

DCC, REC Board, REC Parties and
other interested parties

Email: industrycodes@ofgem.gov.uk

Date: 21 May 2024

Dear Colleague,

**Decision to dismiss an appeal by the Data Communications Company (DCC)¹
against the decision of the Retail Energy Code (REC) Board to approve the
2024/25 Retail Energy Code Company (RECCo) budget.**

On 6 March 2024, Ofgem² received an appeal from the DCC against the decision of the REC Board to approve the RECCo budget for 2024-25.³ Having considered the arguments and evidence submitted by the DCC and RECCo, we have decided to dismiss the appeal. This letter sets out the reasoning for our decision.

Background

Clause 9 of the REC Main Body document requires the REC Board, in advance of each financial year, to prepare and consult on a strategy setting out the key activities which RECCo expects to carry out during that year.⁴ Alongside this strategy, the REC Board is also required to consult on the indicative costs anticipated to be incurred by RECCo in delivering the strategy. Following consultation, the REC Board is required to consider any responses received, and then agree its final annual budget.

In accordance with the REC, Energy Suppliers are liable to fund the costs incurred by RECCo in accordance with the approved budget, and any underspend for that year against the budget is credited back to Energy Suppliers following the end of each financial year.

¹ DCC, or 'Smart DCC Ltd', is the legal entity that is the holder of the Smart Meter Communication Licence. It operates under the conditions of its Licence and is regulated by Ofgem.

² References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day-to-day work.

³ The appeal was made in accordance with Clause 9.7 of the REC Main Body document.

⁴ REC documents are available via the REC Portal: <https://recportal.co.uk/recportal>

Any REC Party may appeal the decision of the REC Board to approve the budget to the Authority. Any appeal must be specific to one or more individual cost items in the budget, meaning that an appeal cannot be raised against the budget as a whole.⁵

Appeal to the Authority

On 6 March 2024, the DCC appealed the decision of the REC Board to approve the RECCo 2024-25 budget. The appeal specifically relates to the 'CRS Transfer' cost item, which is a cost item in the budget relating to the initiation of a project exploring the possible transfer of Central Registration Service (CRS) obligations from DCC to RECCo. The DCC considered the £420,000 provision for this cost item to be a "manifestly disproportionate" figure for the activity in question.

Our decision

We have considered the issues raised by the DCC in the context of the eligible grounds for appeal in this matter, as set out in Clause 9.8 of the REC Main Body Document. We have also had regard to our principal objective and statutory duties.⁶

We have concluded that none of the eligible grounds for appeal have been satisfied in this instance, and we have therefore decided to dismiss the DCC's appeal.

Reasons for our decision

We have assessed the appeal against the four appeal criteria set out in Clause 9.8 of the REC Main Body document. A summary of our assessment against each criterion is set out below.

(a) That the cost item in question was not consulted upon in accordance with Clause 9.2 or the REC Board failed to have reasonable regard to the consultation responses submitted

The cost item, and associated cost, was included in RECCo's consultation on its 2024-25 strategy and forward work plan, which was published on 15 January 2024.⁷ RECCo provided 15 working days for comment, in line with Clause 9.2 of the REC Main Body document.

⁵ In accordance with Clause 9.7 of the REC Main Body document.

⁶ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989 and the Gas Act 1986.

⁷ <https://www.retailenergycode.co.uk/introducing-our-strategy-forward-work-plan-2024-27/>.

RECCo received one response to this consultation, from the DCC, which in part related to the CRS Transfer cost item. RECCo has advised us that, following receipt of the DCC's consultation response, RECCo undertook an additional round of scrutiny of the allowance attributed to the CRS Transfer cost item. RECCo has also advised us that it wrote directly to DCC following the consultation to confirm that the REC Board had considered the DCC's response. This RECCo response has been shared with us for consideration during our assessment of this appeal.

On 21 February 2024, RECCo published its final 2024-25 budget, confirming that the REC Board had considered the DCC's consultation response, and had concluded that the £420,000 allowance for the CRS Transfer project "meets the objective of protecting customers' interests and is a reasonable estimate, representing <1% of the total".

We are satisfied that the REC Board fulfilled the requirements within the REC to consult on the annual budget. Furthermore, we note the confirmation in the publication of the final budget that the REC Board fully considered the comments raised by DCC.

We have therefore not seen any evidence to suggest that the REC Board failed to have reasonable regard to the consultation response received. Nevertheless, we encourage RECCo to continue exploring opportunities to improve its engagement on its annual strategy and budget, to ensure that REC Parties are able to effectively scrutinise the costs included. Where comments or concerns are raised, we would expect RECCo to continue ensuring that these are appropriately addressed.

