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Submitted via email to: [switchingprogramme@ofgem.gov.uk](mailto:switchingprogramme@ofgem.gov.uk)

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## **Switching Programme: Proposed modifications to regulation and governance**

Dear Rachel,

Energy UK is the trade association for the GB energy industry with a membership of over 100 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.

Our members turn renewable energy sources as well as nuclear, gas and coal into electricity for over 27 million homes and every business in Britain. Over 730,000 people in every corner of the country rely on the sector for their jobs, with many of our members providing long-term employment as well as quality apprenticeships and training for those starting their careers. The energy industry invests £12bn annually, delivers £88bn in economic activity through its supply chain and interaction with other sectors, and pays £6bn in tax to HMT.

The comments below represent a high-level industry view, and Energy UK's members may hold different views on particular issues. We would be happy to discuss any of the points made in further detail with Ofgem or any other interested party if this is considered to be beneficial.

Energy UK members welcome the intent of the proposed changes and the aspiration to make the code landscape more consumer focused, supportive of innovation and easier for market participants to understand, access and navigate. The comments below are, therefore, made by exception.

### Duty to cooperate

Energy UK recognises the rationale for a generic licence obligation to cooperate with certain designated programmes and does not object to this in principle. It is important, however, that more detail is provided regarding the circumstances in which this duty to cooperate would be triggered. It would be useful for Ofgem to outline a series of principles that would determine its use and steps that would be taken before this obligation was invoked. This will ensure that there is a clear understanding of how the context of the materiality of the issues and relevant interdependencies would be accounted for in the event that this power was utilised.

While the current wording of the duty to cooperate is focused on licensees, there will be instances where cooperation from third parties will be vital. This is a potential risk to its effectiveness. Energy UK understands that Ofgem will arrange a session to discuss the duty to cooperate aspect of the consultation in more detail prior to September and welcomes this step as a means of ensuring that is framed in the most effective and appropriate manner.

### Supplier Engagement with User Entry Process Testing

Energy UK believes that the perspective of newer, smaller suppliers will be essential in the testing process in order to ensure that innovative models and approaches are accommodated. Our members have, therefore, expressed concern that REC v1 only places a requirement upon "large suppliers" – those with in excess of 250,000 customers – to be ready to enter User Entry Process Testing once it is made available. While it is understood that there needs to be some flexibility according to the size of a

supplier, it is our view that the existing wording of “where appropriate” provides sufficient flex in this area without a need for a specific exemption.

#### Governance

It is outlined in the consultation that the role of the REC Manager will go much further than the current code administrator role and contains a significant level of autonomy. It is important that there are appropriate checks and balances in place given this high degree of autonomy. Energy UK notes that, in addition to the existing suggestion that the REC Manager be subject to periodic performance review by the RECCo Board, there is a need for transparency about who the REC Manager would report in to and how the role would be contract managed.

Our members have highlighted that one potential risk linked to the wide-ranging remit of the REC Manager is that the level of activity being delivered by the REC Panel is less clear and indeed the roles on the Panel may become less appealing to potential candidates as a result.

Energy UK also encourages Ofgem to give consideration to the historic performance of code administrators, where relevant, during the selection process for the code administrator.

With regard to the overall structure of the code, Energy UK believes that it would be useful for further detail to be provided on how it will be managed on a day-to-day basis in order to ensure that it is delivering its duties in a cost-efficient manner. This is particularly significant given the levels of outsourcing involved, the size of these contracts and the associated risk of reduced insight into the costs of key delivery bodies.

#### Wider Code Environment

Energy UK believes that it would be useful for the implementation of the REC to be accompanied by a wider plan of how industry codes will be consolidated and improved in line with the CMA remedy. The REC will set a higher bar for industry codes and a holistic plan for the improvement of all codes would help to mitigate the risk of the creation of the REC resulting in a two-tier code environment.

This exercise would also ensure that full consideration can be given to the question of resourcing and the possible consequences for the level of industry resource that is available to other codes. Energy UK notes that with the changes taking place in the retail market, a review of resourcing would help ensure that the delivery of codes is sustainable in the event that the existing level of engagement from large suppliers does not continue in the future. For example, it would ensure that it is possible to identify where there are roles that are effectively a full-time job and to examine whether it would therefore be appropriate for these roles are established and paid as such.

Yours sincerely,

Colin Brooks  
**Head of Operational Policy**