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Rachel Clark
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By email only

Dear Rachel,

Re: Switching programme: Proposed modifications to regulation and governance

Thank you for the opportunity to provide our comments on Ofgem's consultation on proposals for the Retail Energy Code (REC) and modifications to licences. Utilita is a smart meter Supplier with a predominantly prepay client base and we have been operating in the market successfully since 2008. We provide a high-quality service to a sector of customers who are traditionally poorly served and the continuation of supply to our prepayment customers is paramount.

We continue to support the harmonisation of approaches between gas and electricity and improvements to switching reliability. As stated in previous responses we however maintain the view that delivering faster switching could be achieved with minimal development to existing systems. Had this approach been adopted three years ago when we first raised it, we believe significant progress would have been made by now at very little cost.

We have concerns on how the programme costs will grow and be funded. In particular, how Ofgem will ensure that the significant costs required to deliver a new Central Switching Service (CSS) be recovered by Suppliers in the context of the market price caps.

We note Ofgem's proposal for the further extension of the Data Communication Company's (DCC's) role. We do not consider that the execution of the smart programme justifies the allocation of such a pivotal role in the industry to the DCC. The DCC has consistently missed deadlines and failed to deliver according to requirements leading to repeated deferrals and imposition of excessive costs on Suppliers. These costs are not properly recoverable under the current prepayment price cap. Consequently, increasing the industry's exposure in this way without robust protections for Supplier costs as well as consumers is not appropriate. The DCC has no functionality to deal with dumb meters and it is essential that switching is consistent across both meter types.

Utilita supports the introduction of the Retail Energy Code (REC) and welcomes the efforts being made to simplify and reduce fragmentation of code governance arrangements. The proposed drafting is generally good quality and simpler than usual. This fits the brief of being clear and in plain English, and will aid the understanding of new and existing market participants. As the consultation does not cover detailed drafting issues, we ask that Ofgem publish a timeline for the necessary formal drafting consultation. This should include the Schedules drafting. Given the crucial impact the change process will have in the early days of the REC, we have concerns the current proposed process appears to lack flexibility and may prevent less complex operational changes being developed and implemented swiftly. The current change processes of the MRA and SPAA provide good examples of how such changes can be efficiently managed.

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The consultation provided a useful insight into the proposed contents of REC v1 and v2. We understand the rationale for limiting REC v2 to introducing the CSS and switching related governance however we believe there is a risk the MRA and SPAA may exist for longer than necessary, at cost to industry parties. We encourage Ofgem to establish the REC Panel as soon as reasonably practical to support the transitioning of arrangements from the MRA and SPAA, particularly code arrangements viewed as out of scope of the programme. We believe the REC Panel can be tasked with developing a plan for REC development and the transiting of other code arrangements into the REC, in collaboration with both the SPAA and MRA Executive Committees.

Finally, we support Ofgem's aim to make the REC a code of the future. We believe that Ofgem and industry should start now to research how the REC can be digitally enabled to better meet the demands of its users. This could then serve as a model for others to replace the outdated PDF format. The REC Code Manager should be allocated this task as a priority, with a view to full enablement prior to go live.

We hope these comments have been helpful, and would be happy to discuss any points in more detail.

Yours sincerely,

By email

Alison Russell
Director of Policy and Regulatory Affairs

Appendix A – Utilita's consultation response

Chapter 2: Transitional requirements

Q2.1: Do you support our proposal to introduce a high level duty upon licensees to cooperate, where appropriate, in delivering the outcome of a significant Ofgem-led programme, such as a SCR?

No, we have concerns with the drafting currently presented and what this would mean for industry participants. We believe the drafting would mandate industry to deliver Ofgem-led programmes regardless of timelines, costs or other industry change. In a market of price caps, Suppliers must innovate and rise to opportunities when presented. The drafting should therefore be reviewed to ensure Ofgem accommodates industry development cycles into any Ofgem-led programmes so industry can appropriately resource and schedule their own change programmes.

