Rachel Clark
Switching Programme
Ofgem
10 S Colonnade
Canary Wharf
London
E14 4PU

Switchingprogramme@ofgem.gov.uk

23 February 2021

Dear Rachel

Retail Energy Code v2.0 and Retail Code Consolidation

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 our detailed comments on the draft schedules and questions are set out in the attachments, we would like to highlight our concerns with the transition phase between now and Retail Energy Code (REC) go-live in September, as well as the ongoing role of Metering Equipment Managers (MEMs).

The REC Transition Phase

EDF is fully supportive of the REC and the opportunities that it will bring for harmonisation and simplification of the code arrangements. However, it is clear that considerable work is still to be undertaken in a relatively short period of time between now and September, both by Ofgem and RECCo, to ensure there is a smooth transition to REC ways of working. While the detailed content of the REC schedules appears broadly appropriate, further engagement with stakeholders will be necessary to ensure a seamless transition to REC operations from day one.

A number of the schedules included in the consultation are still work in progress, with further revision required before they can be baselined. This is particularly the case for metering, where the proposals to transition the metering obligations from the Balancing and Settlement Code (BSC), have come relatively recently. The content of REC v2.0 must be baselined as soon as possible to ensure parties have a clear view of the obligations that will apply from go-live in September, and make any changes required.

Other areas such as the governance arrangements for the Qualification and Maintenance schedule, require additional detailed guidance from the REC Code Manager before REC go-live to aid REC Parties in understanding and meeting their new obligations. We are unlikely to be able to meet these obligations without further information. Additionally, suppliers have not yet had the opportunity to see or use the new Energy Market Architecture Repository (EMAR) interface that they will be expected to use in only a few months' time. An engagement exercise is required to ensure that parties are able to understand and use the new tools that will be available to them through the REC.

There is a risk that the transition to the REC is perceived just a 'lift and shift' of existing obligations, and that parties will not be gearing up for the change that the REC will bring. Ofgem and the REC Code Manager must manage this risk through good stakeholder management that, alongside support and guidance, gives adequate time for parties to review, understand and prepare for these lower level changes. As well as transitional support, this should also include ongoing support for parties from go-live to ensure the new governance arrangements are working effectively, and that REC Parties are able to engage with them.

REC Change Process

While the Change Management Schedule is now part of the REC, it is still not clear when the change process will enable parties to start raising and progressing changes to the REC. We are therefore in a position where changes can't be raised under the existing codes as there is not enough time to implement them before code consolidation, however they can't be raised under the REC either. This means that a backlog of changes may already be building up that the process will need to deal with. Urgent clarity is required on when the REC change process will commence.

Ofgem and the REC Code Manager should set out a comprehensive timetable of the steps they intend to take between now and September to achieve a successful transition to the new governance arrangements in relatively short timescales. Appropriate consideration will need to be given to the length of time parties require to adopt any new processes and operate under the new arrangements.

The Role of MEMs

As well as being an energy supplier, EDF also operates as a MEM for both electricity and gas. We are fully supportive of the proposal that the metering processes set out in the BSC should transition to the REC, as a first step towards harmonisation and simplification of metering processes across the two fuels. We also agree that MEMs should become REC parties. This is vital if MEMs are to have the opportunity to influence the REC processes and procedures that they will be required to comply with. Equally, MEMs should be held directly accountable for compliance with those obligations that they are wholly responsible for fulfilling as part of their role.

However, the proposals set out in the consultation go further than this and seek to place responsibility for BSC Code of Practice (CoP) compliance on MEMs for *all* obligations in the CoPs, including those that are the responsibility of other parties such as suppliers or distributors to fulfil.

This places an unfair burden on MEMs who may not have the relevant contractual relationships in place to be able to influence the actions of these other parties, or the capacity to manage any new resultant commercial liabilities. For example, MEMs may not have the capacity to absorb significant financial penalties that might from arise the REC Performance Assurance Board (PAB) that are the result of other parties' failures, nor the means for recovering these charges from those other parties.

