainty in the process because code parties will not know whether they will have an opportunity to raise Alternative modifications or whether SCR related modifications will be restricted during the second phase. Similarly, the mechanics of raising an Alternative modification is clear under the industry process but it is not clear from the consultation how Ofgem intends to consider different solutions which may arise as part of the Ofgem-led process.

In our view, the proposed Ofgem-led end-to-end approach is opaque compared with the established industry-led process and, as it currently stands, does not demonstrate that it will lead to a more efficient result.

- **The industry-led process has more checks and balances in place.** The industry-led process provides an opportunity for code parties to conduct further analysis (if deemed appropriate by the Panel), raise Alternative modifications and consider the implementation solutions in detail (via Workgroup meetings and iterative consultations) before the final report is produced for the Panel. Using the EBSCR as an example, P304 'Reduction in PAR from 500MWh to 250MWh' enabled the industry to consider one of Ofgem's Directions in detail. Through the industry-led process, it became apparent that, on balance, P304 would not further the applicable BSC objectives. As a result, Ofgem rejected one of its own initial Directions. This demonstrates that the industry-led process ensures the necessary checks and balances are carried out before final implementation.

The roles of the Panel and Code Administrator are also very important in the industry-led process. In particular, we find the role of the Panel crucial in providing independent and impartial views on an on-going basis throughout the change process. While we note that the Panel still has a role under Option 3, their role appears significantly narrower than the industry process. It appears they would only be able to assess a single modification proposal put forward by Ofgem. Arguably, Ofgem, as the regulator, will be representing its own views rather than providing independent and impartial advice.

The Code Administrators' role as a 'Critical Friend' is also valuable. Elexon, for example, is very good at ensuring people are available to discuss issues (by providing options for meeting dates or arranging teleconferencing facilities); ensuring that small market participant viewpoints are articulated and debated at Workgroup and Panel meetings; and responding quickly to requests for information and support. Since Ofgem is proposing a number of changes to enhance the role of the Critical Friend in this consultation, we would expect to see further improvement in industry engagement which should result in a more inclusive process.

If Ofgem is not satisfied with the performance of the Panel and/or Code Administrators, this should be addressed in a different manner. Previously, we recommended that Ofgem should publish the reports produced under Principle 12 of CACoP, along with its assessment of performance, to promote transparency and enable benchmarking of code administrators' performance. By assessing how effectively the code administrators are discharging the roles and responsibilities captured within the principles of the CACoP, the standards of service and, more generally, compliance against the code principles should improve. We also believe that greater oversight of the performance of the Code Panels against their duties (as set out in the relevant codes) would be useful. Code Panels have a key role to play in the smooth running of the code modification process and in ensuring that this is managed in an independent and effective manner. As above, we believe that Ofgem should make comparative assessment of Code Panels' performance against their duties and publish its assessment.

- **The governance arrangements promote accessibility for all industry participants.** Since the end to end process of an SCR can take three to four years, it may be difficult for stakeholders, especially smaller parties, to provide continuous, dedicated resources over the entire duration of the SCR. The industry-led code modification process, on the other hand, provides a much more focussed opportunity for stakeholders to participate in the deliberations, making it more accessible for all industry participants.

The industry-led workshops are also open to all interested parties whereas the workshops organised by Ofgem often limit attendance to one representative per organisation. Similarly, the technical working groups set up as part of the EBSCR were exclusive and the materials were not shared widely. We understand the challenges of organising and managing workshops. However, they must be accessible to all industry participants and this is something code administrators are much better at accomplishing.

One of the key learnings from Project Nexus is the importance of good project management at the beginning of the implementation phase. It is important to consider what resources are necessary, what issues need to be resolved, whether there are any dependencies, whether there are any cross-code issues, etc. before starting to think about the actual solutions. This function could be performed by Code Administrators or a third party. In fact, this function will also be necessary in an Ofgem-led SCR process. The Initial Written Assessment that Elexon produces as part of its code modification process fulfils a similar function and we believe a similar assessment should be conducted by all code administrators.

Q2. 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 believe Ofgem can already set the timetables for code change process under an SCR by:

- indicating the implementation date in the Direction it gives to National Grid Electricity Transmission; and
- using its ability to issue a notice to the Modification Secretary that requires the Panel to amend the timetable of a Modification Proposal.

