02 August 2019

Rachel Clark
Consumers & Markets
Ofgem
10 South Colonnade,
Canary Wharf,
London, E14 EPU

Email: alisonrussell@utilita.co.uk

Dear Rachel,

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

Thank you for the opportunity to provide our comments on Ofgem's consultation on the proposed changes to licences and industry codes as part of the Switching Programme and Retail Code Consolidation. This response specifically focuses on questions 1.3–1.5 and 4.3–4.4. This letter and the attached Appendix A together form Utilita's response to stage 1 of this consultation.

Utilita has been operating successfully in the market since 2008. We have a predominantly prepay client base, most of which have smart meters installed. We provide a high-quality service to a sector of customers who are traditionally poorly served and the continuation of excellent supply services to our prepayment customers is paramount.

We continue to support the introduction of the Retail Energy Code (REC) and Ofgem's more recent proposals around retail code consolidation by April 2021. We are also encouraged by the approach demonstrated by the RECCo Board as outlined within the consultation. This approach explores the way in which the range of code manager services should be procured in order to challenge effectively the status quo of industry code governance.

We believe the introduction of the REC provides an important opportunity to re-evaluate and set a new benchmark for the energy industry's approach to code governance.

The RECCo Board must ensure that from the outset, there is deep and relevant expertise in the contracts which they procure on behalf of the energy industry. Having this depth of knowledge in the organisation will enable the RECCo Board to hold future service providers to account for ineffective or uneconomical service delivery, benefiting the industry and end consumers.

This approach will provide genuine flexibility going forward meaning that if a service provider has not delivered adequately, industry will be in a position to move suppliers rather than being locked in to inadequate and uneconomic services.

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We welcome the consideration within the consultation of different options for contracting the services required by RECCo Ltd. Due to the range of service functions that are to be procured, we believe a wider range of interest and expertise could be gained by carefully considering which service areas should be unbundled from the more traditional code administration support services.

We urge both Ofgem and the RECCo Board to place a greater priority on procuring the right innovative, high quality and economically efficient services for industry than simply striving to achieve what may be an over-ambitious contract award date of Q1 2020/21.

We hope these comments have been helpful and would be happy to discuss any points in more detail.

Kind regards,

By email

Alison Russell
Director of Policy and Regulatory Affairs

Appendix A – Utilita's consultation response

Section 1 – REC Governance Arrangements

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

Utilita supports the RECCo Board's approach of not being prescriptive in determining how each of the proposed service areas should be delivered at this stage. We believe this would only influence or hinder the development of the innovative ideas and proposed solutions that we expect from any potential bidders wishing to provide REC Manager services.

We strongly encourage the RECCo Board to think creatively in how interest from a wide range of bidders across different specialities could be generated. This approach has the potential to maximise value for money and ensure a higher-quality of delivery of services both for industry and consumers.

In paragraph 1.19 Ofgem has outlined the RECCo Board's intention to appoint a third-party procurement expert to support the REC Manager services procurement. We strongly support this approach to ensure the process is conducted openly, fairly and transparently.

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

We largely agree with the proposed service areas documented under 1.18. However, clarifications are required in the absence of a short description of the scope of each of the service areas being provided.

We set out the necessary points of clarification below. These are designed to ensure the proposed service areas encompass all usual code administration service functions.

Under the Code Administrator Code of Practice (CACoP), existing code administrators are required to act as a 'critical friend' to parties and provide help and support on an *ad-hoc* basis. It is not clear which of the proposed services would include this activity currently.

Finally, we are unclear of the scope of the 'RECCo support' service and whether this includes usual company financial support such as Company Secretary duties and the production of company accountancy reporting. This is an important service area which requires inclusion within the scope of RECCo Ltd procurable services.

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

We strongly support the RECCo Board considering different options for contracting the services required by RECCo Ltd. Due to the range of service functions that are to be procured, we believe a wider range of interest may be gained by splitting out some of the procurable services rather than the traditional approach taken to code administration where one service provider tends to be contracted to provide all relevant code services. We believe this will challenge the status quo whilst delivering Ofgem's vision of the REC.

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We appreciate the current view is for contracts to be in place by early 2020/21 to give sufficient time for the service provider to be in post ahead of the expansion of the REC in Q2 2021 however we believe that there should be greater importance attached to ensuring the procured services are fit for purpose. We would rather see the RECCo Board taking time to ensure the right services are contracted by the most effective and economically efficient organisations than striving to achieve an overly ambitious contract award date. We expect the RECCo Board to be guided appropriately by any expert procurement advice it seeks as outlined in section 1.19.

The introduction of the REC is an opportunity to address issues with current code governance practices. The RECCo Board must therefore ensure there is a detailed understanding into the contracts in which they procure on behalf of industry and are able to hold service providers to account. For example, where service levels are not met or where the REC's objectives or RECCo Board's strategy is not being delivered as envisage or most effectively.

We are unsure at this stage whether the Performance Assurance Board should have a role in the oversight of the REC Manager as outlined under 1.22. It may be more appropriate for the RECCo Board to invest in a Service/Contract Manager function to directly monitor and report to the RECCo Board on the performance of key RECCo Service Providers. We believe this would prevent situations that are apparent within aspects of the industry where the only experts of current procured contracts appear to be the service provider themselves i.e. as apparent across some code administrator. This leads to behaviours of service providers reporting on their level of performance which is rarely challenged and difficult to scrutinise by code Panels/Boards.

Section 4 – Retail Code Consolidation: SCR Scope, Process and Proposals

Question 4.3: Which option outlined above do you think is best suited to govern MPAS (as defined above) once the MRA has closed, and why?

Utilita is most supportive of MPAS provisions being governed under the REC.

Currently MPAS arrangements are governed under the MRA and changes to these arrangements remain highly infrequent compared to other areas under the MRA. We also would argue that on the occasion where a MPAS related change has been identified to have a BSC impact, we are unaware of an occasion where the BSC voting agent has acted to reject a change to the MRA which resulted in the change being rejected against other voting party views. Therefore, the least disruptive options for transitioning MPAS arrangements would be include within the REC rather than creating a separate need to amend governance arrangements in either the BSC or DCUSA in order to transition MPAS arrangements.

Although we could offer some limited support for proposals which lead to transitioning into the BSC, we consider that the BSC would still be required to have a voting interest in other REC changes. For example, from our understanding that the Data Transfer Catalogue (DTC) will be housed under the REC with the closing down of the MRA. The DTC currently contains a number of data flows that are 'owned' by the BSC and would therefore would most likely require the BSC voting agent to assess and vote on changes impacting these data flows in the future. We would therefore suggest that there will always be provisions in the REC that require some consideration of the dependency between settlement systems, regardless of where the MPAS provisions are placed.

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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 do not have any serious concerns around the suitability of any of the options however our least preferred option would be to split up MPAS arrangements across multiple codes without careful consideration of the possible consequences.

If MPAS arrangements were to be divided across multiple codes, we would recommend that first, a piece of work is conducted to analyse previous MPAS changes under the MRA to determine if the splitting up of MPAS arrangements across multiple codes would require further multiple cross code changes in the future. We strongly disagree with any approach that would newly create unnecessary delays in making code changes through the multiple code change processes being required to be followed to implement a process/system change.