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16 November 2018

Dear Rachel,

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

ScottishPower supports Ofgem's programme of reforms to deliver faster more reliable switching and we are grateful for the opportunity to comment on this consultation. SP Energy Networks is responding separately from its perspective as a networks business.

Statutory Consultation on licence modifications

Ofgem's proposed licence drafting appears to reflect the stated policy intent, with the possible exception of the Duty to Cooperate. We are pleased that Ofgem has confirmed (paragraph 2.18) its intention to tighten the drafting such that the proposed duty would apply only in "circumstances where the Authority has consulted upon, and given formal notice of matters being taken forward as part of a SCR".

However, in the same paragraph Ofgem proposes a generic draft licence condition regarding the duty to cooperate and in paragraph 2.19 includes a generic definition of Significant Code Review for the purposes of this duty. As noted in the consultation, there are discrepancies between this generic definition of SCR and the various definitions of SCR in the existing "code owner" licence condition (eg SLC 21 in the Electricity Distribution Licence in relation to the Distribution Code). We think these discrepancies in definitions of SCRs could lead to unintended consequences and that this licence modification may not achieve the stated policy intent that it applies solely in relation to a SCR.

We would suggest that, in order to mitigate this, the definition of SCR in the duty to cooperate is amended to explicitly state that the licensee as a relevant party will be consulted before the Authority issues a notice in relation to a SCR. In addition, the definition should include the qualification that the SCR relates to material impacts with regards to the Authority's statutory objectives and duties. These changes would bring this definition much closer to the existing definition in other code governance licence conditions. We have provided some possible drafting to illustrate this point in Annex 2.

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Consultation on regulation and governance

With regards to the proposals set out in this consultation, we support Ofgem's approach to the design of the Retail Energy code (REC) and proposed governance structures, making them as accessible and flexible as possible to support competition and innovation in the energy retail market. Our answers to the consultation questions are in the Annex 1 to this letter and we would highlight the following points.

- REC v 1.0 – Transitional Switching Programme Requirements: Although Ofgem is not seeking further comments on REC v1.0 we request that amendments can be proposed if deficiencies in the present code text are identified before this version of the REC takes effect on 1 April 2019.

- Enduring REC Governance: We support the proposed structure for the enduring governance of the REC, in particular the board, change panel and performance assurance board (PAB). While we understand the need to remove the constraint of face-to-face meetings in progressing change proposals, we would expect the alternative solution would require the REC manager to hold these meetings "virtually" rather than leaving it solely to the REC manager's discretion on how to progress the development of the modification.

- REC 2.0 – Enduring Switching Arrangements: Given the volume of REC drafting covered by the wider policy consultation (in particular REC v 2.0 discussed in Chapter 5), we think more than one month should have been allowed for responses, possibly as a separate exercise from the statutory consultation. We have answered the questions as best we can at this time however we will be continuing to review and may supply further comments in due course.

- SCR Process: In principle we would support the parallel running of an SCR covering REC v3.0 with the switching programme SCR. However we would expect that (as it has done for the switching programme SCR and the half-hourly settlement SCR) Ofgem will provide coordination between the SCRs to avoid duplication and ensure they are aligned.

If you have any comments or queries on any aspect of this response please don't hesitate to contact me.

Yours sincerely,

Richard Sweet
Head of Regulatory Policy

SWITCHING PROGRAMME: REGULATION AND GOVERNANCE – WAY FORWARD AND STATUTORY CONSULTATION ON LICENCE MODIFICATIONS – SCOTTISHPOWER RESPONSE

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 appointment of the first board.

Although we agree that Ofgem should have a role in ratifying the initial Board appointments, we do not believe this is required going forward. Subsequent appointments will be made by a committee made up of REC parties which Ofgem can be involved with, if it wish to be.

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.

We believe it is appropriate for REC parties to contribute to the appointment of Board members. This should help to ensure the requisite mix of skills; expertise and experience are represented by the appointed members.

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 where required?

Yes, we agree there should be less of a requirement for face to face industry meetings. However it is important that the REC Manager engages with the appropriate parties and enables interested parties to contribute to the development of a modification which the REC Manager is progressing. It is also important that the REC parties and change panel can challenge and block modifications developed by the REC Manager which are unduly advantageous to the REC Manager.

