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Code Reform - Electricity Systems Team
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Industry Code and Licensing Team
Office of Gas and Electricity Markets
10 South Colonnade
Canary Wharf London
E14 4PU

28 September 2021

Dear Sir/Madam,

Interconnector response to consultation on the Design and Delivery of the Energy Code Reform

Thank you for the opportunity to respond to this consultation.

Interconnector Limited ("INT" or "we") welcomes this consultation and agrees the current code governance needs reform to help deliver net zero targets. The current framework is fragmented and slow in progressing changes.

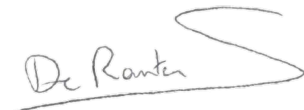
We support the desire to simplify and streamline the governance processes, and to allow more stakeholders to participate in code governance and the modification process. Despite being a UK TSO and UNC gas modification proposals having a direct impact on our business, Interconnector is currently excluded from raising UNC proposals (apart from some extremely limited circumstances). Wider participation will encourage innovation and improve trading arrangements.

We also welcome more strategic direction and active participation from Ofgem in energy codes. Like many stakeholders, we experience that it is often difficult for an industry led process to effectively address policy objectives and be an authority on legal compliance. There is the need for a clear strategic vision and direction from BEIS/Ofgem – especially as we are transitioning to Net Zero while also experiencing significant market & technological changes in the industry. This direction and early input from Ofgem can significantly improve code management and the efficiency of code amendment.

Our response to the specific consultation questions are outlined in the Annex to this letter. If you wish to clarify anything please do not hesitate to contact me or my colleague Pavanjit Dhesi, Regulatory Affairs Manager (Pavanjit.dhesi@interconnector.com).

We look forward to continuing engaging with you and the industry in creating an appropriate code framework to better meet consumer's current and future energy needs.

Yours faithfully,

A handwritten signature in blue ink that reads "De Ranter". The signature is stylized with a large, sweeping "S" that extends to the right.

Steven De Ranter
Managing Director

Annex 1: Interconnector response to consultation on the Design and Delivery of the Energy Code Reform

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 agree to a great extent with the proposal. Engineering standards play a central role in the design and operation of energy networks and the current arrangements are fragmented. Engineering standards will also play a central role in the envisaged hydrogen and CCUS network development. We therefore would support a licensing approach of a code manager for in scope engineering standards. It will improve coordination, consistency and transparency in the development of these standards. Clearly a code manager would need to be equipped with the appropriate skills to oversee this responsibility.

An important question to address will be what is in scope and what is out of scope. Focus should be on topics rather than what body the standards currently sit under. For example, we believe it is important to include gas quality within scope. Gas quality has an impact on all parts of the energy supply chain and consumers. It will be relevant also in determining the level of hydrogen blend that can be carried on the gas network. On page 29 of the consultation you mention standards under the remit of non-energy specific bodies like the Institution of Gas Engineers and Managers (IGEM) being out of scope. Yet the IGEM has been recently playing an important role in recommending changes to the gas quality specification. Clearly this has implications for the whole gas supply chain and cross border trade. Such issues should therefore be within scope so assessment can be undertaken under clear and transparent objectives with an accountable governance structure well understood by the wider industry.

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 agree that the central system delivery functions play an important role in the current framework and will play an important role in the development of the future system. It is therefore appropriate for these functions to be within scope of governance. This will ensure these functions are appropriately incentivised and accountable for timely delivery.

Our initial view is that there is merit in considering a licensing approach to the central system delivery bodies. It would clarify conditions and accountability, with the ability for direct action by Ofgem. The degree of regulatory burden really would depend on the content of the licence and this could also vary depending on the functions of the central delivery body (i.e. include special conditions or certain conditions could be switched off). We also think it would be better for the delivery function to be separate from the code manager to avoid potential conflicts of interest.

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

We support the Government providing a clear strategic vision, including policy priorities, to the strategic function and that this is legally binding. A 5 year Strategy and Policy Statement (SPS) provide a clear and stable vision which Ofgem, code managers and industry can work towards.

We also support Ofgem providing strategic direction. Clearly any strategic direction to be meaningful in addition to the SPS will need to be the next level down (i.e. in providing consideration of which codes may need to change). This will require consultation with the market and advice from system operators and code managers. It will also be appropriate for the code managers to consult and publish approved delivery plans to indicate how they can meet the strategic direction. Code managers then need to execute the delivery plans. There then needs to be review of progress before the cycle is repeated again. Given all of this, it is questionable if a strategic direction would be worth doing annually (do we end up in a perpetual cycle of just updating these documents?). It is worth considering having something like a 2-3 year cycle for the strategic direction and 2 year delivery plans with annual progress assessment?

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

We support the outlined roles and responsibilities of a code manager. This is on the assumption code managers have the appropriate resource and expertise to deliver their responsibilities.

It will be appropriate for code managers to develop delivery plans in line with strategic direction. Stakeholder consultation in developing those plans will be necessary. As noted in our answer to Q3, the appropriate cycle of when the plans are done needs to be considered to avoid a perpetual cycle of just updating documents. Furthermore, whilst it will be absolutely necessary for code managers to coordinate and consult with each other, requiring one combined delivery plan appears may be overly complex and the benefits of that approach unclear.