Any transition of compliance liability from suppliers to MEMs should only be for those obligations which MEMs can fully control. Suppliers should continue to be held responsible for compliance for the other obligations under the CoPs, as they have the existing contractual, e.g. DCUSA for distributors and commercial relationships in place to manage the relationships with other parties, and subsequently potential PAB enforcement. If not, there is a risk that MEMs seek to recover any additional costs by the only means available to them - directly from consumers. This would be counter to the objective of the REC (to achieve positive consumer outcomes), and therefore extremely unwelcome.

Further engagement is required with MEMs such as ourselves to ensure that the transition to the REC does not have a detrimental impact on MEMs, suppliers or consumers. As the BSC will still exist when REC v2.0 goes live, it is not absolutely necessary for these obligations to be transferred to the REC by September. Ofgem should consider delaying implementation of this aspect of code consolidation if necessary, and if the concerns noted cannot be fully addressed in time.

Our further detailed responses to consultation and draft schedules are set out below and in the attachments to this letter.

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

Yours sincerely

Denise Willis
Senior Manager of Industry Change

Attachment 1

Retail Energy Code v2.0 and Retail Code Consolidation

EDF's response to your questions

Q2.1 Do you agree with our proposed approach to information security and data protection assessment under the REC? In particular, do you agree with the requirement for all REC Service Users to notify the Code Manager of a security breach?

Yes, we are broadly supportive of the high-level approach to information security and data protection assessments under the REC. However, stakeholders must have the opportunity to review the detailed requirements from the REC Code Manager for each level of 'qualification and maintenance' to enable complete assessment. This must include sufficient time for REC Service Users to prepare for any relevant assessments, including at least 12 months to prepare for the first annual REC Service User Compliance Statement from the date the obligation comes into force.

We agree it is reasonable for all REC Service Users to notify the Code Manager of a security breach. However, there should also be a mutual requirement for the Code Manager to notify REC Service Users of any breaches which might affect their data. Not only will they be sharing data, but their systems will be interfacing with the REC Service systems. It should be clearly stated that each organisation may also report significant breaches to the Information Commissioner's Office (ICO) as well as reporting to the Code Manager, in accordance with their obligations under General Data Protection Regulation (GDPR).

We have set out some further considerations on the annual REC Service User Compliance Statement below:

12.1(a) it has an up-to-date risk assessment covering information security and data protection risks associated with obligations under this Code, taking into account any significant change to the REC Service User's circumstances and whether there have been any security breaches;

Ofgem must provide full clarity on what systems are in scope for any assessment of a company's information security and data protection risks, including a detailed proposal on the level of protection that the REC assessment process intends to provide. For example, is the intention only to protect from a cyber-attack or is there a much wider remit to protect customers' data directly. The greater the number of systems in scope for the assessment process, the more significant the cost and time to implement any new measures will be. Ofgem and the REC Code Manager must take a proportional approach based on the risk being mitigated and the potential benefit achieved. We would recommend that scope does not extend beyond those systems that do not pose a direct security risk to the REC, and welcome clarification on this point.

12.1(b) has completed up-to-date and relevant ICO checklists

We do not agree that parties should have to provide evidence that they have completed the ICO checklists. The ICO checklists were not designed nor were they intended to be used as a mandatory checklist to assess the GDPR compliance of an organisation. The checklists can be useful as a tool for those organisations without legal or compliance teams in place, primarily small and medium-sized enterprises (SMEs), to assess whether they are operating a GDPR compliant regime. It is not a mandatory tool and is not a robust assessment of a company's data protection compliance and framework. Indeed, completion of the checklist itself provides no indication either way of whether a company meets the intended criteria or not.

As noted in our response to the November 2019 consultation on the Technical Specification approach, paragraph 12 of the Qualification and Maintenance Schedule proposes that the completed ICO checklists will need to be certified by a director as part of a signed REC User Compliance Statement. This is unnecessary and burdensome; as mentioned above the ICO checklists were not created to be used as mandatory compliance checklists.

