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Dear Rachel

The Retail Energy Code – proposals for version 1.1

EDF is the UK's largest producer of low carbon electricity. We operate low carbon nuclear power stations and are building the first of a new generation of nuclear plants. We also have a large and growing portfolio of renewable generation, including onshore and offshore wind and solar generation, as well as coal and gas stations and energy storage. We have around five million electricity and gas customer accounts, including residential and business users.

EDF aims to help Britain achieve net zero by building a smarter energy future that will support delivery of net zero carbon emissions, including through digital innovations and new customer offerings that encourage the transition to low carbon electric transport and heating.

While we broadly support the changes proposed for the Retail Energy Code (REC) v1.1 we have a small number of concerns that must to be addressed if code is to be fit for purpose and deliver the right outcomes for consumers.

- We support the proposal to allow suppliers to object if there is an open theft investigation. Theft poses a danger to life so a right to object would protect consumers, who would otherwise be at risk if they were able to keep switching supplier without being caught. There should not be a limited timeframe in which suppliers are able to object for theft related reasons.
- The proposed composition of the Performance Assurance Board (PAB) and Change Panel does not fairly represent suppliers as a 'Party' category. Suppliers are diverse and provide differing industry experiences and views. The 'Supplier Party' category should be broken down to include suppliers of all types including larger suppliers, smaller suppliers, and non-domestic only suppliers. The selection process for appointing panel members must be fair, and for the Change Panel the Supplier Party representative should accountable to a constituency through an election process.
- While there is value in having representation on REC panels from bodies with external expertise, such as Citizens Advice, it is unfair to assume those representing the energy

industry are unable to champion consumers, and conversely that consumer bodies will automatically achieve the right consumer outcomes. Industry expertise is still required. The PAB and Change Panel representation must not be weighted in favour of consumer groups, nor should consumer groups automatically have additional rights to override the majority decision of wider industry experts.

- We agree that Meter Equipment Managers (MEMs) should become Parties to the REC. If the metering obligations currently set out in the Balancing and Settlement Code (BSC) also transition to the REC this must be an 'all or nothing basis' to ensure obligations for relevant parties remain clear and unambiguous. 'Double jeopardy' must be avoided to ensure MEMs are not subject to multiple sets of governance (and therefore also additional costs and risks) for similar or related activities.

Our detailed responses are set out in the attachment to this letter. Should you wish to discuss any of the issues raised in our response or have any queries, please contact Paul Saker, or myself.

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

Yours sincerely

John Mason
Senior Manager of Customers Policy and Regulation

The Retail Energy Code – proposals for version 1.1

EDF's response to your questions

Company and Code Governance

Q2.1 Do you have any comments on the process for appointing additional RECCo directors?

We are supportive of the proposals for appointing additional RECCo directors. We agree that the selection of suitable candidates for a director role should transition from an authority decision to a nominations committee recommendation with RECCo board approval.

While the inclusion of some directors with expertise outside the energy market is valuable, we must ensure that market participants remain involved and play a pivotal role in governance at director level. Market expertise is vital to ensure that decision making is robust and enables effective foresight of the impacts a decision could have on differing sections of the market.

We would welcome clarity on the expected costs for the nominations committee, including the use of external advisers, and how these will be managed.

Q2.2 Do you agree that MEMs should be Party to the REC?

Yes. As metering codes are moving to the REC, we agree that MEMs should be Party to the Code. MEMs should have a right to a role in defining the arrangements they are party to, and the rules they are required to follow. They also need to be subject to the REC's performance assurance framework, which is best achieved by making MEMs a REC Party.

Metering is important to the consumer experience of the energy market – not just from a technical point of view in relation to site work, but the accuracy and timeliness of metering data also directly impacts the consumer experience – especially regarding switching and billing. It is important to ensure metering codes are aligned to positive consumer outcomes under the REC as consumer safety is paramount and is best served by including those parties with relevant technical expertise.

We must, however, ensure that moving governance to the REC does not become burdensome for MEMs. The change in governance itself should not place additional requirements or costs on MEMs as any increase in cost would be borne by consumers. While we support alignment of metering processes, this must occur over time, and only where it is sensible and appropriate to do. Any change must also continue to recognise that there are different technical standards applicable to the two fuels.

We would recommend that MEMs automatically 'qualify' for the REC if they are already party to some or all the legacy metering codes that are being incorporated into the Code.

