

Lisa Charlesworth
Ofgem
10 South Colonnade
Canary Wharf
London
E14 4PU

SSE plc
Inveralmond House
200 Dunkeld Road
Perth
PH1 3AQ

sam.c.bird@sse.com
01738 340578

23 April 2024

Sent by email to: industrycodes@ofgem.gov.uk

Dear Lisa and Code Governance Reform Team,

RE: Consultation on the implementation of energy code reform

Thank you for the opportunity to respond to Ofgem's consultation on the implementation of energy code reform. This response represents the views of the SSE Group,¹ but please note that SSEN Transmission will be responding separately to this consultation. We agree with Ofgem that codes and their governance need to remain up to date to reflect the net zero energy landscape, and we broadly support the proposals set out in this consultation.

However, Ofgem's preferred approach for consolidation with respect to electricity codes introduces risk that fundamentally impacts parties' ability to engage with the codes. Whilst noting Ofgem's view that a smaller number of codes will be easier to practically engage with, the transition from 'bitesize' codes to the broader subject matter covered by each of the newly consolidated codes will prove challenging for responsible parties. Other areas of code reform such as (i) the code modification process, (ii) Stakeholder Advisory Forums (SAFs) and (iii) the introduction of code managers are critical to ensuring consolidation can be successful. These related reform areas must therefore be progressed in parallel to ensure that the ability of parties to practically participate in informed and high-quality engagement is not diminished. Successful reform to code consolidation and governance will only be achieved by guaranteeing that the effective engagement of those 'on the ground' attending meetings and engaging with modifications is not inhibited moving forward.

With SSE operating across the full energy value chain, we recognise that Ofgem's preferred approach is likely to be considered favourable by stakeholders such as generators and suppliers, and we note this is illustrated by Ofgem's qualitative and quantitative impact assessment. However, from a full energy value chain perspective, we consider that Ofgem's preferred approach to electricity code consolidation has the potential to introduce risk that could have a detrimental impact on guaranteeing the safe and secure operation of networks, which is paramount to ensuring security of supply within GB.

¹ The SSE Group includes 7 business units – SSE's Network Businesses (SSEN Distribution, and SSEN Transmission) and SSE's Energy Businesses (SSE Renewables, SSE Thermal, SSE Energy Solutions, SSE Enterprise and SSE Energy Markets).

With this in mind, we therefore propose that Ofgem implements some simple amendments to the preferred consolidation approach to account for these risks. We recommend; (a) excluding SQSS from the scope of consolidation given its unique role in ensuring network safety and security; and (b) that the STC remains as a standalone code with an independent SAF supporting the code manager due to the unique technical and commercial nature of the code. These adjustments would enable Ofgem to progress with meaningful reform, whilst at the same time mitigating network safety and security concerns.

Furthermore, we have considered the impact of consolidation on the future code governance reform areas given the role these arrangements will have in delivering the success of consolidation. This will ensure that reform can be implemented as a holistic package, with each governance area acting complementary to one another. To ensure success within this overall code reform package, we therefore recommend that:

- The SAFs for each code have a fixed membership with dedicated industry representatives appointed from each sector of the energy chain (e.g., TO, DNO, Supplier, Generator for electricity and likewise for gas). It will be necessary to weight this differently according to the technical or commercial nature of the code.
- Formal (recorded) voting should remain a key tenet of SAF membership. This ensures SAF members maintain the responsibility to understand issues ahead of voting on them and provides stakeholders, code managers and Ofgem with clear transparency as to the support for a given modification proposal.
- SAFs should have an independent chairperson in order to mitigate any potential conflicts of interest with the code manager and to guarantee that the content and topics of discussion are fair and balanced.
- Appropriate '*checks & balances*' must be in place to ensure that a single party is not '*judge, jury and executioner*' in particular with regard to the introduction of the Strategic Direction Statement (SDS) for code managers, or any changes to the rights and route for stakeholders to appeal a change decision:
 - The introduction and implementation of the SDS should be subject to extensive consultation and this should include ensuring that the targets of success, for the SDS measures, are set out upfront (to enable meaningful post implementation evaluations²). Industry requires clarity on the relationship between the SDS and code parties, code managers, and the prioritisation of code modifications given the potential material impact on licensed parties depending on what the SDS determines.
 - Appeals of individual code change decisions must continue to be heard by the Competition and Markets Authority (CMA). The CMA remain the most appropriate body given the

² As per recommendation 4.76 of the House of Lords Select Committee report into 'Economic Regulators' that Ofgem (and other regulators) contributed to ([Microsoft Word - Final Regulators Report.doc \(parliament.uk\)](#)).

technical expertise and skillsets of their panel and, therefore, the statutory right of appeal, to the CMA, must remain.

