



Flexible Generation Group
Gables Lodge
62 Kenilworth Road
Leamington Spa
CV32 6JX

Telephone: 01926 336127
www.flexgengroup.com

By Email: codereform@beis.gov.uk and
industrycodes@ofgem.gov.uk

Code Reform - Electricity Systems Team
Department for Business, Energy and Industrial Strategy
Abbey 1, 3rd Floor,
1 Victoria Street
London
SW1H 0ET

28 September 2021

Dear All

Energy code reform: governance framework

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 vital services to the system operator to help it deliver secure, economic supplies to electricity customers. We also participate in the Capacity Market (CM) and have made significant investment in new capacity on the back of CM agreements.

Introduction

While some FGG members are signatories to some of the governance codes, not all are, but all our businesses are impacted by the way the codes work. We also have members who have sought to be designated by Ofgem to raise code changes, a process that has proved extremely slow and cumbersome. We therefore believe that there are changes that could be made to the governance processes, but the focus should be on achieving improvements without weighing the industry down with change that may have little or no benefit.

In undertaking this review we do not believe that BEIS and Ofgem have defined the problems that they are seeking to address. Referring back to the CMA inquiry in 2016 does not reflect the changes that have occurred in the 5 years since then. It is therefore important that BEIS and Ofgem resolve the problems of today and not those of yesterday.

Looking at the current arrangements, the BSC seems to be the current gold standard of code management. It has proactively changed itself to meet challenges such as the self-governance modifications, and persistently comes top of the Ofgem' code surveys. It would therefore seem sensible to consider how we can build on, and improve this model, making iterative improvements across all the codes.

FGG understand that BEIS and Ofgem hope that their proposals will benefit consumers and industry by "lowering barriers to competition, improving transparency and accountability, and driving innovation." However, we feel far smaller changes could deliver material improvements without wholesale changes to all of the governance arrangements. These changes could include:

- Removing the CUSC and Grid Code governance from NGESO and the financing of the DCUSA process from the DNOs, allowing more accountability and flexibility for the code managers;
- Merging the CUSC and BSC into a wholesale energy code, removing some of the cross code coordination issues;
- Merging the D Code and Grid Code, as well as linking in the offshore TO regime, to create a more coordinated connection and network regime;
- Ensuring the financing of the change process does not stop timely change through a need to “prioritise” changes by making codes funded by users, not under licences and via price controls;
- Align the code objectives across the codes and with BEIS/Ofgem’s statutory duties; and
- Request Ofgem commit to high level, consistent engagement in the code change process, including attending the majority of change groups and at least all of those where it is directing change.

Questions

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

FGG does understand what the licence is meant to deliver. NGESO has a licence and yet as a code manager it persistently scores the lowest ranking for performance of any code administrator. Ofgem has never held NGESO to account for its poor performance and were it to use its powers to fine any other code administrator under a licence it is not clear who would then pay that fine. For example, under the BSC would it be the parties to the code who would pay the fine, and if so how does that help improve performance?

FGG agree that to achieve good governance it is necessary to hold the code administrators to account. We believe that this can be done by putting the industry and the customers in charge of the code managers. By requiring the code manager to report to the impacted parties and to respond to their needs you get the better code manager behaviour. FGG notes that where monopolies either run codes or have undue control of the code manager (such as the DNOs under the DCUSA), the code managers’ performance tends to be less good than where all parties have control.

This should not cut Ofgem out of the process, they should be part of the group overseeing performance as they sit on all Panels and can raise concerns in those forums. Ofgem rarely raise any such concerns at Panels where change can be implemented. Is this because Ofgem’s power needs changing, the wrong people attend Panels, or something else?

The way code managers are funded is also important in flexible delivery, which licencing does not accommodate easily. For example, when NGESO is asked to implement new systems, etc. it will often argue that it has no money in its price control settlement to allow for extra spend. Reopeners to price controls are rare and resource intensive for the regulated and the regulator. However, if parties “own” codes and pay for code managers then they can easily agree that additional spending is required and increase the fees to the parties to pay for them. This has been seen recently with the replacement of some of the Elexon systems. There is also less of a problem in this model of moving spend between years.

