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WWU response to BEIS Ofgem consultation on the Design and Delivery of the Energy Code Reform

Thank you for the opportunity to respond to the consultation. Wales & West Utilities is a gas transporter serving 2.5 million supply points in Wales and south west England.

1. To what extent do you agree with our proposals on the licensing of a code manager for in-scope engineering standards, and why?

We have no comments on this question.

2. What are your initial views on how central system delivery bodies should be regulated (including their relationship or integration with code managers and the extent to which licensing may be appropriate), bearing in mind this may be the subject of future consultation?

We note the proposals to licence Code Managers and also the model for the Retail Energy Code under which the licence covers both code management and the provisions of some systems to support the operation of the Retail Energy Code. It therefore is consistent for all key central system delivery bodies to be licenced; for gas this would be Xoserve. One issue to be resolved is whether Xoserve would have a separate licence for each of its roles including Central Data Service Provider (under UNC), Gas Retail Data Agency (under REC) or whether it would have one licence encompassing all of its central system delivery roles.

We think that there could be an argument for code managers and central system delivery bodies being part of the same organisation where a code manager and central system delivery body have a substantial amount of interaction. We have not considered this in detail and therefore do not, as yet, have a view on whether they should have one licence or separate licences.

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3. To what extent do you agree with the detailed roles and responsibilities of the strategic function, as set out above, and why?

The roles and responsibilities of the strategic function as listed in the consultation are threefold:

- (1) Set government strategic policy priorities and outcomes through a Strategy and Policy Statement (SPS) which will apply to the strategic function
- (2) Ensure that the strategic function keeps under review relevant developments in the energy sector:
- (3) Developing and publishing the strategic direction

The introduction of the strategic function will inevitably mean a closer role for government in the industry through the Strategic Policy statement. Delivering Net Zero does require clear leadership from government so this is appropriate. It is vital that government keeps itself to strategic decisions and does not meddle in the day-to-day decision making that is required for the day to day running of a complex industry that has to function 24/7. We acknowledge that the direction travel over the past few years has been firmly in the direction of more government control and a more interventionist approach and this has happened ahead in areas not directly related to Net Zero for example price caps, price guarantees for generation and so forth.

4. To what extent do you agree with the roles and responsibilities of the code manager function as set out above, and why?

We recognise that the Retail Energy Code arrangements are seen by Ofgem as the way forward. Time will reveal how this works out in practice. Our view is that where a party is fully engaged with a change then having the proposer lead and drive a change is best; however, we recognise that for parties that do not have resources or do not understand some of the details then Code Manager led changes could deliver results faster. The wider the scope of the code, the more knowledgeable the code manager has to be to ensure that all views are understood and taken into account. This is one of the arguments against having one or two all-encompassing industry agreements. Given the substantial changes likely to be required to gas arrangements to facilitate the use of hydrogen, we strongly believe that the Uniform Network Code should remain a gas only agreement so that parties can concentrate on changes required to deliver Net Zero in the next few years. We do though acknowledge that there may be benefit in bringing the IGT UNC into the UNC.

It is also worth noting that given the need for primary legislation to implement these proposals that changes required to meet the BEIS timescales for trials of hydrogen networks will have to be made under current arrangements. In our view this will require a significant code review and Ofgem needs to have sufficient resources to enable it to pro-actively prepare for this likely requirement.

We list the Code Managers' roles and responsibilities as listed in the consultation document with our comments below.

Delivery plans

We agree that the Code Manager should be required to develop and publish a delivery plan consistent with the strategic direction within a specified period following a strategic direction being published by the strategic body. We also agree that this delivery plan should set out what code and system changes would be required to deliver the strategic direction (including any optionality around this), how these changes will be made and by when. We agree that Code managers would be required to consult with relevant stakeholders, including code parties, system delivery bodies and consumer groups, to develop the delivery plans. It is important to realise that constructive and effective engagement takes considerable time and resources and needs to be a continuing part of the Code Managers role and not an add on at the end. We agree that if there are multiple Code Managers, then they should be required to collaborate to publish a single consolidated delivery plan that covers the whole code landscape; however again we note that this will take time and resources.

