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Dear Rachel

Response to Ofgem's Consultation on the Switching Programme: Proposed modifications to regulation and governance

Thank you for the opportunity to comment on Ofgem's consultation on the regulation and governance aspects of the switching programme. We fully support the aims of the programme and believe it will bring clear benefits to consumers. Whilst we enthusiastically support the programme, we do have fundamental concerns with the proposed arrangements set out in the consultation.

The Five Principles of Good Regulation, as confirmed by the Better Regulation Task Force in 2005, provide that good regulation is proportionate, accountable, consistent, transparent and targeted. The Task Force has also stressed that regulation must "be balanced and avoid knee-jerk reactions". Whilst it is understandable that Ofgem wishes to learn from the Nexus project, in the consultation, expediency has triumphed over good regulation.

Our primary concern with both the licence modification proposals for distribution network operators (DNOs) is that we cannot meaningfully assess the additional obligations that might arise. We take both in turn below. We enclose detailed responses to Ofgem's specific consultation questions as **Annex 1**.

Duty to cooperate

As proposed, Ofgem's licence condition would place an open-ended duty on DNOs to cooperate with anyone appointed by the Authority in respect of the implementation of an (as yet) undefined category of projects. This is clearly not a proportionate response to any problems that may have arisen on a prior project. To ensure this obligation is workable we suggest that:

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- The projects to which it applies are tightly defined. Absent a proposal from Ofgem that achieves that, we advocate limiting this duty to Significant Code Reviews.
- The cooperation requirement is set out in full in the licence condition (i.e. the list as to what constitutes cooperation is an exhaustive one).
- The licence condition makes it clear when the implementation of the project has concluded and when, therefore, DNOs move to being bound by their contractual obligations in the relevant code rather than the licence condition.
- The licence condition includes a materiality threshold, over which DNOs can recover efficiently incurred costs driven by this new obligation.

Duty to accede to the Retail Energy Code

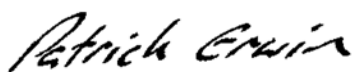
This would place a duty on DNOs to become a party to and comply with the Retail Energy Code (REC) before it has been finalised. All we know at this stage is that the REC would, in the first instance, only contain “basic boilerplate and governance provisions to enable the appointment of a Board, the establishment of funding processes and the appointment of a Code Manager”. And then it would be developed under its own governance.

The consultation fails to make a firm proposal in respect of those governance arrangements. But it seems likely that:

- The REC panel will not be made up wholly, or dominated, by incumbent market participants.
- Modifications to the REC will be tested against the REC Objectives, which do not make any reference to considering the interests of market participants.

In short, DNOs would have to enter into a code that is currently silent on the obligations they would have to meet, without knowing how the code would be further developed, other than that their interests would not be taken into consideration. We do not see how we could accept that. The REC’s governance arrangements should strike a sensible balance between the parties and consumers, and accession should not be required until the code is ready. We note that, in respect of timing, this is what Ofgem proposed in February.

Yours sincerely,



Patrick Erwin
Policy and Markets Director

Annex 1 - Proposed modifications to regulation and governance Consultation Responses

1. This is Northern Powergrid's response to Ofgem's consultation on the proposed modifications to regulation and governance for the Switching Programme.

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?

2. We do not support the duty to cooperate as currently drafted as we have fundamental concerns with its construction. As proposed, Ofgem's licence condition would place an open-ended duty on DNOs to cooperate with anyone appointed by the Authority in respect of the implementation of an (as yet) undefined category of projects. To ensure this obligation is workable we suggest that:
 - The projects to which the duty applies are tightly defined. Absent a proposal from Ofgem that achieves that, we advocate limiting this duty to Significant Code Reviews.
 - The cooperation requirement is set out in full in the licence condition (i.e., the list as to what constitutes cooperation is an exhaustive one).
 - The licence condition makes it clear when the implementation of the project has concluded and when, therefore, DNOs move to being bound by their contractual obligations in the relevant code rather than the licence condition.
 - The licence condition includes a materiality threshold, over which DNOs can recover efficiently incurred costs driven by this new obligation.

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?

3. There may be benefits from establishing the RECCo earlier than REC v2 if this would provide additional benefits in terms of programme management, service procurement facilities and support. However, we could not support this if establishing the RECCo early also required DNO accession to the Retail Energy Code (the "REC") at REC v1. Accession at REC v1 would mean DNOs entering into a code that is currently

silent on all of the obligations they may have to meet and without knowing how the REC may further develop to produce REC v2.