As Elexon seems to come top of the code administrator performance reviews, BEIS and Ofgem should use the BSC structure as a basis to improve code management. Having a board and a Panel

that oversee the functions of Elexon delivers a good quality of service and a responsive code manager. If it is licenced and price controlled Ofgem will need staff to enforce the licence and set the price controls, devise incentives, etc. as will each code manager, but what will be the benefit of that?

FGG acknowledges that Ofgem want more control over the raising of code changes and their progression. This can be done by adding the right for Ofgem to do this into the relevant codes. This will make it easier for parties to see what the rights and powers Ofgem have rather than having to seek out the relevant licence. Why would crating a licence be better than codification?

BEIS and Ofgem also need to acknowledge that Ofgem should play a crucial role as the strategic body in shaping the work of code managers. At the current time Ofgem come to industry meetings, such as code Panels, but are often asked for steers on issues, but fail to give them. Ofgem's commitment to the governance process should be more of a leadership role, not a passive attendee. This will require far greater commitment, and possibly more resources, from Ofgem at a senior level. As code changes also cover multiple areas of Ofgem's work, they need better internal coordination so those attending meetings from Ofgem are fully briefed on interactions of one market change with other policy areas.

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?

Delivery of systems is already an activity requiring coordination between the various delivery partners. Many BSC changes require changes to all systems parties, DCUSA and CUSC changes may need new BSC data flows, etc. We see no obvious reason to change the way these delivery functions are currently undertaken. While we would all like to see changes happen faster, the reality is that many changes have to be coordinated across a number of parties and that will take time.

FGG would like to see the code managers able to review offers from delivery partners. This would be achieved by separating out the code manager function from the delivery partners where they are merged. For example, if NGESO does not like a CUSC change that impacts its system, there is no check that the cost or timing of a change is actually correct or being done to create a barrier to change. We therefore feel separation of the code manger role from the delivery partners is a useful one for some larger market changes. It then becomes the role of the code manager to oversee the delivery of systems, report to the market when there are issues such as late delivery or increasing costs. In our experience code managers tend to be faster to report problems when they are not the delivery partner, as seen with TERRE.

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

FGG support the proposals to have a clear policy strategy that will develop energy markets through the code change process. However, this does look very similar to the annual work plan that Ofgem already do. Is it the intention that this will be more detailed? If it is too detailed it risks defining a solution before the necessary development work is undertaken. Historically we have examples of where Ofgem developed solutions (such as under project TransmiT) that turned out not to be deliverable, wasting considerable time and effort for them and other parties.

FGG do believe that Ofgem is the best choice for setting a strategic policy, albeit that its policy delivery will be driven by the Government's wider energy policy goals. Ofgem have legal duties around the way the market develops and obligations to protect customers that will be important in the coming years. However, Ofgem should make sure that they engage with industry over setting priorities. Neither Ofgem nor the parties have endless resources, so prioritisation will be critical to achieve the changes that offer the greatest advantages in the quickest manner.

Having the FSO as the strategic body risks creating more problems than it solves. BEIS and Ofgem want separation of the FSO because of a perception of bias. Why would the FSO not prioritise strategic change it wants if it controls the strategy? The risk of bias would seem even greater than it currently is.

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

FGG does not believe that the code managers should be raising or approving code changes unless they are of a "housekeeping" nature. Since the CMA reported there have been significant changes in the approach to self-governance modifications, which have allowed for a lot of changes to progress quickly and efficiently. Again Elexon seems to be the leading code admin in using this process, but we note that on some occasions the Panel has asked for brief consultations to just check that a change does not create an unforeseen risk to parties. It is this sort of check on the code administrators that is needed.