We would also welcome clarification on how Ofgem expects the new powers to be used instead of a SCR, which is our understanding from reading section 2.7. We would like to understand how powers would be 'launched' and on what basis Ofgem would still choose to use the SCR process when the new powers would give Ofgem greater power to progress a reform.

Q2.2: Do you agree that the RECCo should be established earlier than REC v2 in order to assist with the successful delivery of the Switching Programme?

Yes, we agree that RECCo should be established ahead of REC v2 being designated. As RECCo acts as the contracting vehicle between Suppliers and a REC Code Manager, the REC Code Manager must be in place ahead of CSS go-live to support transitional arrangements.

Any costs associated with the functioning of the REC Code Manager must be managed by the RECCo rather than using existing code funding arrangements (such as under the SPAA and MRA). This will prevent existing code administrators being privy to the contracted REC Code Manager's administrative costs.

We also believe that by having the RECCo in place, an interim REC Panel can also be established which, with the support of the REC Code Manager, can manage the transition of governance arrangements from the MRA, SPAA and other codes into the REC. This should be done as quickly and efficiently as possible so cost savings can be witnessed by industry with the consolidation of industry codes.

Q2.3: Do you agree that the bodies constituted under the REC could suitably play a formal part in the programme governance?

Yes, as our response to question 2.2 outlined, we believe there are a number of benefits in having early establishment of the REC.

The REC will support the efficient delivery of the programme, as well as increasing transparency and engagement. The early formation of a RECCo Board, REC Panel and any supporting industry REC work groups will enable structured support for the development of REC arrangements as well as transition.

This approach will better align incentives for future delivery. The REC Code Manager and REC bodies have stronger incentives to manage efficiently the transition of remaining code arrangements into the REC, than if it were managed under the remit of existing code administrators.

We therefore urge Ofgem to consider the creation of the interim REC Panel as a priority. The Interim Panel should also be charged with creating and overseeing a transition plan, of those MRA and SPAA code arrangements into the REC, which do not fall into REC v1 and REC v2.

Q2.4: Do you agree that our definition of 'large supplier' in REC v1 is suitable for ensuring an adequate level of engagement with User Entry Process Testing?

Yes, we support the proposed threshold being consistent with the understanding of large and small Suppliers contained within the gas and electricity supply licences.

We believe that beyond entry requirements, the concept of mid-tier Suppliers should also be introduced under the REC i.e. to ensure there is mid-tier Supplier representation of the REC Panel alongside the larger incumbent Suppliers in the market and those defined as smaller Suppliers.

Q2.5: Do you agree that it would be appropriate to have in place interim governance arrangements prior to REC v2 coming into effect?

We support Ofgem's suggestion that the existing Executive Committees of the MRA and SPAA could act as the interim REC Panel. We believe the MRA and SPAA Panel members are well placed to support the procurement of the REC Manager and the development of REC v2. They have excellent understanding of the day to day operation of the MRA and SPAA codes, and consequently, expertise required by a code manager.

We also believe an interim REC Panel, constituted by utilising the existing MRA and SPAA Panels, will help drive the timely and coordinated transition of arrangements from the existing codes to the REC. We recommend that Ofgem clearly define the role and objectives of the interim REC Panel and RECCo Board, to help drive desired outcomes.

We have some concerns with Ofgem undertaking the role of the interim REC Code Manager in respect of REC change requests. Consideration should be given to introducing an interim REC Code Manager, which has the relevant core skill set to undertake change request duties, and who can be made accountable to Ofgem. Any interim change requests must also be trackable by industry, which could be achieved through the early establishment of a REC website. This will prevent the challenges we are currently facing in keeping on top of the programme's activity and locating the most up to date programme material via the Ofgem website.

Chapter 3: REC Governance

Q3.1: 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?

We are largely supportive of the proposed powers and functions of each of the REC bodies outlined under chapter 3, however we have several observations.

