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Dear Rachel,

### **Consultation on the Retail Energy Code – proposals for version 1.1**

Thank you for the opportunity to respond to the consultation on the Retail Energy Code – proposals for version 1.1.

Electricity North West continues to support the objectives of the Switching Programme and welcomes the ongoing dialogue with Ofgem on consequential changes to other industry codes to deliver the Switching Programme and Retail Codes Consolidation Significant Code Reviews (SCRs)T.

We welcome the following proposals by Ofgem:

- 1) *introducing discretionary REC shareholding for all eligible REC parties* – via amending Clause 1.1 of Schedule 4: Company Governance to mitigate a regulatory burden and enable shareholding by REC eligible parties to be discretionary. As mentioned in the Ofgem consultation, we raised a query regarding this obligation prior to ENWL acceding to the REC in February 2019. At the time Ofgem confirmed that the shareholding could be discretionary for network operators, but we welcome this is now being written into the main body of the REC.
- 2) *expanding the REC Performance Assurance Framework (PAF)* – to include RECCo Service Providers which have obligations under the REC, such as the Data Communications Company in its capacity as a CSS provider. Whilst we recognise RECCo Service Providers obligations will be documented and monitored through their contractual relationships, we agree it is appropriate to include key obligations within the REC and as such they would fall under the PAF regime.
- 3) *confirming our licence takes precedence over the REC* – where an inconsistency arises between the requirements of the REC and our licence. Our concerns remain with the decision for MOCOPA to be consolidated with the other metering CoPs into the REC. As MOCOPA is a technical agreement, it is important to ensure the clarity and consistency of the engineering processes are not diluted or misunderstood.



To enable us to best assist Ofgem and meet customers' needs we would welcome further work on the following areas regarding the development of the REC:

- 1) *to introduce the REC objectives in the REC main body and reference made in appropriate REC documentation to enable transparency, clarity and simplicity* – as currently these objectives only sit in each Parties licence. Ofgem refer to the REC objectives under paragraphs 3.76 and 4.42 of the consultation but these objectives are not contained in the REC main body or any other schedule or REC documentation. Reference to these objectives should be referenced in the Change Management and Performance Assurance Schedules and REC Board and various other Sub-Committee terms of reference, as all governance and change control management should be tested and referenced against these objectives. Industry parties and the Code Manager may know where to look for these REC objectives but non industry parties may struggle.
- 2) *to remove the proposed Code Managers power to refuse submission of a Change Proposal on the grounds that the proposal has no reasonable prospect of being approved as this opposes open governance* – as set out under Clause 8.1 (d) of the draft Change Management Schedule Power. We raised a query regarding the appropriateness of this discretionary power without any efficiency testing at a recent RDUG meeting and we welcome more details on examples of where this is common practice in existing codes. Our understanding is this is not common practice and the Authority in March 2020 rejected a [SEC modification proposal 079 ' provisions for withdrawing modifications'](#) on the grounds that the proposed solution did not clarify how the Code Panel would be able to identify modifications for withdrawal and consequently the Authority would have no rational if the Panel decision was appealed. The same reasoning applies here. The term '*no reasonable prospect of being approved*' is subjective and at what stage and based on what criteria does the REC Code Manager, or any REC Sub-Committee determine that a proposal is unlikely to succeed. Until the proposal undergoes the various refinement and development stages how is it possible to predetermine if a proposal is unlikely to succeed or not. In any case, the test should not be if the proposal is likely to succeed or not. Rather if a test is needed this should be based on if the proposal meets the code objectives and benefits consumers.
- 3) *to confirm that Electricity Network Operator constituency category will have a seat on the enduring RECCo Board* - which is reflective of the proposals for the Electricity Network Operator to have seats on the REC PAB and Change Board.
- 4) *to develop one combined Performance Assurance Framework for all codes* – to enable industry parties and service providers to undergo one performance assurance assessment each year conducted by one independent auditor and overseen by one Performance Assurance Board. This would encourage best practice sharing, benefit smaller industry parties and reduce costs to customers. We would welcome participating in any discussions or workshops as part of the Energy Code Review to develop this approach further.
- 5) *to confirm that DNOs will not be expected to pay non proportionate 'Charged Dependant on Usage' costs for this retail code* - we agree that suppliers solely pay for RECCO and we would recommend that this approach be extended to any cost items listed under the forthcoming REC Charging Statement Schedule which are not proportionate to the risk DNOs present to the REC objectives, such as for the annual qualification assessments. This is similar to the arrangements under the BSC whereby DNOs are subject to annual BSC audits but do not pay towards the costs of the Performance Assurance Framework. Whilst we recognise, as a REC party DNOs will be required to be assessed under the REC PAF, the Performance Assurance Techniques applied to the BSC parties are based on risks they pose to settlement. As a DNO we pose non-material risks to settlement which is parallel to our posing non-material risks to the objectives of the REC and the Switching Programme. . We recognise the draft REC Charging Statement is still under development but we are also seeking clarification when this is likely to be issued.