(b) That the cost item in question is not a legitimate item of expenditure for the REC Board

In our October 2018 Switching Programme consultation, we stated our intention to keep under review whether the Smart Meter Communications Licence holder, the DCC, should remain the responsible party for provision of the CRS.⁸ We noted that the end of the current Licence Term in September 2025 would provide an opportunity for such a review to take place. We also explained that consideration of any changes would take place well in advance of 2025 to allow enough time for a transition, if necessary. In our DCC review: Phase 1 Decision we confirmed that we do not consider the creation of a separate licence for the switching service to be efficient or necessary.⁹ We also stated that there could be potential benefits of shifting existing switching obligations from the DCC's Licence to

⁸ Switching Programme: Regulation and Governance - way forward and statutory consultation on licence modifications. <https://www.ofgem.gov.uk/publications/switching-programme-regulation-and-governance-way-forward-and-statutory-consultation-licence-modifications>

⁹ DCC review: Phase 1 Decision. [DCC review: Phase 1 Decision | Ofgem](#)

RECCo, including potential synergies, and thus efficiencies, between switching contracts and other RECCo contracts, such as those in relation to the provision of the enquiry services. Finally, we confirmed that we would consult on whether the responsibility for delivery of the switching service(s) should remain within DCC's Licence or be transferred to RECCo.

As part of the assessment of a possible transfer of CRS obligations, it is understood that RECCo, as well as the DCC, will need to undertake additional work to inform Ofgem's consideration of the possible separation of the CRS from the DCC licence and plan for any potential migration of CRS governance to the REC. Based on the evidence provided, we have therefore concluded that the CRS Transfer cost item is a legitimate item of expenditure for the REC Board.

(c) That the cost item in question is a manifestly inappropriate provision for the activity in question, and there are insufficient safeguards in place to ensure that the actual costs incurred will be efficient

RECCo has explained to us that the work that it needs to do to respond to Ofgem's consultation is not the same as the work that the DCC, as the incumbent, would need to do to respond. RECCo aims to set out in its response how it would:

- Transfer the service from DCC;
- Run the service once it has been transferred;
- Deliver cost reductions and benefit enhancements post transfer; and
- Minimise the risk to Ofgem of transferring the service to RECCo.

RECCo expects that, in order to appropriately respond, it would need to establish a fit for purpose multi-disciplinary project team, comprising internal resources supplemented by external expertise as and when required. RECCo has put together what it believes to be an appropriate project scope with distinct workstreams, and its best estimate of the resources required to fulfil them.

RECCo has also provided assurances that the costs quoted are an 'up to' amount and it is possible that RECCo will not utilise the full allowance. In the event of this happening, unspent monies would be returned to funding REC Parties (ie Energy Suppliers) following the end of the relevant Financial Year.¹⁰ RECCo also confirmed that the budget allowance

¹⁰ In accordance with Clause 9 of the REC Main Body document.

only covers the period up to Autumn 2024 and any subsequent costs will be covered by contingency.

Furthermore, we note that, in accordance with Clause 9.23 of the REC Main Body document, the REC Board is required to arrange for the costs it incurs to be audited by an external auditor each year.

Based on the above, and the information provided to us by the DCC and RECCo, we consider that the cost item in question is not a manifestly inappropriate provision for the activity in question. We are also satisfied that there are appropriate safeguards in place to ensure that the actual costs incurred will be efficient.

(d) That the cost item in question will, or is likely to, prejudice unfairly the interests of one or more Parties, or cause them to be in breach of the REC, the Energy Licences and/or Law

In order for appeal criteria (d) to be valid, it must be proven that the inclusion of the cost item in the budget would have the ability to unfairly prejudice the interests of a REC Party, or cause them to be in breach of their obligations under the REC, energy licences or law. We did not receive any compelling evidence from DCC that would support the claim that the inclusion of the CRS Transfer cost item would unfairly affect the DCC or put it in breach of its obligations under the REC, its licence, or any other legal obligations.

The CRS Transfer cost item which has been called into question by the DCC in its appeal has been explained by RECCo to be exploratory in nature and does not indicate or precede any definitive outcome or decision regarding the future of CRS. We do not consider that the inclusion of this cost item unfairly prejudices any REC Party. The decision on the future of the CRS will sit with Ofgem, and will be duly consulted on.

It is worth noting that the DCC is not a funding REC Party, and that any expenditure against the CRS Transfer cost item is unlikely to have an effect on the DCC's operations.

In addition to this, we are unaware of any funding REC Party, or any other party, expressing opposition to either the scope of this cost item or the cost attributed to it during the consultation phase.

We therefore do not consider that there is evidence to suggest or support an assertion that this work will favour RECCo's position in the decision about the future of the CRS. Therefore, our view is that this criteria is not applicable and the evidence provided does not support its use in this appeal.

Additional remarks

We note that the DCC referred in its appeal letter to concerns it has that there could be a potential conflict of interest which it considered may arise from the possibility of RECCo taking on the CRS provision from the DCC. However, these concerns did not form part of the DCC's grounds for appeal against the RECCo 2024-25 budget, nor do we consider that these concerns have been substantiated with compelling evidence. We have therefore not considered these concerns in the context of our decision on this budget appeal. Ofgem's decision on the future of the CRS will be taken separately of our decision on this appeal, and has not yet been made. We will be consulting on proposals for the future of the CRS in due course.

Decision notice

In accordance with Clause 9.8 of the REC Main Body document, the Authority has decided to dismiss the appeal made by DCC regarding the RECCo 2024-25 annual budget.

Melissa Giordano

Deputy Director, Retail Systems and Processes

Signed on behalf of the Authority and authorised for that purpose