



Marion Quinn  
Industry Codes & Licensing  
9 Millbank,  
London,  
SW1P 3GE

[industrycodes@ofgem.gov.uk](mailto:industrycodes@ofgem.gov.uk)

18 December 2015

### **Code Governance Review (Phase 3); Initial Proposals**

Dear Marion,

SmartestEnergy welcomes the opportunity to respond to Ofgem's consultation on Code Governance Review (Phase 3); Initial Proposals

SmartestEnergy has been an aggregator of embedded generation since 2001 and a supplier in the electricity retail market serving large corporate and group organisations since 2008.

Please note that our response is not confidential.

#### **Overview**

It is SmartestEnergy's view that there should be a clear separation between the writing of rules and the process of making determinations on them. The proposed SCR arrangements are inappropriate in electricity regulation since it seems to us that GEMA is not currently independent of Ofgem. If such a separation could be demonstrated then SmartestEnergy would be more supportive of the changes proposed.

Ofgem are known to have expressed disappointment at the lack of change coming forward from industry and have suggested that the current arrangements for raising modifications are inadequate because Parties to Codes are not incentivised to raise modifications against their own interest. The solution to this is to widen the pool of participants who can raise modifications. For instance, making Meter Operators signatories to the BSC would enable them to propose change to facilitate innovative products. Consumer representation groups too should be able to raise modifications to the Codes. It is not appropriate for a central body to determine the future shape of the industry as this is effectively "picking winners." As you know, SmartestEnergy has raised several modifications in recent years to the BSC to improve market data transparency (P315 and P321), Line Loss Factor auditing (P216) and,



**smarter brighter better**

SmartestEnergy Ltd, Dashwood House, 69 Old Broad Street, London EC2M 1QS  
[www.smartestenergy.com](http://www.smartestenergy.com)

Registered in England & Wales: No. 3994598



perhaps more famously, settling more meters half hourly (P272). We are evidence of smaller players becoming involved to improve the arrangements. If Ofgem were able to raise a modification directly it would be clear that competing or overlapping modifications from industry participants would not be treated on the same level.

We are also of the view that in proposing change Ofgem may stray into a grey area between modifications and policy change (which is the responsibility of DECC). Clarity of roles would be maintained if participants continue to propose change within the policy framework and Ofgem/GEMA stick to making determinations on proposals.

We also believe that cross-code changes would be forthcoming from industry participants and more successful if Code Administrators such as BSCCo, MRASCo and Electralink were merged.

The SCRs completed thus far (gas, TransmiT and electricity balancing) have not been cross code issues as we understand the SCR was intended for. We also believe it is Ofgem's own approach which has led to the rather protracted SCR implementations we have seen so far. We therefore do not support more Ofgem-led analysis before a modification (or series thereof) is pursued. Another lesson we believe should be learnt from recent experience is that, if an SCR is raised, it should not necessarily lead to a single modification but to a series. For example, the cash out mods would have caused less concern to participants had the incremental elements been dealt with in separate modifications (with a direction of travel indicated from the outset) and not all in one.

We agree with Ofgem that the self-governance arrangements have worked quite well. We do not, however, believe that making Panels demonstrate why a mod should not be self-governance would make much of a difference and, in any event, Ofgem should be making their own judgment in these matters.

We are generally of the view that the BSC/Elexon provides the model for best practice which all other codes should aspire to. This ranges from the provision of Operational Support and modification development support to the independence of chairs and voting arrangements.

We agree that there is not much merit in having windows for charging modifications and we also agree that the various charging methodology groups need to be brought together somehow.

### Specific questions

We answer the questions contained in the consultation in the order in which they appear below.



**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?

No. Whilst we can see that there were problems of duplication and not addressing all issues seriously early enough in the Ofgem-led phase of the EBSCR, Ofgem really needs to ask itself whether it is a Code Administrator/Facilitator or a Regulator. Please see our overview above.

Ofgem have been selective for their own SCR workshops in the past and if they were to go ahead with their plans they would need to be more inclusive.

Ofgem's proposals for conducting their own analysis first do not even appear to define the defect first.

**Chapter Two, 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?

No. This may lead to rushed decisions. It is better to leave this to the respective Panels who will have greater experience than Ofgem of the detailed impact of a proposal.

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

Yes. It is inappropriate for the reasons given in answer to Question 1 above.

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

No.

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

No

**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?

No. In reality we do not believe that this would make much of a difference. We believe the current arrangements are working well and the fact that there have not thus far been any appeals is not necessarily an indicator that the arrangements are not yet optimal i.e. that the appropriate boundary is not currently in the right place.



**Chapter Three, 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?

Regardless of what Panels decide, we believe that in all cases Ofgem needs to make its own assessment of whether a proposed modification is material. It is, therefore, inappropriate for Ofgem to delegate this responsibility to the various Panels.

**Chapter Three, 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?

No.

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

No. We believe that the current arrangements strike the right balance already.

**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?

Yes

**Chapter Four, 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.

Whilst we agree that a dedicated CACoP page on each Code Administrator's website would be helpful we are of the view that placing information on a website does not go far enough and is not proactive enough. In the absence of a single code administrator we believe that all Code Administrators need to set up an Operational Support scheme with dedicated representatives who will actively engage with participants.

Code Administrators should not be able to raise modifications on behalf of smaller parties in their role as critical friend (they should be helping get them to a stage where they feel comfortable to do it themselves). Code Administrators should also, incidentally, not be able to raise their own modifications as there would be a danger that they would not progress parties' modifications with the same enthusiasm.



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

Yes

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

We agree that a CACoP review need not be annual but it is important that a review could be instigated if necessary. As a standard every three years should be sufficient.

**Chapter Four, 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

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

The quantitative metrics could be improved through a single quantitative survey.

**Chapter Four, 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?

Yes. This could be undertaken by an independent market research firm but funded by all of the Codes.

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

Yes, although we do not have a particularly strong opinion on this. It is more important that the level of support in devising and progressing a modification is consistent across the Code Administrators.

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

Yes. It is also important that they are as independent of the Code Administrator as possible and should therefore be independently appointed.

**Chapter Four, 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. This provides for the fairest representation of smaller parties and leads to the fairest and most sensible outcomes. We are also opposed to the "constituency"



model; panel members should act as independent experts judging matters on the strength of argument rather than representing vested interests.

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

Yes. The BSC provides a good model for this.

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

Yes. The Elexon provides a good model for this.

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

Yes.

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

Yes

**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?

Yes

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

Yes

**Chapter Five, 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?

Yes





**Chapter Five, 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?

No. The likelihood of charging modifications being material is such that they should all be reviewed by Ofgem.

**Chapter Five, 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

**Chapter Five, 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?

Yes

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

No comment

Should you require further clarification on this matter, please do not hesitate to contact me.

Yours sincerely,

Colin Prestwich

**smartestenergy**

Head of Regulatory Affairs  
SmartestEnergy Limited.

T: 01473 234107  
M: 07764 949374



**smarter brighter better**

SmartestEnergy Ltd, Dashwood House, 69 Old Broad Street, London EC2M 1QS  
[www.smartestenergy.com](http://www.smartestenergy.com)

Registered in England & Wales: No. 3994598



**Marubeni  
Group**