4. This would place a duty on DNOs to become a party to and comply with the REC before it has been finalised. All we know at this stage is that the REC would, in the first instance, only contain “basic boilerplate and governance provisions to enable the appointment of a Board, the establishment of funding processes and the appointment of a Code Manager”. Accession by DNOs should not be required until the REC is finalised.
5. However, it should be possible to establish the RECCo prior to DNO accession to the REC to avoid delays. Consideration should be given to designating REC v1 with a requirement for Supplier party accession only at that time. DNOs would continue to support the programme, including taking up RECCo and REC Panel seats as required and participating in the development of REC v2. DNOs would then be asked to accede to REC v2 once it is complete.

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

6. Yes, noting our answer to question 2.2.

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?

7. We note that the existing exemption for small suppliers is currently a significant distortion of the market. Yes, we agree that the proposed definition of a ‘large supplier’ would ensure a suitable level of engagement for User Entry Process Testing as it utilises the value currently determined in existing codes. However, we believe suppliers may be best placed to answer this question.

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

8. We agree that there may be benefits to the programme in having interim governance arrangements in place prior to the REC v2 coming in to effect, but such interim governance arrangements do not necessarily need to include DNO accession prior to the completion of REC v2. This would not preclude DNO nominated representatives from participating in such arrangements to support the programme as, for example, a ‘prospective party’.

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?

9. Yes, in general, and we appreciate that some of the proposed arrangements have the aim of producing a different sort of code. However, we have an observation on the relationship between the code bodies and a separate observation on the role of the Code Manager in the modification process.

Code Body Relationships

10. We have an observation on the relationship between the RECCo, REC Panel and the REC Manager. We note that that Ofgem envisages 'that the REC Manager's role will go much further than the current code administrator role, being largely autonomous of the REC Panel'. However, we note that the REC Panel's functions include:

e) 'overseeing and evaluating the performance of services and systems providers under the REC, except for the REC Manager, whose performance we propose would be evaluated by the RECCo Board'; and

g) 'establishing and ensuring the delivery of agreed work plans for the REC'.

11. If the REC Manager sees itself answerable to the RECCo and autonomous from the REC Panel, answerable for its performance to the RECCo and is the delivery body for the work plans, there may be conflict where the REC Panel seeks to assert itself for any risks of plan non-delivery. Consideration should be given to whether ensuring the delivery of work plans should instead sit with the RECCo or whether a detailed list should be produced of instances where the REC Manager is answerable to the REC Panel and where it is not. In our view the latter is preferable and a list of the REC Manager's accountabilities, i.e. either to the RECCo or the Panel, should be included in the REC. This can then be reviewed from time-to-time as required to better achieve the REC's objectives.

Code modification process and the Code Manager

12. We support the REC Manager being assigned an objective to address the CMA's concerns regarding the pace and complexity of the modification processes. The REC modification process will need to address these concerns whilst also providing industry parties with adequate time to assess REC modifications and implement associated system and process changes.

13. We have an observation on the change management schedule and the pre-assessment process at paragraph 3. We note that the REC Panel will be required to establish a process to allow potential changes to be considered prior to a formal change proposal being submitted and we agree that this is good practice for all codes. We also note that the Code Manager shall manage the Pre-Assessment Process. However, as the aim for the REC is to create a new sort of code, we think the pre-assessment needs to be considered in more detail as the current provisions as drafted seem weak and subjective as they only 'encourage' (3.2) parties to utilise the pre-assessment process. Clear rules should be established for when a change proposal should be judged to require pre-assessment. The Code Manager should not only be a critical friend to assist parties develop their proposals and ensure sufficient pace of modification proposals, but also be a gate-keeper to stop underdeveloped changes bypassing pre-assessment.

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?

14. Yes, we agree with the proposal that independent NEDs would form part of the RECCo Board. This would bring expertise from other retail industries and should provide perspectives beyond the energy market. However, a lack of energy market knowledge could also hinder those individuals in the translation of principles or potential solutions for change to improve switching and therefore a regular review of the composition of the RECCo Board would be necessary to ensure the Board is operating efficiently and effectively. An appropriate balance of energy industry expertise and independents (on the Board and Panel) will be needed to ensure that innovative change to develop better switching does not de-stabilise industry systems, which are seeing a large amount of change in parallel on a number of different fronts.

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

15. Yes, generally, noting our observations on function g) in our answer to question 3.1.

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?

16. Yes, we agree that there should be entry and systems testing requirements placed on new entrants as part of the transition to the new switching arrangements to ensure that they have appropriate systems

and processes in place to meet the requirements of the REC and, in doing so, do not negatively impact customers of industry parties.

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.

17. We have undertaken an assessment of the content in line with existing codes and we are comfortable with the currently proposed minimum content set out for REC v2, recognising that further detailed work is required between REC versions 1 and 2.

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?

