

Bob Fletcher
UNC Panel Secretary
31 Homer Road
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West Midlands
B91 3LT

11 October 2010

Dear Bob

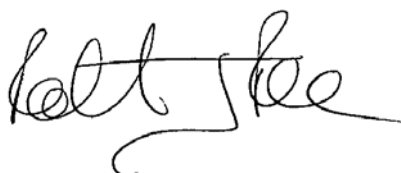
Draft Modification Reports: Code Governance Review Modification Reference Numbers 0318/0318A, 0319, 0320, 0321, 0322, 0323 & 0325.

EDF Energy welcomes the opportunity to respond to the above suite of UNC Modification Proposals that have been raised with the aim of implementing Ofgem's Code Governance Review Final Proposals.

Our comments on the individual draft modification reports for each of the proposals are set out in the attachment to this letter.

I hope you find these comments useful, however should you wish to discuss any of the issues raised in our response or have any queries please contact my colleague Steven Eyre on 01452 653741, or myself.

Yours sincerely



Rob Rome
Head of Transmission and Trading Arrangements
Corporate Policy and Regulation

Attachment

Draft Modification Reports: Code Governance Review Modification Reference Numbers 0318/0318A, 0319, 0320, 0321, 0322, 0323 & 0325.

Modification Number 0318/0318A – The approach to be taken when raising alternative Modification Proposals

EDF Energy believes that both 0318 and 0318A appropriately facilitate the implementation of the necessary changes required under the Code Administration Code of Practice (CACOP) in respect of the approach to be taken when raising alternatives to Amendment Proposals. Consequently, we consider that both proposals would better facilitate relevant objective A11.1 (c) compared to the baseline. However, we do consider that 0318A would implement principle 7 of the CACOP more robustly than 0318. Implementation of proposal 0318A will ensure there is a reasonable opportunity for viable alternatives to be put forward and developed by ensuring that all but the simplest Modification Proposals are sent to a Workgroup instead of being sent direct to consultation. We believe this additional element of 318A would better facilitate relevant objective A11.1 (f) compared to the baseline and 0318 as it will introduce a number of benefits in the efficiency in the administration of the codes.

Modification Number 0319 – Role of Code Administrators and Code Administration Code of Practice

EDF Energy does not support the implementation of 0319. We are concerned that the suggested legal text for this proposal is inappropriate as it reduces the transparency of the modification provisions. The suggested legal text seeks to delete a number of sections of the current provisions of the code and simply refer to the arrangements specified in the CACOP e.g. large deletions in section 6.2, 8.2 and 8.3 etc. We do not support this policy and believe the wording in the code should remain and simply reflect where appropriate explicit provisions set out in the CACOP. This is the practice that has been adopted under the BSC and the CUSC in respect of the code governance changes. We believe as a principle appropriate code governance arrangements should ensure that provisions to modify any industry code should be explicitly set out within such code and not simply refer to a stand alone document that only the code administrators have any influence over. Consequently, we believe the proposals as drafted is detrimental to achieving relevant objectives A11.1 (c) and (f).

Notwithstanding the fundamental concern above, we would also suggest the following changes:

- 1.4.1 should be amended and read as follows “ The Code Administrator shall in conjunction with the other code administrators, maintain, publish, review and where appropriate (but subject always to the approval of the Authority) amend the Code of Practice.

- Given the role of the code administrator as envisaged by the amendments made to the relevant licences via Ofgem's final proposals, we believe the administrator should not be able to unilaterally propose amendments to the CACOP without reference to the views of the code parties. This is particularly significant given that any approved changes to the CACOP could lead to code amendments having to be implemented without any proper industry consultation. We therefore believe that a new section should be inserted after 1.4.2 that places a requirement on the code administrator to gain approval from the Modifications Panel before raising any CACOP amendment proposals.

Modification Number 0320 – Appointment and Voting Rights for a Consumer Representative and Independent Panel Chair

EDF Energy believes that Modification Proposal 0320 appropriately facilitates the implementation of the necessary changes required under the revised licence obligation placed on the licences of the Gas Transporters. Consequently, we consider that this proposal would better facilitate relevant objective A11.1 (c) compared to the baseline.

