

CodeGovRemedies@ofgem.gov.uk

Laura Nell
Ofgem
9 Millbank
London
SW1P 3GE

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Dear Ms Nell

Code Governance

The Flexible Generators Group (FGG) represents the owners of and investors in small scale, flexible generation. These power stations are embedded in distribution networks and provide a variety of services to the system operator to help it deliver secure, economic supplies to electricity customers. While not a new sector of the market, it is becoming increasingly vital that the SO has access to flexible generators to help maintain system security in the most economic manner. As the energy market alters, and the role of decentralised, flexible plant becomes more important, the governance arrangements also needs to alter to encourage smaller parties to be part of the development of the market rules.

As FGG companies are generally not licenced and have their meters registered to suppliers, our relationships with the codes is therefore one step removed; bound by the rules, but not signatories to the contracts.

The operation of the various governance codes is crucial to our businesses and FGG therefore welcome the opportunity to respond to this consultation. However, we do not believe that Ofgem, or the CMA, have identified the real issues with the current governance regime and its proposals are not therefore likely to deliver material improvements.

We believe that Ofgem must address, as a matter of urgency, the following problems:

- The inability of impacted parties to easily raise code changes where the commercial arrangements directly impact their businesses without becoming parties to the code¹;
- The rules around working group membership and voting do not facilitate smaller parties' participation in the change process;
- The role of the Panels and the perception that Panel members are not, and cannot be, independent and do not have expertise from of the full spectrum of generation providers;

¹ Which in the case of the CUSC parties such as ourselves need BEGAs to achieve this.

- The codes, notably BSC and CUSC, should be merged to make coordinated² change easier and governance more accessible to smaller parties;
- The CUSC and Grid Code management should be moved from NG's control to remove the perception of bias in the change process;
- The requirement to raise additional modifications to facilitate consequential changes, if required, to charging changes should be removed;
- The objectives of the codes should be aligned and the code change processes also aligned as far as possible; and
- Ofgem's attendance at the governance meetings, where it could steer policy, needs to be improved, with staff empowered to make a contribution to the process.

Furthermore, the appeals regime needs to be altered to keep open to all parties the right to appeal Ofgem's modification decisions to the CMA. The right to challenge the regulator is fundamental to balancing the regulatory risks and incentivising good governance by a regulator. Taking CUSC modification CMP264 as an example, the working group proposed a number of alternatives to the original modification, which were supported by the majority of the working group members. The Panel did not recommend many of those alternatives to Ofgem, ruling out the ability of the party raising the alternative to challenge Ofgem's decision at the CMA were Ofgem not to agree a change. This removes the right of a party to appeal, but also may incentivise the Panel to vote against modifications that they feel are better than the relevant objectives in order to maintain the rights of parties to appeal in the case of contentious modifications. Ofgem should work with BEIS to review the appeal process in light of the wider changes to the governance arrangements.

Looking at Ofgem's proposals, we would make the following observations.

Licensing of code managers and delivery bodies

FGG is not clear what problem Ofgem is trying to address with this proposal and we note that only Ofgem appears to have suggested to the CMA that such a regime could improve governance. Looking at the various electricity codes it would appear that Elexon's status provides the best model for a code manager, with a Board, the power of parties to remove Board members and senior staff, and a robust process to tender for and then manage system delivery. What does a licence add to this structure and what would be the process, and criteria, to award such a licence? What would the cost of the licencing process be compared to the benefits? Why is Ofgem better placed to judge a delivery body's performance than the parties who most closely use the codes and associated systems on a daily basis?

Instead of licencing, FGG suggests that Ofgem require NG to migrate the management of the CUSC and Grid Code to Elexon, then merge the codes together adopting the BSC's governance model, with some modifications to encourage participation in the governance process. We appreciate that this is not a small task, but as the codes are all altering to accommodate the introduction of EU codes now seems an opportune moment to begin this work.

