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18 December 2015

Dear Lesley,

Code Governance Review (Phase 3): Initial Proposals

Please find below ElectraLink's response to Ofgem's Code Governance Review 3 (CGR3) initial proposals.

We have provided our views from our experience as Code Administrator for the Distribution Connection and Use of System Agreement (DCUSA) and Supply Point Administration Agreement (SPAA) and Secretariat for other industry governance arrangements, across both the gas and electricity sectors. We are appointed to these roles under competitively procured commercial contracts.

ElectraLink has observed some improvements in code administration, primarily due to Ofgem's Code Governance Review work. We agree there is more to do and support the intentions of the third phase of the review, in particular to align and co-ordinate common aspects of the codes. Most code parties have to engage with more than one code, and given the current volume of change across the industry, stakeholders are all reporting constrained resources. Therefore consistency in processes, and Code Administrators doing more centrally should, if implemented in the right way, provide more cost efficient code operations for all parties.

The CMA may recommend some fundamental changes to code governance next summer. ElectraLink has recently provided a response to a CMA request for information on similar topics to this consultation. We would hope that between the CGR3 and CMA outcomes, material improvements are achieved that go further than picking off the quick wins – beneficial though those are. To ensure real change happens (e.g. a Critical Friend role which fully and consistently acts as an advocate and challenger for all stakeholders), we would recommend that Ofgem clearly sets out the benefits parties will get, backed up by examples, from investing in the Code Administrators; in effect what return they will see on that investment.

Alignment of code administration principles, and the code processes is absolutely necessary but it must be implemented carefully. It must take into account differences in the subject matter of the codes, so that inappropriate approaches are not forced on codes. The processes have been set up to fit the party types and subject matter of the codes. For example the SPAA change process is generally light touch. This is suitable as SPAA Change Proposals are probably of a magnitude equivalent to BSC Change Proposals (modifying code

subsidiary documents) rather than code modifications, as that is the nature of the part of the industry that the SPAA governs. At the same time, if too much discretion is allowed it risks a less comprehensive service being delivered in some situations, and highly valuable tools such as the Code Administration Code of Practice (CACoP) being approached as a tick box exercise.   This is a delicate balancing act.

Code Administrators can do more in terms of delivering and supporting code processes. However, ElectraLink feels strongly that code panels should retain the responsibility for code governance, under direction from Ofgem. The Code Administrator's role should be to support the panel (including as a critical friend) in this. Such hierarchy of authority from the regulator to the panel to the administrator is critical for control and accountability. A number of administrators are appointed under commercial contracts, which from responses to the CMA's initial findings[1], appears to be the industry's preferred approach. It is how ElectraLink is appointed in all its code governance roles. This approach clearly defines roles and responsibilities and gives a high degree control to the code panels over how the Code Administration services are delivered. However, it also means that any new responsibilities placed on the Code Administrator must be described in the commercial contracts in order for the administrator to perform those tasks.

ElectraLink's Governance Services role has expanded substantially since we were first appointed as SPAA Secretariat in 2004. We have subsequently been appointed as secretariat to more codes and arrangements; we regularly perform work outside the standard Code Administrator role e.g. project manager, leading reviews, drafting modifications, running procurements, contributing to industry-wide reviews and initiatives. We have had consistently excellent customer feedback; we meet our obligations and exceed the high standards of the service levels within our contracts. Customers clearly tell us they are looking for our role to deliver more, for example:

- Know more about the technical content of the code and about the wider industry
- Do the "extras", innovate and actively look for best practice in code administration
- Encourage and support more stakeholders to get involved
- Broaden the role e.g. project management, compliance monitoring

These are also reflected in the CGR3 proposals and the CMA's findings, such as supporting Ofgem on delivering Significant Code Reviews; working with other Code Administrators on cross-code changes; providing project management and doing analysis on modifications; supporting working groups (e.g. preparing legal text, proposals for change, process efficiencies to make more effective use of their time as a scrutiny body); raising modifications; and chairing work groups. We agree that as the Code Administrator, we are very well placed and have the appropriate skills, knowledge and competencies to do these activities in a cost-effective way for all parties.

