

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

Maitrayee Bhowmick-Jewkes
Phone: 07468 715176
E-mail: maitrayee.bhowmick-jewkes@npower.com

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Dear Marion,

Consultation on Code Governance Review (Phase 3): Initial Proposals

Thank you for the opportunity to review and respond to this consultation.

RWE agrees that industry code governance can be made more efficient, and in light of the wide-spread industry wide changes coming up over the next few years, these reforms will be necessary. Further changes will create a more efficient and economic industry code governance framework which will be better suited for the future landscape of the UK energy industry. There has recently been much focus on the future code governance landscape and RWE npower has advocated the creation of a single over-arching code administrator along with an adoption of high level uniform governance arrangements across all codes. We believe that such an overarching body could ensure a joined-up approach to developing and implementing industry change across all the codes.

As stated in our response to the May 2015 open letter, we agree that to some extent the changes introduced under Code Governance Review (CGR) and Code Governance Review 2 (CGR2) have improved code governance arrangements. However, further changes can be made, resulting in a better industry code governance framework. We have reiterated this in our response to the recent Competition and Markets Authority's (CMA) Request for Information (RFI) on Codes as well.

To conclude, whilst we agree with some of Ofgem's proposed changes, we do not think certain other changes proposed in CGR3 are beneficial for the industry. We therefore set out our comments to the consultation below and hope Ofgem will take this into account as well as those comments we have mentioned in our previous response when they reach their decision..

I hope our comments are helpful. Please contact me if you need any further explanation or detail. We would be happy to discuss them further with you.

Yours sincerely,

Maitrayee Bhowmick-Jewkes

Npower Regulation

RWE npower's response to Ofgem's consultation on Code Governance Review (Phase 3)

Chapter Two: Significant Code Review

Question 1: Do you agree that Ofgem should have the ability to lead an end-to-end Significant Code Review (SCR) process, including the development of code change and legal text?

RWE does not agree that Ofgem should lead an end to end SCR process: As stated in our previous responses, whilst Ofgem undoubtedly has a significant amount of regulatory and industry expertise, this process should be undertaken by a body that has the appropriate level of experience required to understand the full impacts of large scale industry change such as the way suppliers interact and contract with customers and, in some cases, how customers themselves interact with energy. Without this understanding we are likely to see unrealistic proposals and dates imposed on the industry that will negatively impact consumers. BSC modification P272 is an example of such an issue.

We believe that complex changes such as those covered in a SCR require a centralised project management function that focuses on delivering both design and implementation in line with the wider industry change landscape.

We do however believe that Ofgem could play a more proactive role in industry working groups, particularly in offering guidance and working constructively with the industry generally both within the SCR process and for other large scale industry changes. This would be beneficial for the industry and help to reduce delays and misunderstandings. In return it would allow Ofgem to have greater input to the respective industry change.

DCP 123 is an example of a change that would have benefitted from more proactive input from Ofgem in the working groups. The industry voted to accept the change, however it was rejected by Ofgem. Distribution Network Operators (DNOs) and independent Distribution Network Operators (iDNOs) had unanimously supported the proposal and its proposed implementation date. A majority of suppliers had also voted to accept the change. In accordance with the weighted vote procedure, the recommendation to Ofgem was therefore that the DCP123 change was accepted. The rejection from Ofgem was on the grounds that the change proposal DCP123, as it stood, had not demonstrated that it achieved the DCUSA Charging Objectives.

It was disappointing that Ofgem had not raised this with the working group at an earlier date as there was Ofgem representation at a significant number of working group meetings. Some advice or guidance from the Authority at the working group stage would have been most useful and avoided wasted time and resources.

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 do not agree that Ofgem should set timetables for the code change process under an SCR.

It has become clear that implementation dates for industry change are currently made in isolation without consideration of the wider change roadmap. Industry codes and their governing panels operate independently and do not usually review the change landscape of other codes (particularly across fuels) when determining go live dates for their own change. Although Ofgem does have sight of the wider industry change landscape, it does not appear to take this into account when making change determinations. Neither the extent of system change or the impact on business resource required are fully considered, bearing in mind the overlapping implementation dates therefore creating unnecessary risk for all parties involved. A recent example of poor implementation date planning is Project Nexus and the Smart Data Communications Company (DCC), originally both due to go live in October 2015 and now both delayed to roughly October 2016.

RWE npower's view, as stated in its response to Ofgem's open letter on code governance review in May and the CMA RFI on codes, is that Ofgem does not possess the necessary knowledge and skills to fully understand the impacts of their decisions on code changes. Therefore, to address the need for change co-ordination, we have proposed the creation of a Change Overview Board (COB).

In RWE npower's proposed model, the COB provides a central function that makes recommendations on implementation dates, taking into account major changes across not only the industry code landscape but also any major non industry code changes such as those related to licence obligations or self-governed codes of practice. Only by looking across the full landscape can cross industry co-ordination and optimal delivery dates be achieved with least impact on customers.