In terms of proposing code change, it will be important for there be clear triage criteria and also the ability for parties to appeal a decision not to initiate a code change proposal directly to Ofgem. We very much support allowing any interested party including code managers to raise proposals. Currently many parties directly impacted by code changes do not have a say because they are not signatories to that particular code. For example, Interconnector, despite being a UK TSO and UNC gas modification proposals having a direct impact on our business, cannot raise UNC proposals (apart from in some extremely limited circumstances). Wider participation will encourage innovation and improve trading arrangements.

Whilst the code manager should manage the code change process and play a key role, an effective modification process also requires active Ofgem participation and guidance throughout the process however caveated (to not fetter its discretion on the final decision). This participation should make the process quicker and more efficient by reducing the likelihood of modifications advancing far into the process which (with hindsight) do not meet policy objectives/compliance.

We support an approach to allow the decision on non-material changes to be made by the code manager. There will need to be clear criteria for determining a material and non-material change with the ability for a party to appeal that status to Ofgem for determination. Decisions on modifications deemed as having a material impact, must only be made by Ofgem as the governing regulatory body.

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?

We broadly support the envisaged stakeholder engagement model.

As noted in our answer to question 4, it is appropriate that any interested party can raise proposals and those proposals are considered against triage criteria, regardless of who raised the proposal. Currently many parties directly impacted by code changes do not have a say because they are not signatories to that particular code. Allowing a broader group to raise proposals will encourage wider participation. Any stakeholder must also be allowed to appeal decisions.

Code managers should be expected to consult stakeholders on proposals and hold working groups/workshops for interested parties to share input before a decision/recommendation is made.

Whilst we have no objection to stakeholder advisory forums per se, there needs to be caution to avoid undue influence by large players in the market. Forums should be seen as an additional way to engage stakeholders and not replace the broader obligations to consult and invite views of all stakeholders. Forums must also represent a wide selection of industry, not just the large energy companies which have the resource to participate. There would also need to be transparency in the engagement of the code manager with such forums.

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 agree with the proposed approach of holding code managers accountable via code manager licences obligations and incentives. Appeals routes directly to Ofgem are also appropriate. It is also important that Ofgem is proactively engaged in the process (as mentioned in our answer to question 4). It should provide guidance throughout the process where necessary however caveated (to not fetter its discretion on the final decision). This will make the process quicker and more efficient by reducing the likelihood of modifications advancing far into the process which (with hindsight) do not meet policy objectives/compliance.

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 are not supportive of option 2. We do not think combining the strategic function and code manager role will be effective in delivering policy objectives. It may create a conflict of interest and less ambition (i.e. less ambitious strategic function planning in order to more easily achieve the delivery plan). We note also that Ofgem would need to be involved in determining the strategic function in either scenario so believe it is best that Ofgem "owns" the strategic direction.

In terms of decision making, we agree it would not be appropriate for another body to make decisions on code changes that materially impact consumers and competition. We also agree that it would be inappropriate for another body to make decisions on any code changes that are being made according to requirements in the Trade and Cooperation Agreement (TCA) and retained EU law. We disagree with the idea that,

over time, some material decisions could be taken by the IRMB. If an issue is material the decision needs to be made by Ofgem.

With respect to appeals, an IRMB decision should be appealable directly to Ofgem. It will help incentivise the decision making of the IRMB to meet appropriate objectives. From an efficiency point of view, going to an internal body in the same organisation before an appeal to Ofgem seems like an unnecessary additional bureaucratic element (how likely would it be to overturn its own decision?).

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)?

All strategic body decisions on code changes should be subject to both a judicial review and appeal to the CMA. We are concerned that limiting appeals to judicial review would weaken existing protections because, as acknowledged, it has a less intrusive standard of review. Judicial reviews are a challenge to the way in which a decision has been made, rather than the merits of the conclusion reached. The CMA as a competition and market authority can better assess the latter with its economic assessment expertise. Such an approach sets an appropriate check and balance. Experience of the code modification process to date has shown stakeholders do not frivolously challenge decisions. We should therefore continue to trust stakeholders will continue to only raise appeals to the CMA if they feel there is a strong case to do so.

In option 2, it will be appropriate for the decision of the IRMB on non-material changes to be appealed through Ofgem. Again if an Ofgem decision is considered inappropriate, stakeholders should be able to raise an appeal to that decision via the routes outlined above for option 1. We do not think, from an efficiency point of view, going to an internal body before an appeal to Ofgem is worthwhile. It seems like an unnecessary additional bureaucratic element.

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

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

We are generally supportive of the proposed operating model and accountability structure for Ofgem as the strategic body. As noted in the consultation, a lot of this is already in place, so Ofgem is well placed to extend its role here. It is important that Ofgem has the appropriate resource and in-house expertise to effectively deliver the strategic function.

