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Industry Code Governance: Initial consultation on implementing the Competition and Markets Authority's recommendations

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 Ofgem's consultation on implementing the CMA's recommendations for industry code governance. It provides a useful insight into Ofgem's early thinking on strategic direction for codes, the consultative board and the licensing of code managers. While we support Ofgem's proactive examination of how best to implement the CMA's recommendations, in parallel, we would like to see the continued roll-out of the Code Governance Best Practice across all codes. For instance, in a changing energy system, it will become increasingly important to allow all parties to raise change proposals through open governance to the Grid and Distribution Codes, to achieve the needs and demands of new technologies and market players.

In the consultation, Ofgem outlines three outcomes that must be delivered by the new regulatory framework. The first outcome is a coherent vision for strategic change led by Ofgem and clearer lines of accountability for delivering it. The second is a system of code governance that allows strategic change to be delivered smoothly, efficiently and in the interests of consumers. The third outcome is a clear, ongoing signal for industry on where to deploy resources. Additionally, we think the new regulatory framework must be cost effective. We summarise below our high level views of whether the strategic direction for codes, the consultative board and the licensing of code managers are likely to achieve the desired outcomes.

Strategic direction for codes

A cross-cutting strategic direction for codes from Ofgem could provide a valuable signal to industry, indicating how Ofgem expects high-level policy changes to be implemented through changes to industry codes and other wider market changes. We are supportive

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of this initiative and in itself will help to focus effort. We welcome Ofgem's aim to set the first strategic direction in December 2017.

What is not clear from the consultation is the mechanism Ofgem will use to incentivise the delivery of the strategic direction. How these arrangements are implemented is important as there are risks of unintended consequences, not least the effect on 'non-strategic', but nevertheless important, change. Further thought on the mechanism to incentivise the delivery of the strategic direction will be needed in the proceeding consultations.

The consultative board

We support the CMA's recommendation that Ofgem set up and run a standing forum to bring stakeholders together to discuss and address cross cutting codes issues. We think this can be mobilised fairly quickly and would help achieve the desired outcomes described. We note that Ofgem is currently expecting the first meeting to be held in early 2018. If it is a standing forum designed to help Ofgem set the strategic direction, then the first meeting should be convened in 2017 to help Ofgem achieve the December 2017 date for its first strategic direction.

Ofgem's envisaged role for the 'consultative board', however, appears to be much broader with operational delivery functions, such as developing a joint industry plan; monitoring the delivery of the joint industry plan; identifying and removing obstacles; and making sure delivery timetables, sequencing of change and cost efficiency are sensible. These additional responsibilities are needed but we think they may be better provided for by a project management office (PMO) rather than a board. An entity with delivery obligations may also require additional powers (as opposed to an advisory role as currently proposed) to make code administrators follow its plan and make things happen.

While we note that Ofgem intends to consult further on the board's composition, terms of reference, funding etc., Ofgem should consider further whether it is a standing forum, a board or a PMO that is needed to achieve the desired outcomes. It may be that all three are needed but if that is the case, then we think they should be separate, clearly defined roles to ensure clear lines of accountability can be defined.

Licensing and competition

The CMA recommended that BEIS should make the provision of "code administration (and delivery) services" a licensable activity to ensure that Ofgem has appropriate sight of all relevant code development issues so that it can exercise its discretion to intervene in the most effective manner. As we have set out before, in principle we support a stronger code administration role but we consider that the risks and benefits of licensing are not clear cut.

If a new licensing regime is introduced, we note Ofgem's proposal to exclude NGET administered codes from the new initiative because it already has a pre-existing licence relationship. However, it may still be appropriate to consider if NGET is best placed to

deliver the desired outcomes – in part we consider Ofgem’s consultation on the future role of the System Operator has a bearing on this issue.

As part of the assessment process, Ofgem should consider whether it is necessary for all code administrators to become ‘code managers’. While there are clear lessons to be learnt from Project Nexus, it needs to be acknowledged that, by and large, code administrators have been doing an effective job. Instead of enhancing the roles of all code administrators (e.g. secretariat) to code managers (i.e. responsible for delivery of strategic change), Ofgem should consider whether it might be more cost effective to have a single body, responsible for delivering the strategic direction. There is an argument to suggest that enhanced ‘code managers’ will still be code managers for the individual codes. A single, independent body responsible for cross codes issues may be better placed to ensure the impartial, smooth and efficient delivery of strategic change in the interests of consumers. This entity could also have PMO responsibilities described under ‘consultative board’.

We do not have a strong view on introducing competitive tendering particularly given Elexon and Xoserve undertake competitive procurement for their large contracts for their system which form a large part of their costs. Whether they are code administrators or code managers, we want them to help us achieve the desired outcomes. We are not persuaded that the cheapest tender will always be in the best interest of consumers. Tenders are also likely to be time consuming and expensive to run along with of any handovers between organisations which introduces new risks. Ofgem will also need to consider its resourcing needs if it is to implement its current licensing proposals.

Since the timing of the introduction of the licensing regime is highly dependent on BEIS legislation, we are keen to see the strategic direction and aspects of the consultative board set up as quickly as possible. The two could make a significant contribution towards achieving the desired outcomes.

Should you wish to discuss any of the issues raised in our response or have any queries, please contact me on 01452 658415.

I confirm that this letter may be published on Ofgem’s website.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mark Cox'.

Mark Cox
Head of Transmission & Trading Arrangements