However, we suggest that a minor amendment could be made to the legal drafting in respect of the definition of the "Panel Chairman". We believe the current drafting could be improved by making it explicit that the appointee will be independent of the Transporters as required under the paragraph 6d of Standard Special Condition A11. In addition, we believe it appropriate that the views of the Modification Panel should be considered during the appointment process. Consequently, we believe the definition should be:

"Panel Chairman": shall be the person independent of the Transporters appointed as chairman of the Modification Panel by the Transporters, having particular regard to the views of the Modifications Panel, and with the approval of the Authority, and as the context may so require, a deputy Panel chairman;

Modification Number 0321 – Approach to environmental assessments within the UNC

EDF Energy believes that Modification Proposal 0321 appropriately facilitates the implementation of the necessary changes required under the revised licence obligation placed on the licences of the Gas Transporters. Consequently, we consider that this proposal would better facilitate relevant objective A11.1 (c) compared to the baseline.

Modification Number 0322 – Inclusion of the NTS Transportation and Connection Charging Methodologies within the UNC & Modification Number 0325 – DN Transportation Charging Methodology and Change Governance

EDF Energy believes that Modification Proposals 0322 & 0325 appropriately facilitate the implementation of the necessary changes required under the revised licence obligation placed on the licences of the Gas Transporters. Consequently, we consider that these proposals would better facilitate relevant objective A11.1 (c) compared to the baseline.

However, we would draw your attention to proposed changes to bring the electricity connection and use of system charging methodologies within the CUSC. Firstly, it is proposed that a single Modification Proposals cannot be raised to cover both changes to the charging methodologies and other parts of the code. The rationale for this is because of the approach set out from a number of Licence obligations relating to Charging Methodologies. The first is the new obligation to allow Charging Methodology change proposals to be raised by "materially affected parties". Given that CUSC Parties, BSC Parties and the National Consumer Council would have the right to raise Amendment Proposals to the Charging Methodologies, a materially affected party would be someone not covered by those categories and has to be designated by the Authority. In order to gain such designation, the party would have to prove to the Authority that it is materially affected by the charging methodologies and that it wishes to raise a change proposal.

The reason this can not be covered in an holistic manner is because the designation described in the Licence is restricted to Amendment Proposals to the Charging Methodologies only. Thus, in the example above, CUSC Parties, BSC Parties and the National Consumer Council could raise changes to both the 'Use of System' provisions in Section 3 of the CUSC and the 'Use of System Charging Methodology'. However, a "materially affected party" could only raise a change to the 'Use of System Charging Methodology'. They could not propose a change to the 'Use of System' provisions in Section 3 of the CUSC. A further complication is that assessment of Modification Proposals to the general code and those to the charging methodologies are subject to different relevant objectives. Consequently, we believe consideration should be given to how these issues are addressed and whether similar arrangements should be implemented in gas given the clear similarities with the CUSC and the objective of consistent arrangements across industry codes.

Secondly, it is proposed within the CUSC that a fixed cut-off date for a Modification Proposal to reach the Panel Recommendation stage in order to achieve potential implementation by the start of the following Charging Year (1st April) would be appropriate. A fixed cut-off date approach would help provide clarity and predictability of future costs to the industry. Without an implementation cut-off date, parties potentially would need to put a "risk factor" amount into their tariffs to take account of potential changes to charges at a later date, which would lead to higher prices for consumers. It is noted that the Authority will always have the ability to determine a different

implementation date to that recommended by the Modifications Panel. However, we believe this proposal would introduce similar benefits to the gas charging regime.

Modification Number 0323 – Self Governance

EDF Energy believes that Modification Proposal 0323 appropriately facilitates the implementation of the necessary changes required under the revised licence obligation placed on the licences of the Gas Transporters. Consequently, we consider that this proposal would better facilitate relevant objective A11.1 (c) compared to the baseline. In addition, we consider that objective A11.1 (f) would also be better facilitated as appropriate self governance arrangements are likely to lead to more efficient administration of the code in respect of the development and implementation non-material proposals.

One minor point for consideration is whether the independent chair should have the ability to freely vote on self governance modification proposals in the event that there is a split vote. We see no reason why the chair should not be able to freely vote in such circumstances given that the chair will be independent of any party interests and self governance proposals are those which are non-material and have no consumer effect.

EDF Energy
October 2010