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Switching Programme: Proposed modifications to regulation and governance - RWE Response

Dear Rachel

RWE welcomes the opportunity to respond to the Ofgem consultation on “Switching Programme: Proposed modifications to regulation and governance” published on 5th June 2017 (the Consultation Document). We are responding on behalf of RWE Supply and Trading GmbH and RWE Generation plc (RWE). This is a non-confidential response.

We only comment on one of the questions in the Consultation Document in this response. RWE’s concern is around the question relating to the proposal to modify electricity and gas licences which obligates licensees “*to cooperate, where appropriate, in delivering the outcome of a significant Ofgem-led programme, such as a SCR*” (Question 2.1). The proposed licence change also introduces a specific requirement “*to cooperate with the Authority or any person appointed by it to undertake any planning, project assurance, coordination or systems integration in order to give full effect to the conclusions of an SCR*” (Paragraph 2.4, Page 12).

In our view, the proposed amendments to the licence are extremely wide, open ended and arbitrary particularly given licensees are already obliged to comply fully with approved Code modifications including those initiated as part of an SCR. Failure to do so may result in breach of a Code and consequent breach of a licence. Given the nature of the existing obligation it is unclear as to why additional powers with respect to compliance and conformance with an SCR are required at this time. Consequently we do not support further change in this area.

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Ofgem state that “*in drafting the condition in a generic principles based manner, we consider that it could be of use to existing and future SCRs, such as Half-Hourly Settlement*”. We are concerned that Ofgem are seeking to introduce significant and material change to their powers with respect to an SCR in relation to other potential issues as well as those associated with the implementation of the Switching Programme. Any major reform of the electricity and gas governance arrangements should be considered and consulted on independently and not included alongside the specific issues associated with the Switching Programme.

Ofgem note that “*for completeness, we also consider that this duty to cooperate should be inserted into those licences which do not currently contain any reference to the SCR process*” (Paragraph 2.12). We strongly object to the imposition of a generic and wide ranging obligation on electricity and gas licensees who are not currently involved in the Switching Programme.

Our specific response to Question 2.1 is included in Annex 1.

If you have any comments or wish to discuss the issues raised in this letter then please do not hesitate to contact me.

Yours faithfully

By email

Bill Reed
Market Development Manager.

Annex 1: Detailed comments on the questions in the Consultation Document

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 do not support the 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. The powers established in law with respect to the SCR process are sufficient to enable Ofgem to discharge its responsibilities with regard to major changes to the Codes. These powers are set out in Ofgem guidance on the SCR process. This states under Paragraph 22 of the Guidance Document:

“End of the SCR phase

22. The steps that we would expect to take in order to complete the SCR phase are dependent upon which of the options has been followed.

- Under the option for us to direct a licensee to raise code modification(s) we would expect to issue an SCR conclusions document. If we consider that code changes are required, we would expect to issue SCR Direction(s) to the relevant licensee(s) within our SCR conclusions document (or in a separately published document within 28 days of our conclusions). The SCR phase would end on the date on which the licensee has made a modification proposal in accordance with directions issued by the Authority. The SCR Direction(s) will set out the code matters to be addressed by the licensee(s) that should form the basis of modification proposal(s).
- Under the option for us to raise modification proposal(s) we would expect to issue an SCR conclusions document and to raise any modification(s) following publication of that document, at which point the SCR phase would end. This modification proposal(s) would then follow the standard industry process.
- Under the option where we lead an end-end process we would expect that a modification proposal(s) would have been developed and been presented to the relevant Panel(s) during the SCR phase. The SCR phase would therefore end when the Authority makes a decision on any modification proposal(s).”

See <https://www.ofgem.gov.uk/publications-and-updates/ofgem-guidance-launch-and-conduct-significant-code-reviews>

In this context we are unclear as to why Ofgem require additional broad powers to intervene in order to deliver an SCR. In particular,

- mandating these extremely wide and arbitrary changes cannot be in the interests of the industry in terms of ensuring a proper democratic process;
- The Drafting as it stands doesn't necessarily reflect “a transition arrangement”;
- There is a lack of rationale for including such a provision in the licences of licensees where SCR does not feature; and
- Licensees cannot evidence full impact of the Retail Energy Code until May 2019 and are being asked to agree to a wide and ambiguous obligation to co-operate before finalisation.

We also have specific concerns with the draft licence condition included in Paragraph 2.6 (see below). These include:

- Ofgem recognises in paragraph 2.4 of the Consultation Document certain circumstances where third party activity such as “*planning, project assurance, coordination or systems integration in order to give full effect to the conclusions of an SCR*” may impact on the activities undertaken by a licensee, but this not reflected in the draft licence condition;
- The words “*as necessary*” (introductory paragraph) does not reflect what may be reasonable taking into consideration an individual licensees circumstances at any point in time
- An obligation to cooperate with “*any person(s) appointed by the Authority*” (introductory paragraph) could lead to issues such as conflicts of interests and competition concerns;
- A requirement to share “*such information as reasonable*” (Clause a) in relation to IT changes or changes to industry process which may have implications for the release or sharing of commercial or proprietary information;
- The incorporation of a term such as “*where it is reasonable*” needs to be agreed by the parties concerned; and
- The “*reasonable endeavours*” obligations to implement an SCR do not reflect existing provisions with respect to Code and Licence compliance and are unnecessary.