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Dear Rachel,

Retail Energy Code: Technical Specification approach consultation

Thank you for the opportunity to respond to Ofgem's latest Switching Programme consultation.

We have reservations regarding the release of Data as defined in the Data Access Schedule and REC Main Body. Our concerns, in the main, relate to governance of UNC data under the REC and Xoserve's provision of data under instruction from the Code Manager. Our concerns relating to Xoserve's provision of data may be addressed under the contract between RECCo and Xoserve for the provision of the Gas Enquiry Services, however this is yet to be agreed.

Our concerns relating to governance of UNC data under the REC centre around the limited opportunity for UNC Data Masters to be consulted on when there is a change to UNC data items within the Data Access Matrix. We feel that there should be a requirement upon the Code Manager to consult with the relevant Data Master in order to fully assess the release of UNC data items to a non DSC party.

These points are further detailed within our response to question 2.1 in Annex 1.

Annex 1 contains our responses to the consultation questions which are pertinent to our current role as the gas industry Central Data Services Provider (CDSP) and our future roles as envisaged by the REC proposals.

We also highlight that a number of the schedules are subject to changes under the Programme, which has limited our ability to fully review the documentation. We appreciate that given the scale of the project there will inevitably be change, but we would expect that the impacted schedules and documents are recirculated once the change process is concluded.

In particular, we highlight that CR-D059 that has been assumed as approved within the current drafting of the Switching Data Management Schedule. This change has been placed on hold for a considerable period during this consultation. This has led to uncertainty as to the drafting of the documentation and a clarificatory design document has only recently been issued. We also believe that the Schedules are drafted inconsistently with the Change Request which has added further uncertainty in the review. We are opposed to the proposal that the Energy Company data is mastered across all Market Roles in particular those specific to the UNC and we do not believe that the case for this has been made within the Change Proposal.

We highlight that we have significant comments on the Service Management Schedule, but we welcome the latest position on CR-D0072 where the Incident Response times will be amended. We look forward to seeing these in subsequent versions of this document, and if retained in these documents other Service Definitions.

We appreciate CR-D075 is being progressed and will be determined outside of the scope of this consultation, however we would highlight that it is unclear to what extent this change impacts the documentation that has been reviewed to date. We would also welcome clarification of the definition of CSS Interface Provider.

Annex 2 contains detailed comments on the documents published. As previously stated, we remain committed to supporting the development of these. We particularly draw your attention to instances where reporting requirements are yet to be specified – we would propose that given the stage of the project that these are progressed under change control. This has been particularly visible during the Service Management requirements clarification discussions where several requirements have been indicated that they will be subject to further clarification at a later stage.

We have also provided a marked up version of the Gas Enquiry Service Definition – we believe that this will assist you in your review of the response and we would welcome further discussions on this subject to elaborate the comments. This is attached at Annex 3.

We have not responded to the *REC V3.0 Consultation: Consequential changes to codes in the Switching SCR* as we do not believe the correct documentation has been published. We welcome to opportunity to respond once the documentation has been updated.

We look forward to continuing to work with Ofgem, RECCo, our customers and the wider industry to deliver a successful Switching Programme. In the meantime, if you wish to discuss further any aspect of our response, please do not hesitate to contact me. We are happy for you to publish this response in full.

Yours sincerely

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Annex 1 – Responses to Consultation Questions

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

As currently drafted, it is Xoserve’s opinion that some of the REC provisions that govern access to data within the GES pose some risk to data owners who are not a party to the REC and potentially create a risk to Xoserve in its provision of the service to RECCo.

Xoserve has made previous representations to Ofgem regarding access to gas data under the REC. Detailed comments on the Data Access Schedule; Qualification & Maintenance Schedule (including the Access Agreement appended to the schedule); and the corresponding REC Main Body Clauses, have also been shared with Ofgem as part of the review of these documents in previous consultations. A full list of comments raised is included in the attached template.

Xoserve’s concerns fall into the following 3 categories:

- 1) Governance of UNC data under the REC
- 2) Xoserve’s provision of data under the GES as instructed by the Code Manager
- 3) Further considerations regarding Service Provision

1) Governance of UNC data under the REC

a) Data received by Xoserve in its roles as the CDSP (and in accordance with UNC and IGT UNC) will be made available to the GES in accordance with the Data Access Matrix. Some of the data that will be accessed via the GES will be mastered by non REC parties.

