

# Energy UK response to Ofgem's Code Governance Review (Phase 3) Initial Proposals

18 December 2015

## About Energy UK

Energy UK is the trade association for the GB energy industry with a membership of over 80 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership encompasses the truly diverse nature of the UK's energy industry – from established FTSE 100 companies' right through to new, growing suppliers and generators, which now makes up over half of our membership.

Our members turn renewable energy sources as well as nuclear, gas and coal into electricity for over 26 million homes and every business in Britain. Over 619,000 people in every corner of the country rely on the sector for their jobs with many of our members providing lifelong employment as well as quality apprenticeships and training for those starting their careers. The energy industry adds £83bn to the British economy, equivalent to 5% of GDP, and pays over £6bn in tax annually to HMT.

## Executive Summary

Energy UK welcomes the opportunity to comment on Ofgem's Code Governance Review (Phase 3) consultation. Code governance varies across the different electricity, gas and retail codes creating a complex, resource intensive regulatory framework which can be challenging for small and large companies alike. This becomes more challenging when multiple large changes occur across the energy industry in a short period of time without being fully considered in the whole across industry systems. Any changes to the code governance framework should look to simplify the framework and increase accessibility for all market participants. Energy UK has provided answers to Ofgem's specific questions below but there are other areas of code governance which we consider need to be reviewed if beneficial changes are to be made to the code governance framework.

- **Code Mapping** – We consider that it may be better to have fewer codes and, where possible, to rationalise their content and identify synergies. The challenge with this is that it would take a lot of work / resource to rationalise the codes. It is most likely to be cost and resource-efficient if delivered alongside other change programmes that affect the codes. Therefore, we consider that a clear vision of the optimal structure and number of industry codes should be developed.
- **Uniform Network Code** - Energy UK is disappointed that Ofgem has not considered other aspects of governance as part of this review. There are a number of methodology documents in relation to gas capacity release and substitution that exist alongside the Uniform Network Code (UNC) but cannot be modified by shippers. Whilst National Grid has a licence condition to produce these documents much of the detail is duplicated in the UNC document itself. However some key parameters; including the user commitment amount and substitution leadtime reside only in the methodology documents. Ofgem is aware that Energy UK considers that these documents should be subsumed into the UNC as this will provide for a better governance framework for managing change, avoid the risk of the UNC and these documents being mis-aligned and be more efficient since the current annual reviews are time consuming for little benefit. We therefore request that Ofgem provides a timescale for its review of this issue.

- **Design Authority** - The appointment of an overarching Design Authority could benefit the code modification process by delivering a joined up approach to code changes which would deliver efficiencies in implementation, development and structure of the codes. This in turn could allow market participants to allocate staff more effectively, understand the direction of the code framework and better prepare for change. Any changes to the code governance framework should look to simplify the framework and increase accessibility for all market participants, therefore the Design Authority should not add an additional level of complexity to the code structure.

Should you require further information or clarity on the issues outlined in this paper, please contact Kyle Martin on 020 7747 1834 or [kyle.martin@energy-uk.org.uk](mailto:kyle.martin@energy-uk.org.uk).

**Kyle Martin**

**Policy & External Affairs Executive**

Energy UK

Charles House

5-11 Regent Street

London SW1Y 4LR

Tel: 020 7747 1834

[kyle.martin@energy-uk.org.uk](mailto:kyle.martin@energy-uk.org.uk)

[www.energy-uk.org.uk](http://www.energy-uk.org.uk)

## Response to specific 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?**

The proposals to enhance the existing Significant Code Review (SCR) regime is a concern with our members so far as giving the Authority powers to raise, develop and ultimately decide SCR (as well as the legal text) removes the process by which industry can effectively input into a SCR. In the past the use of high level principles for the direction of a SRC have meant that suitable alternatives have been developed in conjunction with industry allowing the Authority to ultimately decide which option to approve.

#### **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 providing more powers to the Authority to set timetables for the code development process under a SCR is not useful and we note that industry panels already have the power to decline any extension to a code modification proposal. SCRs should not be rushed just to meet arbitrary deadlines at the expense of developing a solution.

Greater involvement from the Authority throughout the SCR process also has the potential to significantly streamline the process by steering the working group towards the desired outcome instead of numerous proposals being developed which do not meet the aim of the SCR. Any analysis carried out by the workgroup can also be commented on to ensure that it facilitates Ofgem's decision making ability. This would also potentially reduce the time needed for the Authority to make a code modification decision by reducing the need to carry out additional analysis.