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

Whilst we have no comments on the drafting as set out in Appendix 3, we are not comfortable with the proposed changes captured by the licence drafting for the reasons stated above.

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

RWE npower does not agree that Ofgem should be able to raise modifications directly under the standard process. If Ofgem were to draft and submit code modifications, this would conflict with its longer term general direction of travel, in respect of regulation, which is to move away from a more prescriptive approach. In addition, it is inappropriate for Ofgem to both raise modifications and then approve them, as this would reduce the scope for parties to appeal if they disagree with the decision made. The option of seeking judicial review is a significant step and we would expect this to be particularly difficult for smaller industry players who could therefore be disadvantaged.

Only parties who are governed by codes should therefore be able to raise changes. Ofgem can raise an issue with a modification proposal if they feel there is a problem, however this should be outside the SCR process.

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

We advocate greater clarity from Ofgem on when and why an SCR is required. There have been recent large scale changes that one might reasonably assume would have been eligible for the SCR process such as Project Nexus or the delivery of electricity settlement reform for customers in Profile Classes 5–8, the latter particularly being a cross code issue that is likely to have a significant impact on a specific group of consumers.

Also since its introduction, Ofgem has undertaken three SCRs, and each of these has taken much longer than anticipated to reach a conclusion, particularly the Gas Security of Supply SCR which took forty four months to conclude. Whilst we appreciate this is still a relatively new process that also has time built in for a consultative approach, there appears to be room to either improve the timeliness of the process or manage the industry's expectation on the realistic length of an SCR.

Chapter Three: Self-Governance

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 do not consider changing the modification process in this way will provide the necessary incentive required to increase the percentage of self-governance modifications.. However, having clearer and more easily available guidance for the self-governance procedure is likely to increase the number of modifications raised under self-governance.

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?

Yes, we agree that the industry would benefit from greater clarity on the materiality criteria. The current industry guidance on this is scant and causes some difficulty when raising modifications. We recognise that developing such guidance will be a difficult task but if accomplished, it would improve the industry's ability to identify modifications suitable for self-governance.

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 propose that any guidance developed should be a collective task across the industry. A single panel or code administrator doing this in isolation would not be the solution. Ofgem's input is also an important factor and they should approve the final guidance prior to it being published.

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

We recognise that Ofgem has been actively encouraging the industry to make greater use of the self-governance process. There has been some reluctance to embrace this, however, due to the perceived difficulty in getting self-governance modifications approved, particularly where there are likely to be differences of opinion between parties. To address this, we would like to see Ofgem being more proactive in identifying modifications which should come to them for a decision rather than progressing through a self-governance route.

Chapter Four: Code Administration

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?

RWE npower agrees that updating the CACoP guidance and ensuring uniformity and best practice across all codes would improve the role of the Critical Friend. However, we feel more clarification is needed on the role of the Critical Friend, and how it would work.

As stated in our response to Ofgem's open letter on 'Further Code Governance Review' and the CMA's RFI on codes, there is a lack of consistency in the effectiveness of code administrators in respect of the way they carry out their secretariat duties in industry meetings and in the 'critical friend' role - some are better at it than others. Once this has been clarified, each panel can develop this role further. The more efficient code administrator plays an important role in breaking down barriers for smaller and newer parties as well as consumer representatives by providing well managed governance, ensuring meetings are effective and in providing a gateway to understanding the codes. We are therefore supportive of raising the bar to ensure a best practice culture is embraced by all.

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.

As stated previously, we believe the Critical Friend role needs to be consistent for all code administrators, and adopting best practice across all codes will enhance the role of the Critical Friend. More information can then be added on the website of each code administrators about the role of the

Critical Friend and how it would work should be made clear. Greater consistency is also likely to be achieved if there is one single code administrator, as proposed by RWE npower.

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

We do not see why self-governance cannot be introduced for CACoP. A set of principles should be introduced so minor changes can be made under the CACoP using self-governance. However, such changes should not have any impact on other industry players or the industry code change processes.

Question 4: How often should the CACoP be reviewed?

At the moment the CACoP is reviewed annually. We agree with Ofgem that the review can be carried out less frequently, as long as changes can be raised in the interim if needed. This can be done by using self-governance processes where appropriate as stated earlier. We therefore propose that the CACoP is reviewed every two years.

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?

Yes, greater visibility of the CACoP can be achieved by having clearly marked information and a dedicated CACoP page with clear links available on all code websites to this page.

Question 6: How could the quantitative metrics be improved?