While we recognise that progressing modification proposals via face-to-face meetings can be an onerous constraint, the solution should not be to dispense with meetings entirely and leave the management of the proposal solely down to the discretion of the REC Manager. We would expect the REC to require the REC Manager to convene modification working groups but have the ability to organise this 'virtually', eg by video/tele-conference, webinars etc. Ofgem uses such approaches to great effect in terms of stakeholder engagement including smaller parties, on significant code reviews and other programmes and we would encourage Ofgem to propose a similar approach for the REC.

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?

Yes, we agree that the recommendation should be made by the Panel with reference to the relevant REC objectives.

Question 4.5: Do you, in principle, support the approach to performance assurance outlined?

Yes, in principle we agree with the approach outlined for performance assurance. However as described in paragraph 4.53, this will need to be reviewed in further detail within the development of the REC working paper. Performance assurance needs to be set at a relatively high level and cannot be focussed on operational business as usual activities and issues. The first duty of the PAB should be to monitor issues that arise and develop a framework of assurance techniques. This would then be subject to the relevant change management processes before being baselined.

Chapter 5: REC v2.0 Enduring switching arrangements

Question 5.1: Would you support the development of a REC digitalisation strategy?

Yes, we agree that digitalisation of the REC is an important development. In addition, if we are planning on moving to a digitalised world, then meetings should also be done via webinar, videoconference etc, and only material change meetings should be done face to face. Meeting technology should be used to achieve the best industry wide views and this should change from being the occasional meeting to the standard meeting practice. (Please also see our response to Question 4.3.)

Question 5.2: Do you agree that the draft Registration Services Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

Yes, we agree that the draft Registration Service Schedule meets the required standards set out in the Regulatory Design Principle. The document is written in plain English and meets the need of the users.

Question 5.3: Do you agree that the draft Address Management Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

Yes, we agree that the draft Address Management Schedule meets the required standards set out in the Regulatory Design Principle. The document is written in plain English and meets the need of the users. We also agree that the CSS should have data quality objectives and performance standards around REL and that it should provide market participants with access to the REL Address Data Quality Indicator. Therefore we would fully support the change request that has been raised.

Question 5.4: Do you agree that the draft Data Management Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

Yes, we agree that the draft Data Management Schedule meets the required standards set out in the Regulatory Design Principle. The document is written in plain English and meets the need of the users.

Question 5.5: Do you agree that the draft Interpretations Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

Yes, we agree that the draft Interpretations Schedule meets the required standards set out in the Regulatory Design Principle. The document is written in plain English and meets the need of the users.

Question 5.6: Do you agree that the draft Entry Assessment and Qualification Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

Yes, we agree that the draft Entry Assessment and Qualification Schedule meets the required standards set out in the Regulatory Design Principle and mitigates the risk to consumers and the market of a REC party not being capable of operating in accordance with its REC requirements.

Question 5.7: Do you agree with our proposals that:
- **PAB, as part of its role in mitigating risk to consumers and the market, should provide information to the REC Manager on the specific risks that it wants to be mitigated and assured against through Entry Assessment and Re-Qualification;**
- **The Code Manager should have clear obligations to support the Applicant and coordinate with other code managers; and**
- **Suppliers that undertake a material change to their systems, processes or people should undertake Re-Qualification?**

Yes, we agree with all the proposals within Question 5.7. These proposals will help to mitigate risk to the consumers and the market.

Question 5.8: Do you think that PAB and the REC Manager should work with service providers to identify and mitigate risks associated with material changes to their systems, processes or people?

Yes, we fully agree that PAB and the REC manager should work with service providers to identify and mitigate associated risks around material changes to their systems, processes or people.

Question 5.9: Do you agree that the draft Service Management Schedule meets the required standards set out in the Regulatory Design Principles including whether we have set out clear and workable roles and responsibilities for Market Participants, service providers and the Switching Operator that will support the effective operation of the new switching arrangements? If not, please describe how you think it should be improved?

Yes, we agree that the draft Service Management Schedule meets the required standards set out in the Regulatory Design Principle and the roles and responsibilities for market participants, service providers and the switching operator are clear and workable. We agree with the three key elements that this schedule is seeking to address, especially 5.49 (a).

