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9th September 2019

Dear Rachel,

WWU response to Ofgem consultation Switching Programme and Retail Code Consolidation: Proposed changes to licences and industry codes

Thank you for the opportunity to respond to the consultation. Wales & West Utilities is a gas transporter serving 2.5 million supply points in Wales and south west England.

This response contains our response to the questions except those for which you requested a reply by 29th July (questions 1.3,1.4,1.5,4.3 and 4.4).

In addition to our answers on the overall principles and process, we have made several comments on the detail of the SCR drafting and the REC schedules that we hope are useful. We have also noted some inconsistencies in terminology across schedules that need to be rectified in the subsequent drafts.

Summary

In summary the key points within our response are:

Chapter 1 REC Governance Arrangements

- We disagree with some of the proposals relating to the REC change process; and
- We have some concerns about the range of activities and responsibilities that are proposed for the code manager because it could result in internal conflicts of interest:
 - within the code manager; and
 - with industry parties which may see it as not being impartial and/or transparent.

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Chapter 2 Delivery Approach

- We have some concerns about how the choreography of the code changes for switching and retail code consolidation will work

Chapters 2, 3 and 4

- We have comments on the details of the proposed amendments to the text of codes (Chapter 2) REC schedules (Chapter 3) and licence (Chapter 5)

The remainder of this document provides responses to the questions within the consultation.

If you wish to discuss this response further please contact Richard Pomroy (Commercial Manager) Richard.Pomroy@wwutilities.co.uk

Attached

Mark-up of REC Change Management Schedule to support response to question 1.8
Mark-up of UNC TPD G Annex G-1 to support response to question 2.3

Yours sincerely,



Steve Edwards
Director of Regulation
Wales & West Utilities

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Detailed responses

1. REC Governance Arrangements

Question 1.1: Do you agree that the mission statement and objectives encapsulate the functions of the code, can drive activity of the governance functions and assist decision-making on changes to codes?

Yes, we agree.

The revised mission statement is:

The REC will facilitate the efficient and effective running of the retail energy market, including its systems and processes. It will promote innovation, competition and positive customer outcomes

We prefer the revised mission statement, as it makes clear that an efficient and effective retail energy market is the priority. The previous version could be interpreted as promoting positive customer outcomes over and above anything else such as an efficient and effective retail energy market. We assume that if a change is required to comply with legislation or a licence change then this will be covered by the “effective retail energy market” term. If not, then a specific REC objective to cover this is required.

The revised statement will mean that when assessing changes, the main test will be whether the change facilitates efficient and effective running of the retail energy market. The secondary consideration is promoting innovation, competition and positive customer outcomes. This means that a change that promoted innovation, competition or positive customer outcomes in one area of the retail market but which decreased overall efficiency would now be likely to be rejected whereas under the previous mission statement it would likely to have been implemented. It must be realised that the revised REC mission statement, while promoting innovations requires it to be assessed in the context of the market overall. This may still result in innovators or disruptors who have an idea for a change that affects one area of the market finding their change rejected if it has small but widespread adverse impacts on the efficiency or effectiveness of the overall market.

We note the use of customer rather than consumer. The use of customer implies the person paying for the gas whereas consumer implies the persons using the gas which normally is the customer but also includes other persons. We assume that “customer” means existing customer and does not include potential future customers. The Gas Act refers to both “customers” (for example in section 33A in relation to standards of performance), “owner or occupier” (for example section 9 in relation to connections), and “consumer” (for example in Schedule 2B the Gas Code which deals with meters, theft, disconnection and related matters). In the Act consumers means both current and future consumers (section 4AA). We suggest that Ofgem makes clear whether customer or consumer is preferred and also whether it just refers to current customers or consumers or current and future customers or consumers.

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The REC Change Management Schedule refers to consumers in rule 11.2 so we suggest that once the wording of the REC mission is settled that there is a review of all documents to ensure consistent use of customer or consumer.

Question 1.2: Do you agree with our proposals on the initial and ongoing appointment of RECCo Board Members?

With regard to REC Co board functions we suggest the following changes:

- 1) Items j to m which relate to the legal obligations of the board should be top of the list, this is a presentational issue but we think that it is important to have these first.
- 2) Item b should be replaced by “Acting as representatives of shareholder interests” rather than consumer interests. Company law requires directors to put the interests of the company first and we cannot get away from this duty. We also observe that the current drafting refers to “consumers” whereas the REC mission statement refers to “customers”

It is important that REC Co board members have the skills and experience to carry out their duties. We agree that the composition of the enduring board should be made up of people who have the necessary skills, not necessarily employees of constituents. In this regard the experience of Xoserve is relevant as recognised in the consultation. The interim board is having to buy in specialist skills where these skills are not available from the current board members.