We look forward to collaborating with Ofgem on the code reform developments expected throughout 2024, including the first SDS consultation, further detail on SAFs, and the Modification Process Workgroup (MPW). We will also be responding separately on code manager licensing and the related secondary legislation proposals. As ever, we would be more than happy to talk through any aspect of this letter should you have any questions or require further information.

To confirm, our response is not confidential.

Yours sincerely,

Sam Bird

Head of Group Regulation

Appendix 1: SSE Response to Consultation Questions

DESIGNATION OF CODES AND CENTRAL SYSTEMS

Q1. Do you agree that we should recommend to the Secretary of State that the 11 industry codes listed (including the SQSS) should be designated as “qualifying documents” for the purposes of using our transitional powers in the Energy Act 2023 to deliver energy code reform?

No, the scope of the CMA investigation that initiated energy code reform was focussed on competition issues regarding the supply of gas and electricity in Great Britain in the retail and wholesale markets³. The existing code governance approach works well for the primary technical network codes for electricity, namely the STC and SQSS. Substantive reform would be disruptive and potentially undermine the vital role that these two codes perform in maintaining network safety standards.

We note this view was shared by other respondents to Ofgem’s call for input and we do not consider Ofgem has adequately made the case for the inclusion of these two codes within these consolidation reforms. We are concerned that too much weight has been placed on the relative size and low volume of modifications within these two codes when making this decision (to include them in consolidation), and that insufficient focus has been placed on the consequences of consolidating them within a broader, single, electricity technical code.

This view is set out further in the SSEN Transmission response to this consultation.

Q2. Do you agree that we should recommend to the Secretary of State that the 5 central systems listed (including the Central Switching Service) should be designated as “qualifying central systems” for the purposes of using our transitional powers in the Energy Act 2023 to deliver energy code reform?

Yes, we agree.

CODE CONSOLIDATION

Q3. Do you agree with the monetised costs and benefits set out in the accompanying draft impact assessment (i.e. the quantitative analysis)? Please specify if you think there is any further evidence that we should consider.

Whilst we agree with the broad range of factors identified by Ofgem, we consider that the financial values calculated for the ‘base case’ are likely to be subject to a high degree of variance given they are based on relatively high-level assumptions. Furthermore, the benefits case relies on the accuracy of a high number of predominantly subjective assumptions being borne out in the future. For example, the expectation that consolidation will lead to a reduction in workgroup meeting attendance or in code manager workloads. If this were to arise this would be a negative result, as it would signal less (not more) engagement in code

³ [Energy Market Investigation Final Report | Competition and Markets Authority \(CMA\) | June 2016](#)

change development by stakeholders, which is counter to the aims of the code governance reform to encouraging more (not less) engagement.

Regarding the length of time required to undertake code consolidation, 16 months is not an appropriate proxy for the length of time required to undertake code consolidation. Whilst noting this was based on the Retail Code Consolidation (RCC), it is important to note that this did not fully consolidate the Master Registration Agreement (MRA) and Supply Point Administration Agreement (SPAA) into one unified code. There remain areas of divergence today between the electricity and gas sectors set out in the Retail Energy Code (REC) and further consolidation of the REC would remain beneficial.

For the net present value (NPV) estimates across option 1 and option 2 in all of the lower, central, and upper scenarios, we note the close margin of the NPV results. With the risks to the assumptions used in the model outlined above, this would suggest that remodelling of these NPV values against a different set of assumptions could feasibly present results that do not align with a preference for option 1. Accordingly, whilst acknowledging the challenges associated with modelling the benefits case for code consolidation, we are unable to conclude that the evidence created from the NPV quantitative assessment provides a conclusive or decisive basis for proceeding with option 1.

Q4. Do you agree with the hard-to-monetise costs and benefits set out in the draft impact assessment (i.e. the qualitative analysis)? Please specify if you think there is any further evidence that we should consider.

No. Whilst we agree with the three new design principles which have been condensed down from four, we do not agree with the weighting applied to these principles nor the methodology for determining the weighting of each principle. In particular *“supporting the implementation of the new code governance arrangements and minimising disruption”* has, in our view, been given insufficient weighting. This principle should be viewed as a long-term consistent objective that is constantly assessed, and not as a minimal short-term principle with reduced weighting.