Paragraph 2.17 of this REC v 2.0 consultation states that "*We do not propose to require REC Service Users to demonstrate compliance with data protection legislation…. it remains for the ICO to enforce data protection legislation*". However, by requiring the above-mentioned assessment and compliance statement to be carried out, Ofgem is creating its own data protection regulatory requirements which exceed the ICO's. It is worth noting that under the Smart Energy Code (SEC) data protection is not seen as being in scope of the code, as a decision was made that this responsibility would sit directly with the supplier as the Data Controller.

(c*) "evidence that it has it has appropriate information security accreditation reflective of the risks applicable to its organisation e.g. Cyber Essentials Plus Certification"*

Ofgem should allow for other equivalent cyber security accreditation, or only mandate Cyber Essentials where an organisation cannot otherwise show a high level of IT security resource.

Further detailed comments are set out in the attached spreadsheet.

Q2.2 Do you agree with our proposal to extend entry qualification to new gas MEMs? If not, please explain why.

Yes, we agree with the proposal to extend entry qualification to new gas MEMs. There should a level playing field for all MEMs seeking to operate in the market, irrespective of the fuel type.

We require further clarity on how both gas and electricity MEMs will be expected to demonstrate compliance as part of the ongoing Maintenance of Qualification process once the REC goes live.

Q2.3 Do you agree that the change effected by MAP CP 0338 should apply equally to gas?

Yes, we agree that this change should apply equally to gas, and this was always the intention. EDF raised both the Master Registration Agreement (MRA) change (MAP CP 0338), and an equivalent

Supply Point Administration Agreement (SPAA) change (SCP511). The SPAA change has now been approved for implementation through the SPAA change process.

Q2.4 Do you agree that the clarification on the applicability of the schedule to non-domestic suppliers sufficiently gives regard to non-domestic suppliers who do not serve prepayment customers?

Yes, we agree that the clarification on the applicability of the schedule to non-domestic suppliers sufficiently gives regard to non-domestic suppliers who do not serve prepayment customers. There would be no relevant circumstances where such suppliers would be required to comply with the obligations set out in this schedule.

Q2.5 Do you agree that the approach and processes for gas unregistered sites should be standardised, as set out in the Unbilled Energy Code of Practice?

Yes, we agree that the approach for gas unregistered sites should be standardised to be similar to electricity, to ensure there is harmonisation and consistency across both fuels.

It would be clearer if the Theft Code of Practice and the processes for Unregistered Consumers were identified as separate schedules in the REC rather than being combined into a single schedule. They cover two quite different sets of obligations, and for many suppliers are likely to managed by separate operational teams. If they are to remain as a single combined schedule there must be a much clearer demarcation between the two sections, with the 'Theft Code of Practice' ending at section 16, and the 'Unregistered Consumers Code' starting at section 17. The section headers should also explicitly denote which aspect of the two sets of obligations each section refers to.

We have provided more detailed comments in the attached spreadsheet.

Q2.6 Do you agree that the REC should make provision for the PAB to consider the case for reconciliation of data held by PPMIPs and CDSP for the purpose of identifying unregistered sites? If so, do you agree that this process should sit in the Unbilled Energy Code of Practice?

Yes, we agree in principle that the REC should make provision for the PAB to consider the case for reconciliation of data held by PPMIPs and CDSP for the purpose of identifying unregistered sites. This change could make a positive contribution to reducing the number of unregistered sites and will support settlement reconciliation. However, before proceeding we recommend an exercise is undertaken to quantify the number of sites that would be impacted by this change, to ascertain the costs and the business case for this proposal.

If the benefits case is sufficiently positive, further work and discussion must take place between suppliers and Prepayment Meter Infrastructure Providers (PPMIPs) to agree how this would work in practice. This should include the responsibilities and timescales for both parties, and assurance that the information suppliers receive from the PPMIP is accurate. As a supplier must have relevant

contractual arrangements in place with a customer prior to registering a site, how this requirement will be met as part of any new process will also need to be addressed as part of the final REC obligation.