Changing the board at the time of transition into live operation of REC means that the experience of the set-up process and decisions is to a large extent lost and the new board has to manage arrangements set up by the interim board. There is no easy answer to this but consideration of a more measured transfer between interim and enduring boards would be sensible.

Question 1.6: Do you agree with our proposals on the set-up of the REC Change Panel? Do you foresee any problems with these proposals?

The REC Change Management Schedule refers to REC Panel rather than the REC Change Panel so we use this terminology in our response; however; we think that the REC Change Panel is a better name as it states its function in the title.

The document states that the REC Panel will decide on modification proposals in a way that gives effect to REC Co strategic objectives and the code objectives. We assume that the code objectives are those listed in paragraph 1.4 but are unclear about what the REC Co strategic objectives are. We would have thought that the REC mission statement is more relevant. This discrepancy may be no more than inconsistencies between the drafting of documents.

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Our view is that a change board should ideally have about 10 members, larger than that it can become too large to function effectively. It is important to be clear about the basis on which members are appointed to the REC Panel. We assume that REC Panel members will be acting as industry representatives rather than representing their own businesses or constituencies but the basis of appointment needs to be clearly stated in the REC. We suggest that Change Panel members should sign a document acknowledging this on their appointment and that this should be counter-signed by a director of their employer.

We assume that there will not be a majority of independent members representing consumer interests but a sufficient number to ensure that decisions are not taken against the consumer interest.

With regard to composition we assume that if each constituency (listed in paragraph 1.10 in relation to REC Co Board membership) has at least one representative then there will need to be one representative from at least:

- Large Supplier (presumably mainly domestic)
- Small Supplier (presumably domestic)
- Non-domestic Supplier
- Electricity network
- Gas Network
- Agents such as Meter Equipment Managers

IGTs and IDNOs are not specifically mentioned and are presumably included in the gas and electricity network constituency. For the REC Panel, in the interests of both allowing them to be represented, balancing network and supplier representation and keeping overall membership to reasonable levels, we think that it would be appropriate to give IGTs and IDNOs one seat to cover both activities.

Since the REC will cover a wide range of activities the REC Panel members will inevitably be considering modification proposals that are outside the range of their day to day experience in their roles. This means that the modification proposals will need to be well written so that they explain the issue clearly to those who are not familiar with the subject area and they clearly articulate the reasons why the modification proposal furthers the REC objectives. This requires a high level of skill from proposers and many will no doubt need support from the Code Manager, in their critical friend role, to provide the required clarity. Equally REC Panel members will need to be willing to spend time understanding changes that have no effect on their own businesses so that they can properly discharge their duties. This point could also usefully be put into the document we have suggested the REC Panel members sign on appointment.

Question 1.7: Do you agree with our proposals on the set-up of the PAB? Do you foresee any problems with these proposals?

Our observations of the experience in gas is that setting up and putting in place an effective regime is time consuming. It is relatively easy to obtain agreement on monitoring but obtaining agreement on a regime that improves performance is difficult as this starts to

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impose costs or constraints on parties. We agree that setting up the PAB as soon as possible is sensible. Members of PAB will need wide ranging protection, which need to be in the REC, from being sued by aggrieved parties when carrying out their roles as PAB members. REC Co may need to take out insurance to cover these potential liabilities.

Question 1.8: Do you agree that the inclusion of the principles outlined (as included in the draft change management schedule) should address some or all of the problems associated with existing code governance?

WWU is a Gas Transporter and we do not necessarily agree that there are fundamental problems with Code Governance in gas though we recognise that processes could be made more consistent between codes. The energy industry is complex and must function 24/7. This means that changes need to be carefully assessed to identify any consequential impacts with all parties given time to contribute to discussions.

The industry codes are multi-party contracts and given the complex arrangements and the number of parties to the contracts as well as other stakeholders it is inevitable that change is going to take time. The move to Code Manager should help smaller parties raise and progress changes although there are some potential disadvantages that we discuss below. We also think that the REC Code Manager will need to pro-actively engage with smaller parties in increase their understanding of their obligations. This has been successfully done by SPAA over the last two years.

The change management schedule does not have a section listing principles so we are unclear what these are. For the purposes of answering this question we assume that they are the four headings in the consultation in paragraphs 1.48 to 1.62

Access

We strongly disagree with the proposal that:

“Change to the REC may be proposed by any person”

The code is a contract between the parties and most contracts exclude third party rights (the ability of a non-signatory to affect the operation or terms of the contract). We accept that Ofgem has rights under Significant Code Reviews to raise changes and would be willing to explore whether non-Code parties who were members of the REC panel could raise changes but to allow anyone to raise a change is not acceptable.

