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Dear Rachel Clark,

Switching Programme and Retail Code Consolidation: Proposed changes to licenses and industry codes

I am writing on behalf of ESP Utilities Group (“ESPUG”) (comprising the licensed companies ES Pipelines Ltd, ESP Connections Ltd, ESP Networks Ltd, ESP Pipelines Ltd and ESP Electricity Ltd). We welcome the opportunity to respond to Ofgem’s “Switching Programme and Retail Code Consolidation: Proposed changes to licenses and industry codes” (17th June 2019).

Overall, ESPUG supports the proposed Retail Energy Code (REC) governance procedures contained in the consultation. We agree with Ofgem that firmer guidance is required in order to initiate the procurement of REC Manager role(s) and welcome the clarifications in Section 1.3. This will aid the RECCo Board to determine how the REC manager(s) are controlled to prevent them acting in their own interest that may be separate from the code. This could be for example, as a result of exploiting poor contract drafting or by badly constructed incentives contained within it. Choosing different managers for specific roles will of course present oversight challenges for the Board.

Our key concern is that it is not clear from the consultation what representation independent networks will have in the new structure, particularly if MPAS moves to REC. We do not know for certain if independent networks will be guaranteed a voting position on the Change Panel. The document states ‘We have not at the moment separated IGTs and GTs or IDNOs and DNOs. This is because they do not have separate requirements under the REC. If this becomes the case then we will amend the schedule.’

We suggest that as a point of principle, if the signatory is affected by a code it should have a voice in it. The document clearly supports the inclusivity principle and we would like to see representation in the codes for independent networks hard wired in the REC. We contend that there are legitimate differences between networks regarding our activities and the ability to absorb costs as a result of code change. We will raise this issue further in our September response.

The success of the new code will be based on how effectively it mediates and balances different industry participants' views. Transparency will also be critical to ensure legitimacy amongst codes' signatories. We trust this will happen as part of the implementation of the new arrangements.

Our detailed comments are set out in the appendix to this letter. If you wish to discuss any of the issues raised in our response or have any queries, please feel free to contact me on 01372 587500.

I confirm that this letter and its attachment may be published on Ofgem's website.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Seb Eyre', with a large, stylized 'S' at the beginning.

Sebastian Eyre
Regulatory and Policy Analyst
ESP Utilities Group

Appendix

Question 1.3: Do you consider that the methodology as set out above is appropriate?

Yes, the objectives are appropriate. It takes elements that work well from other codes, especially the PAB which performs well under the BSC that pro-actively audits and addresses non-compliance.

One particular objective is critical to the successful operation of the REC, i.e. “prioritising and driving change which supports the overall REC strategy and code objectives”.

This objective highlights a potential and important coordination problem. In cases where Change Proposals (CP) may require cross code coordination or where likelihood of withdrawal is high, the panel of the other code must not have the vires to stop the progression of the change proposal, without consultation with the code manager and the CP’s sponsoring party. If it should be determined at all, it should sit with the Change Panel of the code under which it was raised. We expect this situation will be rare as no CP should be put on hold due to another change progressing elsewhere if for example, there is a ‘presumption’ that the CP could be withdrawn or rejected.

Question 1.4: Do you have any comments on the scope of services?

We agree on the scope of services defined in the consultation.

Question 1.5: Do you agree with our outline proposals on the set-up of the REC Manager?

We agree with the set-up of the REC manager as proposed in this section of the document.

Ofgem state that initially the REC Manager may be contracted from one or more service providers. As long as the relevant expertise is accounted for and the varying providers work in synergy with no overlap and conflicting advice, for example regarding CPs, then a year’s run up to the go live date seems viable for the REC Manager to implement robust functionality to support the code.

Question 4.4: Do you have serious concerns about the suitability of any of the options for the future governance of MPAS, outlined above?

We agree with all the reasons given for why the MPAS obligations should or should not move to another of the codes presented in the consultation. Our preference is however, for its functions to be moved to DCUSA for the reasons outlined in table 1.

Table 1

Code	Comment
REC	<ul style="list-style-type: none"> • MPAS is not just retail focused – it supports non retail arrangements (e.g. energisation statuses, disconnections, supporting demand control etc.). • We note that Ofgem are not proposing to move UK Link to the REC.
BSC	<ul style="list-style-type: none"> • If it were moved to the BSC, the rights of DNOs will need to be changed as distributors do not have a vote in the change process. • We see no reason why significant amendments of the voting rules in a major code is required if governance is already working under another.
DCUSA	<ul style="list-style-type: none"> • MPAS sits well under the DCUSA as the code already has a framework that supports interaction between suppliers (and their agents) and distributors including registration activities e.g. energisation statuses, disconnections, holding metering data, supporting demand control etc. which are all data items that are held in MPAS. • DCUSA has existing governance arrangements that include DNOs, IDNOs, large and small suppliers all to have a voice in the change process.
Separate governance function	<ul style="list-style-type: none"> • Would fragment functions that are already consolidated and introduce complexity to the codes that MPAs services eventually migrate to.