



John Bradley
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6 May 2010

Dear John,

**Modification Proposal 0286 & 0286A
'Extending Modification Panel Voting Rights to a Consumer Representative'**

Thank you for the opportunity to respond to these Modification Proposals. This submission is made on behalf of ScottishPower (SP).

As indicated in our response of 18 September 2009 to the Code Governance Review Consultation on the Role of Code Administrators and Small Participant/Consumer Initiatives, in principle SP supports having voting consumer representation on the UNC Modification Panel. We agree that such arrangements should be aligned across industry codes where appropriate and since we consider that the BSC and CUSC are the most effective then we would advocate the UNC arrangements being aligned accordingly, but subject to whatever other changes beyond merely voting representation that may be necessary.

However, that having been said, we consider that both 0286 and 0286A are premature, although we appreciate the procedural need to raise the alternative proposal at this time.

It is vital that any change to the UNC Panel governance arrangements, and particularly its voting arrangements, are looked at holistically to ensure that unintended consequences are avoided and that all the potential implications are considered.

It is unclear what the driver is that requires the principal Modification to be raised at this time, and to that end we believe that the fundamental review initiated by Review Group 267, which is currently scheduled to report to the Panel on 15 July 2010, should not be pre-empted by piecemeal changes. The Terms of Reference of Review Group 267 clearly encompass the provision of consumer voting representation, but importantly that is in the context of the wider Panel constitution. This would rightly allow consideration of such issues as implications for the voting balance of the Panel and the potential consequential impact on rights of Appeal to the Competition Commission as allowed by the Energy Act 2004 – critical issues that are not adequately considered in either proposal.

Moreover, both the principal modification and its alternative were raised ahead of Ofgem's Final Proposals on the Code Governance Review that was only published on 31 March 2010. As such they do not appear to take account of the option that the Authority has retained to appoint a further Consumer Focus member if it considers a particular market sector is under represented.

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Accordingly it is our position that neither proposal should be progressed at this time. We believe that it would be more prudent and efficient to raise a proposal or suite of proposals based upon the outcome report from Review Group 267 to seek to address comprehensively all the issues arising from the Final Proposals on the Code Governance Review. To do otherwise may only result in a partial or flawed solution that may subsequently have to be supplemented or unwound.

However in the event that the Proposals do proceed then we believe that the alternative 0286A is preferable and we are prepared to offer it qualified support, subject to the points made above. The alternative at least recognises that simply extending voting rights to the current consumer representatives is overly simplistic. Moreover it does go some way to ensure that consumer representation does not extend into areas that would be inappropriate or where there should be no legitimate consumer interest, such as voting on modifications that would fall under any future self-governance regime or the business of the UNCC.

Should you have any queries on the above then please do not hesitate to contact me.

Yours sincerely,

Gerry Hoggan
Regulation and Compliance Manager