

Rachel Clark
Programme Director, Switching Programme,
Ofgem
10 South Colonnade, Canary Wharf
LONDON
E14 4PU
Switchingprogramme@ofgem.gov.uk

Wales & West House
Spoooner Close
Celtic Springs
Coedkernew
Newport NP10 8FZ

Tŷ Wales & West
Spoooner Close
Celtic Springs
Coedcernyw
Casnewydd NP10 8FZ

Telephone/Ffôn: **0800 912 29 99**
Fax/Ffacs: **0870 1450076**
Email/Ebost: enquiries@wwutilities.co.uk
www.wwutilities.co.uk

16th November 2020

WWU response to Ofgem consultation The Retail Code – proposals for version 1.1

Dear Rachel,

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.

We provide our answers to the questions below. Our key concern is whether the approach of making REC Co Ltd party to the REC works when key committees such as the Change Committee and Performance Assurance Board that can make decisions that are binding on parties. We suggest that these sub-committees cannot bind the REC Co board and so they can only request that the REC Co board does something. We think that the question as to how this works in terms of REC Co corporate governance needs to be laid out not least for directors of the REC Co board. We suggest that removing the requirement for REC Co to be a party to the REC may solve this problem without in fact changing anything although we appreciate that it may appear change the amount of control REC parties have on REC Co.

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

Yours sincerely,



Sarah Williams
Director of Regulation
Wales & West Utilities

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Detailed responses

REC Co Company and Retail Energy Code Governance

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

We support the proposals for REC Co to appoint independent non-executive directors to its board using a nominations committee. Once these are a majority it will mean that REC Co can appoint directors and they do not have to be designated by Ofgem. This will also have the additional benefit that REC Co can run procurement events as a normal commercial body and not be subject to the additional constraints of complying with procurement regulations that apply to government bodies.

Documents such as the Nominations Committee Terms of Reference should be reviewed and gender neutral terminology used such as “chairperson” rather than “chairman”.

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

We agree that Meter Equipment Managers (Meter Asset Managers in current gas terminology) should be party to the REC; they will need to play a full role in the REC and depending on the decisions on the Change Panel, on which we comment below, may need to engage with changes that do not directly affect them.

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?

As a gas transporter WWU is not directly impacted by this; however we have the following comments. Our understanding was that the ambition was, were possible, to have the REC arrangements to be common across gas and electricity noting the differences between gas and electricity such as gas splitting wholesale and retail arrangements between Shippers and Suppliers respectively. Our view is that often the gas industry has been required to change to conform to electricity arrangements notably in the design of the faster switching arrangements. We recognise that metering affects both retail and wholesale processes, for example settlements, and that this issue is common to both gas and electricity. It is clear that the ownership of certain data items needs careful deliberation to ensure the integrity of both wholesale and retail processes. Bearing in mind the above comments we think that there is no reason in principle why the BSC obligations on metering could not be integrated with the REC performance assurance framework.

If the ambition is to align gas and electricity arrangements more closely then a radical change would be to remove the concept of Shipper entirely as we mentioned in our response to question 1 of Chapter 1 of the BEIS consultation Reforming Energy Industry

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Codes consultation submitted on 16th September 2019. In that response we recognised that that approach would need detailed consideration.

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?

We agree and our understanding is that the REC Co board intends to do this.

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

We agree, budgets should be developed based on business cases not based on last year's spend as a default.

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

We agree that this is a better approach than the current process that requires a vote by the parties to the REC. There are two problems with the current approach. First getting a quorate meeting and second that it is relatively easy to vote against because parties do not have to justify their position. The proposed arrangement means that a party needs to give a substantive reason for their objection. This approach is used with the Data Services Contract budget for Xoserve and works well; however, it is important that if this approach is adopted then there is a full process of consultation regarding the budget. In practice the budget for the following year process needs to start fairly soon after the start of the current financial year to enable full process of engagement on zero based budgeting to take place.

We note that, under current drafting, the REC Co is itself party to the REC so the appeal by REC Parties should strictly be REC Parties other than REC Co.

Although the consultation does not ask a question on paragraphs 2.27 to 2.29 on document precedence we wish to provide a response.

The consultation proposes to modify REC main body clause 10 (actually clause 11) to clarify the precedence should there be a conflict between REC and another document. This clarification is not actually required as there are clearly understood orders of precedence:

- Primary legislation
- Secondary legislation
- Licence
- Document such as REC or UNC produced as a licence requirement

What is more of an issue is where two documents of equal status conflict and here the proposal is that the REC party is not in breach of the REC until the conflict is resolved if it has notified the REC Code Manager of the conflict. This is helpful and could be

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considered for all industry agreements; however, we would have thought that the general principle that in such cases the longer standing obligation should have precedence is reasonable. We would hope that parties to REC and other industry agreements will maintain their scrutiny of industry change proposals to ensure that any conflicts are identified in the change process. This is where a well function Cross Code Steering Group should provide a benefit.