In addition, the delivery plan needs to include items that are not part of the strategic direction, but which could be essential for example any changes required to meet changes in legislation such as consumer protection or data security or data access for example. There also needs to be space in the delivery plan for changes that are relatively minor and not included in the two previous categories, but which are required for the smooth running of the industry.

Proposing code changes

We agree with the triage for acceptance of code changes though would urge that the “has no reasonable prospect of being approved” is not interpreted too narrowly.

We agree that the code manager should be able to prioritise changes in order to ensure suitable focus on meeting the strategic direction; however, space must also be left for code changes that are required to meet other requirements that may be imposed by government or regulators from time to time as well as other changes that industry parties may believe are priorities.

Managing the code change process

We agree that the Code Manager will need to manage the change process.

Cross-code coordination

We agree that cross code coordination is essential and hope that the new cross code steering group that came into existence on 1st September will help achieve this although we note that this work has to some extent already been happening informally.

Decision making

The removal of code change panels is a major change and makes the code manager responsible for a significant number of decisions. We expect that in practice the code manager may want to take views on some decisions, for example implementation dates for changes. There will inevitably be some decisions to make on contentious issues and for these the code manager will need to be able to clearly and transparently communicate the reasons for its decision and ensure that it complies with its internal processes for making decisions.

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5. To what extent do you agree with the proposed roles and responsibilities of stakeholders as set out above, including the role of the stakeholder advisory forum, and why?

The experience gained from the Retail Energy Code will provide good learning on how these roles and responsibilities work out in practice. How the Code Manager exercises its responsibilities and how it ensures that it has access to an understanding of all the information relevant to a change will be crucial in whether a Code Manager led change process is a success or whether it addresses one set of problems but creates another set.

We consider that stakeholder advisory forums will, in practice, be of great importance as they will enable the Code Manager to understand whether it has covered all the relevant aspects of the change. In our view it is essential that these offer proper engagement opportunities for stakeholders' view to be stated, heard and taken into account. They must not become "show and tell" sessions whereby the Code Manager uses them to tell the stakeholders what it is doing. Stakeholder engagement, done properly, does take up significant time and resource but is essential in an industry with many stakeholders.

6. In relation to option 1, where Ofgem would be the strategic body, to what extent do you agree with our proposals on how decisions by the code manager would be overseen by the strategic body with, as a minimum, existing appeal routes retained and moved to the strategic body?

We think that appealing decisions on self-governance changes to the strategic body should be maintained as currently exists in the relevant codes except for the appeal body moving from Ofgem to the strategic body. As the strategic body will only be concerned with strategic matters, we would not expect that there would be any conflict of interest should it be required to be the appeal body for self-governance change.

7. In relation to option 2, where the FSO would take on the role of the IRMB, to what extent do you agree with our proposals on how relevant decisions by the code manager function would be appealable to Ofgem, with a potential prior review route via an internal body?

We would have thought that the appeal should be to Ofgem. The FSO as IRMB would have made its decision and therefore we do not see how the internal prior review could be seen to be impartial unless there was strict separation of powers.

8. Do you have any views on the two proposed options for appealing decisions made by Ofgem on material code changes in option 1 (with Ofgem as the strategic body) and option 2 (with the FSO as the IRMB)?

We agree that standardising appeal mechanisms for appealing decisions made by Ofgem as strategic body or the FSO as IRMB would be sensible. Our understanding is currently that appeals can only be made to the CMA (for applicable codes) where Ofgem has gone against a decision of the code change panel so this means that the number that can be appealed is low. The grounds of appeal to the CMA are much wider than a judicial appeal and therefore given that appeals are extremely rare we

think that appeals to the CMA should be maintained for those that currently have them and implemented where it is not available currently. CMA appeals have a timeframe and can be on the merits of the decision whereas a judicial review only looks at process and points of law.

The removal of code panels is likely to require an amendment of the regulations to ensure that the trigger for appeals continues to function.

9. Do you have any thoughts on other potential appeal routes?

No.

