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Dear Rachel,

Switching Programme: Regulation and Governance - way forward and statutory consultation on licence modifications

We welcome the opportunity to respond to Ofgem's consultation on the Switching Programme: Regulation and Governance - way forward and statutory consultation on licence modifications. This response is provided on behalf of National Grid Electricity System Operator (ESO) and is not confidential. As the ESO we are also the Code Administrator for the Connection and Use of System Code (CUSC), the Grid Code and the System Operator – Transmission Owner Code.

We continue to support the policy intent outlined in the consultation, relating to the introduction and governance of the Retail Energy Code (REC), which we see as central to both the delivery of faster and more reliable switching and an industry code that facilitates innovation in the retail energy market.

The scope of Ofgem's Switching Programme is primarily concerned with the retail energy sector. As such, the impacts of introducing the REC are, for the ESO, principally limited to any catalysing effect that the proposed new code governance model and new Code Manager role may have on future changes to the wider code environment and the practical implications of the proposed Duty to Cooperate. Given this, we have chosen not to respond to all of the consultation questions and have instead responded to those questions where our experience as a code party and/or Code Administrator might provide useful input into the development of the REC.

Our responses to the consultation questions are in the annex to this letter and we would highlight the following points:

Duty to Cooperate

We are supportive in principle of a high-level duty, via licence condition, on relevant licensees to cooperate with the Authority in delivering the Faster Switching SCR. However, we have some concerns about the application of a general duty to cooperate on all licence holders. The implementation of a licence change that affects all codes via the Switching Programme, which has a defined and narrower scope, does not seem the most opportune course of action. We believe making changes that apply to all code and licence holders is beyond the scope of delivering the REC and a faster switching process for the primary benefit of the retail energy market. Thus, it likely has not been made clear to many parties in industry that the proposed licence modifications to deliver the REC would extend to other codes.

The ESO considers that the introduction of a blanket duty to cooperate, which places an absolute obligation on the licensee that it "will cooperate", could hold licensees open to delivering anything requested by Ofgem or any other 'appointed person'. Activities such as planning, project assurance and/or coordination/systems integration could be very broad and onerous undertakings, and have the potential to place a significant resource and financial burden on licensees, particularly smaller industry players. The broad scope of the obligation may not ensure that requests to licensees are proportionate and cost-effective, though some assurance is offered by Ofgem's observation that the requirement to cooperate should be determined on a case by case basis. Furthermore, we feel that it is not clear where the responsibilities for delivering activities on a project lie between licences on cross code issues; this could also be true for a single code issue with multiple licensees responsible for delivery.

We are comfortable with the proposed new definition of a Significant Code Review, applicable to the duty to cooperate. The meaning as defined in paragraph 2.20 does not materially differ from the definition of a SCR as described in the current Transmission Licence: Standard Conditions.

We would also take this opportunity to highlight that the proposed licence modifications do not recognise the separate ESO licence that will take effect from 1 April 2019, when the ESO becomes a separate legal entity within the National Grid Group. After this time, National Grid Electricity Transmission will no longer be party to the Balancing and Settlement Code nor the Connection and Use of System Code. Therefore, the licence conditions that will have a new duty inserted should be amended to reflect the separate ESO licence.

In addition, Table 1 (coverage of industry code and agreements) does not appear to be correct as the Electricity Supplier Licence does not give coverage of CUSC.

Enduring REC Governance

We remain supportive of Ofgem's vision of the REC as a 'best-in-class' industry code. We also see the proposed new model for governance as an opportunity to help progress the improvement of all codes, in line with the Competition and Market's Authority (CMA) previous recommendations for industry code governance. In our role as a Code Administrator we are committed to the development of a system of code governance that allows strategic change to be delivered efficiently and smoothly and which works for diverse market participants.

We understand the merits of the proposed new REC Manager role and are supportive of an expanded future role for Code Administrators (i.e. a transition to Code Manager). The ESO notes, however, that the REC Manager has a level of autonomy that goes much further than the current code administrator role and includes the capability to raise changes so it is important that there are appropriate checks and balances in place to hold the REC Manager to account given this higher level of autonomy. With regard to the development of a code manager model across other industry codes, we suggest that more work is required to engage industry parties on what the role of a code manager should be in the future, and to consider how any potential code manager model will interact with, and help to shape, Code Reform more broadly.