FGG fully supports all impacted parties being able to raise changes. A number of our members have tried to use the designation process with Ofgem in the past and approval has taken months, for reasons we are not clear on. We therefore believe that the code administrators should have the power to allow non-parties to raise changes to the codes, to make the process more inclusive. In addition they could have the power to raise mods on behalf of customers if requested, but energy companies should have a right and obligation to raise their own changes.

The reason we do not support code managers being the main party raising and approving changes is because we do not believe that they have the knowledge of all the parties' businesses, with the result the parties will end up lobbying the code manager to raise and approve changes. Instead, the process where they act as a "critical friend", helping parties with drafting changes before they are raised works well. We do not agree with NGESO's requirement that they are consulted as the code manager (that is a bullying friend!), but generally the help of code admins has been welcomed and works well.

Further, if a party does not take ownership of the change, there is a risk changes are raised and then progression is difficult, due to lack of interest. What is to stop a party asking for a change and then not resourcing its reasonable progress? We understand that it is resource intensive, but these are changes to contracts, so parties should be willing to put in at least some work to progress changes they need. A code manager may also think they have understood an issue, but then the mod drafting does not have the flexibility to define to meet the industry's needs. Raising and progressing changes is not always easy. If we allow all parties to just get the code manager to draft, raise and progress a change then we could be inundated with costly changes that deliver little benefit. We are small parties but if it matters to us we would resource a change being progressed.

It is not obvious why the code manager needs to publish a plan as well as the strategic body. Can they not work together to have one plan? For example, Ofgem says we will deliver market wide half hourly settlement and the code manager says that this will be done by supporting Ofgem's policy making and then raising the necessary rule changes at the following times to the following codes? The delivery plans that some code administrators have as part of their reporting to parties, for example the BSC's business plan, sees engagement with the plans limited due to resource constraints.

FGG also has some concerns over prioritisation of changes. We believe that it is a function of licencing, price controls and self-serving incentives that has resulted in prioritisation under the CUSC and Grid Code particularly that has been detrimental to the parties. For example, why was NGESO separation more important than providing timely system alerts to the whole market? To each business their change proposal is important and it is important that the code administrators operate an efficient service. BEIS and Ofgem say that these changes should see the code managers prioritising changes, they should just be delivering them and prioritisation should only be used in exceptional circumstances like a pandemic.

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?

FGG has had concerns about the operations of some of the Panels, notably those that are made up of the larger incumbents, like the CUSC, or weighted towards monopolies like the DCUSA. However, there does seem to be a role for the parties in helping the code managers in overseeing the change process. For example, flagging issues raised to them by smaller parties questioning the delivery costs and overseeing performance audits, etc. We would therefore propose that Panels (or rebranded advisory forums) are retained, but that the make-up of these groups is reviewed, notably to include smaller parties who may not be code signatories and also industrial energy customers, as well as Citizens Advice, who are more focussed on domestic issues.

The voting on modifications for approval is only relevant for the purposes of self-governance mods and to keep open the door for appeals to the CMA. This may be a check that BEIS and Ofgem want to keep, as CMA appeals remain quite rare. We do not believe that the code managers should be signing off changes unless agreed by 100% of consultation respondents, when the change is not simply housekeeping. In our experience even parties in the same sector rarely agree and therefore change approval should still sit with Ofgem. This would allow the maintenance of the appeals mechanism which we believe is vital (see below).

FGG is also concerned that without the check of some form of Panel/forum a code manager may focus on expanding their own role rather than facilitating wider developments. This seems to be a persistent problem under the CUSC where NGESO has prioritised changes it wants over changes others want. The checks on issues such as similar changes, drafting problems, etc. can all still be carried out as a "critical friend".

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?

The use of the CMA as an appeals body feels sensible. Where Ofgem leads on policy it effectively becomes the judge, jury and executioner and that is unlikely to result in good governance. When we look at company governance, good governance requires a split between chair and CEO, the use of

executive directors and non-executive directors, all to provide checks, balances and independent challenges. These general principles of good governance should be maintained.