10. To what extent do you agree with the proposed operating model and accountability structure for Ofgem as the strategic body, and why?

Ofgem would need to ensure separation between the strategic body role and economic regulator role.

11. To what extent do you agree with the monitoring and evaluation approach for Ofgem's performance as the strategic body, and why?

The proposal is for more parliamentary control. We acknowledge the need for scrutiny of Ofgem's role as strategic body but note that this moves energy policy more into the political arena. This may or may not be sensible, but the increased risk of political involvement will increase uncertainty unless there is consensus between the main parties on the required approach.

12. To what extent do you agree with the ways we propose that the strategic body select code managers, and why?

We think that for an initial period the best solution would be to appoint the existing Code Administrators or Managers as the Code Manager. This will make use of existing skill sets and experience while minimising disruption as the industry moves to Net Zero. The key resource for existing Code Administrators and Code Managers are the people with their knowledge, experience, and relationships. If a new Code Manager is appointed, then most current employees will probably be eligible for TUPE into the new organisation; however, this may be unattractive to some people who may choose to decline this opportunity. This raises the risk that key skills and experience will be lost at a crucial time for transition to Net Zero.

Some businesses seem likely to view these changes as a business opportunity to grow their business and influence, but this is not necessarily in the interests of the industry, consumers or achieving Net Zero. Most existing code managers are commercial organisations, and their interests may not align with public policy interests.

We do not agree that the FSO should be appointed as a Code Manager other than to those codes that it currently administers. The changes required to implement the FSO whether option 1 or 2 as outlined in the FSO consultation will be significant and giving it

another role will be too much change. Notwithstanding that point, we think that gas and electricity wholesale functions are significantly different, and the code managers need specific knowledge and experience to manage these differences and therefore separate Code Managers of separate gas and electricity codes is essential rather than having one code manager trying to cover a huge area.

13. To what extent do you agree with our proposed approach to code manager funding, and why?

We broadly agree with the outline of the funding proposals namely that funding should be decided by each Code broadly in proportion to the share each organisation has of the relevant market. Bad debt should not be a significant issue if funding is collected in advance, for example quarterly.

14. To what extent do you agree with our proposal that the strategic body should be accountable for code manager budgets, and why?

While the strategic body should be able to satisfy itself that the Code Manager has sufficient funds to deliver the strategic direction and the broader duties of the Code Manager, the funding parties should also have a significant voice. Whereas the strategic body will be primarily concerned with delivering the strategic direction, other stakeholders may be more willing to fund resources to deliver other changes.

15. To what extent do you support the proposed operating model and accountability structure for option 2, where the FSO takes on the role of the IRMB, and why?

We do not support option 2.

16. Overall, which of the two options do you think would be best placed to reform code governance, and why?

We support option 1 with Ofgem as strategic body; option 2 with the ESO/FSO taking the role of IRMB seems likely to lead to electricity centric decisions.

17. To what extent do you agree with our estimated costs for the new code manager function set out in the impact assessment, and why?

We note that the Impact Assessment is based on costs provided by Elexon. While it is not unreasonable to take indicative costs from one party it does suggest that BEIS looks to electricity first in its analysis and largely ignores any differences between electricity and gas. An example of this is in paragraph 14 where the chart shows the growth in small electricity suppliers' market share but does not show anything for gas. Secondly, we note that the impact assessment refers to Code Administration not Code Managers whereas this question refers to Code Manager. Currently some organisations are currently Code Managers and some, such as for the UNC and IGT UNC, are Code Administrators. For both these reasons we are sceptical of the accuracy of the costs and benefits given in the impact assessment.

18. To what extent do you agree that the case studies included in the impact assessment are indicative of the major barriers facing code changes under the current system, and why? Can you provide further examples of when current code governance has resulted in either optimal or sub-optimal outcomes?