Q2.3 Do you agree in principle that the obligations currently placed upon metering agents by the BSC could be integrated with the REC performance assurance framework, subject to certain conditions being met?

Yes, we agree in principle that this should be possible.

Historically the BSC has placed little focus on consumer outcomes. However, the BSC and REC are fundamentally looking for MEMs to deliver the same set outcomes – send accurate and timely metering data which then supports both consumer facing processes and accurate settlement. It should be possible to integrate metering obligations into the REC and improve the focus on consumer outcomes without adversely impacting settlement. While we agree this could be beneficial, we have concerns about how this integration would be done in practice.

It is not clear from the consultation which BSC obligations would be integrated into the REC, or whether MEMs would remain subject to any obligations under the BSC. The BSC metering obligations should move to the REC on an 'all or nothing basis'. Any attempt to split the obligations between the BSC and the REC is likely to cause confusion and increase the likelihood of misalignment or conflict between the codes. Most MEMs, including EDF, operate in multiple sectors of the market, which means any attempt to divide the obligations based on meter or customer type is likely to require MEMs to operate under two sets of code governance, which is costly and inefficient. MEMs should not be subject to multiple sets of governance, and therefore performance assurance, for similar or related activities. We would welcome clarification on whether MEMs would still be required to qualify under the BSC if the obligations were to move to the REC.

If metering agent obligations were to move, partially or wholly, from the BSC to the REC this could have an impact on a number of organisations that provide multiple agent roles under the BSC (i.e. Data Collection and Data Aggregation as well as MEM). The efficiency of the MEM/Data Collector relationship that underpins settlement performance could also be undermined if differing obligations are managed under two separate codes. These potential impacts will need to be considered as part of the drafting of the MEM obligations into the REC and the design of the REC performance assurance regime.

Q2.4 Do you agree that the RECCo should be required to develop and maintain a Strategy for the REC, including but not limited to digital transformation of REC processes and data?

Yes. A clear strategic direction for the REC would help support efficient decision making and avoid making changes that are not aligned to the overall strategy.

We would recommend that the strategy for the REC doesn't just cover the development of REC governance but also considers the strategic direction for the content of the REC, and the obligations and processes it governs. We note that the SEC Panel has published a Strategic Plan which is intended to do something similar and predict the industry changes that the SEC will need to progress in the future.

Q2.5 Do you agree that RECCo should adopt zero based budgeting from 2021/22?

Yes. It is reasonable and appropriate that every cost should be justified and not just the changes from the previous year.

There are likely to be some activities that are 'core' to the operation of the REC that will always be required, so it may not be proportionate to fully justify every year. We recommend that there is a process to identify these core charges, in order that they could be exempted from this requirement, although the costs of them should still be fully justified in the budget.

Q2.6 Do you agree that future RECCo budgets should be decided upon by the RECCo Board, subject to appeal by REC Parties?

Yes. We agree that the RECCo budgets should be decided upon by the RECCo board, so as long as it is subject to full industry consultation. There is no justification for an additional forum to discuss the budget. We note that this is the process followed for the SEC budget, and that there have not been any material issues with this process to date.

Performance Assurance

Q3.1 Do you agree with the proposed composition of the PAB, as set out in the Terms of Reference published with this document (see Appendix 2).

Yes, we broadly support the proposed composition of the PAB, as set out in the Terms of Reference.

We do not agree that suppliers should be classified as a single homogenous group. We recommend that diverse categories of supplier are included on the Board including smaller and larger suppliers, as well as non-domestic only suppliers. This is necessary as different types of suppliers will have different experiences of operating in the retail market. A more diverse representation of suppliers should lead to a more rounded view on the PAB and will ensure Parties of all types are fairly represented

We recognise the benefit of including non-REC Parties as part of the PAB composition as there is value in independent external expertise, and potentially new and innovative ways of thinking. Nonetheless, we all also need to ensure that those subject to the performance assurance measures and with direct operational experience are able to influence how it is administered. As a result, there needs to be a fair balance between independent performance management experts and industry representation.

We note that there a requirement under 2.15 of the Terms of Reference that the Alternates of REC Party members must not be employed by the same organisation as the REC Party. It is unclear however why this is necessary.

Q3.2 Do you agree that any organisation undertaking an activity governed by the REC would be within scope of the performance assurance framework in respect of those activities?

Yes. If the rules are set out in the REC, and non-compliance could impact consumers or other parties, then oversight of compliance with those rules for all activities should be within the REC performance assurance framework.