We do recognise that such changes would incur additional costs for industry parties i.e. the cost of investing in staff and resources to deliver enhanced Code Administration functions. However, we consider that Ofgem should be able to demonstrate a cost/benefit analysis of its proposals in this area. Under the proposed model this cost visibility itself is a benefit, in that where parties are required to perform those same functions themselves, the cost is still there but it is hidden and the burden is not distributed proportionally. Additionally, the Code Administrator is directly accountable for providing a defined, consistent and high quality service; any underperformance can be reported on and remedial action taken.

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[1] https://assets.digital.cabinet-office.gov.uk/media/559fc933ed915d1592000050/EMI_provisional_findings_report.pdf

In progressing the CGR3 proposals, we would recommend Ofgem is explicit about the benefits of code governance change. Engaging on CGR3, implementing the approved changes and operating with the amended processes, requires resource from both parties and code administrators. The rationale for change needs to be sufficiently strong to justify such investment: what is the problem that needs fixing, and how the solution will fix the problem. We would also recommend all the solutions are stress tested as they are developed to confirm they are suitable for all codes they will apply to and there are not unintended consequences.

Please note that the views expressed in this letter are those of ElectraLink Ltd and not those of the DCUSA and SPAA governing panels who have submitted their own responses. We welcome the opportunity to support the next steps of CGR3, including the outcome of the workshop held on 2 December. Should you have any questions on this response or need further clarification, please do not hesitate to contact me directly via email to elizabeth.lawlor@electralink.co.uk.

Yours sincerely

Elizabeth Lawlor

Head of Governance Services

Appendix 1 – ElectraLink response to CGR3 proposals

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Significant Code Review

We support the proposals on delivering the Significant Code Review process.

Self-Governance

We support the aim of using self-governance for all appropriate modifications. When a modification is first raised, it may not be clear what the materiality / impacts of the issue and any solution(s) are. Therefore, the status should be subject to review throughout the development of the modification and amended with agreement of the proposer if necessary.

The codes all use terminology such as "material", "significant" and "unduly" in determining whether a change should be self-governance or not. We would note the difficulty of defining materiality; the Code Administrator could build a precedent log to assist with this decision.

We assume that Ofgem thinks some modifications presented for Authority consent could have been self-governance. We would recommend Ofgem clearly highlights those modifications early in the process, and describes why they are not material. This will make the process more efficient, and could give panels and parties more confidence in choosing the self-governance route.

Code Administration - Critical Friend

The Code Administrator is in the ideal position to support parties in engaging with the code, so that all parties are able to raise modifications and the provisions are adhered to. The activities by which the Code Administrator delivers the Critical Friend role need to be clearly set out (what, who, when and how) so parties know what to expect. This would include amending the description of CACoP Principle 1 to cover support outside of the modification process, if that is the intention. Therefore we would strongly support work centrally and/or by individual codes to define what the Critical Friend role looks and feels like. The tasks must also be reflected in any service contract the Code Administrator works to.

Ofgem suggests that innovation in the Critical Friend role could be limited if it were described in more detail. We would suggest that it is limited by not being described. The surveys of code parties should elicit examples of where Critical Friend activity is insufficient or additional activities would provide benefits. This feedback would then be included in the CACoP review to assess whether the suggested actions would indeed deliver cost effective support. For those codes that competitively procure their Code Administrators, the organisations submitting tenders would be incentivised to be innovative in how the services are delivered.

Code Administration – Code Administration Code of Practice

ElectraLink sees a lot of value in the CACoP. However, as noted above for the Critical Friend principle, in order for the Code Administrators to deliver the role, and be judged on it, we need to be clear on how the principles manifest under each code.

Code process alignment and best practice

A function of the CACoP is to drive consistency in code operations. We strongly support alignment of processes that are common across the codes, how and where appropriate. We would suggest that parties are best placed to indicate which common processes would benefit most from alignment. As well as the modification process that Ofgem has highlighted, another candidate could be accession (i.e. clarity on the obligations under the code and how to engage as a party).