Where parties are fully engaged, our view is that the current arrangements whereby a Party drives its own change is better than handing a change over to a Code Manager. To give an example, UNC 0710, that transfers the obligation for Class 1 reads from Transporters to the CDSP is a complex change and one that required a good understanding of the processes involved. As this is quite a niche area, that knowledge was held by a very small number of people with experience in this area. It seems unlikely that a Code Manager would have the detailed knowledge to drive this forward. In this case it seems likely that having a Code Manager lead the change would add time to the process. Secondly, where a party has strong internal reason for driving a change forward, for example cost or compliance reasons, then they will put sufficient resource into the change to achieve the deadline; however, a Code Manager may take a different view of the priority and not be willing to put in the same resource.

We acknowledge that some parties do not have resources to drive a change forward and they would benefit from Code Managers proactively managing the change but even the change needs to be fairly well specified and cannot be of the nature of a general problem statement with a request for a solution because there could be several possible ways forward some of which may not actually meet the, perhaps unstated, detailed requirements of the proposer.

We do not have a view on the benefits of restricting the number of alternative proposals. We acknowledge that for complex changes having several parties raise alternatives that address particular issues of concern to them makes it difficult to manage the change process; however, giving the Code Manager the power to decide which alternative to take forward might stifle discussion.

19. To what extent do you agree with the scale and type of benefits to industry estimated in the impact assessment? Are there further cost savings to industry that should be included?

We think that industry will want to understand the decisions made by the Code Manager in coming to the solution proposed and so the industry stakeholder meetings will be important and will probably take more resource than assumed. It is not clear what assumptions have been made about these meetings, for example whether they will be in person meetings or entirely on-line.

20. Are there any other wider industry developments we should consider in relation to the implementation timeline? How do you think these could impact on code reform?

As these changes will require primary legislation it is not clear when they will be implemented. Until they are implemented the industry and Ofgem will need to use existing mechanisms to implement efficient change. Gas Transporters are already thinking about what changes would be required should BEIS decide to implement

decarbonisation of the gas network using hydrogen and we are responding to the BEIS consultation *Hydrogen for heat: facilitating a grid conversion hydrogen heating trial*.

Ofgem also needs to conduct a similar exercise, because significant changes would be required to the Uniform Network Code and to Xoserve systems to facilitate hydrogen rollout particularly in the transition period where the network will be transporting both natural gas and hydrogen and probably a hydrogen / natural gas blend as well. A significant code review would seem to be an appropriate way to conduct this major change as it enables code changes to be developed without any impact from other changes that impinge on the affected areas. Our view is that Ofgem needs to do whatever preparatory thinking is required so that it is ready to launch a consultation on a significant code review immediately should BEIS decide to proceed with hydrogen conversion. This also applies to any other enabling work that may be in Ofgem's gift or control. The Faster Switching Project will have taken over ten years from the first announcement of the intention to delivery, and we need to have the ambition to move faster than this for hydrogen conversion.

Licensing Code managers will require primary legislation and will require changes to the licences of the parties that currently own various Codes as some, or all of these responsibilities, will move to the Code Managers. We also think that achieving sustainability and government objectives should be explicitly set out as a duty or objective of industry participants in primary legislation so that this flows through into all activities. This applies to Transporters, Shippers, Suppliers as well as Ofgem and the Strategic Authority. This can then flow through into the relevant objectives for Codes which will also need revising.

21. Are there any implementation issues, risks or transition considerations we should take into account? How could these impact code reform?

We think that the transition from gas networks that transport natural gas to gas networks that transport hydrogen will be complex and the transition stage will be more complex than the end state. The changes needed to achieve this change in the short timescales available mean that companies will need to devote their most experienced resources to this. It is vital that code reform supports the Net Zero transition rather than complicating it. For this reason, it is vital to allow resources to concentrate on changes to the UNC to achieve hydrogen networks rather than diverting these resources onto other projects.

22. We invite respondents' views on whether our proposals may have any potential impact on people who share a protected characteristic (age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation), in different ways from people who do not share them. Please provide any evidence that may be useful to assist with our analysis of policy impacts.

No comments.

23. Do you have any other comments that might aid the consultation process as a whole?

No.

Yours sincerely,



Carly Evans
Head of Regulation
Wales & West Utilities

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