We must ensure that the level of assurance applied is proportionate to the market role being undertaken and the impact on consumers and/or other REC Parties. REC obligations should deliver the right outcomes for consumers as well as protecting REC Parties from the impact on non-compliance by other Parties

Q3.3 Do you agree that at least one of the PAB's priorities should be determined by Citizen's Advice?

No. The implication is that the PAB is unlikely to agree priorities that are in the consumer's interest, and that Citizens Advice need specific special treatment to enable them to override this. This implies that the rest of the process for selecting PAB priorities could be flawed.

A more effective solution to ensure consumers rights are protected would be to have a single approach to setting all priorities, with the right for Citizens Advice to appeal to the Board or Authority if they do not believe that these are appropriate for consumers, rather than giving them their own 'pick' by default. Indeed, in some cases, the choice of one 'pick' might not be enough for a consumer body if there is a more significant underlying problem with the PAB's prioritisation.

If a decision is ultimately made to enable Citizens Advice to select one of the PAB's priorities then the choice should also be subject to challenge by other PAB members, as it must not be assumed that they will always select the most optimum outcome. This would not be fair on other REC parties that may have equally valid priorities; and if an inappropriate selection is made, without full knowledge of industry processes, this could inadvertently lead to undesirable consumer outcomes.

Q3.4 Do you agree that the PAB should have discretion to escalate liabilities within a defined range if the earlier application of charges does not achieve the desired effect?

Yes, escalating liabilities is a useful tool as the PAB needs to be able to drive parties to address non-compliances. However, its use needs to be considered carefully, especially if these costs could have an impact on a Party's financial viability.

Once the PAB is in place, parties that could be potentially impacted by PAB action need the opportunity to review the more detailed proposal regarding how charges and liabilities will be applied, and in particular and how it will be ensured that these are directly related to the damage caused to other REC Parties and/or consumers, and are not just penal.

We do not agree that the rights of appeal process should always stop at the RECCo Board. While in most instances this will be sufficient, party members should still be able to appeal to an independent authority (Ofgem) if other avenues fail. This is particularly important if the REC is

given power to stop a supplier acquiring new customers, as any decision made by the PAB could ultimately put a supplier's viability to continue operating at risk.

Q3.5 Do you agree that suppliers with serious performance issues should face restrictions on their ability to acquire new customers until those issues are resolved?

Yes. However, while this is a useful tool, mechanisms must be put in place to ensure that any restrictions on a suppliers' ability to acquire new customers is used in a limited and targeted way and should not be penal. The main use should be to prevent additional consumers from being subjected to harm as a result of switching to that supplier.

We recommend that guidelines are agreed with REC Parties regarding the circumstances in which this sanction could be used by the PAB. There would need to be a clear escalation process to this point, as this should be a last resort following unsuccessful attempts to address performance issues through other performance assurance mechanisms. If there is evidence that consumers are being materially impacted by the performance issues and more immediate action is required, the escalation process could be expedited if necessary.

We would also expect Ofgem to have a role in this process – especially if a supplier if performing so poorly they need to have their ability to acquire new customers restricted.

Change Management

Q4.1 Do you support our proposals regarding the production of preliminary and detailed IA?

No, the timelines in the proposals are far too long. This seems to replicate the process and timescales that are currently in place for SEC changes and that process is not working effectively, especially in terms of the cost and timeliness of change.

Fifteen working days seems like a reasonable timescale to undertake an Impact Assessment (IA). Forty working days, which in effect would be two months, is too long, and may not be proportionate for the size or complexity of many REC changes. This timeline is not appropriate for the changes that would be likely to occur to the REC systems where changes would be more process driven. At a minimum there should be mechanisms in place to ensure IAs are completed as quickly as possible, and that timescales are proportionate to the complexity of the change.

While it is stated that the costs of a Preliminary Impact Assessment (PIA) is 'free' ultimately the work undertaken by the Code Manager will be chargeable. To ensure parties are able make an informed decision on whether it is reasonable to progress a change, based on a robust cost/benefit analysis, parties should be made aware of the cost of a PIA, and how and when this will be charged. This is necessary to ensure an informed decision can be made on whether to proceed with the next steps of a potential change.

We agree that the Code Manager should provide a quality assurance role in respect of an IA and avoid the need for unnecessary workgroup meetings. However, as the Code Manager will not necessarily be an expert in details and technicalities of the code itself it is unclear how they will

understand whether the IA is fit for purpose. Relevant technical and business expertise will be required to carry out the scrutiny role that suppliers and other industry parties do now. While we do not want workgroups to be set up when not needed, we must still have the confidence that the IA is being done to the right standard on our behalf. It is unclear how this will be achieved under current proposals.

