The Voice of the Networks

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22nd December 2015

Dear Lesley

Code Governance Review (Phase Three) Initial Proposal – ENA Response

I am writing on behalf of ENA's electricity members as well as in our role of code administrator for the Distribution Code[1] and Competition in Connections code of practice. This provides us with a unique position to comment on the proposals as both users and administrators of the codes. Many of our members will be submitting individual responses and answering the specific questions outlined in the consultation.

ENA and our members are fully committed to helping Ofgem achieve the objectives driving this review of code governance. In many cases, we and our members agree that the proposals will help deliver these aims. In other areas, we and our members have some concerns:

- Some of the proposed measures for enhancing the governance of larger commercial codes may not be appropriate for the technical codes. The proposals do not fully consider the specific characteristics of the Distribution Code when addressing all codes collectively, or the significant efforts already made to engage with smaller parties - as set out in answers to chapter 4, question 1;
- While we support the idea of requiring a positive identification of why Authority consent is needed (rather than why it's not), further consideration is necessary before implementation. This includes details of the circumstances in which code rule changes would be required, as well as rules to set out who identifies why Authority consent is needed;
- There is value in more self-governance on low-materiality changes, which use fewer resources from all parties. However, certain types of code change may still require an Ofgem decision, including for changes that are likely to materially affect domestic customers, changes where licensees' positions and opinions will inevitably be split by party type, and where a change creates material winners and probable losers - as set out in the answer to chapter 3, question 1;
- We do not feel that panel chairs should be completely independent of industry, as we believe it is more beneficial for panel members to have some level of industry expertise. However, we do see the merit of requiring panel members to act independently of the interests of their own employer organisations and agree that all panel members should be impartial. Though our members would like to ensure panels retain appropriate cross-sector representation of views;

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[1] http://www.dcode.org.uk/the-distribution-code/

- We believe that before blanket application across all codes, measures to improve the Critical Friend role that could add costs to code governance should be trialled to test for effectiveness against intended outcomes;
- While we think a pre-modification process could add value, we think it should be carried out for Use of System Methodologies but not for the more simple connection charge methodologies; and
- Any changes made should be applied consistently across all commercial codes.

Chapter 2:

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?

We agree that it is important that Ofgem have the ability to ensure that cross code issues are co-ordinated and led. This will help avoid having important code changes being delayed by governance issues. It can also ensure that individual codes' objectives do not subtly interfere with the overall objective. However, our members would expect that Ofgem proposals would be subject to the normal consultation process, including engaging with industry experts at the start of the SCR process to get the correct scope for the SCR.

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 agree that Ofgem should have the ability to set the timetables for a code change progressed under an SCR. However, it will be important for Ofgem to consider existing code rules on change timetables which may clash with Ofgem's required timetable. We would encourage Ofgem to have a discussion with code administrators prior to any timetable being set by Ofgem. Furthermore, the interaction between codes must be considered when changing timetables, as the potential impact of changes across all codes needs to be accounted for in the required timetable.

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

Our individual members may provide comments on the licence drafting.

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

Our members do not have any issues with this but note the comments already made in response to question 2.

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

n/a

Chapter 3:

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?

ENA and our members fully support anything which can make code administration more efficient and cost effective. While positive identification of why Authority consent is needed could help with both of these, we would urge care to be taken in the specific design as it could have the opposite effect.

For example, we note that under the current Connection and Use of System Code (CUSC), the CUSC Panel has to seek confirmation from the Authority that the criteria to run self-governance on the modification in question have been met. If Authority confirmation is sought at any time, it negates the benefits of self-governance because as soon as Ofgem have to take the time to opine on the characteristics of the issue for self-governance, the same time could be taken to approving a fully developed modification addressing a relatively minor issue.

In addition, our members would highlight that there needs to be clear rules on which party identifies why Authority consent is needed – the proposer of the modification, the code panel, based on guidance from the code administrator, etc. Our members would recommend establishing within each respective code a set of criteria by which any change should be measured against to determine whether such an Ofgem decision is required.

Our members also consider that self-governance should be restricted to low-materiality modifications to allow Ofgem to focus on strategic or contentious issues. However, modifications which have a material impact on domestic customers, or those where code parties are highly likely to be split by party type, should still always come to Ofgem for decision.

Specifically related to the Distribution code, ENA would highlight that when the Authority instigated a review of Distribution Code and Grid Code governance in 2004, it introduced a measure of self-governance into the Distribution Code arrangements. Under these arrangements defined aspects of the Distribution Code jurisdiction are self governed with the criteria being further underpinned by the unanimity of the Panel in agreeing the change. ENA considers that this is already sufficient self-governance for the Distribution Code. It would be inappropriate for Ofgem to avoid involvement in any Distribution Code matter, no matter how trivial it seems, if it is potentially a matter for determination in the future.

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?

Without prejudice to accepting the principle of self-governance, DNOs agree that if self-governance is extended, clear criteria on applicability would be necessary.

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 agree that Code Panels and Code Administrators are a good starting point to help develop these criteria, although we would stress that it could lead to different outcomes for different codes. To ensure consistency, it may be appropriate for Ofgem to develop a set of principles to guide the initial considerations. The criteria developed should then be kept under review and should always be signed off by Ofgem. One way to ensure this would be to have the criteria included in the codes themselves, where any changes required Ofgem approval.

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

n/a

Chapter 4:

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?