The opportunity to appeal to the CMA is not easy, nor is it cheap, so few parties go down this route. However, the fact it exists should help keep Ofgem's decision making process robust. The CMA also has the expertise to look at an issue with a fresh set of eyes. Ofgem's staff may have changed since a change started, government policy may have altered, a parties' business may be at risk, etc. which are all issues that a CMA appeal can take account of. They can also bring experience from other sectors and importantly are an economic regulator challenging an economic regulator, where Judicial Review is a highly legalistic process with very limited opportunities to explore issues holistically.

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?

FGG thinks this model would be a disaster, leaving a monopoly in charge of running the codes it has a direct commercial interest in. Again we note they are the worst performing code admin, so why would giving them more codes to manage be likely to make them better? All decisions would have to be appealable, but we would still like Ofgem as the decision maker and to see the right to appeal Ofgem decisions to the CMA maintained.

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)?

FGG would like to keep the right of appeal to the CMA as described above. Ofgem is an economic regulator and the right appeal regulatory decisions to a body with expertise in market is beneficial. The Judicial Review appeals can be about narrow points of law and not address the wider market concerns that the parties or customers may have.

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

See above.

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

The proposals actually look very similar today with the exception of licencing code managers. It is not clear what influence Ofgem wants over unlicensed managers given its limited use of the powers it already has over the licensed code manager, NGESO. Ofgem has a seat on all Panels and can therefore monitor and comment on progress of all changes and performance of all code managers. This is something it rarely seems to do, with Panel instead often chasing Ofgem for steers, views and decisions. We agree Ofgem should engage with the governance process, at a senior level and in a way that exhibits leadership, but it can do that now.

FGG does not support the licencing of code administrators as we do not believe it will deliver benefits in terms of accountability and flexibility. Instead it will add to work for everyone. If a code administrator like Elexon (not for profit and paid for by parties) misbehaves and it has breached its licence it would then be fined, but the parties would then pay. Where the code manager has a profit making business they could lose money, but this is the case with NGESO and Ofgem has never fined

them for their poor performance (despite never delivering the EBS system, being late with TERRE, etc.).

Under a licence all oversight will have to be by Ofgem as the licence enforcer and they are not the ones having daily interactions with the code managers. So parties will have to complain to Ofgem who will then need to go through an enforcement process, which seems likely to be slow and cost more. NGESO reports quarterly on its performance, which seems to take a lot of staff in NGESO, Ofgem and an independent Panel. However, there is no obvious benefit from this compared to a monthly Panel meeting where a code administrator must explain issues directly to impact parties who can then check a problem is being resolved, etc.

Adding some right into the codes themselves for Ofgem to investigate and reprimand code managers could achieve a similar, but more flexible outcome? Again since the CMA, there have been governance changes, such as requiring BSC parties to approve all Elexon Board members, which could also require Ofgem approval? Ofgem could appoint Panel Chairs and ask them to report quarterly on progress against the strategic plan?

Also these are asset light organisations and price controls therefore have to involve the use of complex incentives, like the incentive once used to make NG's website be available. The current ESO incentive has a performance panel, quarterly reporting, etc., which is all very costly and time consuming. It would be quicker, cheaper and therefore more efficient if the parties had been holding the code manager to account by persistent and uncomfortable calls for improvements, and the potential to vote off board members, than using a whole enforcement procedure.

BEIS and Ofgem say that under their proposals "code managers would be responsible for proactively delivering code changes". FGG fully support this, but in our experience licencing is not going to make any difference and in fact could be a significant barrier to this.

We note the proposals to allow Ofgem to delegate its functions and we do not agree that this is sensible. It is not "future proofing" it will just remove accountability. What is to stop Ofgem giving the role of change approval to a party who directly benefits from that. Either we need an energy codes regulator or we do not. FGG agrees that their funding may be an issue, but their legal duties must be discharged by them.

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

The relationship between BEIS and Ofgem seems somewhat opaque. In the move to net zero FGG hopes the new SPS will be more specific in what it expects Ofgem to do.