Q4.2 Do you agree that the Change Panel should be appointed by the RECCo Board, following a process overseen by the nominations committee?

No. The current wording in the 'Change Panel Terms of Reference' states that there will be 'selection process overseen by the REC Nominations Committee' to appoint the Change Panel. It does not clarify how the 'selection process' will work. The fairest means to select candidates would be an election process, with each REC party having one vote, to select a member to represent them on the Change Panel. The Terms of Reference should be updated to explicitly state that the 'selection' process that must be followed by the nominations committee must be a democratic election process for each panel member. The appointment of these elected representatives for each party could include an appointment by the RECCo board, but this should just be a formality to confirm the correct electoral process has been followed.

A fair election process makes it more probable that those chosen to represent a particular party category on the Change Panel accurately reflects those parties' views and concerns. It will also give other REC parties a clearer right to remove their representative if they are failing to work effectively on behalf of the parties that they represent.

Suppliers' diversity must also be recognised when appointing the Change Panel as suppliers are not one homogenous group with a single set of views. Similar to other panels, different categories of supplier must be included on the Change Panel. This should include smaller and larger suppliers as well as non-domestic only suppliers. This will lead to a more rounded panel that can effectively represent all views.

We do not agree that suppliers' and other REC parties will take decisions against the consumer interest and therefore as a result the Change Panel needs to be weighted to avoid this risk. Indeed, it is possible that organisations representing consumer interests may inadvertently support changes that, while on the face of it may seem to champion consumer outcomes, in fact inadvertently could lead to consumer harm. This could be the result of the non-energy industry expert failing to fully understand the full ramifications of their decision e.g. cost financial or otherwise on the end consumer that may result in detriment.

As a result, we recommend that each member of the Change Panel can demonstrate a level of competency and understanding of the REC that will enable them to understand the full implications of any changes being considered. A detailed understanding of the underlying REC processes and obligations is necessary to ensure that robust decision making takes place across all members of the Panel.

We note that there is a requirement under the Terms of Reference that the Alternates of REC Party members must not be employed by the same organisation as the REC Party. It is unclear however why this is necessary as this is not consistent with other similar groups in other Codes.

Q4.3 Do you agree that the REC should encourage shorter and more frequent Change Panels, to be held remotely where possible?

Yes. This seems a reasonable approach and should help ensure change proposals continue to progress. However, mechanisms need to be in place to ensure that the frequency of meetings does not become excessive. It would be useful to monitor the efficacy of these meetings as changes begin to progress through the REC, and also ensure there is versatility to make changes to this set up if it proves unproductive.

We recommend that the remit of the Change Panel includes the ability to discuss and make amends to proposed changes, so long as the responses from industry consultation concur, and so long as the change is not a material change to the initial proposal. This is necessary to prevent the requirement for unnecessary and burdensome additional consultations to agree amends that the Panel already know are supported.

Q4.4 Do you agree with the proposed categorisation of REC documents and associated change paths?

Yes. It is appropriate that changes have different levels of documentation, and process detail, proportionate to the scale and the impact of the change. If a change is small, such as a simple administrative update with no consumer impact, it makes sense that the change should be expedited and not have the burden of following the full REC process.

There should still be some consistency across all change proposals. Impact Assessments and consultations should take place across all categories of changes, unless the change is administrative, to ensure that relevant parties can influence changes that affect them. There must also be a single or at least co-ordinated process for implementing changes and informing affected parties of any changes as we need to minimise the risk that parties are not aware of changes that could impact them.

While we would expect complex changes with high consumer impact to follow a more extensive process, we would still expect the documentation that details the associated change path to be as simplified as possible. This will help ensure that it easy for those engaged in the change process to correctly and efficiently follow the expected procedures.

Q4.5 Do you agree that code administrators and managers should be able to raise any changes identified as necessary by the CCSG?

Yes, we agree it makes sense for code administrators to have reciprocal rights to raise changes identified as necessary by the Cross-Code Steering Group (CCSG). The alternative would be to find another body or person who is less invested in the outcome to raise the change, which would be inefficient.

Theft

Q5.1 Do you agree that we should extend the valid reasons for an objection to include ongoing and time-bound theft investigations, and subject to monitoring by the PAB? Do you have any suggestions for the period of time during which it should be possible to maintain investigations as a reason for an objection and what should trigger the start of that period of time?