We are unclear on the rationale for the RECCo Board to undertake the powers of item (i) within section 3.13. Our understanding of the REC Panel is that it will be responsible for the day to day operations of the REC and subsequent operational decisions. The REC Panel should therefore handle REC Party matters to support its key responsibilities. We would expect code party compliance issues

to fall under the remit of the Panel, leaving the RECCo Board to run the company and provide strategic direction to the REC Panel and REC Code Manager. As an example, if a breach of the code was raised due to a party's failure to comply with an operational schedule, we would expect the REC Panel to be better placed to manage any cases of non-compliance. This would allow the RECCo Board to be a point of escalation where a code party disputes a decision of the REC Panel, reducing the need for Authority involvement.

We welcome proposals for the REC Code Manager to be more proactive in its' duties, namely being sufficiently empowered to continually improve the processes it is responsible for. However, this must be within defined parameters. We believe the mission statement of the REC Code Manager should also be broader when it currently only refers to its role around change. The other duties expected by the REC Code Manager are covered under the objectives which should fall under a sufficiently broad overall mission statement.

In section 3.20, Ofgem outlines expectations that the REC will include suitable provisions to address non-compliance and that the REC Code Manager will be empowered to enact them. We would like to understand this in greater detail, as in our experience, drawn from industry Committees and Panels, code administrators often need industry input to determine effectively a case of non-compliance and the appropriate actions to take. We therefore remain unconvinced that a REC Code Manager should be empowered to unilaterally enact non-compliance arrangements without formal input and direction from a relevant committee or the Panel.

Q3.2: 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 thorough review, both periodically and/or whenever the scope of the REC/RECCo Board responsibilities changes substantively?

Although in our experience independent Non-Executive Directors (NEDs) can significantly add to the expenditure of a company, we believe real value can be gained from having independent RECCo Board members with expertise outside of the industry to help drive innovation, and challenge common practices undertaken in the energy sector. The NEDs should engage sufficiently with Supplier representatives across the industry, to fully understand market pressures and code experiences in order to assess performance of the code, Panel and Code Manager.

We also believe there is merit in continuity between the REC Panel and RECCo Board decisions to prevent decisions being delayed where understanding is lost between REC body decisions. We are however unclear how this can work in practice when the proposals set out that the RECCo Board would be responsible for overseeing the performance of the REC Panel. This would lead to conflicts of interest where members overlap. We can therefore only see Model B practically working against Ofgem's vision for the roles and responsibilities of REC bodies. There must then be continuity of REC Code Manager support across both meetings to ensure both bodies are sufficiently informed of decisions and actions.

It terms of reviewing the composition of the RECCo Board, this should be subject to REC Parties review annually in the early years following REC implementation. Any more frequent would risk the stability and integrity of the RECCo Board with necessary experience being lost.

Q3.3: Do you agree with the proposed composition, powers and functions of the REC Panel?

We understand Ofgem's proposed composition for the REC Panel is of independent members. We would like to emphasise that in our experience non-independent code Panel members, can and do promote the interest of consumers when making informed decisions to support a code objectives. For this reason, we see no evidence for the case for or against the proposal as we do not believe Panel's with independent members make better or more customer focused decisions than non-independent Panels.

In regard to the functions and powers of the REC Panel we provided our comments on set up of REC bodies under question 3.1.

Finally, we believe it is imperative that Suppliers of different sizes should be fairly represented on the REC Panel. There should be fair representation from larger, middle tier and smaller Suppliers to ensure decisions made by the Panel take into consideration the different types of business models within the market. We would also suggest that while party representation from other market participants would provide for different perspectives and expertise on the Panel, representation from individuals from a Supplier background should hold a greater number of seats. Especially when Suppliers are expected to pay for overall code costs.

Q3.4: Do you agree that there should be entry and systems testing requirements placed on new entrants, comparable to those that we expect incumbent suppliers to undergo as part of the transition to the new switching arrangements?

Yes, we strongly believe there should be a level playing field for operating in the market under the new switching arrangements and across both fuels.