Further, the assessment which determines the score of each consolidation option against the design principles is almost exclusively subjective. Whilst we agree with many of Ofgem’s observations, we also consider that these are open to equal and opposite judgements being formed about how parties will interact with these new consolidated codes. Indeed, many of these assumptions will be impacted by decisions made as part of future consultation rounds; for example, in relation to code modification processes and SAFs. Therefore, although we support Ofgem’s intention to achieve a more efficient code governance process, we do not consider that the impact assessment provides a conclusive or decisive basis for proceeding with option 1.

Q5. Do you agree with our preferred option to consolidate the CUSC and DCUSA to form a unified electricity commercial code?

Yes, we agree.

Q6. Do you agree with our preferred option to consolidate the Grid Code, STC, SQSS and Distribution Code to form a unified electricity technical code?

No, we disagree with Ofgem's preferred option to consolidate these four codes into a single, unified, electricity technical code. We are concerned that the inclusion of the STC and SQSS into a single electricity technical code, alongside the Grid Code and Distribution Code has not been adequately assessed. This is set out further in the SSEN Transmission response to this consultation.

With SSE operating across the full energy value chain, we recognise that Ofgem's preferred option for the electricity technical code is likely to be considered favourable by stakeholders such as generators and suppliers, and we note this is illustrated by Ofgem's qualitative and quantitative impact assessment. However, from a full energy value chain perspective, we consider that the risk to the SQSS and STC is greater than the potential benefits from this reform. In particular, we consider that including these two codes within the single electricity technical code consolidation proposal could have a detrimental impact on the safe and secure operation of the electricity network. This would include, for example, requiring the low number of modification proposals for those two codes to 'compete' for time and attention from the code manager; the submission of code modification proposals to a SAF that will have less technical expertise than the 'status quo'; and an increase in the potential for commercially-driven modification proposals to these two codes.

We therefore recommend that the SQSS is not included within the scope of this consolidation reform given its unique role in ensuring network reliability, and that the STC remains as a standalone code with an independent SAF supporting the code manager due to the unique technical and commercial nature of the code.

For the avoidance of doubt, we do support the consolidation of both the Grid Code and Distribution Code into a single unified electricity technical code (however, our belief is that the best approach is that the STC and SQSS remain out with this consolidation option).

Q7. Do you agree with our preferred option to consolidate the UNC and IGTUNC to form a new unified gas network code?

Yes, we agree.

Q8. Do you agree with our proposals to rationalise the identified code provisions as part of any consolidation exercise?

We somewhat agree with the proposals to rationalise code provisions. For credit cover arrangements we agree with Ofgem that any rationalisation must not undermine the ability of network operators to recover costs. We note that credit cover arrangements have been subject to recent code modification proposals and would urge Ofgem to ensure any rationalisation does not undermine any recent decisions in this area⁴.

On dispute and appeals processes, we recognise that work to reform the energy codes will necessitate a review of the Electricity and Gas Appeals (Designation and Exclusion) Order 2014. Having an appropriate code change appeal mechanism in place, one which is specific to the energy sector, readily accessible and consistent in its approach, is critical to ensuring a transparent, robust, fair, equitable and accountable GB

⁴ [Decision to approve DCUSA code modification DCP349 | Ofgem | March 2022](#)

code change regime to give stakeholders (and investors) certainty. We consider that this review needs to ensure that appeals (where the decision maker's decision runs contrary to the majority stakeholders settled view) continue to be heard by the Competition and Markets Authority (CMA) panel, which we consider is still the most appropriate body for this process, given the technical expertise and skillsets that are available to that panel. Furthermore, appropriate '*checks and balances*' must be maintained, for example where decisions are made to approve certain (limited in nature) modifications made by stakeholder Panel's, including elected members⁵ in many cases, so that these can continue to be appealed to Ofgem if this decision-making power is transferred from the Panels to code managers.

STRATEGIC DIRECTION

Q9. Do you agree with our proposal to publish the first SDS for all codes next year (before code managers are in place)?

Yes, we agree that the publication of the SDS should be prioritised by Ofgem and agree that it should be published in advance of confirmation of the qualifying documents and of code managers being in place. We believe that Ofgem setting strategic direction on codes is critical and is a key enabler of success for the wider code governance arrangements being introduced.

