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Dear Mark,

Undertaking Post Implementation Evaluations of Industry Code changes

Thank you for the opportunity to respond to this consultation. Energy UK is the trade association for the GB energy industry with a membership of over 90 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership encompasses the truly diverse nature of the UK's energy industry from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

I am writing on behalf of our members who are keen to enquire as to what, if any, target(s) Ofgem has set (or plans to imminently set) to facilitate post implementation evaluation of recently implemented BSC or CUSC modification proposals (including for example P305 Electricity Balancing Significant Code Review Developments and P350 Introduction of a seasonal Zonal Transmission Losses scheme).

With regards to P305, it will be two years in November since P305 was implemented. Ofgem had set out high-level objectives¹ for cash-out during its Electricity Balancing Significant Code Review:

- ▶ to incentivise an efficient level of security of supply;
- ▶ to increase the efficiency of electricity balancing;
- ▶ to ensure balancing arrangements are compliant with the EU Target Model (EU TM) and complement the Department for Energy and Climate Change's (DECC) Electricity Market Reform (EMR) Capacity Market (CM).

It would therefore appear to be timely to see if these objectives are being met and if not, what policy changes may be required. Additionally, the review should provide the industry with confidence that a move to PAR = 1MWh and VoLL = £6000/MWh is truly justified. Ofgem undertook to do a review prior to this happening.

The reason for asking this question now is that it is important to ensure, when the policy is developed, that clear target(s) and objective(s) that Ofgem anticipate will be achieved, by the application of BSC and CUSC modifications, for example BSC modifications P305 and P350, are set (now). This will then ensure that a meaningful post implementation evaluation can be undertaken at a later date; be that, say, three, five, seven or ten years hence (depending on the modification and what time frame is most appropriate).

¹ https://www.ofgem.gov.uk/sites/default/files/docs/2014/05/electricity_balancing_significant_code_review_-_final_policy_decision.pdf

In coming to this view, our members are mindful of the recommendations - set out below [1] - of the House of Lords Select Committee in its report into 'UK Economic Regulators'² (including GEMA/Ofgem) that:

(a) *"Post-implementation evaluation should be conducted with greater frequency³"; and*

(b) *"Meaningful [post implementation] evaluation is not possible without clear targets and objectives. The regulator's original IA should set such targets in anticipation of a post-implementation evaluation".*

As you may recall, this Select Committee recommendation came, in part, from the concern that Ofgem itself raised (in its evidence to the Select Committee, at paragraph 4.50) in respect of undertaking post implementation evaluation(s), namely that:

"there is always a danger ... that you get the answer that you want, you work back from that and then you put the assumptions in to give you that answer".

By setting clear target(s) and objectives, in respect of recent BSC modifications, P350 and P305, at this time, Ofgem will ensure that the concern they themselves identified to the Select Committee is addressed and thus allow for a meaningful post implementation evaluation of those modifications.

Our members note that in recognition of the Competition and Markets Authority (CMA) Energy Market Investigation⁴ and its determination with respect to transmission losses, it may be appropriate that Ofgem engage with the CMA in the setting of the clear target(s) and objective(s) for a post implementation evaluation for P350.

If you have any questions please contact me at kate.dooley@energy-uk.org.uk or 0207 747 2942.

Kind regards,

Kate Dooley
Policy Manager

² <http://www.publications.parliament.uk/pa/ld200607/ldselect/ldrgltrs/189/189i.pdf>

³ Our members are uncertain as to how many post implementation evaluations have actually been undertaken, since November 2007, by Ofgem based on clear targets and objectives set at the time the policy was determined – is this something you could please provide us with further information on?

⁴ <https://www.gov.uk/cma-cases/energy-market-investigation>

[1] Extract from the House of Lords Select Committee in its report into 'UK Economic Regulators'

"CHAPTER 1: SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS - Regulators' use of Impact Assessments (IAs)"

1.10. We recommend that:

- Post-implementation evaluation should be conducted with greater frequency and should always be carried out where a step change in regulatory policy has been implemented.*
- Such evaluation and monitoring should generally be carried out by the regulators themselves, but on occasion an independent body (preferably the sessional Select Committee recommended in paras 1.29–1.30, or the NAO) should monitor the quality of assessments and the objectivity shown by regulators in completing them.*
- Post-implementation evaluation should always be made publicly available.*
- The original IA makes clear that a post-implementation evaluation will be completed in cases where it is felt that a post-implementation evaluation would add value. Meaningful evaluation is not possible without clear targets and objectives. The regulator's original IA should set such targets in anticipation of a post-implementation evaluation. (para 4.76)"*