We are generally supportive of Principle 12 of CACoP but believe further improvements need to be made, in order to meet the objectives. For instance, the quantitative metrics specific to “Quality of Assessment” are not reflective of the code administrators’ overall performance. We are not sure what those metrics show and and/or what is done with the results. It would therefore be helpful to have clarity around the purpose of this metric. For example, Ofgem approved P272 (Mandatory Half Hourly Settlement for Profile Classes 5 - 8 - Report Phase) even though this differed with the Panel decision. This raises the question as to how examples like this are captured within this metric and what is done in the light of the information gathered.

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?

In general, we feel that a single body sending out surveys across all codes makes sense. A single body doing this would make it an uniform process. Under the current industry structure, such surveys can be undertaken by different code administrators in turn. However, this process would be much simpler if there were a single code administrator, as advocated by RWE npower.

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

We would potentially agree to a standardised template for modifications across all codes if a brand new format is introduced. It would need to have a standard outline with each of the code objectives in it and be as simple as possible. It should also be able to capture all the information across all codes. However, there are good reasons why some codes require different information than others on change proposal forms and this would need to continue to be accommodated.

We are also aware that while having uniformity on this across all codes would be helpful, a cost-benefit analysis of doing this has not yet been undertaken. This should be carried out before taking any further steps in this direction.

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

In our response to Ofgem's open letter on 'Further Code Governance Review' and the CMA RFI on Codes, we said that we support the concept of independent panels across all codes and independent chairs on working groups and panels. However, this is predicated on the chair having expertise of the process and the industry topic that is being discussed, since we find that historically these have been the most effective chairs.

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

Yes, we agree that panel members should be impartial and should not be representing the interests of their companies as commercial interests should not be involved in panel members decisions.

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

We do not see the merit in DCUSA voting being undertaken by panel rather than by industry parties just for the sake of bringing this into line with other industry code processes. However, if consistency is considered to be a necessity, then we would be comfortable with such a change provided that there is a requirement for all panels to clarify and explain their decisions, particularly where this differs from that of code parties and sub-committees.

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

In principle, we agree that code administrators should provide independent chairs for workgroups, as some already do this now and do it well. A workgroup chair should be experienced, knowledgeable and be willing to push things through, while remaining independent from industry parties who are affected by code changes.

However, it is in our view important to ensure that any code administrator who provides a chair for a workgroup, is independent of their owners, and that there is no conflict of interest between their role as a workgroup chair and in upholding their commercial interests.

Not all code administrators are perceived to be independent of their owners. In our submission to the CMA's Updated Issues Statement we stated that there are potentially significant conflicts of interest for National Grid. It is a privatised company, acting in many capacities (e.g. transmission owner, system operator, metering, onshore/offshore network build/own/maintain, interconnector owner etc). At the same time, it has administrative roles in relation to codes that govern the commercial terms of agreements of which they are the beneficiaries. For example NGT is administrator to the Connection and Use of System Code (CUSC), the Balancing and Settlement Code (BSC) through Elexon and the Uniform Network Code (UNC) through the Joint Office. Therefore we see merit in a closer examination as to where such conflicts of interest might arise and the appropriate action for redress.

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

In respect of consumers, the codes do not generally have a specific consumer objective and we support Ofgem's recommendation that there may be scope for consumer impacts to be better considered during the code modification process. Our view is that all code panels and administrators should take some accountability for independently ensuring that the operation of that code and/or changes to it do not negatively impact consumers, for example, by undermining competition and economic efficiency. As such we would advocate a consumer objective is enshrined in each code consistent with such a focus.

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

We agree with both housekeeping changes proposed.

Chapter Five: Charging Methodologies

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 agree that all 'material' charging modifications should go through pre-modification processes and show how they align with relevant charging objectives before being raised. Ideally, this should always be the case, however it is not always possible because of time constraints. Therefore, we do not think that industry forums should be able to stop any such modifications from being raised.

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 DCUSA process already aligns with CACoP Principles 5 and 6. Anything which could improve that particularly within other code governance would be welcome.

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?

Panels are not involved with the work which the workplans outline. Therefore workplans should not be developed by panels, but rather by working groups. We are happy for panels to provide recommendations on workplans. However, their recommendation should not be decisive or mandatory.

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?

All charging modifications are usually material, unless they are housekeeping or clarifications. These can be progressed through the self-governance route. However, all other charging modifications should go through the usual process.

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 that bringing all current charging methodologies forums under DCUSA governance will help improve stakeholder engagement and improve consistency of processes for charging mods.

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?

A panel sponsor would help the DCUSA panel better understand the origins of charging methodologies, by attending industry charging forums, and reporting back to the panels on progress of modifications. However, the sponsor should not be involved in the working groups themselves. Working groups should report back to panels sponsors who can report back to the panels.

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

We welcome improvements to the governance process and opportunities to simplify arrangements, increase transparency and reduce lead times on agreeing change. However we have concerns that any improvements could be negated or reversed by other factors such as EU Legislation. Additional guidance from Ofgem on how our self-governing process is complementary and not in conflict to our legal obligations to be compliant with EU legislation and policy would be welcomed