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Code Governance Review (Phase 3) Final Proposals – consultation on licence modifications

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including residential and business users.

We welcome the majority of Ofgem's Final Proposals. However, we still have reservations about the Significant Code Review (SCR) process option (Option 3) that enables Ofgem to lead the end-to-end process. As stated in our response to the Initial Proposals, we are not convinced that this will necessarily result in a more efficient process or why it is needed given Ofgem existing SCR code powers. In our view, the industry-led process is more transparent and well-understood compared with the proposed Ofgem led approach; the industry-led process incorporates a wider range of checks and balances to limit any unintended consequences; and is more accessible to industry participants.

It is still unclear from the Updated Draft SCR Guidance what criteria Ofgem would use to decide which SCR option to use. Given the relative checks and balances, Ofgem's decision on which SCR route to follow is an important one and clear criteria should be provided. The Updated Draft SCR Guidance simply states that the criteria Ofgem would expect to consider includes:

- whether the issues affect a single or multiple codes;
- incentives for industry to participate in particular issues and whether these may be misaligned with outcomes in the best interests of consumers; and
- timing and implementation issues that could potentially influence the outcome of policy conclusions or facilitate a more efficient end-to-end process.

In our view, the criteria should clearly set out when Ofgem would choose Option 3 over the existing industry led process.

Moreover, the draft licence conditions provide a high level of flexibility in respect of the SCR process and enable the process to move between the options. While we understand why Ofgem might want this flexibility, in our view, this goes beyond what is currently being considered by the Competition and Markets Authority (CMA). The Provisional

Decision on Remedies outlines powers for Ofgem, **in exceptional circumstances**, to intervene to take substantive and procedural control of an ongoing strategically important modification proposal, as appropriate. This is not the same as having flexibility to pick and choose whether to lead the end-to-end process of the SCR process, at any time.

Lastly, the continued role of the Panel under Option 3 is welcome but we think the Panel should have an on-going role throughout the SCR process rather than only after the Authority has published its SCR conclusions. Under the existing industry-led process, we have the benefit of gaining input from the Panel on a regular basis. Input from Panel members is just as important as input from industry stakeholders. Limiting their input to after the publication of the Authority's SCR conclusions would mean we lose the opportunity to benefit from any insight the Panel (which includes consumer representation) could share before the final conclusions are drawn.

Our responses to the specific questions raised are set out in the attachment to this letter. Should you wish to discuss any of the issues raised in our response or have any queries, please contact Mark Cox on 01452 658415, or me.

I confirm that this letter and its attachment may be published on Ofgem's website.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Angela Hepworth'.

Angela Hepworth
Corporate Policy and Regulation Director

Attachment

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EDF Energy's response to your questions

Q1. Do you consider that the licence drafting would achieve the policy proposals set out in the CGR3 Final Proposals?

Although the licence drafting appears to achieve the policy proposals set out in the CGR3 Final Proposals, we continue to be very concerned about Option 3 of the SCR process owing to the lack of transparency and limited guidance provided.

Additionally, the draft licence conditions as currently drafted provide a high level of flexibility in respect of the SCR process and enable the process to move between the options. We understand that this is Ofgem's policy intention. However, in our view, this goes beyond what is currently being considered by the CMA. The Provisional Decision on Remedies outlines powers for Ofgem, **in exceptional circumstances**, to intervene to take substantive and procedural control of an ongoing strategically important modification proposal, as appropriate. This is not the same as having flexibility to pick and choose whether to lead the end-to-end process of the SCR process.

In our view, the legal text should clearly set out the criteria Ofgem would use to determine the options for the SCR process.

Q2. Do you consider that the licence drafting in Electricity Transmission Licence SLC C14 would also facilitate the implementation of GC0086?

Yes.

Q3. Do you agree that, where licence drafting differs between licence conditions, the substantive effect is materially the same?

Yes.

EDF Energy
April 2016