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

FGG does not believe that Ofgem is necessarily a competent body to run multiple tenders for code managers. In our opinion each should be set up as an unconsolidated subsidiary of the FSO (assuming its role extends to gas and whole system balancing), as Elexon currently is. No code administrator should be directly funded by, and therefore accountable to, any monopoly. The costs should instead be met by the parties to the code.

The document does not also explain on what basis a tender would be assessed. Code managers are not all about keeping costs to a minimum, good customer service, new IT systems, etc. are also important. How will Ofgem evaluate the tenders? Which role would it tender for first? Should we not prefer not for profit bodies running codes so that their focus is on code administration not developing, for example consultancy or other data services?

There are also issues around how often there are tenders? Would we waste customers money tendering for code managers who are already in place and doing a good job? Would we tender every 5 years? Would it not be better to run more min-tenders for the codes that need to be moved away from their current manager. For example, putting the CUSC with the BSC under Elexon looks logical, they are also good code administrators. Moving the D Code and the Grid Code together would seem sensible, and could be run by the Electralink if that became an uncontrolled subsidiary of NGESO. However in each case we would like to see the code manager not controlled by any monopoly energy company(s) nor participating on commercial activities that could create a conflict of interest. Keeping their roles narrowly defined and focussed is less likely to mean senior managers get distracted by empire building. These codes are legally binding contracts that are critical to the energy market and must be treated as such.

The companies running the codes need boards that also scrutinise the code managers behaviour. We believe the lack of scrutiny by boards over some code managers create an issue and annual voting on board could be useful. The code managers need to be held to account regularly, not just be cheapest at a tender.

It is clear that if anyone is going to tender, it should be Ofgem rather than the ESO. The ESO not only has skin in the game, but it is already swamped with work to meet market changes and would seem unlikely to have the resources to manage this process well. It is not apparent that NGESO has the right type of staff either, not obviously having great success in tendering for things itself, instead it seems to have moved from tenders to inhouse delivery. Taking the code manager roles it currently has away from it should also be a priority.

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

We agree with billing parties, but then they need some control over what the money is spent on. As noted above, under a licence, it seems likely there will be incentives and fines, and if parties are paying these they are going to want some accountability from the code managers; those who pay bills are always more interested in where the money is going.

FGG believes code managers can earn extra money from running training on their codes, letting out rooms, etc. However, we would like to see these activities to be peripheral to their main function. As noted, we would be concerned that code managers could get distracted from their core function if they are expanding activities into other areas such as services to new sectors, etc. Building on their core skills, for example taking on more codes, seems likely to lower cost.

It is also worth flagging that Electralink appears to have commercialised the data it has access to by virtue of being a code administrator that is actually the data of those connected to the DNOs network. They seem to sell data, to parties such as NGESO, on what assets are connected and where using the DTS data. FGG is not convinced that this is consistent with the Government's policy on more open and transparent data in the energy market, in line with the recommendations of the Energy Data Taskforce. This data is about a customer, the DNOs should want NGESO and others to

have it for free to improve the efficiency of the markets as a whole (planning investment, balancing the network, forecasting for the CM, etc.). The activities of other code administrators in these types of areas should be examined.

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

BEIS and Ofgem seem intent on giving most control to Ofgem over how the code managers are run and financed, with no clear view as to the problem this will solve. As noted above, Ofgem have controlled NGESO via a licence for years and we suspect Ofgem would agree they are not the gold standard of code managers. Ofgem and the parties should be talking together about when systems need replacing or new projects require new systems, etc., adjusting budgets as required.

Looking at the changes made in the market over recent years, the greatest failure has been NGESO's EBS program. Parties paid for this and have had no money back, which is surprising as usually if IT is not delivered companies would seek compensation from the service provider. In the meantime, the non-delivery has resulted in significant delays in providing data, market access for smaller plants, etc. Ofgem must have approved this budget as part of the relevant price control, but the lessons need to be learnt around contract delivery.