Similarly, users can give valuable feedback as to what is "best practice" for them in receiving code administration services, which is another aim of the CACoP. We need a structured way to decide what represents best practice and determine how (and if) that approach should be delivered according to the needs of each code.

Cross code co-ordination

The panels and administrators are doing more to share information about projects and modifications that may impact other codes. This could be enhanced, but should be proportionate to the amount of code business that is truly cross-code. We would support re-formation of the Cross Codes Forum (with a dual fuel remit) as long as the way it was run made best use of the attendees' time.

There is a huge amount of information produced for all the codes. As many parties engage with multiple codes, and all have pressures on their resources, we would support increased central provision of information to parties, e.g. modification registers, events listings, consultation information, to enable parties to have more of a one-stop-shop for information. The detail should still be held by the individual CAs / code websites to ensure the volume of information is not unmanageable and it is kept up to date, and the method of central publication should not put a disproportionate burden on administrators. Again, users would be best placed to suggest what information would be most useful if centrally collated.

CACoP measures

Where the Code Administrator operates under a contract, the panel must be responsible for CACoP compliance via the contracted duties and standards. We would agree that delivery of the CACoP principles should be measured and reported on, to provide the regulator and stakeholders with assurance that it is being adhered to. We would support a review to amend the metrics so measures like for like activities across the codes and focus on the key elements of the service. We can see merit in a single survey for all the codes to reduce the burden on respondents and improve consistency. But it's worth considering the implications of this – the individual organisations may do other roles that they also want feedback on, so surveys will be duplicated. Individuals with really useful insight into being a user of one code may not engage with any other code so can't provide comparison, so more users may have to be approached. Therefore it may not result in savings of time or money.

Ofgem has suggested that the CACoP could be reviewed less frequently. We would suggest it is reviewed annually for the time being, for instance off the back of the annual survey. Ad hoc updates could be made for specific events such as the outcome of a Significant Code Review (e.g. that introduces new party types). The review shouldn't be a significant piece of work and the CACoP is stable the frequency could reduce.

Code Administration - Role of Code Panels

Forward work plans

With regards to forward work plans, we would support the principle of targeting resources to those areas of the arrangements that most need improving to increase efficiency and manage new developments (e.g. new technology or policy). We would observe that currently panels tend to be reactive rather than proactive in taking actions to prepare for and implement such developments. This has advantages in that it ensures the code changes are more aligned, rather than panels each taking the initiative and going in different directions. Also work should not be undertaken without a clear understanding of the benefit a project will bring. ElectraLink would strongly agree that the forward planning steer should come down through the hierarchy (regulator – panel – Code Administrator) in order that panels can all pull in the same direction. It should also set out any expectations Ofgem has in terms of when and how the changes should be facilitated by code modifications.

We would suggest that panels could do more to identify parts of their own code processes that could be delivered more effectively and focus projects on those periodically e.g. better compliance monitoring. The SPAA EC recently asked ElectraLink to review the MAMCoP assurance process, and has initiated a project to assess the data flows relating to the MAMCoP.

However, in order to use stakeholders' time wisely, panels would also need greater ability to delay projects or modifications that don't fit the strategy – otherwise there is a risk that parties and the panel will have no way to control the volume of change, to the extent that the workload is either preventing robust analysis and decision making, or all change is slowed down.

We would suggest Ofgem should make a strong case for forward planning, to sell the benefits of this approach and ensure panels have the authority to be strategic in their work.

Code change

Panels should be in control of modification processes; that would include identifying where project management support is required for a project or modification. The Code Administrator is likely to be best placed to provide that support directly, bringing in external expertise for any particularly specialist elements. This approach gives the panel direct authority and responsibility. The Code Administrator is reliable and established, is incentivised to deliver a high standard of work due to its existing commercial relationship, and there is already a reporting /monitoring framework for the Code Administrator's activities.