Development

The consultation states:

“One of the reasons that change proposals currently take so long to progress is the development process, which is heavily reliant on the input of incumbent parties, whose interests may not align with those of the proposer”

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We agree that industry parties are able to delay change by raising alternatives or prolonging discussion at workgroup but also observe that another reason for delay is proposals that are poorly thought out and so some workgroup meetings are used to help the proposer think through issues that should have been thought about before the proposal was raised. Some proposers also do not seem to be willing to put enough time into the process to progress their proposals in a timely manner.

Having the Code Manager develop the proposals may seem to solve these issues, however it does take away the opportunity for industry parties to raise issues and propose solutions. The Code Manager is also likely to have conflicts in terms of priorities between changes and potentially between some of its other roles.

We think that there is merit in keeping a proposer responsible for a change, this means that if a proposer really wants a change progressed quickly it is in their gift to drive it forward by providing high quality materials to the workgroups. Having the code manager develop the proposal behind closed doors means that the industry would see a change raised, it would disappear for a period and then reappear as a worked-up solution. It is not clear how much input the proposer or other parties would have into the proposed solution.

One advantage of the current process in gas codes is that parties can see how the proposer's thinking develops over time. For WWU's SPAA 443 change proposal "SCP 443 - Notification of Customer Contact Data to Transporters" the current process has been very effective in developing the proposal and we are not convinced that a Code Manager led process would have teased out some of the issues as effectively.

A Code Manager could have conflicts of interest between its ability to raise changes, prioritise and progress them and its role as Design Authority. Clear separation of roles is required to ensure that the Code Manager does not manage changes in a way that suits itself but does not deliver the REC mission. Giving the Code Manager the role of prioritising changes as well as implementing change gives it an interest in how changes are written and may compromise parties' perception of its ability to deliver its "critical friend" role under the Code Administrators' Code of Practice. We will comment further on these points in our response to the concurrent BEIS and Ofgem consultation on Reforming Energy Industry Codes

Impact Assessments

We agree that impact assessments are crucial, the consultation gives the impression that the provision of impact assessments is a problem, this is not our experience in gas. Proceeding without impact assessments would not be sensible. Some seemingly simple changes can have major impacts on systems or processes and it is important to understand these otherwise a change could be approved that cost a disproportionate amount to implement or took a disproportionate amount of time to implement.

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Decision making

We agree that having both self-governance and Authority direction changes is sensible. We also agree that changes to matter that are under control of the REC Co board such as changes to the Articles of Association or changes that affect contracts that it has in place should be subject to Board approval.

Comments on draft change management schedule

We have several comments on the draft change management schedule and attach a mark-up with this response.

2. Delivery Approach

Question 2.1: Do you agree with our proposed choreography of the Retail Code Consolidation SCR, Switching Programme SCR and associated licence changes, including our proposals that the Switching Programme changes will be introduced as 'dormant' before being made 'active' following Authority direction?

We agree that setting a date for the Retail Code Consolidation provides certainty; however, this means that Retail Code Consolidation will occur before the Switching text is implemented. The current SCR text for switching has been written on the basis that the switching text is implemented before Retail Code Consolidation occurs. It seems likely that there may be some interdependencies between these two sections of text for at least some codes.

It is worth remembering that when Project Nexus was delayed until after Xoserve FGO some changes to the UNC text were required to enable FGO changes to be implemented before Nexus despite one change being primarily about Xoserve systems and commercial arrangements and the other about Xoserve governance. We suggest that Ofgem carefully discuss the potential impacts of Retail Code Consolidation being implemented before switching go-live with each Code Administrator before making a final decision. Production of high quality legal text is expensive and reworking it due to changes in the order changes are implemented will take both time and money.

Regarding the proposal to introduce the switching programme text as dormant and turn it on we observe that the requirement for the legal text was different from this proposal.

The requirement was for new enduring text and for the UNC this has been provided. Once implemented this text, as drafted, will come into effect and the current text will cease to exist. There is no provision in the drafting for the new enduring text to be switched on. To allow the text to be implemented as dormant and turned on it would need to put in to the UNC as transition text, this will require further legal drafting and there may be other changes required.

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There are, however, three advantages of having the SCR text as transitional text in the UNC:

- It will be transparent, currently the SCR text does not exist in terms of UNC processes
- Any new modifications will need to clearly state how they will affect both current arrangements and those that will exist for faster switching
- Legal text will be required for any new modifications for both sets of text

Notwithstanding the above there will need to be further changes to the faster switching text to take account of:

- Modifications implemented after the date of the legal text used as a basis for the SCR switching text
- Modifications raised since the SCR text was submitted to Ofgem
- Any changes that are required following the consultation or issues that emerge as systems are built of which a few have already emerged
- Transitional arrangements that describe how in-flight processes, that commence under existing arrangements but which need to be completed differently under the new arrangements, are dealt with.