We agree that the process, if agreed, should sit in the 'Unbilled Energy Code of Practice'.

Q2.7 Do you agree with the principle that a consumer should be no worse off by virtue of a theft investigation being undertaken by a network company rather than a supplier?

Yes, we agree with the principle that a consumer should be no worse off by virtue of a theft investigation being undertaken by a network company rather than a supplier.

It is unclear whether the current drafting in the 'Unbilled Energy Code of Practice' regarding back-billing intends to cover networks. There is no regulation that prohibits a network company from back-billing a customer beyond a certain time period, therefore reference to the *'the prohibition'* in clause 3.6 (i) will have no meaning for network companies. If a prohibition for back-billing is to apply to network companies as well as suppliers, the code must define (and make it clear to network providers) what the prohibition is. It would also be sensible to define the 'prohibition' for suppliers by referring explicitly to the relevant Licence Condition (SLC21B).

The drafting also only currently refers to back-billing in the case of unregistered supplies, and not unproven theft in conveyance, which the proposed policy intends to cover. We assume that unproven theft in conveyance will be treated as an unregistered supply for the purposes of these obligations but would welcome clarification on this point.

Q2.8 Do you agree that the requirements relating to provision of customer contact details should apply equally to non-domestic suppliers, as set out in the Transfer of Consumer Data Schedule?

Yes. We have no concerns with the requirements relating to provision of customer contact details applying to non-domestic as well as domestic suppliers.

Q2.9 Do you agree with our proposal to extend 'Gas use case 5: Payment of Guaranteed Standard of Performance Payments' to cover voluntary payments?

Yes, we agree with the proposal to extend 'Gas use case 5: Payment of Guaranteed Standard of Performance Payments' to cover voluntary payments. This should make provision of any expected payment to the end consumer a much quicker process, as it will no longer require supplier intervention to pass a payment onto the consumer.

Q2.10 What risks (if any) do you foresee in the transfer of processes associated with Commissioning, Complex Sites, Proving and Faults from BSCP514 to the REC Metering Operations schedule

We do not foresee any significant risks in the transfer of processes associated with Commissioning, Complex Sites, Proving and Faults from BSCP514 to the REC Metering Operations schedule.

However, if the CoPs remain in the BSC, any future changes to these processes under the REC will require close co-ordination with the BSC to ensure that any relevant technical updates to the CoPs are also made concurrently. As discussions on the CoPs are still in progress, we would welcome further clarity from Ofgem and the RECCo on what measures will be in place to ensure any co-ordination across the codes will be managed effectively.

Q2.11 Do you agree that requirement to comply with the BSC CoPs should be placed directly on MEMs in the REC? If not, please explain your reasons

No. We do not agree that the requirement to comply with the BSC CoPs should be placed entirely on MEMs under the REC.

We agree that MEMs can be held responsible for compliance with the obligations under the CoP that they can fulfil directly as part of their existing role, for example sending certain dataflows on time. We do not agree that MEMs are responsible for compliance for rules and regulations that are the responsibility of other parties to fulfil, such as suppliers or network operators.

Unlike suppliers, MEMs do not have the relevant contractual relationships or other powers in place to be able to sufficiently influence the actions of other parties. For example, MEMs do not have any means of influence or control over network operators for obligations that relate to metering equipment. This sits with suppliers, who have a contractual relationship with the network operators through the DCUSA that enables them to co-ordinate with network operators to manage any works that need to be carried out on Distribution Equipment.

Subsequently, MEMs are not set up to manage the new commercial liabilities that could be imposed on them under the proposed set up – for example they would not have capacity to absorb significant financial penalties from the REC PAB, nor the means for recovering these charges from other parties. The value of the metering equipment is typically considerably lower than the value of the energy, and it would not be reasonable for MEMs to become liable for the full energy costs associated with metering compliance issues as a result of the transition to the REC.

