

Sent by email

Rachel Clark
Switching Programme Director
Consumers & Markets
Ofgem
10 South Colonnade
Canary Wharf
London
E14 4PU

31st July 2018

Dear Rachel,

SWITCHING PROGRAMME: PROPOSED MODIFICATIONS TO REGULATION AND GOVERNANCE

Thank you for the opportunity to respond to your consultation on the 'Proposed Modifications to Regulation and Governance'.

We agree with the overall approach and thrust of your proposals. We have provided responses to specific consultation questions within the attached Annex, however there are four particular aspects we wish to draw out and highlight for your attention:

1. Governance – a new way: the proposals need to be ambitious and enabling so that the Retail Energy Code (REC) can deliver against its vision of being 'best in class'. We question whether the proposals have yet gone far enough to facilitate a 'best in class' outcome;
2. Programme Plan: it is important to ensure the different responsibilities and accountabilities are clear and unambiguous. All governance bodies need to be working towards a consistent REC vision, and we query whether the current proposals are adequate in this regard;
3. Performance Assurance: for a smooth industry transition from the old to the new, a set of assurance framework principles should be put in place from day one; and
4. Data Governance: without a single retail energy data governance approach under the REC, we will continue to be plagued by the difficulties associated with data inaccuracy and inaccessibility, we recommend that the REC Manager undertakes a comprehensive data assurance review.

Governance – a new way

We are encouraged and very supportive of Ofgem's plans to steer the new REC development to a different, more accessible and customer centric code. We support Ofgem's aims to make this code the 'best in class' and to give consideration to how the code will be used by all parties, but particularly market entrants and innovators that have struggled with existing codes.

Gemserv Limited - Registered in England and Wales. No. 4419878

8 Fenchurch Place, London, EC3M 4AJ

T: +44 (0) 207 090 1000

F: +44 (0) 207 090 1001

W: www.gemserv.com



However, there is a risk that the REC simply becomes yet another code, noting there may be resistance to change from some. We therefore believe it is extremely important the REC delivers against a number of key design principles from the outset: transparency, accessibility, consistency, simplification and coordination. More recently, we made the case for a totally new approach; the REC could cease to be a physical code altogether, becoming embodied as a set of digitised rules, intelligently laid out and customised to reflect the variety of risks to which the different retail market participants expose the market¹. Market engagement as we know it today for the retail sector could be unrecognisable and totally transforming.

Ofgem might wish to consider:

- (a) The overarching governance and responsibilities, and how to ensure that in bringing clarity, they do not unintentionally create competing objectives. The Panel, Board and REC Manager need to act as 'one', i.e. be capable of driving towards the same goals and ambition. How this will be done needs to be set out as robust REC Objectives that guide all three bodies. For example, the REC Manager will be expected to drive forward strategic change and could be frustrated from doing so, if the other governance functions think and/or behave differently.
- (b) The REC Manager should be put in place as early as possible, i.e. at least for the duration of REC Version 1 (REC v1). The REC Manager will ensure that the 'REC Vision' can be moulded from the outset, assist with programme coordination, and undertake the REC development drawing on its governance and market expertise.
- (c) REC v1 should be as 'thin' as possible, i.e. to provide a vehicle for the Board, Panel, and REC Manager to instigate the necessary development work. This should speed up the consolidation of retail responsibilities from across the various codes (e.g. MRA and SPAA)² and ensure that the relevant knowledge and understanding is built up as early as possible to make the REC a success.

Ultimately, effective competition and customer engagement will bring customer benefits and the REC will have an important role to play. We are pleased that the expertise and experience, within the bodies that support codes, has been recognised. This should alleviate some of the participation burden that falls on parties currently. That said, with the right direction and vision, more use can be made of technology, data and digitisation to help alleviate the burden for all REC Parties, transforming REC governance for the benefit of all.

Programme Plan

The Central Switching Service (CSS) is planned to go live at the end of 2020. The CSS delivery is on the critical path, but limited consideration appears to have been given to whether the 'governance – new way' aspiration can also be delivered within that same timescale.

The Switching Programme governance presents an enormous opportunity and it is important that it is not squandered in favour of meeting system delivery deadlines. It is important that the governance and system delivery be closely aligned and that their mutual importance is recognised. We should avoid compromising the development of good governance due to time constraints which might drive a 'lift and shift' approach of governance from other codes in order to save time. Hence, we believe a 'thin' version for REC v1 and the early appointment of the REC Manager will help mitigate this risk.