We note that in paragraph 2.15 Ofgem states “...we aim to provide as much certainty as possible by publishing a complete set of modification proposals and maintaining them as living documents.” We assume that this will cover the first three bullet points above. It is important to realise that some changes may require consequential changes to other parts of the codes. The Ofgem approach does not seem to cover transitional arrangements and the approach to this requires clarification.

Question 2.2: Do you agree with the approach we have described for managing the delivery of the Switching Programme SCR and the Retail Code Consolidation SCR?

We do not think that the approach described in the consultation works for the UNC for the reasons given above. Implementing Retail Code Consolidation before switching goes live is almost certain to impose additional costs on the providers of the SCR legal text who have provided text as requested in time to be issued with this consultation. This could be seen as imposing additional costs on those that have met Ofgem’s deadline.

We agree that for SPAA and MRA the number of change proposals is likely to decrease once the end date for the Codes is clear as parties will wait to raise changes to the Retail Energy Code.

We welcome Ofgem’s consultation with Code Administrators about the implementation of SCR text and reiterate our concerns about the potential problems caused by changing the implementation order of the text for the two SCRs.

Table 2 on page 31 of the consultation document is not entirely clear in relation to text changes for existing codes. The order in the table implies that the Retail Code Consolidation will take place on 1st April 2021 before the Switching text goes live. Under

1st April 2021 it uses the term transitional text for changes to BSC, DCUSA, UNC and IGT UNC, however this text is not transitional it is the enduring text for the Retail Code Consolidation. It will only be transitional if either it has to be “switched on” or it will change substantially on some future date. Notwithstanding our previous comments, in our answer to question 2.1 above, it would be helpful for the table to distinguish between the implementation of the text and it going “live”

Question 2.3: Do you have any views on the draft consequential changes to industry codes and work plans described in Appendix 5 that would help deliver the Switching Programme and Retail Code Consolidation SCRs?

We have a few detailed comments on the proposed legal text to support the Switching Programme. There is no draft text associated with Retail Code Consolidation.

Uniform Network Code (UNC)

The definition of Proposing User in General Terms A now refers to the wrong part of TPD G, the reference is to 2.1.2 but the revised text now has this definition at 4.2.1 (b). It is probably worth checking the references of other defined terms that currently reference TPD G.

We have two comments relating to Annex G-1 both relating to Table A.

The first relates to Group A and the data item Supply Meter Point Reference Number. This is correct for CSS and Non-CSS Supply Points but we do not believe it is correct for CSEPs. The ownership of this data item for CSEPs is with the IGT not the Transporter as it is defined in the UNC. General Terms C 2.1.1 (c) defines Transporter as National Grid NTS or a DN Operator. This means that an IGT is not a Transporter in terms of the UNC.

The second relates to Group F. The definition of LDZ Optional Capacity Rate has “The applicable LDZ Optional Commodity rate” this should be “The applicable LDZ Optional Capacity rate”

We have attached a mark-up of this Annex with this response.

Supply Point Administration Agreement (SPAA)

We have the following comments on the definitions in the main body of the agreement:

“Registered” should we believe refer to Central Switching Service (CSS) database rather than the Gas Transportation Database. Under the new arrangements the CDSP will be notified of the identity of the Supplier by the CSS so will not be the primary data source.

“Retail Energy Code” could also usefully be defined in relation to the Standard Condition 14 of Gas Transporter licence otherwise it gives the impression that the Retail Energy Code is only relevant to Gas Suppliers.

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Schedule 22 refers to Meter Asset Managers (MAMs). The Retail Energy Code refers to them as Meter Equipment Managers (MEMs) so we suggest that SPAA is amended to use consistent terms. This may affect more than schedule 22.

Schedule 23 is not included in the SCR legal text. The accompanying commentary suggests that given Ofgem's proposals then schedule 23 will not be required. If so it should be included as deleted text in the SCR legal text. We realise that this inconsistency is probably due to the late development of Ofgem thinking on this subject, however it is important that the SCR legal text is consistent with the decisions made.

Schedule 29 lists a definition of Data Enquiry Service, if the data information services are moved into the Retail Energy Code then this definition is not required. We also think that the definition "Withdrawal" in schedule 29 needs amending to reflect the new arrangements whereby the Central Switching Service will control switching. We suggest that the reference to CDSP should be removed. It would also be sensible for SPAA to use the terms used in the Retail Energy Code where SPAA refers to processes defined in that code.