BEIS and Ofgem's document says that licences will help with this management process because of the "relative ease with which the strategic body can modify the code managers' licence conditions". Changing licences is neither easy nor quick, but holding an emergency meeting to agree to allow an increase in spend is. The parties also have more expertise in setting budgets for things like IT projects than Ofgem does. So if Ofgem is going to do this work it should call on those expertise. We believe the Panel and Board model can work well for this if Ofgem engage at the right level.

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?

FGG would reiterate that we do not support this proposal, but NGESO is already price controlled and we would not see why this would alter. The IRMB would seem to form part of NGESO's business so fall under the terms of their licence and price control. As noted above, this is a model that has demonstrably not worked and should not be considered further.

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

FGG supports having Ofgem as the strategic body setting the policy framework against the background of wider energy policy. We would then like to see some codes merged and given to code managers to run them based on the rules of the code and a budget set by a board with industry representation and the right to request help from Ofgem, for example views on any prioritisation of projects if both cannot be achieved in parallel.

We believe that leaving the parties, with Ofgem, to hold code managers to account would be more flexible, future proof, and less resource intensive than licencing. We fully support Ofgem's role in strategy, but BEIS and Ofgem will need to work with industry experts as well as code managers to achieve effective and flexible governance.

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?

FGG is generally concerned by the IA. Again it relies on the CMA report that is over 5 years old and governance arrangements have moved on. They are more agile than they were, parties have been designated to raise changes despite not being signatories, sand boxes established, Board members can be voted out, self-governance mods are allowed, etc., all reflect the new world we are in. FGG fully agrees agility will be needed to accommodate the changes we are seeing across the market, but little in the BEIS and Ofgem document obviously improves governance across the board, having ducked the issues such as NGEOS's conflict of interest as a code manager, the need to merge some codes, and a case study of why some code managers perform better than others at the current time.

It is unclear where the IA numbers come from. We believe the savings to parties could be greater if some codes were merged and incremental changes made more quickly. If Ofgem is tendering and licencing code administrators then the costs look far too low. There is also no assessment of value for money. A code administrator's performance as well as costs need considering; the market needs good code managers not necessarily cheap code managers.

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?

FGG does not agree that the treatment of P272 was a problem in so much as the process tried hard to assess the costs based on the information provided. Had the analysis been showing a net benefit then the Panel would have seemed likely to agree it. While it may have disadvantaged some companies, we believe changes should not be being made where they impose significant costs without any benefits. Ofgem has now mandated HH settlement and we shall see if it brings the benefits claimed. However, we note that DSR can gain significant benefit from the Triad regime, but the response is now estimated by NGEOS to be c400MW, which suggests it may not be settlement, but remote control of load without customer intervention that will drive DSR in future. That was not likely to be the case in 2012 when smart meters, EVs, etc. did not exist in any noticeable volumes.

Ofgem and BEIS do not seem to have undertaken any analysis of where Ofgem seems to have been the issue itself. For example P390 was raised by E.ON on 12 August 2019. The BSC process took until May 2020 to recommended approval to Ofgem. Ofgem then took until November 2020 to send it back. Why did Ofgem not raise concerns in the mod meetings or at the Panel and why did it take 6 months to find a problem, is Ofgem resource constrained, was there an issue with the way it engaged? Ofgem approved P390 in March 2021.

It is also worth exploring the issues of conflict seen with NGEOS. For example, GC109 raised by SSE in February 2018, following 3 years of discussion with the industry urging NGEOS to make this change without the need for a mod at all. Instead, a mod had to be raised to force their hand, but was then not "prioritised" by NGEOS until the report into the power cut of 2019 saw E3C and Ofgem raise concerns over the way NGEOS communicated with the market. At that point the proposer sought urgency from Ofgem, which was declined, though work then did progress again, though 10 workgroups were held on what was a simple change. NGEOS even raised an alternative in 2021 which had no support, except from itself, which looked like a final attempt to further slow change. The final report went to Ofgem in May 2021 and was approved in July 2021.