ElectraLink is delivering such a function for the Theft Risk Assessment Service (TRAS) project, which is progressing successfully to time and quality. The SPAA and DCUSA panels have jointly specified the work, and

ElectraLink reports progress into the governance committee. Roles and responsibilities are clear and there is strong project oversight on behalf of parties, who are funding the work.

We understand that one option the CMA is considering is for Code Administrators to have powers to raise modifications. This is already done in some codes, e.g. for Change Proposals on code subsidiary documents under the BSC. We would support this proposal as under certain circumstances it could be a tool to increase efficiency in the change process, and avoids parties having to volunteer to be a proposer. However, the panel should have the appropriate authority to review / reject such modifications, so it retains responsibility for the code arrangements.

Code compliance

Compliance with code provisions by all parties is crucial to having a level playing field and efficient operation of the code processes. Some codes have little or no central, proactive compliance monitoring. We consider this is a risk to the integrity of industry data and to successful competition, and the panels should ensure this risk does not materially manifest. There needs to be a clear and proportionate consequence of failure, consistently applied, and support provided to parties to become compliant. The Code Administrator is best placed to do the analysis of compliance, so the Panel can determine the materiality of any non-compliance and decide on the appropriate actions against those parties in default. The regulator should be available as the escalation route for unresolved non-compliance.

Code Administration – Independence

Independent chairs

ElectraLink chairs some regular committees such as the SPAA Change Board and SPAA Expert Group, and a number of project groups. We can see benefits in having independent chairs provided by the Code Administrator:

- All group members can focus on the business of the meeting, without having to also act as chair.
- It can be easier to find opportunities to hold meetings; sometimes there are resource constraints on group members which delays progression of changes, and the chair is a key attendee.
- A dedicated chair may be more able to drive through the work at a pace appropriate to the urgency of the change and the timetable set by the panel.
- An independent chair may be able to better ensure all meetings are fully prepared for and engage, along with the Secretariat, with other stakeholders such as Ofgem, consumer representatives and other codes (e.g. if it's a cross-code change).
- Impacts on under-represented stakeholders or those who don't take part in the change process are more taken into account in the assessment. It can be hard for a single secretariat representative to do this without active support of the chair, so with a dedicated chair, such impacts could be considered more fully. We would note however that not all groups of stakeholders such as small suppliers will have identical impacts from a modification or issue, especially where new entrants have unusual business models. The chair and Code Administrator would need to be cognizant of that when in any way representing the views of those stakeholders.

- Smaller parties that need additional support to engage may be more comfortable discussing the impacts of a change on their business with an independent person than another party, being mindful of compliance with competition law etc.
- The chair is a key role to the group's work being efficient and effective; an independent person is accountable to the panel for the quality of their delivery, and parties can feedback any concerns.

We would ask Ofgem for clarity on whether this proposal is just referring to the main panel and modification working groups, or all committees and forums, including Change Boards. There may also be implications that are potentially unintended, for instance in the DCUSA, the Panel chair is also chair of the Board of DCUSA Ltd.

In regards to the work of code committees and groups, particularly in relation to modifications, we would suggest that Ofgem representatives attend them more often, or at least engage more with the Secretariat / chair. This would provide opportunities for Ofgem to raise issues and concerns early, give a useful overview of cross industry change and help coordinate activities that are cross-code and/or align with the Ofgem strategy.

Panel voting

The CGR3 report proposes that voting on SPAA and DCUSA Change Proposals is done by the panel rather than by parties. This would be a significant change in principle and in process and we would urge Ofgem to engage with the parties and panels of those codes to understand all the implications of such a change of approach, and describe why the current approach is not preferable.

The elements that support a robust decision on a modification (whoever makes that decision), are:
- the requirement for change to be well described
- the costs and benefits (and dependencies and implications) to be fully examined
- all impacted stakeholders given the opportunity to understand and comment on the proposal
- the decision to approve or reject the change is transparent, unbiased, justified and appealable

We would observe that both panel and party voting promote some of these elements over others, depending on how they are done. For instance panel voting is likely to be more transparent whereas party voting is likely to encourage stakeholders to be more engaged and gives more direct control to the parties who have to abide by the terms of the code. Panel voting is likely to put significant burden on individual panel members to understand all arguments of sometimes very complex and technical change whereas party voting could give some parties much more power than others e.g. where votes are weighted. We would also note that even amongst the codes that have panel voting the exact process is not the same, so we are not clear on the extent of consistency that Ofgem is looking for.