¹ [Modernising Energy Governance – A Golden Opportunity](#)

² Master Registration Agreement (MRA) and Supply Point Administration Agreement (SPAA)



Performance Assurance

The performance assurance regime needs to be ready to embrace new and innovative ways of working, and to exploit the power of data and technology. It should not feel slow, lumbering and reactive.

We are therefore disappointed that greater emphasis has not been placed on performance assurance within the consultation and that the assurance design principles are not further developed at this stage. It is important that all parties understand what is expected of them as we move forward, so that the performance assurance development under the REC can be appreciated, i.e. the REC is provided with the opportunity to devise a more targeted/proportionate/risk-based methodology.

We also question whether it is right to specify traditional approaches to monitoring reports at this stage, rather than empowering the REC Manager to take this forward through consultation. We believe this would enable the REC to be more progressive, and better targeted, making use of data and technology to deliver a more focused and responsive 'finger on the pulse' approach, enabling early and speedy interventions when required.

Data Governance

To harness the power of data for both customers and industry parties, there needs to be a comprehensive review of how and by whom data updates are made, its accessibility and its movement within the industry. Energy data accuracy is perceived as a weakness and as the governance for retail data is considered within the REC, we believe there is an opportunity for change. Understanding the incentives and identifying appropriate targets for data updates is complex. New data protection legislation, designed to protect consumers, must not become a barrier to customers accessing their data and the market.

For these reasons, we advocate a comprehensive data review, done early in the programme to inform the governance model as it is developed. This could be one of the first tasks performed by the REC Manager.

We hope you find our comments useful. If you have any queries or require clarification on any aspect, I would be very happy to expand and discuss these further.

We look forward to supporting you and the programme as we work to turn the vision of a 'new way' in governance into a reality. We have facilities in central London that are at your disposal for programme meetings (face to face or dial-in, with screen sharing facilities) if that would also be helpful.

Yours sincerely,

Anne Jackson

Principal Consultant, Gemserv



Annex

Chapter 2: Transitional requirements

Q2.1: Do you support our proposal to introduce a high level duty upon licensees to cooperate, where appropriate, in delivering the outcome of a significant Ofgem-led programme, such as a SCR?

We agree that a licence condition (i.e. a strong incentive) will be required to provide the necessary impetus for parties to move into mobilisation and deliver their part in the programme.

However, we have the following comments to ensure that the programme's key outcomes are met and sustained going forward:

- We believe the use of the word 'cooperation' does not have a distinct enough definition to provide the strong incentive needed;
- We suggest a licence incentive that focuses on the outcomes on which parties' co-operation might be expected to be the focused, as an alternative; and
- We suggest that parties should also be required to share when they are experiencing delivery difficulties, due to the dependences that parties have on each other in terms of specifications, data cleansing, testing and data sharing.

The programme must not just transition 'switching', but deliver a sustainable model that will be the base for the enduring solution going forward.

Q2.2: Do you agree that the RECCo should be established earlier than REC v2 in order to assist with the successful delivery of the Switching Programme?

Yes, and we agree with the benefits identified in the consultation:

- Support the governance 'cross-over' from the transitional REC and programme governance to REC v2 and the 'business as usual' governance;
- REC parties or their representatives can have an active part in the programme governance; and
- The REC Manager can be procured to provide support to the programme and to facilitate the Significant Code Review (SCR) phase.

Until the REC is in place, some aspects of support can be fulfilled through the MRA and SPAA governance. However, gas and electricity governance are separate currently and the longer this continues, the more risk there will be to the dual fuel ambitions of the new REC and its content. Consequently, we support the establishment of RECCo as early as possible to assist with the programme and the enduring REC v2 governance and thereby limit this risk.

Q2.3: Do you agree that the bodies constituted under the REC could suitably play a formal part in the programme governance?

Yes, we agree.

We believe that the bodies constituted under the early establishment of RECCo (such as the REC Manager or a Performance Assurance body, for example) could play a formal role in the programme governance and believe that the programme would be better for their involvement.



Q2.4: Do you agree that our definition of ‘large supplier’ in REC v1 is suitable for ensuring an adequate level of engagement with User Entry Process Testing?

Yes, we agree. This definition falls in line with established thinking.

However, as we go deeper into our research into ‘Modernising Energy Governance’, we might wish to revise our view, particularly as we consider the impact of risk. Our early work can be found in the first of planned series of thought leadership papers (Modernising Energy Governance: A Golden Opportunity³).

Q2.5: Do you agree that it would be appropriate to have in place interim governance arrangements prior to REC v2 coming into effect?

We agree that interim governance arrangements prior to REC v2 coming into effect would be appropriate.

