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Switching Programme: Proposed modifications to regulation and governance

We welcome the opportunity to respond to Ofgem's consultation document dated 5th June 2018.

This response is made on behalf of National Grid Electricity System Operator (ESO) and it is not confidential. As you are aware, we are also the Code Administrator for the Connection and Use of System Code (CUSC), the Grid Code and the System Operator - Transmission Owner Code (STC).

The ESO is supportive of Ofgem's objective to deliver faster and more reliable switching which improves outcomes for consumers, both in price and quality of service. We note that existing code governance arrangements are often viewed as complex and fragmented by new market entrants and smaller parties in particular. To this point, we agree that the creation of a single governance code for all relevant retail market provisions (i.e. the REC) is a logical step towards reducing some of the existing barriers to consumer switching and supporting future market innovation.

We are supportive of Ofgem's aspiration that the REC should be a 'best-in-class' industry code and welcome the introduction of governance arrangements that allow all market participants equal chance to input to and influence code changes that will enable a more innovative and competitive market. In our role as a Code Administrator we are committed to the development of less burdensome and less complex governance frameworks that will be truly fit for purpose in the future energy market. As such, we understand the merits of consolidating all retail energy code provisions (including the MRA and SPAA) within the REC and are of the view that this will serve to make the resulting code environment more accessible and easier to navigate.

The aim of having a single (yet flexible) approach to the change process to enable a greater level of input from a diverse set of industry stakeholders is something which will be of value in driving well-rounded outcomes. This approach should address some concerns about the current inability of code governance arrangements to deliver industry codes that keep pace with future market developments and implement strategic as well as incremental change.

As per paragraphs 1.15 through 1.18, a staged approach to the implementation of the 'final' consolidated code seems like a sensible approach, including the early procurement of the REC Manager. With regard to paragraph 2.2, we would encourage Ofgem to avoid putting obligations into the licence which may be better suited to the code to ensure a faster pace of change is possible assuming appropriate controls are in place (e.g. the applicable code objectives).

Ofgem has acknowledged that further work is to be done on developing some of the REC arrangements such as a provision to allow trialling of innovative proposals. We believe the inclusion of something akin to a 'code sandbox' is sensible to encourage innovation and change and would note a willingness to provide support in this area given our recent experience with BSC Modification P362.

Furthermore, we would be happy to share with Ofgem any insights from our new Code Change Journey¹ which may be relevant to code structure and governance arrangements, and we would welcome a discussion on feedback to this consultation (if Ofgem feel this would be appropriate) to input into our own thinking on improvements to the codes currently administered by National Grid ESO.

We have chosen not to respond to all of the consultation questions as some are specific to energy suppliers and the technical requirements and systems that will support the REC and the delivery of the Switching Programme. We have instead responded to those questions (in Appendix 1) where our experience as a code party and/or a Code Administrator might provide useful input into the development of the REC.

If you would like to discuss or have any questions please contact Sarah York (Commercial Analyst) in the first instance at Sarah.York@nationalgrid.com.

Kind Regards

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¹ The ESO Code Governance Team is undertaking an exercise to map the journey customers go through when navigating governance processes for the codes which we administer. The customer journey mapping exercise seeks to identify where improvements can be made and this will be done by working with customers to understand their experiences and future needs.

Appendix 1

Question 3.1: Do you agree with the proposed powers and functions of the RECCo Board, REC Panel and REC Manager, and how they would be distributed amongst them?

The proposed powers and functions of the RECCo Board, REC Panel and REC Manager, and how they would be distributed, seems broadly sensible and in keeping with the REC objective of establishing a different kind of code and governance model.

We can see how the introduction of a Code Manager, empowered to deliver strategic change and to manage the Performance Assurance Framework, goes beyond the current code administrator role. We believe that the outlined remit and objectives of the REC Manager marks a good first step in moving from the traditionally neutral and passive role of the code administrator (i.e. making the process work) towards a more proactive role that is focused on managing and driving the code to ensure its objectives are met. It would be helpful, in due course, to understand the mechanisms that will be put in place to ensure that the REC Manager is held to account, for example a time limited contract and the criteria for performance evaluation.

We note under paragraph 3.54 that the REC Manager will only be permitted to raise 'Change Proposals' in limited circumstances, with the latter still to be defined. We would emphasise that the extent to which the REC Manager is empowered to raise 'Change Proposals' is a key question which requires careful consideration. We are keen to understand if the REC Manager will be able to raise 'Change Proposals' entirely at their discretion or only where identified in line with the Mission Statement cited in paragraph 3.16. We would also observe that further consideration might be required on how the REC Manager can effectively balance any potential tension with remaining an impartial critical friend as per paragraph 3.17 whilst becoming a driver of strategic change in line with the Mission Statement.

Question 3.2: Do you agree with our proposal that independent Non-Executive Directors (NEDs), potentially from outside of the energy industry, should be present on the RECCo Board and that the composition of the RECCo Board should be subject to review, both periodically and / or whenever the scope of the REC / RECCo Board responsibilities changes substantively?

We broadly support Model B and the proposal to appoint NEDs to the RECCo Board to ensure diversity of Board membership and expertise. Representation from outside the energy industry has the potential to drive innovations in governance arrangements and market structures, via best practice and lessons learnt, that will bring benefits to consumers and industry alike. We note the importance, however, of achieving an adequate balance between the level of independent and industry expertise (and experience) represented on the RECCo Board.

Periodic review of the composition of the RECCo Board seems a sensible approach and should help to ensure that the governance framework of the REC and the functioning of the RECCo Board remain fit for purpose as the REC continues to evolve over time. With regards to how membership of the RECCo Board membership would be reviewed, we are unclear about exactly who would conduct the review and decide any subsequent changes.

Question 3.3: Do you agree with the principles for REC Panel Composition as set out in paragraph 3.43?

We agree with the principles set out in paragraph 3.43 and would observe that the principles are akin to those which underpin the panel election process common to a number of existing industry codes.

We would concur with Ofgem that to fulfil the objective of creating a best-in-class, consumer-centric code it is prudent for the REC Panel to comprise both independent and elected representative members; this will allow for further independence, diversity and transparency in Panel decisions. We believe a Panel should comprise some independent members to bring a different view to the Panel but it remains essential that the Panel is primarily composed of parties to the code and industry experts.

We also note that Ofgem's preference for wide and balanced representation seems to align with the intent behind CMP285. This modification (amongst other things) seeks to introduce independent industry experts to the CUSC Panel to enhance the independence and diversity of the CUSC Panel and Ofgem may wish to further consider this change proposal as part of the thinking on the development of the REC.