



Inveralmond House
200 Dunkeld Road
Perth
PH1 3AQ

Lesley Nugent
Industry Codes & Licensing
Ofgem
9 Millbank
London
SW1P 3GE

adam.carden@sse.com

18 December 2015

Dear Lesley,

We welcome the publication of phase 3 of the Code Governance Review. This response reflects the view of SSE plc and is submitted on behalf of Scottish and Southern Energy Power Distribution, SSE Energy Supply Ltd, Southern Electric Gas Ltd and SSE's licensed generation businesses.

Whilst we agree that it is necessary to improve the current code arrangements, we are disappointed that Ofgem has not taken this opportunity to explore the potential for more fundamental reform in this area, which we consider is now overdue.

The current approach to industry code governance is disjointed, inefficient and is not designed for today's market. A new approach is needed to ensure that the detailed rules specified in the industry codes, which form a key part of the regulatory framework, are governed in a more strategic way.

We have been developing our thinking in this area and we have included our paper on "An Alternative for Industry Codes" alongside this response. We have kept this separate from our response to the specific questions in the consultation, which are contained in the annex below.

Yours sincerely

Adam Carden
Head of Industry Codes



Annex – Answers to consultation questions

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?

SSE welcomes the more collaborative approach being put forward in Ofgem's proposals to allow the SCR to be an end-to-end process.

If Ofgem are to be involved in the development of code modifications and the associated legal text then we consider that there are a number of issues that must first be resolved:

- **Governance** – The standard industry code processes place a great deal of structured governance around the development of modifications. It is important that the governance around industry's input to Ofgem's modification development is appropriate and properly reflects differing perspectives on how the intent of the SCR can be delivered. Industry discussions on code solutions are extremely valuable, particularly in order to bring attention to the practical issues that could arise, and potential interactions that the proposed change might involve. This should not be underestimated.
- **Skills** – Knowledge and understanding of the structure and operation of the industry codes is essential to successfully develop code modifications. Additionally, for complex changes under the SCR process, it will be necessary for Ofgem to have appropriate programme management expertise in place to ensure efficient and timely delivery. We would therefore propose that Ofgem looks to ensure that it is appropriately resourced in this area.
- **Transparency and Appeals**– As Ofgem would be undertaking both the role of both proposing and ultimately approving modifications there must be transparency around the decision making process. Further, this dual role has the potential to threaten Ofgem's decision-making independence: can Ofgem approach the decision on a modification with an open mind given they have proposed, developed and drafted it? As any decision out of the proposed SCR process would be challengeable, the potential for criticism in this area is clearly relevant. In the event that the proposed framework might encourage more appeals than is currently the case, this would create uncertainty and delay over implementation.

SSE believes that, to be successful, the revised SCR process must ensure that: (1) structured governance is in place; (2) the requisite skills are available; (3) that decision making is transparent; and (4) designed in a way that will minimise the need and incentive for excessive appeals.

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?

SSE supports the setting of timetables for the industry-led stage of the SCR and we believe that it should be done working jointly with code panels to understand the tasks required



and the risks and constraints related to revised timescales. We would recommend that once a timetable is set, Ofgem should regularly review with industry the appropriateness of any timescales to determine whether tasks or durations need to change.

SSE believes that it is equally important to introduce timetabling to the Ofgem-led phase of the SCR process.

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

The legal drafting appears to reflect the intent of the SCR proposals but we observe that the structure of the drafting may lead to confusion with similar numbering such as 1(b) and 1B; and paragraph 4(a) is subject to provisions of 4A (not to be confused with 4(aa) or 4AA or 4AA(a)).

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

SSE supports in principle the proposal to allow Ofgem to directly raise modification proposals that follow the standard industry modification process. We do question the additional benefit that Ofgem raising a modification will bring over the current power to direct industry to implement the SCR conclusions.

As noted in response to question 1 above, if Ofgem are to be involved in the instigating modifications, there must be greater transparency of Authority decision making and that the right of appeal must be strengthened to allow an appeal regardless of whether the Authority decision aligns with that of the panel.

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

We observe that the SCR process was introduced in an attempt to resolve issues with the delivery of strategic change through the industry codes. The current process and the proposed reforms do not resolve the underlying issues with the codes that prolong the development of strategic change. SSE believes that more fundamental reform of the code arrangements is required and that the model proposed in our attached paper would allow strategic change to the market rules to be delivered effectively.