Chapter 3: REC Governance

Q3.1: Do you agree with the proposed powers and functions of the RECCo Board, REC Panel and REC Manager, and how they would be distributed amongst them?

It is important to ensure that the REC is agile and forward looking. Consequently, the clear demarcation of responsibilities and accountabilities will be critical, as will enabling powers. We therefore broadly agree with Sections 3.11 (RECCo Board), 3.14 (REC Panel), Section 3.15 (REC Manager).

Ensuring the three bodies can work as a whole, without compromising each other, will be critical. For example, the REC Manager may not be able to satisfy its obligations if funding via the RECCo Board is inadequate and/or withheld under the REC budgetary process.

Consequently, the legal drafting should ensure there are adequate duties to act, clearly articulated and an overarching responsibility by all concerned to meet clearly articulated REC objectives.

Q3.2: Do you agree with our proposal that independent Non-Executive Directors (NEDs), potentially from outside of the energy industry, should be present on the RECCo Board and that the composition of the RECCo Board should be subject to thorough review, both periodically and/or whenever the scope of the REC/RECCo Board responsibilities changes substantively?

We broadly agree. However, the composition of the RECCo Board should be subject to thorough review at regular points, and not be tied to whenever the scope of the REC/RECCo Board responsibilities change substantively.

We support the wide diversity of thought and the added value brought by different expertise and experience, through the Non-Executive Directors. The Board should concentrate on the business of the REC Company and its success in meeting its objectives. Consequently, the articles of the company will be important and careful consideration given to what these should be.

We have a concern that any RECCo Board, REC Panel and REC Manager could work in isolation from each other. The scope of the Board needs to ensure that their decisions do not conflict with the responsibilities and objectives of the REC Panel or REC Manager. It is important that the three complement each other and work together as a whole, to bring balanced outcomes for the ultimate benefit of consumers.

³ [Modernising Energy Governance – A Golden Opportunity](#)



This will require careful consideration of the RECCo Board’s scope and responsibilities, otherwise, this could frustrate the REC’s evolution, should some RECCo Board members avoid material industry changes that then impact the RECCo Board responsibilities. The RECCo Board should provide oversight to ensure that company objectives and outcomes are being delivered, without being concerned about the detail. The operational detail and practical application of energy governance in the sector will be the responsibility of the REC Panel, supported by the REC Manager.

Q3.3: Do you agree with the proposed composition, powers and functions of the REC Panel?

Yes, subject to responses above and how the different powers and functions interact with each other across the three: RECCo Board, REC Panel, and REC Manager.

The model and the balance of responsibilities must be designed with an expectation of adapting due to the expected evolution of codes.

Q3.4: Do you agree that there should be entry and systems testing requirements placed on new entrants, comparable to those that we expect incumbent suppliers to undergo as part of the transition to the new switching arrangements?

Initially yes, but we expect this position to evolve as this requirement could be perceived as a barrier to entry.

We believe that considering entry requirements will be an important role for the REC Manager. A proportionate risk-based approach might provide the assurance levels required for example. We believe, therefore that these requirements should not be ‘locked’ into the code in a way that hinders or prevents evolution.

Again, we might wish to revise our view, as we consider the impact of risk through our research into ‘Modernising Energy Governance’. Our early work can be found in the first of planned series of thought leadership papers (Modernising Energy Governance: A Golden Opportunity⁴).

Chapter 4: REC Content

Q4.1: Do you agree with the proposed minimum content for REC v2 (as listed in Appendix 3)? Is there any other content we should consider for inclusion in REC v2? If yes, please provide further details.

We understand that the MRA has provided input and no omission has been identified.

Q4.2: Do you agree with our proposal that the REC Code Manager should collate Switching Domain Data and make it available to Market Participants?

Or do you consider that the Data Master for each element of Switching Domain Data should make it available to Market Participants?

Much of the Switching Domain Data will have legal consequence (such as contractual relationships, sanctions, trading circumstances) and there will need to be real time updates in order to minimise risk to parties. For this type of data, it would seem more efficient and timely for the Data Masters (the party ultimately responsible for the data content) to communicate important time bound changes to the relevant parties that need them directly. This would avoid miscommunication or delay.

⁴ [Modernising Energy Governance – A Golden Opportunity](#)



However, we do see a role for the REC Manager in collating the Switching Domain Data in one place for reference purposes, on the assumption that the Data Masters are required to make updates to agreed timescales, so that data remains accurate and pertinent.

Q4.3: Paragraphs 4.20-4.24 suggest that the DCC should be subject to a data quality objective and performance standards around the quality of REL Addresses. Do you have suggestions on the quality measure areas and levels quality measures will take? Do you believe that the REC Panel should have a role in setting these targets (initially and/or on a periodic basis)?