18. Yes, we agree that the REC Code Manager should collate the Switching Domain Data and provide it to Market Participants. Managing the process centrally will ensure consistency and visibility to all relevant parties.

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)?

19. It is very difficult to quantify what the DCC's performance targets should be. As a distributor we maintain the Meter Point Administration Number (MPAN). Our process is to match (where possible) our address data to Address Base Premium (ABP). This process shows us that there will always be a number of records that we are unable to match as our address information references a supply address rather than a postal address. The CRS proposed process adds further complexities in that the REL will include other electricity metering points at the same address and also gas metering points which have a different address format.
20. We believe that quality requirements outweigh quantitative performance and quality measures should be the priority. These quality measures should include sample checks of REL records, review of failed switch requests and REL address change requests received from industry parties should be used as an indicator that address matches are not being made accurately.

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.

21. We believe there is value in sharing this REL address quality indicator with market participants. Given that address data quality may impact customers, suppliers should have access to it, as they have direct contact with customers. The distribution companies would also benefit from understanding the measures to which the CSS is working, to see if this could be replicated in their processes and potentially provide insight to the DCC.

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?

22. Yes, we agree that it would be beneficial to make the DCC methodology on REL Address data performance public for the reasons set out above.

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.

23. Yes, we support the creation of an Enquiry Service Schedule in REC v2 and **our preferred option is option C**. This option allows the UNC to remain intact and does not result in irrelevant DES data items being included in the REC. Although the data items will be split across the UNC and the REL, a single source of reference would assist parties in understanding the requirements.

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.

24. Yes, we agree with the proposal to create a REC Exceptions Schedule in REC v2 in line with the scope outlined in Figure 3.

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.

25. Yes, we agree that the grey areas highlighted should be out of scope of an Exceptions Schedule for REC v2.

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.

26. We do not believe any of the content listed is unnecessary nor do we believe that anything additional should be included.

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.

27. Yes, we believe that Table 1 captures all of the items that should become a REC subsidiary document.

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

28. Yes, we believe the parties responsible for producing each document have been assigned correctly.

Chapter 5: The DCC licence

Question 5.1: Do you agree with the role we have set out for DCC during the DBT phase and steady state operations? If not, why not?

29. No. The DCC has not, as yet, proven itself as a reliable delivery partner that is capable of hitting major milestones and providing a high quality product and, therefore, it should not be receiving additional duties and responsibilities. Indeed, giving the DCC additional responsibilities now might add risk to the Government's Smart Meter Programme.
30. We would be concerned that CRS and CSS activities would act as a distraction and divert the DCC away from delivering current and future smart metering relating obligations.

Question 5.2: 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?

31. Yes. It seems sensible to allow the General Objectives of the DCC's licensee (DCC) to prevail in the event of a conflict with the Interim CRS objective.
32. It also seems sensible to allow the novation/transfer of the CRS to another licensee independent of its smart metering communication service obligations.

Question 5.3: 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?

33. Yes these seems reasonable, although we would welcome clarification in respect of the circumstances where Pass-Through Costs would be allowed and what these costs are likely to include.

Question 5.4: 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?

34. Yes, we agree. That said, we think that it is essential that the lessons of the smart metering programme are learned when it comes to remunerating and incentivising the DCC. Previous incentive arrangements have been based on the DCC hitting certain delivery milestones and it seems to us that there have been occasions where the DCC was wanting to declare milestones as being hit, when it was using a very liberal interpretation of having done so, in order to be able to collect its incentive payment.
35. The incentive arrangements that should be used in the CRS arena should be more subtle and nuanced and not be as simple as 'did the DCC hit a milestone?' There should be clear quality criteria associated with each incentive that will ensure that crudely hitting the incentive target does not count and that, only by hitting the target and delivering an output/outcome that meets both the legal form and substance of what was intended, does it get recognised.
36. At a high level, therefore, the outcomes in 5.43 of the consultation look right. We would suggest, however, adding an incentive around timely and honest communication – i.e. the closer the DCC is to a milestone date, the higher the penalty if the DCC has to concede that it cannot meet it.
37. Also, on the basis of our smart metering experience, there must be much more capacity for the DCC to be financially penalised for missing delivery dates/milestones and for not delivering a quality product. i.e. the DCC must be discouraged to the maximum extent possible from repeating the smart metering experience where everything was late and, even when it was delivered late, it was still of poor quality.

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?

38. Yes we agree with the proposed changes to the scope of the Switching SCR which extends Ofgem's involvement.

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?

39. We have no further changes to suggest to the scope of the SCR.

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?

40. Yes, we agree with the proposal to publish the drafting of all SCR related changes circa Q1, 2019 to ensure they fully reflect the final design.