

23 February 2021

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

Email: AlisonRussell@utilita.co.uk

Dear Rachel,

RE: Retail Energy Code v2.0 and Retail Code Consolidation

Thank you for the opportunity to comment on the above consultation.

Utilita Energy Limited (Utilita) is a smart prepayment energy supplier, specialising in providing an excellent smart service to a previously poorly served market sector. We have been installing smart meters for our customers since 2008, and SMETS meters since 2013. Our portfolio is around 95% prepay customers, and of those approximately 90% have smart meters operating in smart mode.

We broadly accept the proposals within this consultation and welcome the opportunity to provide our comments to the consultation. Although we are supportive of attempts to rectify existing issues with code governance arrangements i.e., introducing applicability of REC schedules to non-domestic suppliers where they have a domestic customer we have concerns with the scope and intention of certain proposals.

Utilita understood one of the main benefits of the development of the REC was to put in place a proportionate and outcome-based governance regime focusing on mitigating or resolving high value retail risks and issues. We question, however, if this is still being adopted across all aspects of the code.

Ofgem should reconsider requiring parties to provide actual policies and procedures around information security and data protection. Not only is there existing legislation on these specific topics, but there are also robust requirements under existing codes which must already be adhered to, e.g. under the Smart Energy Code (SEC). There should be cross code alignment to ensure that where a party has fulfilled greater or similar requirements in another code, then the evidence of that fulfilment should be able to be utilised across other codes and reliance placed. This would be a more efficient and cost effective solution than replicating an already onerous compliance regime.

The obligation should therefore be outcome-based and focus on a party providing evidence reflective of the risks applicable to its organisation, e.g. meeting Cyber Essentials Plus Certification standards, or evidence of completing a SEC Full User Security Assessment. This supports existing legislation and regulation while allowing transparency for REC Parties to demonstrate compliance.

Utilita is also concerned with the proposed transition of metering operation assurance to the REC due to the combination of regimes which have such different performance assurance drivers. We have significant concerns around the impact this would have on the BSC performance assurance framework and the ability to mitigate risks to settlement, with the financial consequences this might bring. We note that the BSC will have a seat on the REC Performance Assurance Board (PAB) but we continue to have reservations. We are concerned that REC PAB will be rightly made up of retail experts and not settlement experts – there is therefore a risk that this places undue responsibility on the BSC representative.

As a principle, risk should sit with the Party best placed to manage it. Settlement risk should therefore sit with BSC; and retail risk should sit with REC. As such, Utilita is strongly supportive of the REC PAB owning and managing retail risk and the BSC PAB owning and managing settlement risk. We do not support arrangements that introduce ambiguity or complexity into risk management.

Our response comprises this letter, the accompanying appendix and a completed spreadsheet in which we set out our detailed review of the proposed REC drafting and consultation questions. If you would like to discuss any of the points raised, we would be happy to help.

Yours sincerely,

By email only

Alison Russell
Director of Policy and Regulatory Affairs

Appendix 1: Utilita's response in respect of the consultation questions

This appendix sets out Utilita's views on each of questions posed in the consultation paper.

Question 2.1: 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?

Overall, Utilita has concerns with the seemingly wide context of the proposed drafting: REC governance should be ringfenced to contain only REC issues. The REC should be complementary to existing legislation and regulation and should seek to align with these requirements. The compliance required under the REC should not duplicate compliance requirements imposed by other codes.

There are topics already regulated outside the direct scope of the energy industry, like data protection and information security. The REC should point to these by way of 'providing evidence of compliance' against existing legislation.

There are already rigorous existing data protection and information security requirements which exist under other codes, like the Smart Energy Code (SEC). Where fulfilling requirements under one code may be sufficient for another code, there should be cross-code alignment to avoid unnecessary replication and allow parties to place reliance on work already completed. For example, where a SEC Party passes an information security and/or privacy assessment, this should be able to be 'carried over' to be applicable to the REC requirements (where the requirements are greater or equivalent).

Additionally, section 8.2 and 8.3 should move away from requiring parties to provide policies and procedures around information security and data protection. While such policies and procedures are shared with the User CIO for example under the SEC audit requirements, each time such documents are shared externally increases risk of inappropriate disclosure of policies designed to protect the organisation. Instead, the obligation could be aligned to the wording of the intention/outcome based 8.2 (c) 'evidence that it has appropriate information security accreditation reflective of the risks applicable to its organisation e.g. Cyber Essentials Plus Certification.