Yes. If there is an ongoing investigation for theft, suppliers should have the right to object and prevent a proposed supplier transfer for both Domestic and Non Domestic Customers. Theft poses a danger to life so a right to object would ultimately protect consumers, who would otherwise be at risk if they were able to keep switching supplier without any real prospect of being caught.

We do not consider that there should be a specific time period where it is possible to maintain theft investigations as a reason to object. In general, we would not expect a theft investigation to go outside the timescales set out in the codes of practice, which is up to 90 days. However, there will be circumstances when an investigation may take longer, for example if we are still applying for a warrant. We agree that the PAB should be able to monitor suppliers objecting for the reason 'suspected theft' and would expect suppliers to be able to produce evidence of their suspicions for theft if requested. This should mitigate any risk that a supplier objects for longer than they are allowed. We would not expect that a supplier could object for theft once the investigation is closed, unless there is a confirmed theft in which we would expect the supplier could object until such a time the supply was made safe (or as a last resort disconnected).

If we object to a transfer the licence conditions require us to provide 'Notice' to the customer of the grounds for the request. Normally we would expect to be fully transparent regarding the exact grounds for raising an objection. This is not likely to be appropriate in the case of theft, as our objection letter could pre-warn the customer of our investigation, which could lead the customer to take (potentially dangerous) steps to prevent us confirming the theft, or what otherwise would have been a successful investigation. We agree that a letter should still be sent to the customer, but that the call to action to resolve the objection would be to contact the supplier, rather than providing detail to the customer on the grounds for the theft investigation.

Q5.2 Do you consider that the RECCo should be required to periodically review the effectiveness of the incentive scheme(s)?

Yes. The incentive schemes should periodically be reviewed to ensure they are effective both in terms of reducing theft, but also to ensure that the cost of the scheme is proportionate to the amount of additional theft that is detected as a result.

Q5.3 To what extent, if any, do you consider that the Theft Target should be reduced pending the replacement of the Theft Risk Assessment Service?

The theft target must be proportionate to the number of thefts it is realistic (and cost effective) for a supplier to detect. Suppliers must not be financially penalised if they fail to reach a target that is unreasonable based on current circumstances.

The end to new TRAS leads will inhibit some suppliers in identifying theft that would otherwise be discovered through the investigation of outliers. However, the impact of this could be relatively

minimal – some thefts will still be identified through suppliers' own investigations, and some suppliers do not rely primarily on TRAS to identify theft.

The most significant impact on suppliers being able to meet their theft targets this year will not be the end to TRAS but the existence of Covid-19. Covid-19 restrictions have made it much more challenging for suppliers to identify and investigate suspected theft as there have been, and most likely will continue to be, some level of restriction regarding suppliers and other third parties being able to enter a customer's property. Courts are also not operating as usual, and the Scottish courts are closed meaning that we are unable to apply for warrants in many instances to confirm a theft. While we agree the pending replacement of TRAS should have some impact on suspected theft targets, it is the wider circumstances of Covid-19 that are likely to have a more significant impact upon suppliers.

Q5.4 Do you agree that the RECCo should procure a theft methodology, and use that to assess the effectiveness of a Theft Reduction Strategy, which it should also develop?

It is difficult to quantify the benefits of any theft methodology, as it is trying to measure a benefit that cannot be confirmed. While in theory we would support the RECCo procuring a theft methodology to assess the effectiveness of a Theft Reduction Strategy, suppliers and other parties should be able to review any proposal to ensure that it is cost effective.

We have a specific comment on Section 6.6 of the Theft Reduction Schedule which states that '*Only Confirmed Thefts identified within the specified start and end dates of the Scheme Year will be eligible for the 2021/22 Scheme Year*'. We recommend that a definition is provided of the date that a supplier must use to identify when a theft is 'confirmed' so that each supplier is using the same date when deciding whether to include a theft in the current, or next year's, incentive scheme. While this is not defined in the current Incentive Scheme Schedules, clarity is provided in the TRAS Programming Manual (Date Investigation closed) but this will no longer exist once the current TRAS Scheme ends on 31 March 2021.

If clarity is not provided some suppliers could use the 'Tamper Report date' (which could be earlier than Date Investigation closed) meaning there is a risk some suppliers may count a theft towards the current scheme year, which other suppliers are unable to count until the next scheme year begins.

EDF
November 2020