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?

We believe that code panels have been choosing not to use self-governance in situations where any doubt is raised over whether or not Ofgem has an interest. In these scenarios the panels have taken a cautious approach and followed the normal governance route. We believe that Ofgem's proposals should go some way to improve this. Although, we note that under CUSC governance, for example, Ofgem already have the power to require modifications follow self-governance when they believe an Authority decision is not required. This power is rarely used to send standard modifications through the self-governance route.



We are concerned that changes to the identification of self-governance modifications will only serve to increase the volumes of trivial or vexatious change to the industry codes. Although less material, these changes still require time and resource commitment from industry to successfully implement. This will divert focus and effort away from the timely delivery of the necessary strategic changes required to shape the future market.

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 guidance on materiality would assist industry assessment around self-governance modifications. There may be an advantage in guidance that identifies a de minimus level below which modifications should not proceed at all.

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 believe that code panels and code administrators are best placed to develop guidance on self-governance on their individual codes but we are concerned that guidance must be consistent between codes and self-governance must not open to gaming. We feel that there is a role for Ofgem to ensure guidance is appropriate and consistent between codes.

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

As noted above, we are concerned that the proposals do not effectively deal with vexatious and trivial change in the self-governance route diverting industry effort from delivering strategic change. We would welcome guidance on de minimus levels below which modifications could be prevented by panels from entering the modification process at all.

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 agree that the current CACoP principle 1 guidance needs to be updated and support the proposal that code administrators should work together to develop revised guidance.

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 believe better signposting the Critical Friend role on code administrator websites could be beneficial, techniques, used for some codes, such as allocating each industry party a dedicated key contact in the code administrator could be more effective as this builds stronger working relationships between parties and code administrators. We believe code administrators should work together to share engagement techniques and develop proposals that could be used across all codes.



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

We are concerned about the effects that a move to self-governance for CACoP will have on the reliability of service provided by code administrators to the industry. Whilst we welcome moves to align good practice, will self-governance for CACoP result in a service from code administrators that is constantly changing?

SSE's preference is that from the baseline of the current CACoP, code administrators should work together to develop a clear plan to improve and develop the CACoP arrangements that provides consistency to industry.

Question 4: How often should the CACoP be reviewed?

We believe that the single qualitative survey, referenced in question 7, would be the natural review point for CACoP each year. Based on the customer feedback from the survey, code administrators should work together to develop a clear structured plan of improvements to the CACoP arrangements for the year ahead.

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 having clear links to a CACoP page on each code website may increase the visibility of CACoP. However, we feel that more active engagement techniques from code administrators would better deliver this visibility.

Question 6: How could the quantitative metrics be improved?

The metrics in CACoP Principle 12 do not assess code administrator performance against all of the CACoP principles. For example, there are currently no metrics related to Principle 9 on the provision of legal text or related to Principle 5 on use of the pre-modification processes.

We believe that, as a minimum, performance metrics should be identified for each of the CACoP principles to ensure that there is a broader measure of code administrator performance. However, the performance framework should be mindful of not creating perverse incentives. For example, not every modification needs to follow a pre-modification process, so any measure of Principle 5 would need to ensure the pre-modification process is only used where it is appropriate.

However, SSE strongly believes that within the current code arrangements, the most effective way to encourage good practice and innovation in code administration is through competitive tendering which should also improve standards and reduce costs. The model used by SPAA, MRA, SEC and DCUSA where respective code panels contract for and oversee the activities of their code administrator is effective at ensuring good practice as code administrator's performance, generally and against CACoP, is reviewed at each panel meeting and ultimately poor performance can result in loss of contract.



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 would welcome a single qualitative survey across all codes as this would allow the level of satisfaction in code administrator to be compared effectively and to trend performance. However, rather than try and pick a single body who may be best placed to send out such a survey, we feel that code administrators should be required, through CACoP, to jointly procure the single survey.

Regardless of how the survey is procured, we believe it essential that the outcome of the survey is made available to all industry participants.

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

SSE supports the standardisation of modification processes and templates across the codes but the results of any standardisation must not be overly complex; must be focused on the needs of the users of the process; and must recognise code specific requirements.

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

We believe that in order to be effective, panels must be lead by a relevant and proficient chair; this is not necessarily a factor of independence.