At present, new entrants are required to undergo audits on their processes, use of central systems and sending of industry data flows for entering the electricity market. We believe this provides many benefits to both the industry, and even the new entrant, by aiding understanding of requirements upon the organisation.

The same level of assurance however does not exist under gas which we believe needs to be addressed in the REC. We believe the REC provides a fresh opportunity to ensure those operating in the market have well-functioning systems and processes to operate effectively with the new CSS. We encourage Ofgem to ensure all entrants undergo similar testing requirements as incumbent Suppliers when entering the market.

Chapter 4: REC Content

Q4.1: Do you agree with the proposed minimum content for REC v2 (as listed in Appendix 3)? Is there any other content we should consider for inclusion in REC v2? If yes, please provide further details.

We agree with the proposed minimum content for REC v2. We note Ofgem have also provided a list of other process candidates for a future REC version or to be included within other codes. We would like to see, wherever possible, these processes transitioned into the REC as soon as reasonably practical in order for industry to reap the rewards of code consolidation. We are concerned there is a risk the MRA and SPAA will continue to exist for longer than necessary. This will incur unnecessary costs, and mean parties still have to engage with multiple codes and code administrators to stay informed.

In reviewing the proposed candidates for the future REC/other code candidates we believe some of the more straightforward existing governance procedures could be transitioned into REC v2, without creating added risk to the CSS go-live. For example, the electricity disconnections procedures, the gas and electricity smart prepayment arrangements and other legacy prepayment processes.

We note SPAA is in the process of completing a project for all prepayment related schedules to be consolidated and reviewed in line with current market operations so transitioning into the REC alongside the equivalent MRA Agreed Procedure should be easily achievable for 2020.

We recommend REC v3 and beyond should solely be focusing on introducing new arrangements (such as retail market reporting) and the transition of the more complex aspects of existing retail code arrangements which may involve use of central systems and contracts with Service Providers.

Q4.2: Do you agree with our proposal that the REC Code Manager should collate Switching Domain Data and make it available to Market Participants? Or do you consider that the Data Master for each element of Switching Domain Data should make it available to Market Participants?

The introduction of the REC is an opportunity to simplify market arrangements, as well as consolidating fragmented arrangements which are spread across multiple codes. We agree with proposals for the REC Code Manager to collate Switching Domain Data and make available to Market Participants. This would be much simpler than if each market participant was to make data available it is a master of.

Q4.3: Paragraphs 4.20-4.24 suggest that the DCC should be subject to a data quality objective and performance standards around the quality of REL Addresses. Do you have suggestions on the quality measure areas and levels quality measures will take? Do you believe that the REC Panel should have a role in setting these targets (initially and/or on a periodic basis)?

We believe this is fundamental question that warrants consideration by industry under an industry group.

Our initial view is that where central systems are updated to match CSS address data this will have knock on impacts which need to be fully considered. Where this is the case, we see the benefits of the DCC having a specific objective in relation to data quality of REL addresses. Its performance against its objective should be measured against a set of quality measures and KPIs.

As a minimum, we would expect any quality measure areas to cover a set of reasons for measuring data quality in the first place, such as for completeness, timeliness, consistency, validity, and integrity. Each reason should then be considered against how data quality can be measured and a range of metrics can be set.

Q4.4: Paragraph 4.25 outlines that the REL Address data quality indicator is currently intended to be an internal measure for the CSS. Do you believe there is value in making this available to other market participants? If so, please provide your rationale for this and outline which market participants should have access.

We believe it is essential that the indicator should also be made available to Suppliers and networks. By having this indicator available, Suppliers can determine if extra processes are required to validate the details of a premise with a customer i.e. where there is a lack of confidence in the accuracy of a REL address ahead of a switch.

We also believe this information is valuable for networks who own metering and supply point address data and the indicator may highlight premises where data quality efforts should be focused due to causing issues for a REL address to be applied to a site.

