Rupert Steele OBE
Director of Regulation

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Industry Codes & Licensing
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Dear Marion,

Code Governance Review (Phase 3): Initial Proposals

Thank you for the opportunity to respond to Ofgem's consultation on Code Governance Review (Phase 3): Initial Proposals. Our responses to the questions raised in the consultation are set out in the annex to this letter. We would like to highlight the following points:

- **Significant Code Review (SCR**) – We understand Ofgem's concern to ensure that wide ranging industry reforms are not unnecessarily delayed. However, we remain of the view that any shortcomings identified with the SCR process to date can be resolved by using the existing process more effectively. There have only been three SCRs to date and we would expect there to be scope for improvement now that Ofgem and stakeholders are more familiar with the process. As a general rule, we believe that better decisions will be made where industry practitioners are leading the process. If Ofgem takes the additional powers proposed, we would encourage it to retain the current industry-led approach as the default for SCRs, exercising the new powers to set timetables and raise code modifications only where there is a clear reason for it to do so.

- **Open Governance** - We are in broad agreement that open governance arrangements are beneficial to small parties and new entrants and can be further enhanced. This encompasses a number of areas:

    - As a general rule we agree code change panels or boards should have independent chairs and panel members should be required to act independently of their company interest, in the manner that applies under the BSC.

    - We agree with Ofgem that closer alignment of governance arrangements across codes should increase transparency and accessibility. We think one area Ofgem should consider is how code parties could get access to independent and consistent legal advice in relation CPs. For example the MRA and SPAA have an independent 3rd party legal advisor available to all code parties, whereas for the UNC, legal advice is only available through the gas transporters.

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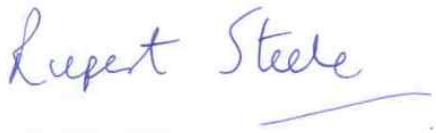
    - We believe additional codes would benefit from being subject to open governance, in particular technical codes such as the Grid Code and the Green Deal Arrangements Agreement (GDAA).

- **Self Governance (SG)** – We are happy to follow initiatives that are intended to increase the proportion of SG modifications. We would not recommend introducing binding targets on the proportion of SG modifications as this may have unintended consequences.

Please contact me if you have any questions on any of the matters raised in our response.

Yours sincerely,



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Annex 1

CODE GOVERNANCE REVIEW (PHASE 3): INITIAL PROPOSALS CONSULTATION - SCOTTISHPOWER RESPONSE

Chapter 2: Significant Code Reviews

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 understand Ofgem's concern to ensure that wide ranging industry reforms are not unnecessarily delayed. However, we remain of the view that the current SCR process gives Ofgem sufficient powers to lead large scale industry change, and any shortcomings identified to date can be resolved by using the existing process more effectively. There have only been three SCRs to date and we would expect there to be scope for improvement now that Ofgem and stakeholders are more familiar with the process.

As a general rule, we believe that better decisions will be made where expert industry practitioners are responsible for raising and developing modifications. If Ofgem is raising the modification, taking the final decision and setting the timetable, this is likely to reduce the input from the people who actually operate the systems, with a greater risk of code changes that are misconceived or have unintended consequences. On balance we are not persuaded that it is necessary or appropriate for Ofgem to have the ability to lead an end-to end SCR process in the way proposed.

Should Ofgem decide to adopt these proposals, we would encourage it to retain the current industry-led approach as the *default* for SCRs, exercising the new powers to set timetables and raise code modifications only where there is a clear reason for it to do so. We are not sure that it would be necessary in the context of the next day switching SCR, bearing in mind that the recent voluntary initiative to reduce switching times to 21 days demonstrated that industry can deliver technically complex changes across many codes within required timescales.

Question 2: Do you agree that 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 recognise that Ofgem will sometimes wish to ensure that code reviews are progressed quickly, but would encourage Ofgem to consider applying more widely the approaches which already work well for the CUSC and DCUSA. Under the CUSC, modifications are subject to a standard timetable unless agreed otherwise by the CUSC Panel and Ofgem; if required, any subsequent extension to the workgroup timetable requires the approval of the CUSC Panel and Ofgem. A similar process operates under DCUSA. If such a process was extended to other codes, this could avoid the need for Ofgem to take additional powers to set the timetable for the existing industry-led process of an SCR.

If Ofgem were to take such powers, there is a risk that by setting unduly challenging timescales, it could lead to changes that have not taken sufficient account of industry requirements and therefore fail to deliver the benefits anticipated, or may undermine existing industry arrangements. It would therefore be necessary to have a robust process for reviewing timetables and extending where appropriate.

We would also note that extensions to workgroup timetables are increasingly being sought, due to a lack of industry resource to attend the multiple workgroups arising from the many

modifications now under consideration. An unintended consequence of setting binding timetables for SCR modifications might be that other modifications are delayed, if code parties are compelled to re-focus the available resources in favour of the SCR modifications.

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

As explained in our responses to Questions 1 and 2, we do not agree with the proposed changes at 4AA and 4BA which seek to implement the proposed modification process outside the existing accepted industry-led process.

