

Rachel Clark,
Programme Director,
Switching Programme,
Ofgem
10 South Colonnade, Canary Wharf
LONDON
E14 4PU
Switching.Programme@ofgem.gov.uk

Wales & West House
Spooner Close
Celtic Springs
Coedkernew
Newport NP10 8FZ

Tŷ Wales & West
Spooner Close
Celtic Springs
Coedcernyw
Casnewydd NP10 8FZ

Telephone/Ffôn: **0800 912 29 99**
Fax/Ffacs: **0870 1450076**
Email/Ebost: enquiries@wwutilities.co.uk
www.wwutilities.co.uk

29th July 2021

**WWU response to Ofgem consultation:
Switching Programme Significant Code Review: Retail Energy Code v3.0**

Dear Rachel,

Thank you for the opportunity to respond to the consultation. Our responses to the drafting in the schedules are on the attached spreadsheet as requested in the consultation.

Our answers to question 2.1, a comment on the addendum to the consultation and a further point on the "Find my supplier" service are below. Our comments on the schedules are in the attached spreadsheet as requested in the consultation. We have commented on the REC main body and the Data Access Schedule.

Question 2.1: Do you agree that access to data within the GES should be governed under the provisions of the REC?

We agree that the access to data within Gas Enquiry Service (GES) should be governed under the provisions of the Retail Energy Code (REC) and having looked carefully at this while considering the details of how this service will operate, believe that the mechanism to achieve this exists within the current REC drafting. Our reasoning is as follows:

- a. The REC interpretation schedule requires DNs to make sure that the CDSP does what it is requested to do under REC
- b. The CDSP is the GES Service Provider under REC and what is in GES is determined by the REC Data Access Schedule and the REC Data Access Matrix
- c. REC can therefore extract what data it wants from the CDSP directly.

In consequence of our latest thinking on this, our view is that the text provided for the Faster Switching Significant Code Review for General Terms D 2.6 needs a small amendment to remove the requirement to amend the Data Services Contract Data Permissions Matrix to reflect change in the REC Data Access Matrix. This removes an unnecessary extra step in the process and removes any debate about whether REC has access to the data it needs to populate GES. The Data Services Contract Data Permissions Matrix has not previously included permissions where there has been a clear obligation in a Code, for example the Supply

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Point Administration Agreement, to provide data and to do so now for the Retail Energy Code would be inconsistent with previous practice.

We have some points on the REC main body in particular clause 13, we recognize that these have not changed since REC 1.1 was published; however now that the schedule for the Gas Enquiry Service (GES) has been published and the treatment of Shipper owned data has become clearer we think that it is legitimate to return to these provisions.

We note that Shippers are not obliged to be parties to the REC and are also not required to use GES though they may choose to sign a REC Service User Access Agreement to enable them to do so. The REC Service User Access Agreement (described in the REC Qualification and Maintenance Schedule) binds a Shipper signatory to REC main body clauses in particular clauses 13 (Intellectual Property Rights) and 19 (Data Controller) and the Data Access Schedule. Clauses 13.18 to 13.21 of the REC Main Body relate to Services Data which is the data which is provided by or on behalf of REC Service Users to REC Service Providers under or pursuant to the REC. These clauses provide that:

- each REC Service User in respect of the Services Data provided by it, grants a licence to each REC Service Provider and each other REC Service User to use that Services Data in accordance with a permitted purpose;
- each REC Service User shall indemnify each licensee in respect of any claims brought by a person alleging that use of the Services Data has infringed any IPR.

Where a Shipper signs a REC Service User Access Agreement then they are clearly bound by these terms but where they do not sign then they are not. REC Co needs to carefully consider whether it can release data to third parties relating to an MPRN for which the relevant Shipper has not signed the REC Service User Agreement to use GES.

We have a further concern with Clause 13 of the REC main body. Clause 13.19 (b) of the REC Main Body states that all Services Data held within the Central Gas Register (register of Supply Meter Points maintained by the CDSP) shall be owned by the relevant Gas Transporter. This might be based on an assumption that Transporters control Xoserve which has not been the case since Xoserve governance changed in 2017 or it may be a transfer of provisions based on the electricity arrangements.