Smart Energy Code (SEC)

We welcome the proposals to remove network's obligation to provide registration data to the CSS. We are disappointed that there is no legal drafting at all related to SEC. Although a number of elements may require further discussion progress could have been made on the other elements and drafting provided for these.

3. Switching Programme: REC Operational Arrangements

Question 3.1: 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.

We have looked at the draft Registration Services Schedule and it appears to meet our requirements to allow Transporter initiated registrations when permitted by the UNC. In this respect it meets Design Criterion 4: The REC is written in clear and accessible language that meets the needs of users.

Question 3.2: 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.

We have a concern with paragraph 3.6 which states:

"3.6 In respect of the data which the CSS Provider is required to maintain under Paragraph 3.1 which is obtained from sources other than Users, the CSS Provider shall take all reasonable steps to obtain the data on licence terms which permit the data to be shared in accordance with Paragraphs 3.5 and 4.6, and the Interface

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and Timetables set out in this REC Schedule. However, the CSS Provider shall not be obliged to share data under this REC Schedule to the extent that the relevant licence terms do not permit the CSS Provider to share such data in such manner.”

We understand that the terms of the CSS licence with Ordnance Survey for the use of Address Base will not allow the Retail Energy Location data item to be shared unless it is for switching purposes. This would mean that it could not be shared with transporters who might use it for other purposes.

There are some solutions to this including:

- 1) The CSS licence with Ordnance Survey being amended to allow a wider sharing of the REL to industry parties.
- 2) The REL being shared to parties that have bought the same product from Ordnance Survey.
- 3) The Unique Property Registration Number (UPRN) is shared and individual industry parties use their own processes to populate an address against the REL for their own purposes but do not share it outside their own business.

The UPRN a unique static record that does not change, the REL can and does change over time. Option 3 would allow each party to apply their own validation and quality enhancements to the UPRN as they wished.

Paragraph 3.6 is one of many references to obligations on the CSS Provider. The CSS Provider is not party to this agreement so the only way that these obligations can be given force is for there to be obligations on the DCC to ensure that the CSS Provider fulfils its obligations. There seems to be nothing in the current REC drafting to ensure this. The only obligation on DCC is in 12.1

“The DCC shall ensure that each External Service Provider Contract is capable of being novated to RECCo.”

It may be that the DCC contract with the CSS Provider contains provisions that require the CSS to fulfil obligations given to it by the REC but, even if they do exist, they are only contractual provisions and we suspect that there are no third-party rights to allow other parties to enforce the provisions. Therefore, if the CSS Provider does not fulfil some of its obligations that affect a third-party there seems to be no effective way of enforcing compliance. In contrast, the REC interpretations schedule paragraph 2.5 places obligations on Gas Transporters, and Electricity Distribution Network Operators to ensure that their service providers comply with the provisions of REC.

We propose that an equivalent provision be placed onto the DCC to ensure that its External Service Providers comply with the REC by amending the Interpretations Schedule by inserting a new clause 2.6 and renumbering existing clause 2.6 as 2.7.

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2.6 The DCC's External Service Providers are not Parties under this Code. Where this Code places an obligation on a DCC External Service Provider the DCC shall ensure that the appropriate DCC External Service Provider shall comply with the obligations expressed to be placed on the DCC External Service Provider. The DCC shall be liable for any failure by a DCC External Service Provider to comply with the obligations expressed to be placed on the any DCC External Service Provider under this Code.

Given our concerns we do **not** think that the schedule meets Design Criterion 4: The REC is written in clear and accessible language that meets the needs of users because the drafting does not place sufficient obligations on the DCC.

Question 3.3: 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.

We note that the key issue of the identity of the Data Master, which is the party that owns that data item is defined in the Data Catalogue which is not provided as part of the documents issued with this consultation.

Question 3.4: Do you agree that the draft Service Management Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved.

We have no comments on this schedule.

Question 3.5: 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.

This schedule is not applicable to Gas Transporters and hence we have not reviewed it.

Question 3.6: Do you agree that the draft Resolution of Consumer Facing Switching and Billing Problems Schedule meets the Regulatory Design Principles? If not, please explain how the Schedule could be improved?

Sections A (General Obligations), D (Crossed Meters) and E (Duplicate Registerable Meter Points) are applicable to Gas Transporters) we have not reviewed the other sections. We only have comments on section A.

Section A

The table in paragraph 2.1 to refers to Gas Transporter licence condition 17. This is turned off in GDN licences, it may be applicable to IGTs. For GDNs we believe that the intended reference should be Standard Special Condition D13.