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

In line with our response to Question 1, we would have concerns with Ofgem having the power directly to raise a modification proposal under the standard process. At present, Ofgem has the power to direct a licensee to raise a modification proposal following the conclusion of the Ofgem-led SCR phase. We do not think that this step has in practice added much to the timescale or produced unsatisfactory modification proposals and it is therefore unclear to us why Ofgem's existing powers are inadequate and why the additional power is required.

Granting Ofgem the ability directly to raise a modification would confer on it the privileges of modification ownership, including the ability to define the original proposal regardless of the views expressed during the industry-led modification process, and to present the final modification report to the appropriate code panel.

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

No, we are still of the view that the existing SCR arrangements are appropriate. To date they have only been used on three occasions to deliver complex reforms. We think that some of the problems experienced may be particular to the SCRs concerned and also reflect early stages of learning of Ofgem and the industry in working with the SCR process. There would seem to be scope to improve the deployment of current arrangements before enacting further reform.

Chapter 3: 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?

Yes, we agree that this proposal could lead to more self-governance modifications. We would suggest that this should be complemented by the guidance on materiality referred to in Question 2 below. We do not envisage any problems from increasing the number of SG modifications, especially if Ofgem believes this would allow it to focus resources more usefully elsewhere. We would caution against setting hard percentage targets for the proportion of SG/non-SG modifications as this may unwittingly lead to the wrong classification of particular modifications if the target is already reached or looks difficult to achieve.

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 assist in determining whether use of the self-governance process would be 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?

Any guidance on application of the self-governance criteria should be applied consistently across all applicable codes and should therefore be developed on a cross-code basis with full industry consultation, and with input from Ofgem which can provide a cross code perspective. In the MRA, the Code Review Expert Group (CREG) set up to implement the CGR 2 proposals had particular difficulty establishing the requirements around self-governance and would have benefitted the from such advice.

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

Early indication by Ofgem representatives on code panels or change boards that a modification may be suitable for self-governance would help guide panels towards decisions on self-governance.

Chapter 4: 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?

We support the principle that Code Administrators should play the role of the Critical Friend to all industry parties regardless of size or experience. We believe that there have been many examples of good practice by code administrators and that this needs to be shared where deficiencies have been identified.

The Critical Friend role is defined under CACoP principle 1 and is subject to annual review under the CACoP review process in consultation with industry. To date, no changes have been identified and we consider that parties have adequate opportunity to propose changes to CACoP principle 1 if it is felt that they are required.

In this context we would suggest that the Green Deal Arrangements Agreement (GDAA) should now be adopted into the CACoP. As more suppliers cross the threshold to become Green Deal Licensees the need for a Critical Friend becomes ever greater.

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 role of Critical Friend should be advertised, together with contact details (phone and email) on the main industry code website pages and also on the subsidiary pages relating to code modification. The Critical Friend role could also be explained (with links) in any

licensee and industry association websites which provide high-level guides to the industry codes.

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

ScottishPower does not consider that it would be appropriate to introduce a self-governance process to the CACoP. The CACoP is currently subject to annual review in consultation with industry and the volume of change proposed is very limited. As a matter of principle, change to any part of the modification process, including CACoP, should be subject to determination by the Authority.

In its current market investigation, the CMA has consulted on potential reforms to code administration emphasising the importance of the CACoP and therefore suggesting the Authority should retain approval of changes. We remain of the opinion that the CACoP is the most effective route to achieving desired objectives for code administration.

Question 4: How often should the CACoP be reviewed?

We believe that the current annual review of CACoP is adequate given the level of engagement by industry. The frequency can be reviewed if further changes to the CACoP are envisaged.

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. Please refer to our answer to question 2.

Question 6: How could quantitative metrics be improved?

We believe that there is scope to drive Code Administrators' performance through public sharing of best practice and performance statistics.

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?

The CACoP role is a licence requirement and therefore any survey on the quality of service being provided by the relevant party should be undertaken by Ofgem who could use a single questionnaire to ensure consistency across all codes and licensees and minimise the administrative burden.

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

We agree that, so far as practicable and cost effective, modification processes and templates should be standardised across all codes. This will require extension of open governance to the remaining industry codes (eg Grid Code) and adoption of best practice from the codes currently subject to open governance. However, while standardisation should be an objective, modification templates should continue to reflect the different relevant objectives applicable to each code.

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

It is unclear what it intended by the reference to "completely" in the question. However, if the suggestion is that the chair of a Modification Panel or Change Board should not be an employee of a member (other than the code administrator), this seems to be appropriate in most cases. We believe this is currently happening in a number of codes as the code administrator provides this function (eg SPAA, MRA, BSC). This is a cost-effective solution.

We believe there should be a clear and consistent naming of Modification Panels or Change Boards to clearly mark them as separate from Executive Committees (EC) or Panels carrying out corporate functions. It is not appropriate for there to be independent chairs on the MRA, SPAA ECs or DCUSA Panel as these are clearly corporate functions. If this does not fit the model of voting on changes (which only happens under MRA or SPAA if the change boards cannot reach a decision) then we believe the code administrator could chair that discussion.