We would be happy to share with Ofgem any insights from our new Code Change Journey¹ which may be relevant to code structure and governance arrangements, and we would welcome a discussion on feedback to this consultation, if Ofgem feel this would be appropriate, to input into our own thinking on improvements to the codes currently administered by the ESO.

If you would like to discuss the specific points raised within this response or have any questions please contact Sarah York (Commercial Analyst) in the first instance at sarah.york@nationalgrid.com.

Yours sincerely

[EMAIL]

John Twomey
EU & UK Commercial Strategy Manager
Electricity System Operator

¹ The ESO Code Governance Team is undertaking an exercise to map the journey customers go through when navigating governance processes for the codes which we administer. The customer journey mapping exercise seeks to identify where improvements can be made and this will be done by working with customers to understand their experiences and future needs.

Annex 1: Response to Consultation Questions

Chapter 4. Enduring REC Governance

Question 4.1: We would welcome views on whether Ofgem should have an ongoing role in ratifying RECCo Board appointments after the first board.

The success of the REC will depend in part on appointing the right mix of individuals to the RECCo Board, recognising that the Board's key purpose is to set strategic direction and to provide external expertise to support both the Change Panel and the REC Manager. We do not foresee any issues should Ofgem have an ongoing role in ratifying RECCo Board appointments, but note that further clarity needs to be provided on the composition of the Board and the duration of appointments. It is important that the RECCo Board is subject to periodic review to assess delivery against its objectives and to review the Board's remit and composition.

Question 4.2: We would also welcome views on whether the REC parties should have a role in ratifying the first and/or subsequent boards.

It is not clear what benefit will be derived from giving the REC parties a role in ratifying the first and/or subsequent boards without clarification on the make-up of the RECCo Board and the tenure of appointments. We consider that the question of whether representation is needed or expected is in part contingent on the extent to which the Board can influence and impact the REC parties.

Question 4.3: Do you agree that the REC should place less reliance on face to face industry meetings for modification development and instead empower the REC Manager to develop and analyse proposals, procuring expert support as and when required?

We believe that the proposed REC Manager function, and the role of a code manager more broadly, is a positive step to facilitate a more efficient change process. There is merit in having an individual take responsibility for delivering strategic rather than tactical change in the code arena.

We recognise that development work groups sometimes slow the current code modification process and make it burdensome on code parties, but we also observe the need to balance pace of change with having input from the right subject matter experts and having a transparent process. We are of the view that there is value in the consultative function that the work group process serves and while we understand that this kind of stakeholder engagement and input can still be gathered without the formality and debate of the work group setting, the need for an open and transparent code change process remains paramount.

We are not opposed in principle to the REC Manager under taking a more proactive approach to the development of modification proposals. However, Ofgem may wish to look at making it easier for industry parties, particularly smaller participants, to take part in the process in the first instance before seeking recourse to empower the REC Manager to undertake offline development and analysis of proposals. For example, better coordination and the utilisation of technology to facilitate work groups provide greater opportunity for industry parties to participate without the need for meetings to be face to face. These kinds of measures have been implemented by the ESO as part of its improvement plan for facilitating code change, and the result has been greater confidence in the ability of smaller participants to engage in the current code process.

It also remains unclear still how the REC Manager can effectively balance any potential conflict with fulfilling the role of an impartial critical friend and being a driver of strategic change. Our experience suggests some unease amongst industry customers and stakeholders about the extent of the proposed changes to modification development, with a desire for the modification process to be conducted in an open and transparent manner. The ESO considers that further work with industry stakeholders is required, prior to any future transition to the code manager model across other industry codes, to provide greater clarity around how the activities of being a critical friend will work in practice where a code manager has powers to raise code modification proposals, and how this may be productive of conflicting customer and code manager outcomes.

Question 4.4: Do you consider that a recommendation to the Authority should be made by the RECCo Change Panel, with reference to the REC relevant objectives, or based on a vote of REC Parties?

We are comfortable with the RECCo Change Panel making a recommendation to the Authority, but consider that the recommendation should be based on a hybrid approach, with reference to the REC relevant objectives in the first instance followed by a code party vote. This approach balances a need for engagement and wider views with delivery of an efficient and smooth change management process, given that the Change Panel will include independent parties.

Notwithstanding the above, the ESO would seek more clarity on how, as part of the decision making process, it would be demonstrated that the change proposal has been developed and fairly represented across impacted parties. If the REC will become eligible for appeal under the Energy Act 2004, then it would be beneficial for Ofgem to consider and clarify how decision making on proposed REC changes will fit in to the Right of Appeals process, managed by the CMA.