We do however disagree with the proposal that Ofgem should have the ability to delegate some of its proposed power and duties to an alternative body or bodies. The strategic function should sit with Ofgem only. We do not think it is appropriate to delegate some of these functions to any FSO or code managers given it would add additional complexity (more than one strategic function body) and could create potential conflicts of interest (i.e. if the same party is drawing up both the strategic and delivery plan).

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

We support the monitoring and evaluation approach outlined in the consultation. As part of the evaluation process, BEIS should periodically also consult stakeholders on how they believe Ofgem is performing the strategic function.

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

We agree that, at this stage, the appropriate approach should be to allow the strategic body discretion as to how to select a code manager to licence. There should however be a condition on the strategic body to consult stakeholders on its selection criteria.

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

In principle funding via code parties is fine though charges need to be cost reflective. If a code manager is responsible for more than one code it is important that there is no undue cross subsidisation of charges from one set of code parties to another. There is also a need to ensure charges do not create a barrier to new entrants and users. In this context price controlled networks should cover the bulk of the charges (with allowances made under their price controls to cover these fees). Only a small portion of charges should be levied to users (to avoid barriers to entry).

We also support an approach where the code manager would not be able to charge a non-code party for proposing a code change in order to prevent this acting as a barrier to smaller parties raising proposals. There should be no fees applied to any party seeking to raise modification proposals.

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

We agree that the code manager should be accountable to the strategic body when setting its budgets. It is important that there is transparency in these budgets, particularly for those that are expected to cover these costs.

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. Ofgem, under option 1, is best placed to deliver the strategic function.

As noted in our response to question 7, we do not think combining the strategic function and code manager role as suggested in option 2 will be effective in delivering policy objectives. It may create a conflict of interest and less ambition (i.e. less ambitious strategic function planning in order to more easily achieve the delivery plan). We note also that Ofgem would need to be involved in determining the strategic function any so rather than adding layers, complexity and time to this process it is best that Ofgem directly "owns" the strategic direction.

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

As we have mentioned in answering earlier questions, we believe that option 1 is best placed to reform code governance. Ofgem is well placed as an established public organisation and regulatory authority to extend its role here. Meeting net zero objectives will require industry to have more clarity and strategic vision from Government and Ofgem. It is important that Ofgem has the appropriate resource and necessary in house expertise to effectively deliver the strategic function.

We also believe option 1 will encourage Ofgem to become more involved in the code modification process (rather than just making decisions on modifications at the end of the process). This is needed to improve the efficiency of both the process (prioritisation) and proposals (reducing the likelihood of advancing modifications which do not be meet policy objectives/compliance).

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?

The impact assessment appears to be comprehensive.

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?

The GB charging regime reforms under UNC621 and UNC678 are good examples of the challenges faced in the current set up. It illustrates the challenge for an industry led process to progress major reforms, particularly where major reforms will create "winners and losers". To be fair to industry in this example, a lot of time and effort was made to progress proposals that proposers felt were compliant - it was not so obvious they were non-compliant. It is hoped that if option 1 is taken forward in this code reform, Ofgem can play a greater role in providing upfront strategic direction and guidance which improves efficiency and reduces the risk of progressing modifications which are, with hindsight, non-compliant. Furthermore, where there is major reform, particularly related to charging reforms, it would be preferable for the strategic body to take the lead role in developing change proposals after consultation with industry and advice from system operators.

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?

As outlined in the impact assessment, it is difficult to quantify all the benefits. There will certainly be cost savings from a more efficient modification process and benefits to the market/consumers from implementing modifications earlier than under the current set governance set up.

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?

It is important to be mindful and take into account of decarbonisation initiatives and targets (and the potential need for new codes). There is also the need to consider interaction and compatibility with cross border developments, noting major decarbonisation reforms will soon be outlined by the European Union.

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

It is important that there is a clear, transparent timetable set out once an option has been decided. There also needs to be a smooth transition to new code managers to avoid the whole modification process becoming a “lame duck” resulting in inertia in raising modification proposals due to the uncertainty.

22. We invite respondents' views on whether our proposals may have any potential impact on people who share a protected characteristic (age, disability, gender reassignment, 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.

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

This code reform is an opportunity to also set deadlines for modification decisions. There are instances of modifications awaiting decision for nearly a year, which does not help the functioning of the market. There is also a risk that, if the responsibilities of Ofgem get wider and wider to meet decarbonisation initiatives (e.g. perhaps becoming the economic regulator for hydrogen/ CCUS networks as well as gas and electricity), it has even more of a challenge to conclude assessments and publish decisions in a timely manner. Deadlines obliged on the code manager (for non-material changes) and Ofgem (for material changes) will provide greater confidence to the industry to raise proposals and understand/prepare for potential implementation timelines. It will also incentivise Ofgem and the code managers to devote appropriate resource/expertise to the code governance process. An approach where a decision is obliged by perhaps 3 months where an impact assessment is not needed and 6 months where an impact assessment is needed would be welcome. If no decision is forthcoming in that time, the modification should be deemed to be approved (which can also help progress modifications considered minor/lower priority).