We consider that the key determinant of the effectiveness of the critical friend is the engagement from the relevant party needing the friendly assistance. There is no evidence to show that the helpful support of Code Administrators is lacking. It is more the case that small players simply choose not to engage. For example, on the technical side, ENA has undertaken a lot of work (along with Ofgem, DECC and other trade associations) to advertise the impact of the EU Network Code Requirements for Generators. We and others have highlighted that it has a profound effect on small generators. Despite this, it has proved difficult to get consistent or continuous engagement from small generators (with one or two notable exceptions). We would ask Ofgem whether it is appropriate to expend licensees' (and therefore customers') monies on chasing reluctant parties with little time to engage on such issues.

For the reasons above, we and our members believe that if Ofgem still deem it appropriate to enhance the role of the critical friend, then the measures should be trialled and assessed for their effectiveness before they are rolled out.

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 nature of code management means that it is always hard to concisely articulate useful information to smaller players. DNOs see merit in the Critical Friend role being better advertised, but note that opportunities to improve engagement are already provided by code administrators. These include code and industry education sessions. We feel that this is an important question, but might be better answered by newer or smaller parties as to what further help, information or guidance would be of most use to them.

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

The benefit of Ofgem approval of the CACoP is that Ofgem is able to take an industry wide view of costs and benefits. A self-governance process for CACoP would need to have clear ownership of cost responsibilities and a counter balance to any incentive for Code Administrators to make changes which are to their financial benefit. If changes to the CACoP are expected to be on an infrequent basis and possibly less than one per year then it seems sensible and efficient for Ofgem to approve the change.

Question 4: How often should the CACoP be reviewed?

As a backstop an annual review seems sufficiently frequent with clear responsibilities for which party undertakes the review.

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?

While this should increase visibility, we are unsure as to whether this would lead to any different outcomes or particular wider benefits.

Question 6: How could the quantitative metrics be improved?

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Bench-marking the different codes on a purely quantitative basis can be a useful indicator of general efficacy. However, we are unsure whether performance metrics can actually be used to achieve fully effective comparison of the different code administration processes. The nature of the support that code administrators provide to parties and the code panels for the different codes will drive resource levels and costs irrespective of the volumes and the actual costs of the change process itself. For instance, on the Distribution Code there are typically only one or two modifications per year. Issues like the "average number of respondents to consultation" depend critically on the materiality of the subject matter to affected parties, not on the effectiveness of communication.

We wonder whether any additional qualitative measures (other than surveys) could help better inform any metric based approach.

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 do not think that surveys in themselves are sufficient to identify qualitative differences between the code administrators. Please also see our answer to question 6 above.

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

In principle yes, subject to any necessary modifications to accommodate the rules of a particular Code Panel. Although for our members, using different modification proposal forms is not an issue.

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

We feel that all members of panels that govern change processes require some level of industry expertise. It can be difficult to find Chairs with the required expertise who are completely independent of industry. In addition, we need to be mindful of the costs of governance and requiring independent chairs with the requisite knowledge is likely to lead to additional costs. If Ofgem chooses to go down this path, it will need to put processes in place which ensure value for money, particularly for the smaller and technical codes.

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 can see merit in members acting independently of the interests of their own employer and feel that this is a reasonable requirement for panel members with voting rights. If this is to be introduced and enforced, it could mean an end to allocated Panel seats to reflect certain sectors of the industry. If this did happen, our members would highlight the need to ensure that panels had appropriate cross-sector representation of views.

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

Our members would like to highlight that DCUSA and SPAA are not the only codes with party voting. MRA and SEC also use party voting. We would welcome clarity from Ofgem as to why it has singled out DCUSA and SPAA in particular and not considered other codes with these arrangements.

Our DNO members are unfamiliar with the arrangements in SPAA. DCUSA arrangements have included party voting since its creation. This was introduced as a way to engage all parties in the decision process. Careful consideration would be needed if this were to be changed. If Ofgem do not see issues with panel voting in other codes, and wish for consistency across codes, DNOs would support this in the interests of consistency. However, if Ofgem introduce an independent panel chair

to DCUSA, and opt for more direct oversight of charging methodologies, it may be necessary to review the constituency of the DCUSA panel.

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

As code administrator, ENA considers that workgroup Chairs need to have appropriate grasp of the subject matter. Therefore, the Panel should formally choose the Chair. While code administrator Chairs may be appropriate for larger commercial codes, it is unlikely to work for smaller or technical codes. Clear cost benefit analysis would need to be undertaken as code administrators' staff may not have the necessary skill sets and may need to employ additional staff at further cost.

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

Yes.

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

Yes.

Chapter 5:

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?

DNOs believe that there may be merit in a pre-modification process, as it may lead to better developed change proposals. However, we feel that such a process is not needed for the simpler distribution connection charging methodologies.

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

We believe that aligning assessment to CACoP principles 5 and 6 is logical, but are unsure as to whether this will make the pre-modification process more effective, as we do not see any issues with the current arrangements for pre-assessment.

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

While we believe this may assist the development of more manageable charging methodologies arrangements, we do not think this would be a simple process as there is not always a single view among stakeholders as to what these priorities should be.

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?

In principle, yes. However, it may be challenging to agree materiality criteria, and self-governance

may not be appropriate for changes that affect charges for mass-market customers (see comments above).

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?

Our individual members will respond to this question.

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?
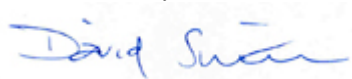
Our individual members will respond to this question.

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

 Our individual members will respond to this question.

I hope that you find the above information of use. If you have any further questions, or would like to discuss these issues further, please contact Mark Askew (mark.askew@energynetworks.org) or Kieran Coughlan (kieran.coughlan@energynetworks.org).

Yours sincerely,

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