Energy UK's response to call for comments on the document: "Role of stakeholders in the implementation of network codes and related guidelines, and in particular the establishment of European Stakeholder Committees for network code implementation"

23 January 2015

About Energy UK & general comments

Energy UK is the Trade Association for the energy industry. Energy UK has over 80 companies as members that together cover the broad range of energy providers and suppliers and include companies of all sizes working in all forms of gas and electricity supply and energy networks. Energy UK members generate more than 90% of UK electricity, provide light and heat to some 26 million homes and last year invested over £11 billion in the British economy.

Membership covers parties operating in all areas within a full range of generation, supply and network businesses and hence, we consider, that Energy UK is well placed to advise on the important issues raised in the consultation document.

Energy UK welcomes and considers it positive that this document has started a discussion on an aspect of the Network Code process which will be crucial to the long term success of the project. Nevertheless, we also find it regrettable that the consultation document has not managed to clearly articulate concrete proposals regarding how the stakeholder process will be managed and designed in a manner which is open, transparent, efficient and above all in consumers' interests with respect to the costs and benefits. We view this as a missed opportunity and something which ACER needs to revisit as a matter of urgency.

GB experience

Our comments build on the considerable experience which we have gained through the industry led governance processes which exist in Great Britain and seek to highlight the elements of those processes which we consider should be viewed as best practice.

There is a window of opportunity for ACER to draw on considerable national experience, in Great Britain and elsewhere, in its development of a set of robust and inclusive proposals for discussing the implementation of Network Codes and, perhaps more importantly, considering the way in which the codes are subsequently amended. We urge ACER to incorporate these principles into a more clearly defined set of proposals in the near future.

1) Clarity of purpose

Energy UK members would like to seek further clarity regarding the scope of what is proposed within the consultation. In particular, the suggested European Stakeholder Committee structure appears to be confined to ongoing implementation work across Europe and it seems that the purpose has been constrained to that of an advisory role only. We find the lack of any linkage to the Network Code amendment process puzzling as we see more value over a purely information sharing exercise if the committees are part of the amendment process as well. In our view, the success of the Network Code project is dependent on an inclusive but flexible amendment process. This is the area where ACER in particular should be focusing its stakeholder engagement efforts. Articulating a clear purpose for each of the proposed committees must be the starting point for any future development work for this initial proposal.

2) Transparency

The most important feature of the GB industry governance process is the transparency which forms its framework. All information, except for a limited amount of detailed commercial data, is made publically available in a timely manner with any interested party provided the right to participate. This is a principle which ACER must enshrine in any stakeholder group dealing with implementation, amendment and future developments. All information must be made publically available to all parties as soon as possible and at the same time; and any decisions must be made in an open and transparent manner.

3) Consistency of approach

We note that the consultation document suggests three committees to deal with different *"families"* of codes. Recognising that every Network Code presents strong interlinks with other codes and guidelines, not necessarily from the same *"family"*[1], we feel that this approach may be a recipe for inconsistency and duplication of effort. While we agree that detailed expert groups will be needed to discuss the specifics of each individual Network Code, we also believe that this needs to be guided in a consistent manner. In practical terms, a change to one code will impact multiple codes and we are concerned that overly rigid structures may restrict the ability of committees to fully recognise, understand and acknowledge the wider impacts of potential changes.

In addition, we believe there is merit in discussing each Network Code separately. This would ensure that each of them is progressed at the same speed and avoids that the committee's

---

[1] E.g. As currently drafted, the Network Code on Emergency and Restoration (NC ER) is a hybrid code and presents strong interlinks with both the operational and market network codes family

attention is focussed on one or more of the other codes within the "families" of Network Codes that the committee is responsible for. Nevertheless, an "umbrella" structure or formalised communication requirement between committees needs to be put in place as well, in order to avoid that the committees work in silos, without addressing the cross-cutting and overall consistency issues.

We also note that finding an appropriate balance of representation within each stakeholder group will be difficult. Generally speaking, we see two approaches to representation, both of which have pitfalls. Countries could be individually represented or particular technical areas within the industry could be represented such as: Network Operators, Generators (small, medium, large) and the Supplier community. In the latter case, we assume the responsibility would fall on Europe-wide trade associations. We would urge ACER to recognize the need for broad based engagement, take a suitably flexible approach and clearly set out which parties shall participate in the proposed processes. In doing this, it will be particularly important to recognise the role of Member States in approving amendments via the comitology process going forward.

4) Impartiality & range of representation

Within our current GB industry code panel framework, representatives are required to act on an impartial basis, independently from their companies' interests. In our view, this principle needs to be extended to the European stakeholder forum. We have significant concerns that ENTSO-E, a party which clearly has a vested interest in the content of the Network Codes, is being proposed to be tasked with a chairman role for two (out of three) of the suggested committees. We do not support this approach- ENTSO-E should not chair any of the committees (or expert groups) that deal with Network Codes going forward. The role of ENTSO-E- as set out in the Third Package- does not, in our view, legally extend beyond the work they have largely completed (with most of the codes, submitted by ENTSO-E, being recommended for adoption). Our members consider that independent chairs are needed to chair the committees (and expert groups) and any perception of conflicts of interest must be avoided at all costs. The use of independent chairs within GB industry code panels has, in the view of our members, been beneficial.

Conclusions and next steps

The issues raised by this consultation are of considerable interest to our members and there is a widespread desire to engage with the process of further developing European Network Codes.

However the proposals which this document has brought forward are, in our view, insufficiently clear to allow us to present concrete suggestions for improvement based on the considerable experience we have developed in GB over the past ten years. We therefore consider that more developed proposals must be developed as a matter of urgency. ACER must clearly articulate the purpose and scope for each committee and group, detail the proposed links to the amendment process, outline the governance processes and rules for participation, as well as explain how transparency and impartiality will be ensured.

Energy UK and our members would be happy to discuss these issues with ACER colleagues in more detail and reiterate our view that a robust and inclusive governance process is key to the long term success of the Network Code project.

Should you have any questions, please contact ███████████████████████████ ████████).

███████████
Director of Generation
Energy UK
Charles House
5-11 Regent Street
London SW1Y 4LR

████████████████████

www.energy-uk.org.uk