Performance Assurance

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

The composition is quite light on Transporter and Distribution (including independent GTs and DNOs) with one seat between them.

In the definition of transporter and distribution company membership it would be better to use the same wording as for Supplier members therefore we suggest amending the wording to “one member nominated by Parties that are Gas Transporters or Distribution Network Operators”.

Providing that the BSC Performance Assurance Administrator and the UNC Performance Assurance Framework Administrator may nominate a member to the REC PAB is reasonable but it is up to those bodies whether they choose to take up their seat and up to the body funding them whether they fund these parties to take up their seat on the REC PAB. The wording in the REC PAB draft terms of reference might be taken as trying to be binding on the other bodies; this is of course cannot be the case as a contract cannot bind a person that is not party to that agreement. We think that the terms of reference should make clear that taking up these seats is subject to the decision of relevant body.

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?

Including the activities of REC Co Ltd in the scope of the REC performance assurance framework runs into the same difficulties as including REC Co Ltd in the scope of the change process that we discuss below. In addition we think that the PAB would be best to commence its work focussing on the performance on industry parties, mainly Suppliers, and the service providers that support switching and theft detection in accordance with its assessment of performance risks.

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

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No we do not. The PAB's priorities should be determined by its members in accordance with its assessment of risks and the benefit from addressing those risks. If the way PAB sets its priorities is considered not to give the right answers then the solution is to revise the way priorities are set not to give one party the right to arbitrarily set a priority.

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?

We think the consequences of a breach should be clear and not subject to the discretion of the PAB. If an organisation is found to be in breach of its obligations then it should be clear what consequences it faces. It is for PAB to define this. Suppliers should not be left facing a range of outcomes without understanding how PAB would decide what action to take. PAB could decide on a range of sanctions with mitigating and aggravating circumstances which are to some extent discretionary; or it could have a more prescriptive approach perhaps with sanctions depending on one or more of the number of customers affected, or the size of the impact on them, or the duration of the failure.

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 we do. The sanction of not being able to acquire new customers, while still being able to lose them, is a significant sanction and should have its place in the measures available should a Supplier have serious performance issues. This sanction exists for Shippers in certain clearly defined circumstances in the Uniform Network Code and is rarely used but is an effective deterrent for breaches of credit arrangements.

Change Management

We have some comments on the arrangements proposed for REC Co Board sub-committees. The REC main body clause 6.2 makes clear that the Change Panel and the Performance Assurance Board are both REC Co Board sub-committees. This means that the terms of reference are determined by the board rather than as a schedule to the REC. We comment on these later.

REC Co is, by clause 2.1 expected to be a party to the REC and will therefore be bound by the terms of the REC. REC Co Ltd is therefore agreeing to be bound by decisions of one of its own board's sub-committees which is a very unusual arrangement. The consultation proposes a dual key approach, which is effectively a veto for the REC Co board, to apply to changes that affect REC Co Ltd's contracts or other arrangements. Although it is helpful to note this, we suggest that the REC Co board may always reject by a proposal from a sub-committee. We cannot find reference to this proposed approach in REC main body text. Changes that required changes to the Articles of Association of REC Co Ltd would presumably be reserved

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matters for the shareholders who are a separate group from the board directors. Again the REC drafting would need to reflect this.

Unless the Articles of Association provide that the REC Co board is bound by decisions of its sub-committees, that will not contain a majority of REC Co board directors, we cannot see how a decision of the Change Panel can be made binding on REC Co Ltd and it could only have the status of a request to the board. In such cases the Change Panel would only be able to make a recommendation and the language of the Change Management Schedule needs to reflect that. We suggest that if the Articles do make such a provision then a question arises as to whether there is a conflict between those Articles and the legal obligations of directors.

This circumstance arises because REC Co Ltd itself is a party to the REC, although with different rights and obligations to other parties. We suggest that, because the REC Co board cannot be bound by its sub-committees, making REC Co Ltd a party does not, in reality, achieve anything apart from raising questions regarding corporate governance. Our view is that a model in which REC Co Ltd is not a party to the REC is just as effective and much simpler.

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

The 40 working days allowed for service providers to produce a detailed Impact Assessment is approximately two months. When a few days administration and the requirement to publish papers five working days in advance of a meeting is added, this means that if a detailed impact assessment is requested in month 1, it will not be available for discussion until month 4. A 30 working day period would enable the Impact Assessment to come to a meeting in month 3.

With regard to charging we do not know what happens with impact assessments for electricity for example Elexon and individual companies' registration systems but in gas Impact Assessments are provided free of charge. If REC Co is going to be paying the Data Communications Company for Impact Assessments then it is reasonable to pay for Xoserve Impact Assessments especially as Xoserve is funded by Transporters and Shippers and Shippers are not party to the REC.

