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By email: switchingprogramme@ofgem.gov.uk

Dear Rachel

Switching Programme: Regulation and Governance (Statutory Consultation on Proposed Changes to Licence Modifications)

We welcome the chance to respond to the statutory consultation on proposed changes to licence conditions as proposed in the above consultation dated 15 October 2018. A further response will be provided to the additional proposals of the consultation within the agreed extended timeline.

We have read and agree with Energy UK's response on this statutory consultation. We would like to add our further comments, set out below.

We agree that licence conditions are needed to ensure licensees, including suppliers, accede to and comply with the Retail Energy Code (**REC**), and that licensees should be subject to a duty to cooperate with the Authority in delivery of a Significant Code Review (**SCR**). This latter goes some way, as Ofgem notes, to addressing one of the issues raised with regard to the implementation of Project Nexus.

However, we are concerned this is too much a belt and braces approach, with the detailed list in particular risking making internal risk and programme management, tracking and monitoring significantly more challenging and costly for parties. In particular, we are concerned with the following:

- The scope and extent of the general duty to cooperate, noting here the number of current SCRs and the implications the duty to cooperate - notwithstanding the clarification proposed by Ofgem around SCRs. We note here Ofgem is already proposing an additional SCR for REC v3 (which we are still considering);
- The references as part of the general duty to assurance, integration, etc risk baking in the approach being taken to the Faster and More Reliable Switching programme, which while sensible in this context, may not be appropriate in other contexts;
- There is no requirement of reasonableness placed on the actions to be required pursuant to the general duty. Complying with this general duty has the potential to place significant costs and overheads on licensees, and therefore any planning, assurance etc. must explicitly be subject to a requirement of reasonableness;
- Guidance must be developed to scope out for each SCR the effective and practical limits of application of this general duty, to aid in the construction of what is reasonable, e.g. assurance could be internal assurance and planning carried out internally;
- The non-exhaustive list of aspects to be delivered by the licensee as part of the duty to cooperate. Here again, this list risks reflecting potentially specific issues arising in the faster switching programme, and here, we are unclear why this is considered necessary when a requirement to comply with the REC is being imposed, but more to the point, the ability of parties appointed by Ofgem to assign tasks which may themselves not be subject to any reasonableness, with which the licensee must comply, is disproportionate to the aim to be achieved, namely the efficient and timely delivery of an industry-wide programme;
- Specific concerns arise from the drafting: programme milestones would not apply to “any actions assigned to the licensee” and timelines set out for per-licensee actions do not become programme milestones; “remedial plans” imposed (potentially by a third party appointed by Ofgem) implies the licensee’s inaction or issues impacts the entire programme and it’s unclear where this would actually be the case (in particular given the construction for faster switching includes a code setting out these requirements); and the obligation to secure third party cooperation is concerning, and concern is not mitigated by the obligation being subject to all reasonable steps. It may not be in the licensee’s power to secure this at all, and in other cases, it’s possible that awareness of this obligation has the perverse outcome of increasing the difficulty and cost of securing cooperation by changing the commercial balance between licensees and their suppliers.

These specific concerns, not least of which is that some elements of delivery inevitably rely on coordinated delivery, do not mean that we disagree with the need to cooperate with programmes. However, internal programme delivery teams will rightly be nervous with requirements placed on them pursuant to this list (or otherwise given its non-exhaustive) as well as the requirements of the REC. We are therefore hoping to secure a balanced

approach to meeting the policy aims and enabling licensees to meet programmes in as cost-effective and efficient a way as possible.

Yours sincerely

Carl Whitehouse
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