Question 5.10: We also welcome views on the draft service levels set out in Appendix B of the draft Service Management Schedule.

We believe further clarity is required on the severity levels for the four categories, ie service requests, incidents etc. The available schedule and Appendix B are not sufficient to enable

us to provide further comments around the resolution times without further details about what would be deemed from critical to low.

Question 5.11: Do you agree that the draft Switch Meter Reading Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

Yes, we agree that the draft Switch Meter Reading Schedule meets the required standards set out in the Regulatory Design Principle.

Question 5.12: We welcome views on whether we should retain or amend the remit of the proposed Switch Meter Reading Exception Schedule beyond domestic consumers and electricity NHH consumers.

Yes, we would support the amendment of the proposed Switch Meter Exception schedule beyond domestic and electricity NHH consumers.

Question 5.13: Do you agree that we should move any requirements to obtain and process meter reads for settlement purposes into the BSC and UNC?

Although we support moving any requirements to obtain and process meter reads for settlement purposes into the BSC and UNC, we believe further review of the licence requirement brought in following the CMA decision on gas settlement is required.

Question 5.14: We welcome views on whether the Switching Meter Reading Exception Schedule should make specific provisions for consumers with smart gas meters.

At this point we are not in the position to make an informed comment. We will review in more detail and respond in due course if appropriate.

Question 5.15: Do you agree that the draft Debt Assignment Protocol Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

Yes, we agree that the draft Debt Assignment Protocol Schedule meets the required standards set out in the Regulatory Design Principles and we support the creation of the dual fuel process to be implemented in June 2019.

Question 5.16: Do you agree that the REC should refer to existing security standards rather than develop separate and bespoke ones?

Yes, we agree that the REC should refer to the existing security standards rather than developing separate and bespoke ones. However, we would note that the range of systems covered by the REC may be wider than those covered by the SEC, and it may be necessary to ensure that any controls (such as audits or sanctions in the event of breach) that exist within the SEC are also applied to systems that are covered by the REC.

Question 5.17: Do you agree that a consolidated PPM Schedule should be developed and given effect as part of REC v2.0?

Yes, we agree that a consolidated PPM schedule should be developed and given effect as part of REC v2.0, rather than being deferred until REC v3.0.

Chapter 6: REC v3.0: wider consolidation

Question 6.1: What do you think are the pros and cons of Model A and Model B and which do you think we should use to develop an Exceptions Schedule in the REC?

Model B, a mixture of prescription and principles, would be our preferred option at this point.

Question 6.2: Do you agree that the theft of gas and electricity provisions should be moved to the REC?

Yes, we believe it would be appropriate to move the gas and electricity provisions for Theft of Gas and Electricity into the REC.

Question 6.3: Do you agree that the REC Manager should undertake the (re)procurement of any services due to commence at or after REC v2.0 implementation?

Yes, we would be keen to see a (re)procurement of services due to commence in line with REC v2.0 implementation. At this time we are not convinced with the benefits that have been achieved via Theft Risk Assessment Service (TRAS) and a review and potential (re)procurement may be beneficial for all parties.

Question 6.4: Do you support the establishment of an industry-wide data catalogue that all code bodies incorporate by reference into their own codes and collaborate on the maintenance of?

Yes, we would support the establishment of an industry wide data catalogue that all code bodies maintain.

Question 6.5: Do you think that the REC should have the responsibility of hosting the industry-wide data catalogue?

Yes, it would be appropriate for the REC to host the data catalogue.

Question 6.6: Do you think that an industry-wide data catalogue should be developed for REC v2.0 (to enable REC CSS messages to be incorporated from day 1) or should consolidation be undertaken as part of REC v3.0?

Yes, if possible - though this may not be an achievable aim at this time and may need to be consolidated as part of REC v3.0.

Question 6.7: Subject to further development, assessment and consultation, would you in principle support aligning the gas and electricity metering codes of practice under common governance?

In principle we do not have any objection to this proposal in terms of governance. This will require further development and consultation before aligning both codes under common governance.

Question 6.8: If yes, do you consider that the REC would be a suitable vehicle for such common governance?

Possibly, however we would like further details on the implications for the commercial market, prior to committing to a decision.