Code Administration - Identifying customer impacts

ElectraLink would support this proposal; it is not a significant change. We would recommend the Code Administrator and working group chairs have regular engagement with the consumer representative organisations on modifications and projects, to confirm impacts have been identified and appropriately treated.

Charging Methodologies

Overall, ElectraLink supports stronger governance of the charging methodologies that sit under the DCUSA and more alignment with how other parts of the code are administered. The governance framework should provide an holistic view of the aims and intentions of the methodologies in order to direct change.

The Charging Methodologies are highly complex and not straight forward to modify. Proportionally few people across the industry understand the methodologies and models in depth, and there is currently only one service provider delivering a full set of analysis and modification services, though ElectraLink has been engaged to perform some tasks.

We would agree that the administration of the methodologies are disjointed, in that the role of developing changes and publishing model related documents is split across DCUSA and the DCMF. We would strongly support having a single point of contact and one-stop-shop for administration and publication of all related documents.

The funding of the analysis of proposed changes is split between DCUSA Parties for modifications and the Network Operators under the ENA for pre-modification issue analysis. This creates perverse incentives to defer analysis so the other set of parties fund the work. We would suggest Ofgem makes clear that all stakeholders will benefit from robust and well analysed methodologies, modified in a timely manner, and therefore parties can feel confident in investing in an efficient governance framework for the methodologies under the DCUSA.

Pre modification process

ElectraLink would strongly recommend pre-modification assessment. There is a good model in use already through the MIG and DCMF, but the roles and responsibilities of the groups, and funding of their work should be reviewed to ensure it's the most cost-effective way to contribute to the modification process. We would also support that process being brought under the DCUSA as above.

Forward work plan

There's a natural incentive for a change window as the DNOs have a deadline each year for publishing their methodologies, so we don't believe this is necessarily required. It would be useful to understand if Ofgem considers this incentive does not provide the right outcome for change to the Charging Methodologies.

Having a forward work plan may provide a way of focusing resources on a particular area to ensure its timely progression but there is a risk that this may divert resources from other areas. Given this risk, it would be useful to understand more on how Ofgem envisages prioritisation working. This is particularly important as different market participants may have differing views on what should be prioritised thus a steer from Ofgem is likely to be needed.

Self-governance

In general, we would see limited scope for self-governance of modifications to the DCUSA Charging Methodologies as there is a licence condition[2] for Ofgem to approve all the methodologies that are in use. Therefore, beyond perhaps housekeeping changes, self-governance isn't going to allow the licence obligation to be met. It would be useful to understand which DCUSA Charging Methodology Change Proposals Ofgem felt could have been self-governance, in order to understand where the materiality is being over-estimated.

Specific proposals for DCUSA charging

Whilst we wouldn't see a direct dis-benefit in DCUSA Panel members being a sponsor for each Charging Methodology working group, we are mindful of the resource burden this could place on the panel members. As both Code Administrator for DCUSA and Secretariat for the charging methodology groups we could support the panel members in this regard, especially if we were also providing an independent chair for the charging methodology groups. An alternative could be for the group chair(s) to attend the Panel meeting – representatives from Ofgem and other codes (e.g. ELEXON, National Grid and MRASCo) already attend the open session to share updates on their code's work and hear discussion about the DCUSA projects and change proposals. We suggest that Ofgem discusses this proposal with the DCUSA Panel and the members of the DCMF and MIG to gather views on the issue that needs to be resolved or minimised, and the potential solutions.

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[2] Condition 13.1 *"The licensee must at all times have in force: (a) a Use of System Charging Methodology which the Authority has approved… and (b) a Connection Charging Methodology … approved by the Authority…"*