Sections D and E

We have no comments.

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Question 3.7: Do you agree that we have adequately captured the requirements of the ETCC within the draft Resolution of Consumer Facing Switching and Billing Problems Schedule, taking account of the existence of Guaranteed Standards of Performance that cover engagement with the consumer and resolution of erroneous transfers?

We are not responding to this question.

Question 3.8: Do you believe there is merit in extending obligations relating to the resolution of Erroneous Switches, Crossed Meters, Switch Meter Read Problems and Duplicate Meter Points to micro-business consumers or should these requirements more generally apply to all Non-Domestic Energy Suppliers? For Switch Meter Read Problems, should the scope be extended to cover domestic and micro-business consumers who are settled on a Half-Hourly basis?

No response.

Question 3.9: Do you agree with our proposal to introduce a harmonise procedure for escalating delayed and disputed problem resolutions for all problem areas covered by the draft Resolution of Consumer Facing Switching and Billing Problems Schedule? If not, please explain how the approach for escalations could be improved.

No response.

Question 3.10 Do you agree that the draft Prepayment Arrangements Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved.

No response.

Question 3.11: Do you agree that the draft Related Metering Point Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved.

Related meter points only apply to electricity. We are not responding to this question.

Question 3.12: Do you agree that the draft Data Access Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved.

The drafting is ambiguous regarding ownership of the individual data items. If all the data items are controlled by REC parties and not by some other code then the references to the Code Manager “seeking to” in 7.1, 7.2 and 8.2 should be removed and the obligations made absolute particularly as 5.2 makes the Code Manager responsible for the Data Access Matrix, albeit in accordance with paragraphs 7 and 8.

On the other hand, if the Code Manager is dependent, on some occasions, on third party agreement, then in these cases “seek to...” is appropriate in these cases.

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We have not been party to the detailed discussions on this and other schedules but it seems that the wording is trying to accommodate two possible situations and hence the rights and obligations of the Code Manager in each case are not clear. We suggest that separating out rights and responsibilities into two cases is sensible:

- Those where the data item **is** controlled by a REC party under terms in the REC
- Those where the data item **is not** controlled by a REC party under terms in the REC

Paragraph 6.5 lists the minimum standard terms for data access agreements. We suggest adding the following

- liabilities for breach
- termination both by agreement and in case of breach

We think that this schedule needs further clarification and as it stands does not meet either Design Criterion 3: The REC contents provide a comprehensive set of requirements that will support the effective operation of the retail market.

nor Design Criterion 4: The REC is written in clear and accessible language that meets the needs of users.

Question 3.13: What changes would you make to best align the draft Data Access Schedule to the Energy Data Task Force recommendations?

The UK Government's Energy Data Taskforce takes the view that all data should be open. The Data Management Schedule does not address this issue which is complex because the data governed by REC may include both personal data and commercially confidential data. If these data items are to be made open either aggregation or anonymization seems necessary. We note that the electricity networks spent a lot of time developing processes to enable them to use data from smart meters for network management purposes. As making data open is likely to be moderately complex and expensive we do not believe that it should be done unless licence obligations are placed on licence holders to do so.

The revised REC mission statement in paragraph 1.2 of the consultation states "The REC will facilitate the efficient and effective running of the retail energy market, including its systems and processes. It will promote innovation, competition and positive customer outcomes". Having open data may promote innovation but it is not necessarily clear that it will promote positive consumer outcomes, this will depend on the cost.

Question 3.14: Do you agree that obligations should be placed on networks and suppliers to ensure that RECCo procures gas and electricity enquiry services and that obligations in the Gas Transporter and Distribution Licences can be removed?

We support the proposed removal of the licence obligations and their replacement with a joint obligation REC on Suppliers and Transporters to ensure that the RECCo procures the services. While Transporters and Suppliers hold a majority of the seats on the REC Co board they can effectively deliver this obligation; however, were they not to be a majority there is a risk that they may have an obligation that they cannot deliver. If this

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obligation is place on Transporters and Suppliers then Ofgem must ensure that Transporters and Suppliers always have a majority of seats on the REC Co board.

Question 3.15: Do you agree that the RECCo should be able to appoint either the Code Manager, Enquiry Service operator or a third party to act as the Enquiry Service Administrator for the purpose of monitoring compliance and managing Data Access Agreements?

Yes, we agree, the REC Co should be able to discharge its obligations as it sees fit; however, as we stated in our answer to question 1.8 if the code manager takes on roles that give it discretion and an ability to affect a party commercially then it may cease to be seen as impartial which will affect its ability to discharge its other functions such as “critical friend” effectively.