Q10. Do you have views on the proposed SDS process?

The development phase of the SDS is crucial in establishing a credible analysis of energy policy that can then be used as direction for forthcoming code modifications. A robust consultation process is essential to ensure that the development phase is successful: there should be a clear explanation as to how industry views will be incorporated following the consultation and how these will be reflected within the final version. It is essential that the assessment of the SDS⁶, in the context of energy policy, is wide ranging, and fully considers the impact across the entire, end-to-end, energy chain (e.g. TO, DNO, Supplier, Generator for the electricity codes and likewise for gas). For the final version, the need for transparency is critical and, therefore, the process that code managers follow for prioritisation of modifications following the SDS publication should allow for robust industry scrutiny and the chance for stakeholders to provide feedback and insight to the code managers.

For the implementation phase, we agree that some form of delivery plan is required either for code managers or through the current process to ensure that the objectives of the SDS publication can be achieved. We agree that reporting and monitoring on this area is sensible as a means to deliver the output of the SDS. However, as the SDS will be the main driver of direction for code managers, there should be sufficient transparency and flexibility within delivery plans given that recent events have required reactive

⁵ Such as the Panels for the Grid Code, BSC and CUSC.

⁶ As per our introductory comments, this includes ensuring that the targets of success, for the SDS measures, are set out upfront (to enable meaningful post implementation evaluations).

changes to energy policy. The ability to prioritise and de-prioritise in order to react to urgent developments should be included within the guidance, alongside agreeing the process for doing so with industry.

That having been said, we should also like to note that, as time passes, the need for a comprehensive SDS to be produced each year may, legitimately, subside. Ofgem should remain mindful of the risk of '*creating work, for work's sake*' by producing an extensive SDS each year where one is not warranted. More generally industry requires clarity around how the SDS interaction with other code governance areas (that are also not yet confirmed) will work. There will be critical interdependencies between code parties, SAFs, code managers, code modification prioritisation, and ultimately licensed parties with the SDS and we would welcome further consultation on the SDS wider impacts to avoid the risk of unintended consequences.

Q11. Do you agree with our proposal that a principles-based standard condition for gas and electricity licensees would support the development and delivery of code modifications related to the SDS?

No, we are concerned that implementing a principles-based licence condition is not the right approach to encourage good quality engagement and, instead, will lead to bad outcomes. Whilst we fully agree that it is important for code parties to cooperate and engage positively with code managers, this would be best-achieved by developing governance processes that encourage parties to engage, rather than requiring a license-based obligation be put in place. We would also welcome clarity as to how this obligation would be applied to non-licensed parties as proposed within section 4.27. of the consultation.

The introduction of an enduring principle based standard license condition would expose code parties to a potentially limitless obligation to provide code managers with any data or information they consider is needed to assess a code modification. This could have a funding impact on code parties that would therefore need to be reflected within the relevant code parties' plans. We recognise that the intention is to ensure the development of code modifications identified in the SDS is not impeded by code parties. Accordingly, we would recommend that the code manager could raise a modification⁷ at the start of each year setting out what information and data it considers will be needed from code parties to deliver the SDS. This would provide a specific, time-bound obligation for code parties to comply with and would provide a suitable degree of transparency and scrutiny over the creation of an obligation. Over and above this, the code manager should be limited (when seeking data or information they consider is needed to assess a code modification) to not being able to seek commercially confidential information from parties or seeking data or information that it is not reasonable for the parties to have or divulge⁸.

⁷ That would be subject to Ofgem (not SAF or code manager) approval.

⁸ Such as third party data or information.

CODE GOVERNANCE ARRANGEMENTS⁹

Q12. Do you agree with our preferred option for how a Stakeholder Advisory Forum should be constituted?

We believe that SAFs are vital to the success of implementing energy code reform, and that decisions made on SAFs should be complementary to other code reform areas including consolidation. With that in mind, and in line with our executive summary recommendations, we believe that SAFs should have a fixed membership with dedicated industry representatives appointed from each relevant part of the energy chain (e.g., TO, DNO, Supplier, Generator etc. for electricity and likewise for gas) weighted according to either the technical or commercial nature of the code. Formal (recorded) voting should remain a key tenet of SAF membership to ensure SAF members maintain the responsibility to understand issues ahead of voting on them. This also provides stakeholders, code managers and Ofgem with clear transparency as to the support for a given modification proposal. SAFs should also have an independent chairperson in order to mitigate any potential conflicts of interest with the code manager and to guarantee that the content and topics of discussion are fair and balanced.