If Ofgem wishes to provide an aspirational timetable for each SCR, we would support this provided that there is some flexibility and leeway, i.e. the timetable could be changed if industry can demonstrate the need for more time to develop the necessary solutions. We would not support the introduction of a fixed timetable which does not cater for sufficient time to develop the solutions because this is likely to result in consumer detriment.

The Implementation of P305 'EBSCR Developments' is an example of a modification where Ofgem set a clear timescale in its Direction. The industry met Ofgem's expectation by delivering solutions to meet the 5 November deadline but we are now seeing notifications from Elexon on a regular basis highlighting errors in the calculation and reporting of Loss of Load Probability and De-rated Margin. While Ofgem may feel that industry was taking too long to fine-tune the detail and turn Ofgem's proposals into a firm solution capable of being turned into software, the reality is that a rushed timetable inevitably results in problems in errors post-implementation. If meeting a specific timetable results in insufficient time to develop robust, tested, software and processes, this would not be in the interest of consumers.

Q3. Do you have any comments on the licence drafting set out in Appendix 3?

Paragraph 4AA states that:

"The procedures for the modification of the BSC shall provide, where the Authority submits a significant code review proposal to the panel for a modification within the scope of paragraph 13F(b):

- (a) *for the modification to be accepted into the modification procedures as if the steps in paragraph 4(b)(i)-(ivA) had been completed;"*

It is not clear why the steps set out in paragraphs 4(b)(i)-(ivA) are to be circumvented for an Ofgem raised code modification. It is not clear why representations of small parties or consumer representatives would not be appropriately considered in an Ofgem modification for instance, or alternative modifications disallowed, or an assessment of greenhouse gas emissions. We assume that this is an oversight in the drafting that should be addressed.

Q4. Should Ofgem be able to directly raise a modification proposal under the standard process (option 2A)?

Yes. We support option 2A where Ofgem can raise the modification proposal and legal text which then feeds into the industry process. In some instances this may be more efficient than asking National Grid to raise the modification. We would therefore expect the industry to be able to raise Alternatives as per the existing industry-led process.

Q5. Do you have any other proposals for changes to the SCR process?

In paragraph 2.25 of the consultation, Ofgem states that the effectiveness of the SCR process and the ability for it to arrive at coherent and well-thought through policy positions could be undermined by industry participants using the modification process to delay or otherwise frustrate the process of developing code modification text. As a result of this risk, Ofgem proposes to develop a new option where Ofgem could lead the end-to-end process.

Since concrete examples of such occurrences are not provided, it is difficult for us to understand whether this is a real risk or a perceived risk; we have not witnessed any vexatious behaviour to frustrate the SCR process which has dealt with important industry issues. The concerns raised by some industry participants may seem immaterial to other parties and can be frustrating at times, but they are genuine concerns for that particular party. Their views must be respected on such key changes and this is reflected in CACoP and the industry-led process.

Proposals designed to address a perceived risk will not necessarily address genuine inefficiencies in the current process. If Ofgem is convinced that fundamental changes are necessary, we would suggest that the end-to-end process of the SCR is examined and scrutinised. Efficiency gains could also be found in the first phase of the SCR process.

CHAPTER: Three

Q1. 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?

Yes. We agree with Ofgem that the scope of using the self-governance route is probably greater than currently used. Changing the assessment criteria to requiring a positive identification of why Authority consent is needed (rather than why it is not) should result in additional modifications being developed under self-governance.

Q2. 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?

Yes. Guidance on the materiality criteria will be helpful.

Q3. 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?

Panel and code administrators should be able to develop such guidance but only with the direct advice and guidance of Ofgem.

Q4. Do you have any other proposals that may improve the self-governance processes under the codes?

No.

CHAPTER: Four

Q1. Do you agree that updating the guidance in CACoP and ensuring best practice across all codes would enhance the role of the Critical Friend?

We fully support the further standardisation of the governance arrangements for code changes across the codes; this would be a simple and beneficial step. As an immediate step, we recommend that the Code Governance Best Practice, as identified in the conclusions of Ofgem's CGR, should become mandatory across all codes. This should be followed by updating the guidance in CACoP and ensuring best practice across all codes.

Q2. 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.