Question 3.16: 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.

As explained above in our answer to question 3.2, we propose that an obligation equivalent provision be placed onto the DCC to ensure that its External Service Providers comply with the REC by inserting a new clause 2.6 and renumbering existing clause 2.6 as 2.7.

2.6 The DCC’s External Service Providers are not Parties under this Code. Where this Code places an obligation on a DCC External Service Provider the DCC shall ensure that the appropriate DCC External Service Provider shall comply with the obligations expressed to be placed on the DCC External Service Provider. The DCC shall be liable for any failure by a DCC External Service Provider to comply with the obligations expressed to be placed on the any DCC External Service Provider under this Code.

Question 3.17: Are there any other areas that you think should be covered in the REC to support the Switching Programme, other than those that will be included in the Technical Specification?

We are still awaiting an Ofgem decision on the treatment of shared supply points.

We strongly believe that transporters should not be expected to facilitate Licence Exempt Networks (LEN) in UK Link as part of their obligations. By definition, a LEN is not on a licenced network. Should a LEN operator wish to request Xoserve to provide a service then it can request a third-party service from Xoserve. It is the responsibility of operators of private networks to apply to BEIS for an exemption if one is required and BEIS should have a register of any such exemptions granted. It is not the responsibility of licenced network operators to identify such private networks that may or may not need a licence. If private network operators require assistance, then network operators could consider providing services as part of their non-regulated businesses.

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Question 3.18: Do you have any additional comments on the drafting of any of the schedules, in particular in relation to whether they effectively achieve the outcomes described here and articulated in Design Baseline 4 or other programme documents?

No.

4. Retail Code Consolidation: SCR Scope, Process and Proposals

Question 4.1: Do you agree that Ofgem should lead an end-to-end process to develop the code modifications to deliver retail code consolidation?

WWU supports Ofgem leading an end-to-end process to deliver Retail Code consolidation. If this was left to industry it is not clear how this would be delivered as it is a substantial piece of work for one company to take on, requiring coordination between SPAA, MRA and REC. Further, if retail code consolidation takes place before the Switching programme, there may not be a REC change board in place to approve the changes. Even if one is in place having a change of this size as one of the first changes is not ideal.

Question 4.2: Do you agree with the proposed scope of the Retail Code Consolidation SCR? Do you think any additional areas should be in scope?

We broadly agree with the scope. We agree with the proposal to put all remaining provisions of MRA and SPAA in the REC or another code. The second part of the Retail Code Consolidation scope is making necessary changes to other codes to better facilitate cross code changes. We assume that this envisages changes in process and timings to align codes. If it goes further and seeks to move code administrators to code managers in line with how REC will function then we do not think that this is appropriate for an SCR as it will have cost and resource implications.

Question 4.5: Do you agree that the GDA and Green Deal related provisions in the MRA should transfer to the REC?

No response.

Question 4.6: Do you think GDA parties should accede to the REC, or be engaged in governance through some other means?

No response.

Question 4.7: Do you agree that the requirements currently held in SPAA Schedule 22 and the RGMA Baseline related to gas meter agent appointments and MDD should be mandatory for domestic and non-domestic suppliers? If not, why not?

No response.

Question 4.8: Do you agree with our preferred option for governance of agent appointments and MDD, outlined as option 3 above?

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Yes, we agree, that option 3 which transfers the processes common to gas and electricity into the REC is the most appropriate option.

Question 4.9: Do you support our proposal for consolidating the metering CoPs into the REC?

WWU agrees that the Metering Codes of Practice should be governed by the REC. This makes sense if the MEMs are to be parties to the REC.

Question 4.10: Do you think MEMs should be parties to the REC?

Requiring Meter Equipment Managers to be party to REC would provide tighter governance. We agree with the arguments in paragraphs 4.68 and 4.69 of the consultation regarding the importance of data quality. We also agree that the current arrangements whereby obligations are placed on Suppliers but a lot of the activity and data creation is done by MEMs can lead to problems with data quality. While it is not possible to require MEMs to accede to the REC, if REC required Suppliers to only use MEMs that were parties to REC it would be more or less achieved in practice. The exception to this would be where customers appointed MEMs themselves (where the Gas Act owner of the meter is Customer rather than Supplier). In this case there could be MEMs that were not party to REC; however, in practice it seems likely that there would be few if any MEMs in this category. Most meters are provided by Suppliers or Customers but the Gas Act does allow a transporter to be the Gas Act owner and it would be sensible to cover off all the possibilities. We therefore suggest that it would also be sensible to require Transporters to use a MEM that was party to REC.

Question 4.11: Do you think changes to the metering Schedule(s) of the REC should be progressed through the Change Panel only, or should there be an additional MEM Panel?