Appendix 1 provides our detailed responses to each of the consultation questions.

I hope these comments are helpful. The following table gives our detailed responses. Please do not hesitate to contact me or Catherine Duggan (07775 547624) if you would like to follow up on any particular aspect of our response.

Yours sincerely,

**Paul Auckland**  
**Head of Economic Regulation**

## **Appendix 1 – ENWL detailed responses to each of the consultation questions**

The following table includes our views on the consultation:

Ref.	Question	Response
<b>2 Company and Code Governance</b>		
<b>2.1</b>	Do you have any comments on the process for appointing additional RECCo directors?	<p>We agree that the RECCo Board would benefit from the appointment of two additional directors covering consumer advocacy and digital transformation.</p> <p>We note, that Ofgem proposals regarding the process for the appointment of RECCo directors is silent on if ‘Electricity Networks’ constituency expertise category is a requirement for the enduring RECCo Board membership. Which would be reflective of the proposed composition of the REC PAB and Change Panel. Rather, Ofgem are proposing that a Nominations Committee will determine the composition of the enduring RECCo Board in consultation with the Authority.</p> <p>Whilst it is appropriate our role should diminish on switching as others take on these responsibilities with the creation of the Central Switching Service (CSS); as referenced in this consultation the creation of the REC (although originally conceived as a means of providing governance for the new dual fuel switching arrangements) has now provided the opportunity to consolidate other codes.</p> <p>Networks would still have a role as an Electricity Retail Data Agent under the REC. Also, Ofgem are currently proposing other non switching areas which impact Networks and their customers should be transferred from DCUSA and the Master Registration Agreement (MRA) as part of this codes consolidation. As such it is appropriate that the REC party constituency ‘Electricity Networks’ have a seat on the enduring RECCo board and this be written into the RECCo Board Terms of Reference.</p>
<b>2.2</b>	Do you agree that MEMs should be Party to the REC?	<p>We have no comment on the MEMs being parties to the REC in regard their interactions with other MEMS or suppliers.</p> <p>We still have concerns on the decision for MOCOPA being consolidated with the other metering CoPs into the REC. MOCOPA is, as previously stated by Ofgem “primarily concerned with health and safety, competency of the overall business and its individual employees; and the practical operational interactions between DNOs and MEMs.”</p> <p>As MOCOPA is a technical agreement, it is important to ensure the clarity and consistency of the engineering processes are not diluted or misunderstood. We foresee</p>

		issues and conflicts around a health and safety agreement being contained within an energy code (REC) governing retail energy activities and the operation of faster and more reliable arrangements for consumers to switch their energy suppliers.
2.3	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?	<p>We recommend instead that the existing codes and future codes consolidation being take forward by the Energy Codes Review instead look at consolidating the Performance Assurance Framework across all codes so each Party undergo only one combined assessment each year. This would result in significant efficiency savings and enable lessons learnt to be shared across fuels and codes.</p> <p>Currently, as a DNO we are required to undergo four different annual code performance assurance assessments as follows:</p> <ul style="list-style-type: none"> <li>1) SEC user security assessments</li> <li>2) MRA MPAS re-qualification (which will be replaced by the REC re-qualification)</li> <li>3) BSC Audit</li> <li>4) MOCOPA Audit</li> </ul> <p>Multiple assessments must be more resource intensive for smaller suppliers and independent distributors.</p> <p>Instead of shuffling performance assurance from one code to another code under the Retail Codes Consolidation (such as with MOCOPA) it would be more pragmatic for DNOs and other code parties to undergo one annual performance assurance review each year across all the codes overseen by one code independent performance assurance board.. This model could work with an Ofgem decision to introduce one or three codes under the Energy Codes Review.</p>
2.4	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?	<p>Yes. We would welcome the annual publication of a RECCo strategy to be consulted upon as part of the annual business planning and budget consultation.</p> <p>This is good practice and examples can be sighted from other energy industry planning processes such as DNOs volunteering to publish their strategies for how we are Modernising Energy Data through digitalisation as part of the RIIO2 planning.</p>
2.5	Do you agree that RECCo should adopt zero based budgeting from 2021/22?	We have no comment as suppliers alone are required to fund the REC.
2.6	Do you agree that future RECCo budgets should be decided upon by the RECCo	Yes. In principle we agree that the RECCo Board should decide upon the RECCo budgets (following consultation) with this decision being open to appeal to the