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

Energy UK does not have any comments.

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

The proposals to give Ofgem the power to lead an end-to-end SCR process is not that dissimilar from the process already in place, therefore, we would question if a separate process to the current code modification route would complicate the process by setting out a new framework modifications are progressed. Greater involvement from the Authority throughout the SCR process also has the potential to significantly streamline the process by steering the working group towards the desired outcome instead of numerous proposals being developed which do not meet the aim of the SCR.

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

Energy UK does not have any comments.

### 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?**

We consider that the identification of why the Authorities consent is needed for a modification to progress under self-governance may empower panels to develop more modifications under self-governance, although, there still needs to be appropriate checks in place to ensure panels do not progress modifications which have a material impact on parties as self-governance. Further guidance on whether a modification is/is not self-governance would also be useful.

**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?**

We agree that further guidance on the materiality criteria would be useful to assist panels when deciding whether a modification should be progressed as self-governance or not. However, as is currently the case, not all scenarios can be documented therefore there needs to be acknowledgment that panels will act in the best interest of the industry when deciding if self-governance is appropriate.

**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 potential guidance on materiality should be developed by code administrators with input from panels and industry. We also agree that, in line with the CACoP, code administrators across all codes should produce common guidance on materiality criteria.

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

Energy UK does not have any comments.

**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?**

We consider that principle 1 of the CACoP which obligates code administrators to help users effectively frame and develop MPs should be strengthened to ensure this is applied to all code administrators and ensure the critical friend role is consistent across all code administrators.

The definition of the “Critical Friend” role is not consistent across industry codes with some able to not only support the drafting and progressing of modification proposals but also being able to provide technical support for parties who are either new entrants or have less experience with a code. In our opinion the code administrator’s “Critical Friend” role should be twofold:

- Administration function – This would provide support in with conventional code administrator functions such as code modification drafting, document identification and industry liaison.
- Technical function – This would allow the code administrator to act as a code expert and, thereby, provide impartial advice to industry participants whether small or large when discussing potential change proposals or how the current code governance arrangements work and what the impacts will be on the code itself.

**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 implementation of European Network Codes offers a genuine opportunity to rationalise the existing GB Code structure and make it more accessible to users. Users should be able to easily identify the obligations associated with their rating, connection voltage and technology without reference to multiple sources. This should coincide with work to enhance Ofgem’s website to include key information on the various network 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). This would be particularly useful for new entrants.

The advertisement of the critical friend role also needs to clearly set out what the role of the critical friend is. A number for a help desk does not inform parties that technical support is available for complex code issues or the development of new modifications.

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

We consider that a self-governance process could be implemented so that minor and non-material changes can be made to the CACoP without the need for the Authority's consent. There should, however, be steps in place to ensure self-governance modifications do not extend beyond minor and non-material changes.

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

We consider that the annual review of the CACoP should continue.

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

We agree that greater visibility of the CACoP can be achieved through having clear links to a dedicated CACoP web page. This should contain information about how the code administrator is meeting its Critical Friend role and what services it is providing to market participants. Allowing industry to provide feedback and suggestions as to how code administrators are meeting these requirements could also allow the code administrator and the CACoP to be more user friendly.

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

There is a case for greater oversight of the performance of the code panels and code administrators against these best practice guidelines. For instance an annual report by Ofgem that set out relative performance across all codes building on the existing code administrators KPIs. This would provide a comparative benchmarking report for both industry and also Ofgem to ensure that the code modification processes were effective and efficient and prompt action where needed. While we note that all of the Code Administrators have signed up to the CACoP, the level of compliance appears variable. Under Principle 12, Code Administrators should be reporting on a series of qualitative and quantitative metrics, including views of recipients of the service. In practice these reports are not easily accessible. We think Ofgem should publish these reports, 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.

**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 consider that the Authority would be best placed to fulfill this role.

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

A standardised modification process across all codes would be beneficial. Further work would need to be carried out to decide which template currently works best while also considering who the participants of each code are and how the process may need to be tailored to ensure accessibility can be achieved for smaller parties or address code specific issues. As a starting principle, all codes should have open governance arrangements and be a party to the CACoP.