Any transition for CoP compliance responsibility to MEMs should therefore only be for those obligations which the MEM has direct control over. Any decision to extend this remit would risk the possibility that MEMs seek to recover costs by the only means available to them - directly from consumers with whom they have direct contracts. This would
be extremely unwelcome, and counter to the objective of the REC to achieve positive consumer outcomes.

Q2.12 Do you agree that metering operations rules and processes in the REC could be assured by the BSC, particularly with regard to PARMS reporting and technical assurance

audits, until the assurance function can transition to the REC? If not, please explain your reasons.

Yes. As the timescales to REC go-live are short, and current BSC assurance processes are established, it makes sense for the BSC PAB to continue with PARMs and technical assurance audits until such time the REC PAB is up and running and able to manage assurance effectively. This will also ensure that parties do not become subject to two sets of governance and assurance for the same sets of regulation. This would lead to 'double jeopardy' which must be avoided.

While it is especially important during the transitional period, there needs to be continued close co-ordination between the BSC and the REC on an ongoing basis to ensure that any assurance and performance management regime under the REC continues to be focused on achieving both settlement and consumer outcomes.

Q2.13 Do you agree that the information in the RGMA Baseline relating to exceptions should be out of scope of the mandatory Schedule?

Yes, we agree that these should be out of scope of the mandatory schedule as the 'exception information' in the RGMA Baseline is for guidance only and not obligatory. We have also reviewed the exceptions individually and can confirm they are no longer relevant to suppliers' operational activity.

Q3.1 Do you agree that the proposed text to embed the Cross-Code Steering Group will enable the intended improvements to cross code change? If not, please suggest alternative or additional drafting.

Yes, we agree that the proposed text to embed the Cross-Code Steering Group will enable the intended improvements to cross code change.

We recommend the below minor addition to the text to make it clear that more than one organisation may be responsible for raising consequential changes to other codes. Unless the REC is the lead code, the various code administrators will individually have to raise any consequential changes to their respective codes.

*(c) where a potential change to one Energy Code is likely to require a parallel change to another Energy Code, determine which Energy Code is to be used as the lead-code for the change and which organisation**(s)** shall raise the consequential changes to other codes.*

Q4.1 Do you agree with the assignment of Code Manager ownership (Metadata Owner) of each Energy Market Message within the "Annex D – Message Scenario Variant Catalogue"?

Due to the volume of data to review, we have only carried out a sample check of the Metadata owner for the Energy Market Messages. Based on that sampling exercise we have not identified any concerns with the proposed assignments.

Q4.2 Do you agree with the classification of existing flow notes (including DTC Annex C) to either one of, a rule within the Data Specification, a Guidance Note (managed under the respective code, e.g. a REC Level 3 document) or a process obligation (e.g. a rule within a REC Schedule / BSCP)?

We do not have any specific concerns with classifying existing flow notes into the differing categories of rule, guidance notes or process obligation. As these notes transition to the EMAR Ofgem and the RECCo must ensure that the ambition for a simplified and consistent format is not at the expense of accuracy, and that in particular the meaning held in the EMAR maintains the current meaning as set out in the Data Transfer Catalogue (DTC).

Flow notes should also be easily accessible for relevant parties, for example, via a direct link from the flow itself. We welcome the opportunity to review the format and content of the EMAR soon to ensure that it is usable for both current and future REC Parties.

Q4.3 Do you agree that the data items identified in 'Redundant Data Items for Review' spreadsheet should no longer be represented in the Data Specification as they are not associated to any Market Messages?

Due to the volume of data to review, we have sample checked some of the 'Redundant Data Items for Review'. Based on our sample check we agree that these data items should no longer be represented in the Data Specification as they are not associated to any Market Messages.

Further detailed notes on the data items themselves are set out in the attachment in the tab 'Technical Specifications'.

EDF
February 2021