² A CUSC charging mod may require 2 CUSC mods and a BSC mod; which is not efficient.

This model has a number of substantial longer term benefits:

- The coordination of change, that Ofgem's rightly says is missing in the market, would start to develop by virtue of less codes run by fewer organisations;
- Aligning the code rules so that a coherent market code can develop, for example BSC services then paid under the CUSC, but derived from the Grid Code would all sit in one document;
- The "relevant objectives" for change would be aligned;
- An independent body would oversee all developments and system changes, with governance that allows direct control by parties of the delivery body; and
- The perception that NG operates its codes for its own benefit would be removed.

Similarly there is a good case for bringing the DCUSA and DC together to provide a coherent set of rules for those connecting to and then using the distribution networks. Removing the direct control of meeting from the DNOs, with an independent chair, etc., along with customers and other impacted parties, in control of the delivery body would add to efficiency. Again, their objectives should be aligned with those under the BSC/CUSC so that all market changes can work to the same objectives.

FGG proposes that Ofgem sets out how good governance should work and require each code to alter their rules to align with the principles. This could include:

- Aligning relevant objectives for change, including possibly adding in some of Ofgem's wider statutory duties;
- Altering the governance so that Boards can control delivery bodies with the support of Panels in a manner that aligns with good corporate governance rules;
- Adding unrepresented groups to Panels where their businesses are materially impacted by the operation of the code; and
- Aligning the change processes, so all code modifications follow a similar, possibly simplified modification process.

Ofgem recognise that licencing cannot be achieved without legislation. We would therefore propose that Ofgem adopts the proposals outlined above as a first step to improving the current processes. If these changes leave Ofgem still believing licencing is justified, when there is legislative time, they could move to licencing.

Setting a strategic direction for code development

By merging the codes, as defined above, the need for as much coordination should be reduced. However, we agree that coordination is not a bad thing, especially on the retail side with the move to smart meters and HH settlement. Exactly how Ofgem envisage this working is unclear; how does it sit with the SCR process?

It is also unclear how the "strategic direction" fits with Government's energy policy. It may be better for BEIS to produce their Strategic Policy Statements and then Ofgem outline the road map to deliver what BEIS wants. To be of use the road map would require some detail, as saying something high level, such as "cash-out must become more cost reflective", would leave the change processes struggling to guess what Ofgem had in mind.

It is also not clear how Ofgem will chose policy if it not led by government policy. Would it consult as it does on its work plan? If so is this an appendix to the work plan to give details on the how as well as the what?

Establishing and running a consultative board

It is very difficult to see any benefit from this proposal without a better understanding of what Ofgem is trying to achieve and why this differs from the Code Administrators current efforts to improve coordination, for example via a combined work plan. It is unclear if the body would set policy, act as a project manager, alter priorities and delivery timelines to accommodate urgent changes, etc.

This proposal needs to be fleshed out and we consider the following points in particular need to be addressed:

- Is this a policy or project management body?
- Who sits on it - just Ofgem, big 6, code administrators, etc.?
- Are parties paid to attend, how often does it meet, what are the members' liabilities, etc.?
- Who judges which priority is given to each change process?
- Who has the power to alter the implementation timetables of different code changes to accommodate the slowest mover?
- Could Ofgem achieve a similar outcome by attending more meetings itself and providing more of a policy steer?
- Should there be one electricity and one gas group, with an over arching board?
- How does the board process not slow down the mods process?

Our concern is that only the larger parties can fund yet more meetings and they will dictate polices that best meet their own agenda's.

FGG would welcome the opportunity to discuss these issues further with Ofgem.

Yours sincerely



Lisa Waters
lisa@waterswye.co.uk
On behalf of:

Mark Draper
CEO, PeakGen Power

Matthew Tucker
CFO, Welsh Power

Graham White
CEO, Mercia Power Response

Paul Jenkinson
CEO, Alkane Energy

George Grant
Director, Prime Energy Ltd