SSE welcomes the proposal for independent chairs, in principle, but we seek clarity on what is meant by panel in this proposal. A number of panels such as MRA and SPAA executive committees have no role over the modification process, is it Ofgem's expectation that these panels are required to procure chairs or is this proposal focused only on those groups that make decisions on modifications?

We have identified a further option on independent chairs. Given that the work load of a panel chair might only be a handful of days per month, there is an option to look at multi-panel chairs where one independent chair serves several panels. We feel that this approach may also have a positive effect on cross-code engagement.

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 welcome the requirement for panel members to act impartially but we note that in its provisional findings on the Energy Market Investigation, the Competition and Markets Authority (CMA) observed that representation on industry panels achieves a fair balance (para 11.125) and that there is no evidence that panels have abused their powers or that the CMA has reason to believe that they have done so (para 11.139). SSE has not observed any inappropriate bias in the behaviour of panel members.

If an impartiality requirement were introduced, we would require clarity on whether elected panel members and those representing consumer groups would continue to be able to represent the views of their constituencies.

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

It is unclear what problem the changes to the DCUSA and SPAA voting arrangements seek to resolve. The current direct voting arrangements allow any party to put their vote on record regardless of whether they are able to attend a Panel or Change Board meeting.

If the proposal was to be implemented, it is essential that existing membership and constitutions of the DCUSA Panel and SPAA Change Board are reviewed to ensure that the views of all parties continue to be represented in the decisions for these codes.

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

We believe that in order to be effective, workgroups must be lead by a relevant and proficient chair; this is not necessarily a factor of independence.

While in principle, SSE supports “independent chairs” provided by code administrators as the default for workgroups, there are circumstances where a “non-independent chair” may be more appropriate. For example, where a modification explicitly affects the role of the code administrator, it would be conflict of interest for the code administrator to continue to provide the chair. Also modifications of a technical nature that may benefit from being chaired by a technical expert from one of the code parties rather the code administrator.

SSE believes that code panels need to retain flexibility to be able to appoint someone other than the code administrator as a workgroup chair, particularly where there is a conflict of interest.

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

SSE welcomes the proposal to include consumer impacts on modification proposal forms as we believe that this will stimulate discussion on consumer interests during the development of modifications.

We have a number of questions around how any customer impacts section would be used in practice:

- Will the consumer impacts section form part of the code panel considerations in making a recommendation on a modification?
- How will the consumer impacts section be weighted against the relevant objectives of a code?
- Would consumer impacts have to be identified regardless of how far removed they may be from the intent of the modification?
- How would competing consumer interests be balanced? Or would the section only consider consumers as a whole?

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

We agree with the housekeeping changes put forward.

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?

SSE supports full and proper scrutiny of charging modifications but we are concerned that the proposal for “material” charging modifications to go through pre-modification processes may mean that pre-modification scrutiny is in effect mandatory for the majority of charging modifications regardless of whether the additional scrutiny is of benefit.

We believe that as an alternative, Panels should be given the power to require a charging modification to go through the pre-modification process where the modification is not sufficiently developed. This would allow additional scrutiny where a modification required further work or where there are questions related to the evidence presented but would not delay the progress of fully developed charging modifications.

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 would welcome alignment of the charging pre-modifications processes with CACoP principles 5 and 6 but, as noted above, it is important that the use of pre-modification does not become mandatory by default. Parties should have the choice on whether to use the pre-modification processes to explore issues and test whether a charging modification is required or not.

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 are concerned that a forward work plan for charging modifications may only serve to create additional modifications to fill it. If a work plan were implemented, then having an empty plan with no future charging work must be an acceptable outcome.

We would question any approach that seeks to prioritise charging modifications in the plan over those that have been legitimately raised but are not in the plan.

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 are concerned that the proposal to introduce self-governance for charging modifications will only serve to increase the volumes of trivial or vexatious change. Although less material, these changes still require time and resource commitment from industry to successfully implement.

There is a legitimate question that if a modification to a charging methodology is “not material”, why is it being made at all?



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 welcome the proposal to bring the charging methodology forums under governance particularly following the approach already taken with the TCMF in the CUSC.

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?

In the absence of open governance for charging where any party can propose a modification to the charging methodologies, then this approach would ensure some accountability.

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

SSE supports the introduction of open governance for charging modifications and we would advocate the approach taken in the CUSC. We feel the ability for any party to propose charging modifications would give stakeholders confidence and reassurance that the governance is robust, comprehensive and equitable whilst maintaining the necessary oversight by the Authority.