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

We support a move towards an independent panel chair and the option to elect an independent workgroup chair if considered necessary. The appointment of an independent chair would not necessarily improve the efficiency of the working group but would remove any bias that may arise where the code administrator (or another party) currently chairs the group and is also an affected market participant. Independent chairs may also help to expedite the MP process, because, as a neutral party, they are less likely to hold specific views (i.e. work group alternative proposals).

Another area of concern is that fully independent workgroup chairs may have less technical understanding of the issues and time may be required to increase their knowledge of the issues which is why selecting the right skill set for independent chairs is crucial i.e. technical knowledge and/or project

management experience. There are also times when non-independent chairs are appropriate as they can already have the right knowledge and skill set needed to act as 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?**

We support the principle of panel members acting impartially when voting on modification proposals. As noted in the consultation, controls already exist in the BSC (under which panel members are required to act impartially and in accordance with the code objectives; they must not be representative of the body by whom they were appointed; they must have a letter from their employer agreeing that they may act independently as a panel member). We therefore support this principle being applied across other code panels.

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

We consider that there are benefits from voting being undertaken using either method (panels or all parties). The emphasis should, therefore, be on making sure that there is sufficient engagement and representation from industry. Ensuring that panels represent the different users which are a party to a code and that parties are registered to vote using the all parties method is crucial to increasing engagement and improving representation across codes.

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

See response to question 9.

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

Highlighting the impacts of any code modification proposal is important to ensure engagement with the relevant parties is achieved. Consumer interests are one area but it's also important to highlight the impacts on other parties. The change proposal forms should also be of a uniform design to easily allow industry participants to check whether they are impacted by the change. Also, ensuring that all parties are represented on code panels will also ensure that impacts can be discussed formally at panel meetings and change proposals can be voted on fairly.

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

Energy UK does not have any comments.

**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?**

We are unclear as to what role a pre-modification process would achieve and remain of the opinion that any modification should have the opportunity to progress through the code modification process without unnecessary delay.

The existing code methodology forums should be fully utilised to discuss code modification proposals with wider industry before a modification is launched. This will allow a potential proposer to present the modification and received feedback which can then be included in the modification proposal.

Under the BSC there is also the option to raise an issue where the solution has not been identified, therefore, this process will seek to thrash out the issue prior to a modification being formally proposed.

We would also like to emphasise the importance of code parties being able to raise modification proposals on any topic at any time, any restriction to this could prevent beneficial changes being made in a timely manner.

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

The option of using a pre-modifications process already operates across several codes as well as the option to discuss new modification proposals at the existing code methodology forums. Improving knowledge of these forums and reviewing the format of meetings to make them more accessible and useful to potential modification proposers would enable more parties to engage, bring forward issues for consideration in the round and then to raise formal charging modifications.

There already exists a process under the BSC where issues that do not have a solution identified can use the pre-modification process. However, this can be a slow process and therefore likely to put people off using this route especially if the modification proposal is urgent. As a principle of open governance we do not accept any restriction on when modifications being raised.

**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 support the principle of open governance which allows any industry party to submit MPs to code panels for consideration and then subsequent progression at any time, any restriction to this could prevent beneficial changes being made in a timely manner. It is, therefore, important to ensure that the ability to raise MPs at any time is not compromised. Should forward work plans be implemented, it would be important that these plans are carefully managed to ensure that proposals are joined up across codes. We note that the SCR process was put in place to facilitate this option with panels providing recommendations as neutral parties as to the best course of action for implementation.

**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?**

Although we agree in principle that non-material charging modifications should be progressed through the self-governance route there needs to be greater clarity as to what is and is not considered material. Ensuring that a material change does not occur to any party through a proposed change is crucial to an effective self-governance project and any change aside from typographical errors tend to have an impact on a party.

The emphasis should be on code panels to debate any proposed non-material charging modification and express its view to Ofgem so that where non-material changes can be progressed through the self-governance route.

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

We agree with Ofgem's proposals to bring all DCUSA documents under one website which is managed by a single code administrator. This is already effectively done under other codes such as the Balancing and Settlement Code (BSC) and the Connection and Use of System Code (CUSC) where the panel receives updates on the various working groups.

**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?**

When new modifications are raised the proposer should be able to provide a background summary for the panel regarding why the modification has been raised, the proposed solution and whether it better meets the codes applicable objectives. Where a sponsor may be beneficial is explaining what of modifications the new proposal interacts with thereby allowing efficient progression of modifications.

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

Energy UK does not have any comments.