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

Allowing the REC Co Board to appoint the change panel does introduce more independence; however for most contracts it is only the parties to a contract that can propose and make changes to the contract and a sensible balance needs to be struck. As the proposed composition of the Change Panel has not been decided it is not possible to comment on whether this has been achieved.

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We comment below on the Change Panel terms of reference and the Change Management schedule.

Change Panel terms of reference

Notwithstanding the point that the REC Co board can set the terms of reference for its own sub-committees, we note that the REC drafting provides that the REC Co Board can change the Change Panel terms of reference as it is a document subject to the change process for category 2 documents. We do not agree that a change to the composition of the Change Panel is a category 2 document. Category 2 documents are described in paragraph 4.38 of the consultation:

Category 2 – Technical documentation relating to REC services or industry data such as the REC Technical Specification, or documentation which does not directly and materially impact industry parties. Various REC committees will be established which will govern these documents, for example the Performance Assurance Board or a dedicated Metering Group

We do not think that a change to the composition of the Change Panel can be argued as “not directly and materially impact industry parties”. We note that the for the UNC a change to the UNC modification rules (that include the composition of the UNC Modification Panel) are regarded as material changes that require Ofgem determination. We suggest that the solution is to put these matters into the Change Management Schedule and limit the Change Panel terms of reference to matters such as the powers of the Change Panel (for example it being unable to bind REC Co Ltd itself).

The terms of reference do not make clear the following:

- the number of members of the Change Panel from Suppliers;
- the number of subject matter experts; and
- the status of the subject matter experts.

All these matters need clarifying, in particular the role of the subject matter experts. In that regard the following questions need answering:

- will they only be a member of the Change Panel for their area of expertise;
- will more than one subject matter expert be involved for any one issue;
- who decides who is a subject matter expert for a particular issue; and
- will they be excluded if they have advised the Code Manager on the subject of the change or a similar change, to avoid the risk of influencing both the Change Panel and the Code Manager’s recommendation for a category 1 change?

Change management schedule

As noted above the the boundary between the Change Panel terms of reference and the Change Management Schedule is not clear. As drafted it does not cover details such as frequency of meetings, how they are called and such like. Paragraph 11 covers subject matter experts but it does not answer the question raised about what role they fulfil in the change process and whether they can both advise the Code Manager and be part of the Change Panel. The schedule is also sketchy around the various paths taken by the different category of changes proposed and we want to see more detail about how category 2 and 3 changes are progressed to ensure that they

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are properly publicised and there is adequate provision for a Party to challenge a category 2 or 3 change if they think that an impact has been missed or not properly considered.

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

Change Panels need to be of sufficient length to ensure that there are full discussions on complex or controversial subjects. Holding them remotely does have advantages but experience at UNC modification panel is that a face to face discussion is more effective for complex and controversial subjects.

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

We recognise that the intention is to give the Code Manager a significant role in change management; however, the Change Manager is not neutral. The Code Manager is a commercial organisation and will have its own priorities and may favour one solution over another for its own reasons. We have raised points above about the role of subject matter experts both to advise the Code Manager and in being members of the Change Panel and the need to ensure that one subject matter expert does not fulfil both roles at the same time.

With regard to Category 2 documents, we caution that specialist groups by their very nature may not appreciate the consequential impacts of what may seem like purely technical changes. We have found that Xoserve, who try to assess the impact of a change on the various industry parties, every so often miss an impact and we think that specialist groups will make similar errors through lack of knowledge. It is vital that all changes are adequately publicised and open to comment in case the specialist group has missed something.

With regard to Category 3 documents, we oppose the Data Communications Company (DCC) having responsibility for maintenance of any documents because we cannot see how these decisions are under any form of control by REC parties. We note that the REC provides that the DCC may become a party but we are not clear whether the DCC licence requires it to be a party. If it does not become a party the REC has no control over it. The DCC must not be allowed to make changes to any documents without proper scrutiny. Xoserve systems and processes are all subject to some form of control either by industry codes or committees or by processes under the Data Services Contract. We are willing for the Code Manager to have responsibility for category 3 documents because they can be held to account.

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

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Yes we broadly agree. It is vital that the consequential impacts of any changes are fully explored before changes are raised. We hope that the Cross Code Steering Group will be an effective body that co-operates to identify these impacts and amend draft proposals accordingly. The UNC has had recent experience of BEIS making a change to the UNC using its powers under Section 88 of Energy Act 2008 (smart metering) that impacted a change already in progress resulting in additional work to rectify the consequential impact.

Theft prevention arrangements

We do not have any responses to the four questions asked as they are largely Supplier related questions; but we do wish to raise an important point. DNs have both Gas Act and licence obligations (Standard Condition 7 and from April 2021 Standard Special Condition D22). These rights and obligations have precedence over the terms of the REC.

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