Furthermore, the REC Service User should only be required to notify the Code Manager of any security breach which is related to the REC-owned processes and systems posing a high value retail energy risk. It could be that there is a breach which could compromise the security of another REC User, but under a different code/process (given the interlinked industry interactions), for example reporting requirements under the SEC. Ensuring the scope is limited to that which is relevant to the Code and the Code Manager, means that it can be better managed, and ensures better alignment to existing regulation and legislation.

Finally, the Code Manager should then act constructively and predictably on that notification, for example, not only to request a further assessment, but to work with the affected parties to mitigate the resulting risks in a cooperative manner. This could include advising other parties or supporting remedial action if needed.

Question 2.2: Do you agree with our proposal to extend entry qualification to new gas MEMs? If not, please explain why.

Yes, entry qualification and maintenance should be applied in general to any REC Party, with the caveat above on not replicating compliance requirements.

Question 2.3: Do you agree that the change effected by MAP CP 0338 should apply equally to gas?

Yes, Utilita agrees that the solution approved under MAP CP 0338 should apply equally to gas when the UTRN process for SMETS 2 meters enrolled in DCC applies to both gas and electricity. We understand an equivalent change under the SPAA has since been progressed.

The fact that two Change Proposals were not raised simultaneously under the MRA and SPAA demonstrates one of the key benefits of introducing the REC and a harmonised, more efficient Change Process for both electricity and gas arrangements.

Question 2.4: 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 believe that the Schedule should be mandatory for non-domestic suppliers and specifying the applicability of the Schedule to only where a customer has a prepayment meter, provides sufficient clarity on the scope of compliance arrangements for suppliers.

As a principle, we believe that all suppliers should be compelled by the REC to serve a domestic customer as a domestic customer to prevent customers receiving substandard experiences within the energy market. There have been too many examples under current gas arrangements (i.e. the SPAA's missing or disputed reads process) where a supplier refused to operate certain processes due to not operating as a domestic supplier even though they were the registered supplier to a domestic customer.

Question 2.5: 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?

We agree with the proposed creation of a standardised process for unregistered sites as set out in Unbilled Energy Code of Practice. Consumer choice over which Supplier they wish to enter into a contract with is imperative and we believe the drafting sufficiently covers this.

Although we appreciate the Schedule is drafted as a Code of Practice and acts to replace the SPAA and DCUSA theft related Codes of Practice, we believe the creation of the REC is an opportunity to improve its readability. For example, we would prefer a document written in a more consistent and similar style to other REC Schedules i.e., clearly setting out a process, its intended outcome, and the key obligations on parties to achieve the intended outcome. At present, the admixture of obligations, best practice and process steps throughout the Schedule makes reading an end-to-end process and parties' key obligations overly complex. We also note that some key processes have process diagrams whereas some do not; a consistent approach throughout would be welcome.

Question 2.6: 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?

Where unregistered sites are deemed as a PAB priority, Utilita agrees that the PAB should have the ability to access available industry data in order to help rectification of the issue.

The PAB should however understand the limits within the data sets proposed, for example the PPMIP databases are ungoverned, limited to legacy Prepayment meters and may not always correctly identify the registered supplier (i.e., where there has been flow processing issues, etc.) or the supplier which the current customer wishes to be supplied by. Utilita would expect suppliers to have the ability to review the outputs of any reconciliation activity to prevent cases where a customer is registered to a Supplier where there is no contract in place.

Question 2.7: 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?

We agree with the principle that a consumer should be no worse off by virtue of a theft investigation being undertaken by a network rather than a Supplier. Any actions taken forward as a result of a theft investigation must be based on clear and retainable evidence and this should form the basis of any REC governance concerning the treatment of all consumers in the case of a theft investigation.

Question 2.8: 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?

Utilita agrees that the Transfer of Consumer Data Schedule should equally apply to non-domestic suppliers with the carve-out where provisions only apply for domestic consumers. The REC is intended to deliver positive outcomes for consumers; we believe this proposal will enable the sharing of available PSR information of all domestic consumers across suppliers and Network Operators.

Question 2.9: Do you agree with our proposal to extend 'Gas use case 5: Payment of Guaranteed Standard of Performance Payments' to cover voluntary payments? Transfer of Consumer Data Schedule?

Yes, Utilita does not have any concerns with this proposal.

Question 2.10: 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?

Utilita have not identified any significant risks in transferring processes associated with Commissioning, Complex Sites, Proving and Faults from BSCP514 to the REC Metering Operations schedule.

Question 2.11: 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.