WWU thinks that one Change Panel (this is called the REC Panel in the REC Change Management schedule) should deal with all changes; having different change processes for different activities will add complexity. The REC covers a lot of areas and if MEMs have separate processes then there is an argument for having separate processes for changes that only affect gas or electricity processes. Having one Change Panel, which is our preference, will require MEMs to be represented on the Change Panel and they would need to play a full part in assessing any changes. We have provided further comments on the composition of the REC Panel in our answer to question 1.6.

Question 4.12: Which of the requirements within SMICoP, if any, should extend beyond the initial installation of the smart metering system?

No response.

Question 4.13: Which of the requirements within SMICoP, if any, should apply to installation of non-smart metering systems and other site visits required to carry out metering related work?

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No response.

Question 4.15: What are your views on our proposals for the governance and assurance of the SMICoP provisions once migrated to the REC?

We are not responding to this question except to repeat our view that there should be one REC panel that deals with all change. See our answer to questions 4.11 and 1.6.

Question 4.16: Do you agree with our proposal for incorporating PSR provisions in the REC?

We agree with the proposals in paragraphs 4.87 to 4.94 of the consultation regarding incorporation of PSR provisions in the REC. It is also worth adding that WWU has raised SPAA CP 471 to align PSR Needs Codes and Needs Codes Descriptions in energy and water.

5. Licence Condition Changes

Question 5.1: Do you agree that Appendix 4 accurately describes all of the changes that should be made to licences to support the effective operation of the new switching arrangements?

Yes we agree.

Question 5.2: Do you agree that Appendix 4 accurately describes all of the changes that should be made to licences to support Retail Code Consolidation?

We have comments on the GT licence drafting proposals.

SLC 8 and SSC D17. We note that the REC refers to Meter Equipment Managers and it would seem sensible to be consistent across licence and codes so we suggest that this is changed in the licence both in this condition and in the defined terms under Standard Condition 1.

SC 31 For GDNs this should refer to SSC A31. We support the proposal in question 5.3 to remove this license condition but if this is not done we do not agree that the obligation should be amended to include Suppliers as they will be able to obtain the information directly from the CSS. It would be pointless for the CSS to provide it to Xoserve for them to provide to Suppliers.

SSCA15. We agree that SSC A15 should be removed, it might be more appropriate to do this as part of the license amendments under the GD2 price control. These will also be raised about the same time as the timetable proposed in this consultation and Ofgem must make sure that they are coordinated to avoid conflicting changes being raised.

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Question 5.3: Are there any changes to licences that, if not made prior to the switching arrangements going live, would inhibit the delivery of the Switching Programme?

We think changes to SSC D17 and SSC A31 should be made before the Switching Programme goes live otherwise Transporter will have obligations in both licence and REC and it may not be able to fulfil its licence obligations.

Question 5.4: Do you think that we should remove licence obligations on GTs described in SLC 31 and DNOs in SLC 18 to provide one or more of the following services:

- Enquiry services;
- Maintenance of a register of data associated with a metering point/supply point; and
- Customer enquiry service?

Enquiry Services

In relation to paragraphs 5,6,7 which relates to connections, the provisions could be deleted and reliance placed on the obligations in sections 9 and 10 of the Gas Act. The gas connections processes have operated smoothly for a considerable period and our view is that deleting these would not affect this.

Supply Point Register

This relates to paragraphs 1 to 4 with the exception of 2(e) and 2(f), 3(a)(iii), 3(b)(iii) and 3(b)(iv). The service provided by Xoserve as Central Data Service Provider for DNs exceeds the requirements of the licence as this is necessary for the smooth operation of the market. As this service is established and provided under the terms of the Data Services contract, there seems little point in continuing to have the obligation to provide the service in the licence. The main question is whether the obligation should be in the REC or the UNC. Insofar as the obligations relate to Shippers they should be in the UNC. The obligations that relate to Suppliers would naturally migrate to the REC although giving that switching is now Supplier centric some of these would naturally fall away and do not need to be discharged by transporters as the Supplier should be able to obtain the information directly from the CSS. We suggest that this needs further thought.

Customer Enquiry Service

This relates to paragraphs 2(e) and 2(f), 3(a)(iii), 3(b)(iii) and 3(b)(iv). This service provides a service to customer so that they can identify their Supplier. For supply points that are subject to the faster switching service this information will be held by the CSS and therefore the service should no longer be an obligation on Transporters but should now fall to Suppliers. For supply points that are not held by the CSS, which are almost entirely on the National Transmission System, this obligation on the transporter may still be required but could be moved to the UNC.

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