The Data Access Schedule describes a process whereby the Code Manager **may** consult the relevant data master in the event that there is a change to the Data Access Matrix that concerns a data item mastered by a non REC party. The process does not allow for the relevant data master to object to the data item being added to the DAM or being made available to a new organisation being added to the DAM. Xoserve would like to understand how this will work with the IPR provisions set out in Clauses 13.18 to 13.21 of the REC Main Body. Clauses 13.18 – 13.21 of the REC Main Body relate to Services Data. Services Data is the data which is provided by or on behalf of REC Service Users to REC Service Providers under or pursuant to the REC. Each REC Service User in respect of the Services Data provided by it, grants a license 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.

Xoserve would like to further understand the following:

- i) Shipper may not be a REC Service User, but its data is being shared under the REC/Access Agreement by a REC Service Provider to another REC Service User. How is the licence to use that Shipper’s data granted?
- ii) A Shipper does not have any right to reject or approve any shipper data items being added to the DAM. It does not seem reasonable that a shipper may be in a position that it grants a licence to and indemnifies a user in the event of IPR infringement for data that it does not agree is made available. Is this a likely scenario?

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. How does this work with Clauses 13.20 and 13.21? Does this make the GT liable for any 3rd party IP infringement in the event that the Shipper is not a REC Service User? It needs to be made clear how Shipper data is treated when the Shipper is: a) A GES user b) Not a GES user?

DSC Parties have expressed a preference to continue to access gas information services via the DSC rather than the REC. A paper supporting this preference has been drafted by Xoserve with support from DSC Contract Management Committee and shared with both RECCo and Ofgem in June 2021. It

is unclear why Shippers should be required to follow the same application and assessment process as non-licensed organisations in order to access their own data under a different code. The existing process does not require a portfolio shipper to seek permission to access data that it is the 'owner' of under UNC.

b) The Data Access Schedule describes the Enquiry Service User categories and sets out the authorised purpose for each category of Enquiry Service User. Some of these are unclear, as described below:

- i) Price Comparison Websites are not included in the list of authorised users.
- ii) There is no definition for Third Party Intermediary, this organisation type is very wide and without some parameters around who this is intended to be there is a risk that this opens the service to a very wide organisation type. Whilst this may be intentional there should be a more objective 'test' to ensure the user is genuine.
- iii) For each Market Participant Role, other than those required to hold an Energy Licence – for the purpose of performing the relevant Market Role – this is too wide and needs more objective criteria to determine the authorised purpose for use of data accessed.
- iv) For Police Authorities for the purpose of performing their statutory functions. This should be clarified that this relates to the Electricity Enquiry Service only. If Police require access to data to support a criminal investigation this must be requested on an individual basis and the relevant process under the DPA should be followed.
- v) It is unclear why DWP; HMRC; and Police Authorities are listed on the DAM. The purpose of access for these organisation types is 'for the purpose of performing its statutory functions'. If these organisation types require access to data to satisfy a statutory function each request should be assessed individually, and data privacy legislation provides a route for requests to be made.

c) The Data Access Schedule lists 'Research Bodies' as an Enquiry Services User type for gas data only. Research Bodies are currently determined on a case by case basis depending on the data items requested and the specific objectives the research aims to achieve. It is not clear who will approve this request. The Research Body application will include a request for shipper owned data, as such it would be appropriate for Shippers to be involved in the decision making process.

d) Audit Right set out in the REC Main Body (and apply to the Access Agreement on an equivalent basis) are limited to no more than one audit per financial year. RECCo should have the right to audit a REC User if misuse of the service is suspected.

2) Xoserve's provision of data under the GES as instructed by the Code Manager

a) Xoserve will contract with RECCo for the provision of the GES and will provide access to an Enquiry Service User on instruction from the Code Manager.