Q13. What are your views on i) a requirement to assess the greenhouse gas impact of code modifications with updated guidance, or, ii) introducing a 'net zero' code objective?

Code objectives should be aligned against a new net zero code objective, in line with option ii) proposed. This is the most appropriate as it is in line with the wider objectives of key strategic bodies such as National Energy System Operator (NESO) once operational, and Ofgem.

However, we would highlight that a net zero objective should not be the sole objective against which code modifications are assessed, and instead that code modifications should be considered against the suite of individual objectives that each consolidated code will have and which proposers (of modifications), the code change workgroups, the code manager, the SAF and Ofgem will need to take into account.

Q14. Do you agree with our proposal to extend and harmonise the ability of code panels to prioritise the assessment of code modification proposals?

Yes, we agree in principle that a harmonised prioritisation process across the consolidated codes can be introduced, but this should be considered further within Ofgem's Modification Process Workgroup (MPW). In addition, we agree that there should be clear guidance for code managers within the SDS to ensure that unplanned higher priority (or urgent) modifications are given the appropriate time and focus over planned modifications set out in the SDS and that industry are able to consult and input within this process.

⁹ Please note that this response is based on our current understanding of matters; such as of the SAFs, code managers and the code change process, all of which will be explored (subsequent to this response submission) as part of the Modification Process Workgroup (MPW) deliberations (which are due to get underway in earnest after this consultation response is submitted – and therefore our response here may materially change as the results of the MPW deliberations become clearer over the coming weeks and months).

TRANSITION

Q15. Do you agree with our proposal to adopt a phased approach to transitioning codes to the new governance model?

Yes, we agree that a phased approach is the most sensible. This will allow for swift progress that minimises disruption to industry, whilst allowing for a stocktake to reflect on progress of code consolidation so far to ensure that best learnings can be applied moving forward to other codes being consolidated.

Q16. Do you identify any strategic or operational considerations that might inform the transition sequence?

Yes, we agree that the strategic issues raised within the consultation. In particular, the implications from the (ongoing) second REMA consultation and the (ongoing) transition to NESO that are underway this year are both likely to highly impact the transition sequence.

We also agree that operationally complexity will arise from; implementing code consolidation and code governance reforms; creating and consulting on new code modification processes; setting up and licensing code managers; contractual implications that arise from introducing reform; dealing with transitioning for existing (at the time of consolidation) code changes that are ongoing 'in the process' (be that, just raised or within the assessment / development phase or approved, but not yet implemented); and the high resource impact required from Ofgem to progress reform. Consideration should be given to the learnings from RCC, as outlined in our answer to Question 3 above.

Q17. What are your views on our proposed transition sequencing?

We somewhat agree with the proposed indicative sequencing. We agree that phase 1 focussing on the BSC and REC makes sense as these are not being consolidated with other codes, however we believe that the electricity technical code should be assessed within phase 2, and that the electricity commercial code should be assessed within phase 3.

As noted in our answer to Question 6 above and our executive summary, our recommendation is that SQSS sits out with the scope of this consolidation reform and that STC must be considered individually as it is both technical and commercial in nature. We believe that the electricity technical code should be prioritised into phase 2 given the impact on the safe and secure operation of the network. This would also allow the consolidation of the commercial aspects of the electricity codes to occur last, which we believe would be beneficial, as this is likely to be the most burdensome and complex to conduct, meaning there are two previous phases (of consolidation) that can provide lessons learned and best practice to ensure phase 3 is as smooth as possible.

Q18. Do you have any other comments on how Ofgem should approach the implementation and transition process?

In line with the diagram from 6.26 within the consultation document, we believe it would be helpful to have more 'plan on a page' type summaries for code reform. We and others in industry feel that it is somewhat difficult to comment fully on code reform proposals, as certain aspects of individual governance areas are being consulted on at different times, yet are interdependent on each other. Simplicity and ensuring industry

fully understand what is being reformed is absolutely critical to successful code reform. We note that a second joint consultation with DESNZ has been launched on code manager licensing whilst this current consultation; which focussed on consolidation and then only certain aspects of SAFs and SDS; is still live. We would welcome a central matrix being maintained by Ofgem so code parties are clear on what will be covered by individual consultations and when these are scheduled to be published.