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

We agree that Modifications members of Panels or Change Boards including those that require members to represent a constituency must be impartial and not represent the interests of their company, in the manner that this is achieved by the BSC.

However, some industry code panels are currently appointed on a constituency basis to achieve representation of particular industry groups. Such panels would either have to change to open election of panel members or constituency representation, short of representing individual company interests, would have to be accommodated.

Presumably consumers' representatives on code panels would be excluded from this requirement.

In terms of Panels and ECs that carry out a corporate function it is clearly documented within each code that all members are there as company directors and as such cannot favour the views of their employing member.

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

We do not believe this is required at this time. The DCUSA voting process is open to all DCUSA signatories and follows a clear, time bound process which is open to all. We believe it is the most inclusive voting process. However, if the decision is to have voting at a meeting we believe the MRA and SPAA models should be used, which would result in the vote being delegated to a stand-alone change board.

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

Yes. To ensure impartiality during workgroup meetings and to ensure that workgroup reports fairly reflect the views of all members we agree that code administrators should provide workgroup chairs. This is currently already happening under a number of codes (eg SPAA, MRA, iGT UNC and BSC). Licensees can provide expertise to the workgroups through the nomination of workgroup members.

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

At present, consumer interests are generally understood to be considered through the assessment of the relevant code objectives, ie if the relevant code objectives are better facilitated by a modification then consumer interests will be better served. Having said that, we do not see a problem with including a consumer impact section on each CP form, and we can see that in some cases it may be beneficial for industry experts to give explicit consideration to consumer impacts ahead of any assessment by Ofgem.

It will be important that if this change is adopted, clear guidance is provided to code parties on the appropriate methodology for assessing consumer impacts. Ofgem's principal objective is to protect the interests of existing and future consumers, and this provides a clear steer that any assessment should be conducted over the medium to longer term, taking into account dynamic as well as static effects. We would therefore suggest that any assessment of consumer impacts should focus on consumers in aggregate (rather than distributional effects between different classes of consumer) and on overall societal welfare (rather than on short term transfers between consumer and producer surplus, which are unlikely to be sustainable in the long run).

Clearly there will be some code modifications where agreement on the impacts by code parties may prove contentious or require substantial and complex analysis, and in such circumstances the relevant code panel may decide to curtail the assessment on the grounds of efficient code administration. Even where there is no conclusion on consumer impacts, summarising the discussions could be helpful to Ofgem and other stakeholders.

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

We have no objection to the addition of a specific code objective [4.65] of promoting efficiency in the administration of a code. We note that CUSC applicable objective (a), the efficient discharge of the Company of the obligations imposed upon it by the Act and the Transmission Licence is often used to promote administrative efficiency.

We have no objection to amending the definition of applicable objectives for the BSC, CUSC and STC as this will bring the legal text into line with current, accepted practice.

Chapter 5: 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?

While it may be advantageous is many circumstances for charging modifications to proceed through a pre-modification process we do not agree that this should be a rigid requirement. Under open governance, parties must retain the right to raise their own charging modifications and to retain ownership throughout the modification process. This right should remain, even if parties are unable to gather support in the pre-modification process.

Similarly, should the need for an urgent change to the charging arrangements be identified, this should not be subject to the potential delay resulting from a mandatory pre-modification process.

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

The Transmission Charging Modification Forum (TCMF) arrangements under the CUSC should be used a model for how parties may engage with the change process and develop potential solutions into formal modifications. It also allows the Transmission Licensee and Code Administrator to assess the priority and urgency which parties attach to various potential changes.

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?

At present, code panels treat all charging models impartially and do not prioritise any modification over another in terms of timetable or resources. Not all panels currently identify priority areas and much of the change workload is driven by defects identified by industry. Workgroups are resourced by industry representatives and, regardless of agreed priority areas, parties will allocate scarce resource to the changes which have the greatest potential impact on their businesses.

We question the effectiveness of identifying priority areas when panels have control of neither the industry resource nor the transmission licensee resource required to progress modifications.

Any prioritisation of modifications would have to be subject to a set of transparent, objective criteria with the ability for parties to appeal the priority attached to their modification. This would appear to be another unnecessary step in the modification process and could be perceived as a barrier to proposing change by some parties.

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?

We agree that charging modifications which are "not material" should be progressed through the self-governance route. However, we would expect this largely to be restricted to housekeeping changes as even minor changes may have a "material" effect on the smallest parties.

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?

Yes, we believe DCMF and MIG should be brought under formal DCUSA governance. The DCUSA Panel is already provided with monthly updates on both and this change would allow the forums to be funded by all DCUSA Parties.

We also note that iGTs have no forum for discussing changes to their charging methodologies and would welcome this being introduced along similar lines. This would bring them in line with larger transporters and also DCUSA.

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?

As stated in response to Question 5, the DCUSA Panel already receives monthly updates so it is unclear why this additional step is required. A DCUSA Panel representative at each meeting might more effective.

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

As noted in response to Question 5, we believe a charging methodologies forum should be implemented under the iGT UNC as there is currently nothing in place.

ScottishPower
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