Data access, accuracy and integrity is fundamental to the smooth operation of switching and the smart energy revolution. There should be a wholesale review of how data is updated and managed for the development of the REC governance, as experience to date indicates that this is a current weakness.

We are concerned that a data quality objective might be placed on a party that is not actively using and experiencing the data quality. In reality, the parties using the address data, most likely metering service operatives and suppliers, will be aware of the failings of addresses, but we do not see what incentives there will be on these parties reporting their observations. Consequently, there must also be obligations on other parties to fulfil their part in achieving data accuracy to ensure the data quality circle is completely joined.

If the mechanism is not there, putting the obligation on any party will not remedy or improve the issue. Rather it will destine that body to failure and customers to continued switching failings, caused by address data quality as an example. This should be one focus of the review.

The area is extremely complex. Understanding the incentives on parties, initially identifying appropriate targets and duties could be a job for the REC Manager during the programme. The work once adopted, can be reviewed on a periodic basis and could become the responsibility of the REC Panel.

Q4.4: Paragraph 4.25 outlines that the REL Address data quality indicator is currently intended to be an internal measure for the CSS. Do you believe there is value in making this available to other market participants? If so, please provide your rationale for this and outline which market participants should have access.

We do not see any benefits in the quality indicator being generally available, but we do think that the REC Performance Assurance body should have visibility.

We would expect the Performance Assurance body will have some responsibilities for providing assurance around data quality as part of their role and it is also possible that the Performance Assurance role will be able to advise on where governance should be added or changed in order to improve observed performance outcomes.

Q4.5: Paragraph 4.25. suggests that the DCC should set out the methodology it will apply to meet the REL Address data performance standards on an annual basis. Do you agree that it would be beneficial to make this methodology publicly available?

How the quality of address data is managed should not be taken in isolation, from data as a whole.

We commented above in response to Q4.3, there is need of a comprehensive review of how data is updated and managed for the development of the REC governance, as experience to date indicates that this is a current sector weakness.

Making decisions without a review could 'lock in' governance that prevents future thinking and the evolution of data quality. We believe that this review could be performed by the REC Manager, as soon as possible after



their appointment, so that the outcomes can be used to inform the development of REC governance in the data sphere.

Q4.6: Do you support the creation of an Enquiry Services Schedule in REC v2? If so, which of the options around the requirements (in paragraph 4.32) do you prefer? Please provide details to explain your answer.

We need to be cognisant that the REC will be designed to simplify the code landscape for new entrants and innovators and will bring fragmented processes and arrangements into a single governance space. Both options 2 and 3 would not meet these criteria. Option 1 does have the ability to fulfil these requirements.

The consultation indicates that there are non-switching data items within Data Enquiry Service (DES), provided by and owned by shippers. As shippers are the conduit for all supplier data as well as their own and in the majority of cases, the original source of all data is based on information provided by customers, it is important that the data is governed in the REC, which is focussed on providing and supporting the best service to customers.

To simply leave it where it is today would be a missed opportunity and a decision that may constrain us in the future. We would advocate the governance of all retail data to be held within the REC. Where data is used for dual purposes, i.e. retail and settlement governance, it should still be under the retail code. Data items that have no impact on any retail processes or arrangements should be governed wherever it is appropriate.

We should also be careful to understand the link between the separate entities of governance of data and governance of systems. The development of systems such as the Electricity Central Online Enquiry Service (ECOES) and DES, and of the Market Intelligence Service (MIS), should not be hampered by the bureaucracy of data governance under differing codes. Consequently, we support bringing the governance of all retail data (not just switching data) under the governance of the REC.

By fragmenting both the governance of enquiry system architecture and the data contained within the enquiry system, we are in danger of stifling innovation in this space.

We would also support the REC Manager providing data protection oversight for the REC, providing advice on data protection and the appropriate application of data protection legislation in energy governance and systems. The ultimate purpose being to facilitate customers or their nominated agents in accessing their data.

Q4.7: Do you agree with our proposal to create a REC Exceptions Schedule to be contained in REC v2, with the scope outlined in Figure 3? If not, please provide further details.

We agree that exceptions processes should form part of the REC but have concerns that a single, exceptions schedule will become a 'bucket' for various retail arrangements that do not fit naturally in any of the other REC schedules. As we consider the REC, a new 'best in class' code, this is not a creative solution.

Also, we are moving towards a digitised approach for the code and its processes and would not expect this approach to assist with navigation. This could make the code complex to engage with, especially for new entrants.