- i) How will this process work?
- ii) Will notification be provided to other REC parties?

b) The Data Access Schedule describes the process for an organisation to appeal a decision by the Code Manager in the event that its application to become an Enquiry Service User is rejected. However, there is no process for the Enquiry Service Provider to dispute an instruction given by the Code Manager. Is this intentional? If, for example, the Code Manager instructed Xoserve to provide access to an Enquiry Service User in its capacity as a Shipper and Xoserve did not recognise that organisation as a Shipper, should there be a process for Xoserve to challenge this instruction? The contract between RECCo and Xoserve for provision of the GES will need to include remedies to mitigate the risks associated to Xoserve sharing data, on instruction from the Code Manager, with an

organisation who is later determined not to have met the assessment criteria to become an Enquiry Service User.

c) The Data Access Schedule places an obligation on the GES Provider to validate (and at reasonable intervals, revalidate) the Non Domestic Consumer's association with each Metering Point by requesting validation from the relevant Energy Supplier. This obligation must be clearly defined in the contract between Xoserve and RECCo for GES provision.

3) Further considerations regarding Service Provision

a) Each Enquiry Service User is authorised to access data from the Enquiry Service and to use that data, only for the specific purpose described in paragraph 5 of the Data Access Schedule. There does not appear to be any restriction on how the data is accessed. The Data Permissions Matrix (UNC) is supplemented by the DPM Conditionality Document which further describes any limitations on how a user may access data as permitted. For example, some organisations are only permitted to access data via an API and do not have permission to use DES. There is reference in the Data Access Schedule to other conditions [of access] being included in the DAM where applicable, to what extent will any conditions of access be described?

b) The Data Protection provisions in both the Data Access Schedule and Access Agreement (appended to Qualification and Maintenance Schedule) are drafted on the basis that an Enquiry Services User will always be a data controller of the data that it accesses through the Enquiry Services. This may not always be true, there may be circumstances where the Enquiry Service User is data processor. For example, if an Enquiry Service User is viewing data via the online portal and not downloading or consuming data for onward use they may be considered a processor.

Clause 19 of the REC Main Body sets out the obligations of a party when it is a controller (whether independent or joint); it must be clear in the relevant schedules where a party is acting as a processor; independent controller; or joint controller. The following also need to clear; who will be responsible for responding to a DSAR? Who will be responsible in the event of a data security incident or data breach (whether reportable or not)? Who will be responsible for responding to a complaint? The data protection legislation requires these responsibilities to be clearly set out in contracts between controllers and processors.

Clause 20 of the REC Main Body sets out the obligations of a party when it is a processor but only assumes that either CSS Provider or RECCo (or REC Service Provider on behalf of REC) will be a processor. Xoserve will be a REC Service Provider but will not be a party to the REC; obligations on the REC Service Provider must be set out in the relevant contract between RECCo and the REC Service Provider. Clause 20 should also provide for REC Users who are processors rather than controllers.

c) Regulatory responsibility for the accuracy of data provided in the Enquiry Service rests with the data master for each data item (as set out in the Data Specification). What is meant by 'Regulatory responsibility'? Presumably this means that neither the Enquiry Service Provider nor the data masters warrant the accuracy of the data provided in the Enquiry Service.

d) There is a discrepancy between the Data Access Schedule and the GES Service Definition in relation to Volume Restrictions. The current process aligns with the description set out in the GES Service Definition.

Question 2.2: Do you agree that suppliers should be required to de-activate a registration following termination of an RMP within 10 working days? If not, what would be an appropriate timeline?

Under the UNC, parties may effect isolation at a Supply Meter Point which will have the effect of setting the RMP status to Dormant and enable a Deactivation under the REC. Currently within the

UNC, once a Supply Meter Point is isolated the Shipper may withdraw from the Supply Point – which is the equivalent of Deactivation. Under the current processes Shippers chose not to undertake the withdrawal processes despite being liable in such instances for Capacity charges. We understand that they take this course of action for a number of reasons within UNC, notably in order to ensure that future Capacity requirements are retained.

Under the UNC a Dead Meter Point (which would equate to a Terminated RMP) may be set back to Live, in which case the Shipper may also not wish to de-activate the registration.

It is unclear why this proposal is specifically being made, as such placing an SLA on Suppliers obliging them to submit a Deactivation seems inappropriate as this may impact Shipper activities within the UNC.

Annex 2 – Detailed Comments on the Appendices / Annexes



REC V3 Schedules
and Service Definition

Annex 3 – Gas Enquiry Service Definition



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