Question 6.9: Do you consider that the SMICoP should be incorporated into an industry code, and if so, do you agree that this should be the REC?

We believe further consideration is required. SMICoP could be incorporated within the REC or within the Smart Energy Code.

Chapter 7: The DCC

Question 7.1: Do you agree with the five incentivised milestones identified? Do you think any milestone should be given greater importance and therefore a larger proportion of margin placed at risk?

Yes, we support the five incentivised milestones. However, in as much as they need differentiation, we believe that proportions should be divided as follows:

Milestone 1: 30%
Milestone 2: 25%
Milestone 3: 25%
Milestone 4: 10%
Milestone 5: 10%

Our rationale is that the DCC and CSS readiness for system integration testing is equally important as system integration readiness.

Overall, however, we think it is more important that the achievement of each milestone be subject to scrutiny to ensure its meaningful delivery. Therefore, we think the REC Panel should be responsible for setting any success criteria, and for appointing an independent auditor to examine and report to the Panel on the DCC's delivery. It will then be up to the Panel to determine whether the DCC has satisfactorily achieved each milestone.

Question 7.2: Do you agree with our proposals for the shape of the margin loss curves. Do you have any suggestions for other margin loss curves which may better incentivise DCC to achieve its milestones in a timely manner while encouraging quality?

We are generally supportive of the tapered incentive regime and are largely satisfied with the shape proposed for the margin-loss curves. However, we also think it is important for Ofgem to reserve a fair degree of flexibility in these arrangements, such that it can revisit them in time if need be.

Question 7.3: Do you agree with our proposal for a potential recovery mechanism? Please give reasons. What types of criteria could be considered for demonstrating clear, transparent communication and what portion of lost margin should be available to be recovered?

We agree that a recovery mechanism would serve to increase the incentive on the DCC's delivery of subsequent milestones. We also agree that such a mechanism should not permit the recovery of all the margin lost as a result of late delivery. However, the challenge is in finding the right balance: while the recoverable margin must represent genuine incentive, so must the value that is in jeopardy**.**

Broadly, we agree that a cap of between a third and a half sounds about right, but these should not represent a firm commitment and should, instead, be subject to situational

evaluation. As such, we welcome the proposal for the allowed recovery to remain at Ofgem's discretion.

We are mindful of the rolling nature of the delays experienced during the smart meter implementation, when it seemed that a year's delay was communicated as a series of monthly delays. Therefore, with regard to the criteria for transparent communication, we believe stakeholders should be informed immediately of any impending delay, with a genuinely realistic reassessment of the timescales subsequently being communicated to all stakeholders at the earliest opportunity.

Question 7.4: Do you agree with our proposals for a discretionary reward where it can be demonstrated that DCC has gone above and beyond established requirements for REL Address matching? Please give reasons.

We have no specific objection to these proposals. However, we would highlight our expectation that the successful bidder for this role will have already demonstrated how it will exceed the basic requirements.

Chapter 8: The Way forward

Question 8.1: Do you agree with the proposed collaborative approach to consultation and modification report production?

Yes, we agree with the proposed collaborative approach to consultation and modification report production.

Question 8.2: Would you in principle support REC v3.0 code consolidation being progressed as a SCR separate to, but run in parallel with, the Switching Programme SCR?

Yes, in principle we would support the parallel running of an SCR covering RECv3.0 with the Switching Programme SCR provided it is carefully coordinated. Otherwise it risks placing duplicate demands on the same staff and resources from industry required to support the SCRs.

SUGGESTED AMENDMENTS TO LICENCE DRAFTING

Definition of Significant Code Review

We suggest the following amendments to the definition of significant code review in the duty to cooperate (based on text of paragraph 2.20 from the consultation) to ensure consistency with other definitions of SCR (as explained in the covering letter):

> "a review of matters <u>in relation to its principal objective and/or general duties (under section 3A of the Electricity Act or section 4AA of the Gas Act), statutory functions and/or relevant obligations arising under EU law</u> which the Authority considers are likely to relate to one or more of the documents referred to in this condition, or to which the licensee is required under this licence to be a party, and concerning which the Authority has <u>consulted on and then</u> issued a notice to the parties stating that the review will constitute a significant code review."

ScottishPower
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