One suggestion, as an alternative, is for customers and new market entrants to reference an appendix describing common 'problems and issues'. This could assist in understanding the industry language used to describe these events and where the governance for the solutions sit within the code, rather than setting out an exceptions schedule per se.



We believe that the right approach would include setting down some delivery principles for the REC reflecting the 'new way', to drive reform and improve the retail market experience for consumers. This issue requires further thinking and would benefit from the contribution of the REC Manager.

Q4.8: Do you agree that the grey areas highlighted in Figure 3 should be out of scope of an Exceptions Schedule for REC v2? If not, please provide further details.

Unfortunately, this question and diagram implies that the REC is 'lifting and shifting' obligations from the MRA and SPAA. In recent years, the MRA and SPAA have frequently required change to address issues. If the industry does not take the opportunity to properly review the code content, then it is difficult to conceive of a new way forward with less obligations, facilitating new entrants and innovators and a consequential step change in the service to customers.

We therefore refer to our response Q4.7 above.

Q4.9: A list of suggested content for a set of REC Technical Documents can be found in section 4.44. Do you believe that any of the content listed is unnecessary or is there any content that you would expect to be included?

If so, please provide details.

We believe that there should be a document holding the CSS Requirements Specification and that might reasonably incorporate the CSS Interface Document, on the basis that the contents of the Interface Document are most likely to have been derived from the Requirements Specification. This would complete the technical document suite for the enduring REC. We also think that the Business Process Models (Abacus Extract) should also sit within the Requirements Specification and not as a separate REC subsidiary document as suggested in the consultation (reference Q4.10)

However, if the technical document suite is also required to support transition, then the following additional technical documents would be required; migration, data transformation and the implementation plan.

Q4.10: Do you believe that table 1 captures all of the items that should become a REC subsidiary document? If not, please provide details of the additional items that should be included and why.

We believe the RECCo Articles of Association, the REC Framework Agreement, the REC Accession Agreement and the Escrow procedure if relevant should all be REC Subsidiary Documents in the enduring REC.

We do not believe the other documents should be subsidiary schedules as most are transitional documents, which are required as reference documents for and stored within the programme. At the end of the programme, the REC Manager could hold the documents in case there is ever a need to reference them. The CSS Procurement documentation should not be in the public domain and should only be available to the parties who conduct any future procurement.

Q4.11: Do you believe we have assigned the correct responsibility for producing each REC subsidiary document? If not, please provide further details.

It is not clear what might be envisaged under the 'Outstanding Issues' Product / Document and it's therefore unclear why the DCC should be responsible for producing it. We believe that 'Outstanding Issues' might be identified by a number of roles or parties within the programme and as such this document should be held and administered by the Switching Programme / REC Manager. We would expect the DCC to be a contributor amongst others.



Chapter 5: The DCC licence

Q5.1: Do you agree with the role we have set out for DCC during the DBT phase and steady state operations? If not, why not?

No comments.

Q5.2: Do you believe that our proposed drafting to amend LC 15 of DCC's licence would, if implemented, accurately reflect our expressed intentions? If not, why not?

No comments.

Q5.3: Do you agree with our proposal to add new CRS specific price control terms. Do you think any of these terms are unnecessary or are there other terms we should consider adding?

No comments.

Q5.4: Do you agree with the high-level programme outcomes we believe the programme should look to incentivise? Can you suggest further areas we should look to include and are there aspects you believe should be prioritised?

We remain concerned about the involvement of the DCC as a central player in two major energy delivery programmes. Both are central to the delivery of major benefits to consumers. The Smart Programme governance did not anticipate a second resource intensive programme being run in parallel, with the DCC being a major stakeholder in both.

As such, we believe that the Switching Programme governance and the new DCC licence conditions should be impact assessed for the possible consequences on the DCC's responsibilities in the Smart roll-out and enduring solution. It is important that any changes to the DCC's governance will ensure that they remain focussed on both programmes appropriately and that there is no incentive or commercial driver to divert effort between the programmes.

Chapter 6: The SCR process

Q6.1: Do you agree with the changes that we propose to make to the scope of the Switching SCR?

No comments.

Q6.2: Are there any further changes that you consider we should make, either to bring something into scope, or to explicitly rule it out of scope?

No comments

Q6.3: Do you agree with our proposed approach of publishing the drafting of all SCR related changes circa Q1 2019, but waiting until systems have been proven through testing before submitting the proposals into the modifications process?

We welcome the principle of publishing the SCR changes as soon as possible, as this enables all parties to plan their change activities. We would however caution against any material changes to these proposals. Allowing significant change at this stage creates uncertainty and both wasted effort and delay in the implementation of changes.