Utilita agrees that the requirement to comply with the BSC Codes of Practice (CoPs) should be placed directly on MEMs in the REC and the relevant BSC CoPs be transitioned to the REC if they intend to fall under the REC Performance Assurance regime. By having the requirements to comply with the BSC CoPs under the REC, alongside the BSC CoPs themselves, this will avoid confusion in having to read across different codes to understand obligations.

We recognise that some of the BSC CoPs are outdated and have not kept pace with advances in technology. Additionally, some of the BSC CoPs could benefit from improvements to remove current ambiguities that are recognised in the market. We therefore welcome the formation of the Issue 93 (Review of the BSC metering Codes of Practice) group that has been formed to undertake a review of the BSC CoPs. We consider that this review should be completed before any requirements are transitioned to the REC. This will prevent the need to set up a review group under the REC and ensure a smoother transition of arrangements to the REC.

Question 2.12: 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.

No, Utilita has significant concerns with the proposed transition of metering operation assurance to the REC, the impact this would have on the BSC performance assurance framework and the ability to mitigate risks to settlements via the REC.

Retail risks and BSC risks will be intrinsically different (i.e., 'Retail risks' are understood to predominantly focus on consumer related outcomes) and it is not clear within the consultation how the BSC will continue to have sight, data and control of under-performing parties.

We note that the BSC will have a seat on the REC PAB but we are concerned that REC PAB will, quite rightly, be made up of retail experts and not settlement experts – there is a risk this will place undue responsibility on the BSC representative and bring into question whether the REC PAB can be compliant without a BSC representative. Furthermore, the REC PAB will be at risk of discussing and deciding on action outside of its scope.

Utilita is strongly supportive of the REC PAB owning and managing retail risk and BSC PAB owning and managing settlement risk and does not support arrangements that introduce or increase ambiguity or complexity in risk management.

The consultation also lacks information on the practicalities of the proposal for the BSC to assure against the transitioned metering arrangements until an assurance function is established under the REC. A robust plan, outlining roles and responsibilities and how Elexon, RECCo and the corresponding code Performance Assurance Boards (PABs) intend to work together is required if the proposal is to be further considered.

Question 2.13: Do you agree that the information in the RGMA Baseline relating to exceptions should be out of scope of the mandatory Schedule?

Yes, we understand that the RGMA Baseline exceptions are not currently mandated and due to not being used by all industry participants, have become outdated. Therefore, we believe this information is of little value in its current form. Where an industry participant considers there to be a need to introduce exception rules into the mandatory Schedule to improve market performance, this can be raised through the REC Change Process at a later date.

Question 3.1: 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.

Utilita agrees subject to the following inclusions:

- We would expect the Cross Code Steering Group to also have a core role of agreeing and overseeing the timetable of cross code Modifications. This enables central sight and collaboration across the journey of cross code Modifications under one forum, maintaining momentum for relevant Modifications.
- To ensure the effectiveness of the Group, it should be required to assess its combined progress of coordinating cross code change on an annual basis. This could be achieved by producing an annual report, highlighting lessons learnt and best practices that should be adopted in the subsequent year.
- The Group will only be as effective as the personnel put forward by the code Panels, we believe strongly that there needs to be allowances for review of the Group's membership by Ofgem and Ofgem must be responsible for the Groups collective and its individuals performance.

Question 4.1: 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"?

Utilita mostly agrees with the proposed assignment of Code Manager ownership of each Energy Market Message within Annex D however we have the following observations which require further Ofgem consideration:

- We are unclear why the D0171 has been given a REC Code Manager assignment when the D0172 has been given a BSC Code Manager assignment, we would suggest both messages are assigned to the REC Code Manager.
- We are unclear why the D0217 and D0270 has been granted a BSC Code Manager assignment when other critical Registration messages have been assigned to the REC Code Manager i.e., the D0055.

Question 4.2: 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)?

Process obligations on Parties should only sit within a code Schedule. This will enable parties to fully understand their responsibilities by looking in one place, avoiding reading across multiple documents and only in some cases.

Where a flow note is only additional information to support a process, we would be comfortable with this being within the Data Specification i.e., in a form similar to DTC

Annex C. We believe guidance notes seems to over complicate matters. The Working Practice Product Set under the MRA is an example of a separate guidance document which soon became outdated and largely unused.

Question 4.3: 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?

We believe it would be worthwhile for an existing industry group (such as the MRA's IREG and/or the SPAA's SEG) to review the list of Data Items to confirm that there are no instances where the Data Items are still considered useful before removed.

An example we are aware of is the J2261 (Import/Export Indicator) which has been discussed for inclusion with the ECOES API under the IREG on several occasions.