	Board, subject to appeal by REC Parties?	Authority and the Electricity Networks consistency category having a seat on the RECCo Board. Please refer to our response to Q2.1
<b>3 Performance Assurance</b>		
<b>3.1</b>	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).	<p>Yes. We agree with the proposed composition of the PAB. We welcome Electricity and Gas Networks consistency category having a seat on the Board as parties who are subject to the performance assurance regime.</p> <p>Whilst we recognise Ofgem are proposing that the REC performance assurance framework will be most effective if it works in collaboration with other assurance regimes of other codes. Consequently, Elexon would have a seat on the REC PAB. We don't believe this goes far enough and are instead recommending one assessment/re-qualification overseen by one PAF and PAB across all codes. Please refer to our response to Q2.3</p> <p>[Suggest I specially discuss this with ENA COG and Fungai – might be something I have missed. I have suggested to ENA COG that Fungai would be a good fit to sit on the REC PAB (and BSC PAB) – lessons learnt etc if no DNOs volunteers (none so far).]</p>
<b>3.2</b>	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. We agree any REC Party and RECCo Service Providers should be in scope of the PAF in respect of those activities with the REC PAF prioritising those organisations and activities which present the greatest material risk. Governance to Party and that Party discharges its own compliance with its. We do not agree with REC Parties third party providers being in scope of the PAF.
<b>3.3</b>	Do you agree that at least one of the PAB's priorities should be determined by Citizen's Advice?	We recommend all priorities determined by the PAB Board should be informed by Citizens Advice. We believe it is for all the PAB priorities to be determined collectively by the PAB Board (on which Citizens Advice has a seat) as the accountable body.
<b>3.4</b>	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?	We can not agree or disagree in absence of sight of the Performance Assurance Techniques which is yet to be developed. We agree that this approach should be developed further and would recommend any escalation under the suite of Performance Assurance Techniques should be ring fenced for material Retail Risks identified in the Risk Register so the use of the performance techniques are proportional to the Retail Risk the REC party places to the REC objectives.
<b>3.5</b>	Do you agree that suppliers with serious performance issues should face restrictions	Yes. We agree that new registrations are withheld for suppliers with serious performance issues which is in keeping with the DCUSA restriction on new supply point

	on their ability to acquire new customers until those issues are resolved?	registrations where a supplier has defaulted on payment network charges.
<b>4 Change Management</b>		
<b>4.1</b>	Do you support our proposals regarding the production of preliminary and detailed IA?	Yes. We support Ofgems proposals under clauses 4.12 – 4.21 for the preliminary and detailed Impact Assessments for a RECCo ‘Service Providers’ only. However, when we cross checked against Clause 12 within the proposed Change Management Schedule this refers to ‘Relevant Service Provider impact assessments’ and no definition exists for these entities within the draft Interpretations Schedule issued in July 2020. We recommend this is amended to enable compliance assurance. Please refer to our response to Q3.2 regarding which organisations should fall under the scope pf the PAF
<b>4.2</b>	Do you agree that the Change Panel should be appointed by the RECCo Board, following a process overseen by the nominations committee?	Yes. We agree the Change Panel should be appointed by the RECCo Board following a process overseen by the nominations committee subject to Change Panel Terms of Reference ensuring the Electricity Networks constituency has a seat on the Panel.
<b>4.3</b>	Do you agree that the REC should encourage shorter and more frequent Change Panels, to be held remotely where possible?	Yes. We agree the Change Panel should met more frequently and be held remotely where possible. We agree to reduce the burden on participants, meetings should continue to be held by video or teleconference as the norm rather than by expectation. We recommend the creation of Change Panel issues groups to enable the development of an issue such as currently exists under the MRA (with the Issues Resolution Expert Group - IREG)..
<b>4.4</b>	Do you agree with the proposed categorisation of REC documents and associated change paths?	<p>Yes. To enable us to best assist Ofgem and meet customers' needs we would welcome further work on the following areas regarding the development of the proposed change paths:</p> <ol style="list-style-type: none"> <li>1) that the Code Manager also being required to refer any changes to the Authority which have a material impact on a parties ability to discharge its licence obligations under Category 1 documents. Please refer to our area of concern set out in our covering letter regarding the lack of REC objectives being hard wired into the REC main body.</li> <li>2) Network operators having a seat on the metering group regarding making decisions in relation to the MOCOPA as category 2 document. Please refer to our earlier concerns regarding MOCOPA being transferred into the REC.</li> <li>3) All category 1 and 2 documentation when filtered by the Code Manager should clearing indicate if that change has an impact or not on customers and each</li> </ol>

		party categories (and for which role). For example a DNO may have obligations as an Electricity Retail Data Agent.
<b>4.5</b>	Do you agree that code administrators and managers should be able to raise any changes identified as necessary by the CCSG?	Yes. We agree subject to the change meeting the REC objectives criteria. Please refer to our area of concern set out in our covering letter regarding the lack of REC objectives being hard wired into the REC main body.
<b>5 Theft Arrangements</b>		
<b>5.1</b>	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?	This question will be best answered by suppliers.
<b>5.2</b>	Do you consider that the RECCo should be required to periodically review the effectiveness of the incentive scheme(s)?	This question will be best answered by suppliers.
<b>5.3</b>	To what extent, if any, do you consider that the Theft Target should be reduced pending the replacement of the Theft Risk Assessment Service?	This question will be best answered by suppliers.
<b>5.4</b>	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?	This question will be best answered by suppliers.