In relation to UNC621 this seems similar to the issues seen with CMP317/327, Removing Generator Residual and excluding assets required for connection. Ofgem requested these CUSC mods, but

rejected the 84 options as inadequate. Ofgem did not define what it wanted clearly enough for the workgroup to define a solution Ofgem wanted. When Ofgem feels a mod is not legally compliant or delivering the policy intent it should take a leadership role in the change process. The same has also been seen recently with the DCUSA charging changes, where Ofgem has not attended 3 consecutive DCUSA charging forums despite being explicitly asked to please come and give a steer on timing. Finally, we note on Ofgem's indicative decision timetable UNC696V was sent to Ofgem on 22/05/2020, but still has no indicative decision date over a year later.

There seem to be a number of issues that should be addressed:

- Do codes and Ofgem have different objectives? Yes, as code objectives are more limited (and not aligned across codes) than Ofgem's duties. Reviewing and aligning these objectives would be relatively quick and simple and may better facilitate cross code changes.
- Should changes be made if the industry led cost benefit does not stack up, but Ofgem believe the change may prompt wider change? Ofgem can approve such changes, but robust consideration would still seem to be needed, as with P272 Ofgem asked for further assessment.
- Are some mods progressed slowly due to conflicts with the code managers' interests? This has been witnessed on numerous occasions and these codes need to be moved away from the control of the monopolies where that is the case.
- Does Ofgem's engagement and decision making sometimes slow change? This is in our view a serious issue and needs addressing by Ofgem's level of engagement, which may require more resourcing or prioritisation.
- Does the process need to be easier for non-code parties to engage with? FGG believes moving designation to raise changes to the codes administrators could improve this process as they can both designate and then help a smaller party draft and raise a change.

There seems to be a number of relatively minor changes that could be made to add value to the code governance process. However, the conflict of interest evidence suggest that Ofgem and BEIS have over stated the benefits of option 2 over option 1.

FGG believes that there are a lot of lessons than can be learnt from the more recent mods processes, but we would suggest a more thorough analysis than two case studies given, and the ones we have set out here.

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?

There could be additional savings from undertaking the more minor, but quicker changes that we have proposed above. For example it all the cross code mods could be dealt with as one mod that would save significant time for all participants. We welcome NGESO finally raising CMP371, to stop the CUSC requiring two changes every time a mod impacts charging. If NGESO was not the code manager for the Grid Code and CUSC we would expect their change processes to speed up even if there were no codes merged, as they have been the only code manager to prioritise code changes such that they do not get progressed for years.

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?

Ofgem's timetable for implementation looks extremely ambitious. BEIS has a suite of consultation ongoing at the moment and Ofgem and BEIS may need to decide what they want to prioritise. For

example, a review of transmission charges or a focus on achieving a coordinated offshore transmission network, code reform or full separation of the ESO (given the latter does not seem to currently have any actually identified problem, just a perception there could be a problem)?

We believe Ofgem, BEIS and the market will simply not be able to deliver all changes at once and some sensible prioritisation will be needed. It is important that the market gets changes done right not just done.

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

The codes are legally binding contracts and therefore changes to them must be done in a robust manner and time taken to review changes. Some things, like aligning code objectives could potentially be easy, but merging codes, tendering for code managers, etc. seem to create quite a lot of implementation risks. FGG believes these could be managed if the work is undertaken in clearly identifiable chunks of work, for example move the codes from the ESO, then merge some codes, then consider if any tenders are needed, etc. We therefore urge BEIS and Ofgem to come up with a detailed work program with a focus on incremental change to achieve the final goal.

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 comment.

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

While not a code manager, the role of NGESO as the EMR Delivery Body (DB) also causes us a lot of concerns. FGG has raised a number of times with both BEIS and Ofgem that the DB is not fit for purpose. We hope that BEIS and Ofgem will consider if NGESO's role as the DB should not also be removed and given to a more efficient code manager.

Yours sincerely



pp Mark Draper
Chairman