In our previous response, we recommended enhancing Ofgem's website which currently contains limited information on codes. 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 including, for example, which codes parties need to sign up to, the code modification process, appeals process, collateral and compliance requirements, and the relevant objective(s). The Critical Friend role could also be explained there. Previously we have also suggested a simple web based front end for all the industry codes which would provide a portal for all parties. A simple front end like this could also highlight the critical friend role of code administrators.

Q3. Could a self-governance process be introduced for the CACoP?

Yes. It would be sensible to introduce a self-governance process into the CACoP review so that minor, non-material changes can be made without the need for Authority consent.

Q4. How often should the CACoP be reviewed?

Especially with the amendments being proposed, we believe retaining the annual review to assess progress seems sensible in the short term.

Q5. 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 greater visibility of the CACoP could be achieved by having clear links available on all code websites to a dedicated CACoP page. However, we would suggest going further. From an end-user's perspective, it is much easier to have a single website that hosts all the relevant industry code information in one place, rather than having several sites hosted by different code administrators and with completely different layouts. Navigating through complex sites, especially when the required information is sometimes unavailable, is a frustrating and unproductive experience shared by users, both large and small. We believe that code administrators should be required to develop a single hosting website that is easy to navigate as this will reduce the complexity to market participants.

Q6. How could the quantitative metrics be improved?

We do not have any views.

Q7. Should a single body send out one qualitative survey across all codes? If so, who would be best placed to undertake this role?

It would seem sensible and an efficient way of managing the survey. It would be useful if Ofgem could consider taking this role for instance through a third party agent. Given our strong belief that Ofgem should publish its assessment of code administrators' performance, it may make sense for Ofgem to coordinate the survey.

Q8. Do you agree that the modification process and template should be standardised across all codes?

Yes. It is clear that despite the CACoP and CGR1 and 2 there are still differences that need to be addressed. This will make industry codes and their governance more accessible to all.

Q9. Is it appropriate that all panel chairs be completely independent of industry?

Yes. We think industry experience is beneficial but believe panel chairs should not be employed by industry. They should also be able to demonstrate independence of mind and impartiality.

Q10. Is it appropriate that all panel members are required to be impartial, i.e. not to represent the interests of their company?

Yes. A number of codes already do this but this should become the standard. Code Panels have a key role to play and it is important that they are and are perceived to be independent.

Q11. Should DCUSA voting be undertaken by panel, rather than all parties?

Yes. This would bring DCUSA in line with other codes. However, consideration should be given to assess whether the DCUSA panel should consist of a wider representation.

Q12. Should code administrators provide a chair for workgroups? Do you agree that the relevant criteria have been met for us to approve the funding increase?

Yes. We consider that workgroups should be chaired independently, and agree that this could be achieved through code administrator chairs.

Q13. Would including a consumer impacts section on each change proposal form help to ensure consumer interests are discussed and published?

Yes. The inclusion of a consumer impacts section on each change proposal form will be useful. We are fully supportive of this proposal. We would, however, go further than simply including a consumer impacts section on the form. Consumer benefits should be discussed proactively by the workgroup and the Panel as part of the assessment process.

Q14. Do you agree with the housekeeping changes we have proposed?

Yes.

CHAPTER: Five

Q1. 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 think it is always useful to have some sort of pre-modification discussion and this is something we do actively. While we think this is useful, we do not think it needs to be a mandatory process.

Q2. Could the current pre-modifications processes for charging code changes be applied more effectively in line with CACoP Principles 5 and 6?

Broadly speaking, we think they are already being applied effectively in line with CACoP Principles 5 and 6.

Q3. Should panels develop forward workplans for charging modifications in line with agreed priority area(s) to provide a more robust approach to managing modifications?

Yes. It will be very helpful if Panels' can develop forward work plans in general. However, there should always be space to accept change outwith the workplan. Events happen and priorities change during the course of a year and it is key merit of the existing open governance industry codes process that allows the rules to evolve flexibly.

Q4. 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.

Q5. 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?

Yes. For DCUSA specific charging, we agree they should be brought together.

Q6. 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?

Again the Panel would need extending if each CP were to be sponsored by a panel member as there are a large number of changes but it does seem sensible if the panel are to vote on the change for them to be more informed.

Q7. Please set out any other proposals you may have for improving the governance for charging methodologies under open governance arrangements.

While we do not have a specific proposal, we would like to highlight that the greatest issue at the moment is getting industry parties to participate given the very high level of change on-going.

**EDF Energy
December 2015**