Whatever the reason, we are not clear what “owned” means. We don’t think that it refers to the metadata owner. We also do not think that it relates to the roles of data controller and data processor because these are determined by the Data Protection Act 2018. If it refers to some guarantee of accuracy by the Transporters, then this seems to contradict Clauses 13.20 and 13.21 because we do not see how a Shipper can grant a licence and give an indemnity if it does not own the data. Alternatively clauses 13.20 and 13.21 may only be intended to operate where the Shipper does not sign a REC Service User Access Agreement. We cannot believe that this is the intention because to change the ownership of data on the basis of whether another party does or does not sign a contract would be a strange approach. Making Transporters own data in the CDSP systems contradicts the arrangements in the UNC itself which means that the REC is imposing obligations on Transporters that conflict with arrangements in the Code from which the data is sourced.

At best 13.19 (b) is unclear and at worst it seems to impose wide ranging liabilities on Transporters. If the REC wants some assurance that the Services Data held within the Central Gas Register and provided to REC Co under various CDSP service obligations is accurate then

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Registered Office:
Wales & West House, Spooner Close, Celtic Springs,
Coedkernew, Newport NP10 8FZ
Registered in England and Wales number 5046791

a clause requiring the CDSP to warrant that the data is a reliable copy of data held by the CDSP is appropriate.

The Data Access Schedule seems to have been written based on the structure of the electricity industry and insufficient thought seems to have gone into whether it works for gas. There seems to have been a fundamental unstated assumption that **all** Shippers will sign up to use GES even though they have no obligation to do so. Not all organisations have both Suppliers and Shippers that are the same legal entity, some organisations have separate legal entities for Supplier and Shipper functions and some Shippers ship for third party Suppliers.

There may be several potential solutions to these problems including:

- resolving the lack of clarity in 13.19 (b) and replacing it with a warranty on data accuracy from the CDSP and REC Co acquiring the liability in the case where a Shipper has not signed a REC Service User Access Agreement to use GES; or
- requiring Shippers to sign a REC Service Use Access Agreement to use GES, or to become parties to REC; however, this was rejected early in the design of REC; or
- removing the concept of Shipper and aligning the Supplier role in gas to that in electricity; however, this radical solution would need careful consideration of the direct and indirect consequences; require primary legislation and could not be achieved in the time available

WWU's preference would be to continue to access data by using services under the Data Services Agreement between Xoserve, Shippers and Transporters. We do not see this in anyway conflicting with the purpose of the REC GES service which will improve access to data for non-UNC parties.

Finally, in addition to agreeing that the access to data within GES should be governed under the provisions of the REC, we also wish to make clear our view that access to data within any service provided by any industry code should be governed under the provisions of that code.

Addendum to consultation

The Ofgem website lists "Addendum to REC v3.0 consultation: Consequential changes to codes in the Switching SCR" ¹, however, for the UNC and IGT UNC, this gives the text for the Retail Code Consolidation Significant Code Review that relates to REC 2.0, it is not the text for the Faster Switching Significant Code Review that relates to REC 3.0.

We agree that the UNC text for the Retail Code Consolidation Significant Code Review (REC 2.0) is suitable.

Our comments on the text for Faster Switching Significant Code Review (REC 3.0) above is based on the text shared with industry by Transporters. Our understanding is that the Faster Switching Significant Code Review text for the UNC has not been published, by Ofgem, for industry consultation.

¹ <https://www.ofgem.gov.uk/publications/addendum-rec-v30-consultation-consequential-changes-codes-switching-scr>

Find my Supplier service

Although not directly related to GES we think it would be sensible for the “Find my Supplier” service to be delivered under REC, under a new schedule, as it is clearly a retail market function for the benefit of Suppliers’ customers. Currently this service is provided by Transporters under Standard Special Condition A31 for DNs and equivalent provisions for IGTs. With REC 3.0 coming into effect in summer 2022, it would be sensible to move this service so that it is provided by Suppliers. This migration will need to be coordinated with appropriate changes to Transporter licence conditions.

Yours sincerely,



Carly Evans
Head of Regulation
Wales & West Utilities

Attached: REC v3 consultation response template WWU

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