<u>Q4.5: Paragraph 4.25. suggests that the DCC should set out the methodology it will apply to meet the REL Address data performance standards on an annual basis. Do you agree that it would be beneficial to make this methodology publicly available?</u>

We believe this should be available to all REC Parties when it will be REC Parties responsible for funding REL Address arrangements and the DCC's setting and application of any methodology. We do not see a justified reason for not making this information available to REC Parties.

<u>Q4.6: Do you support the creation of an Enquiry Services Schedule in REC v2? If so, which of the options around the requirements (in paragraph 4.32) do you prefer? Please provide details to explain your answer.</u>

Yes, we believe an Enquiry Service Schedule should be included in REC v2 when both DES and ECOES are critical to Supplier procedures during the switching process. We believe the REC is the best place to hold dual fuel switching related governance including provisions for access and monitoring the use of the DES and ECOES systems. We believe this would also provide an opportunity to ensure consistent levels of governance exist on users' use of systems, across both gas and electricity. A consistent approach to both services is encouraged.

In regard to the content of the enquiry schedule at REC v2 we are surprised by the options provided and believe option 1 is the only straightforward and logical solution.

Although DES data items include a number of non-switching related data items owned by Shippers, obligations can be placed on Suppliers who contract with Shippers for the maintenance/provision of the data items. We believe Option 2 and Option 3 completely go against one of the key aims of the switching programme which is to simplify and reduce fragmentation of current retail arrangements and therefore should be discounted.

<u>Q4.7: Do you agree with our proposal to create a REC Exceptions Schedule to be contained in REC v2, with the scope outlined in Figure 3? If not, please provide further details.</u>

We agree with the principle of the proposed REC Exceptions Schedule. We consider that it may improve new entrants' ability to navigate to those processes, which impact key elements of the end-to-end customer experience of switching. However, the redrafting of this new Schedule must be undertaken carefully, to ensure it is not misleading. It must be clear what scenarios are covered, for example, in the case of Erroneous Transfers, customers can be returned to a Supplier even if a valid contract/sign up has taken place.

In reviewing figure 3 we agree with the proposed candidates for the Exceptions Schedule for REC v2, however we see no particular reason why the candidates in grey could not be included within REC v2. We also believe the processes will remain mostly unchanged when transitioning from the MRA and SPAA into the REC. It would be better to have the certainty of only one code to refer to for switching related governance.

<u>Q4.8: Do you agree that the grey areas highlighted in Figure 3 should be out of scope of an Exceptions Schedule for REC v2? If not, please provide further details.</u>

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As outlined under our response to question 4.7, we would prefer to have only one code for switching related governance at the point of REC v2 being implemented. However, it is not clear that the Smart Prepayment switch exceptions process is best placed within this Schedule. It may be better grouped with all other Smart prepayment switching governance, in a separate Prepayment Schedule. Our experience has shown that Prepayment customers are a distinct population with unique characteristics, who benefit from specialist management. A Prepayment Schedule could be divided into legacy and smart prepayment meter processes and any processes which could cover both smart and legacy meters and processes such as DAP and misdirected payments.

This would make it easier for existing and new Prepayment Suppliers to better understand the unique requirements these customers place upon their business.

Q4.9: A list of suggested content for a set of REC Technical Documents can be found in section 4.44. Do you believe that any of the content listed is unnecessary or is there any content that you would expect to be included? If so, please provide details.

In reviewing section 4.44 we are comfortable with the proposed REC Technical Documents however to reduce multiple codes involvement in change control procedures we would expect these documents to be complimented with the enquiry services technical specifications and a Data Flow Catalogue which we expect should also move to REC v2 (currently the Data Transfer Catalogue (DTC) and Gas Online Catalogue).

Q4.10: Do you believe that table 1 captures all of the items that should become a REC subsidiary document? If not, please provide details of the additional items that should be included and why.

We agree with the list of REC subsidiary documents. However, the programme must ensure appropriate financial management and planning documents are created, to support the activities of the RECCo Board. A REC budget and minimum 3 year-business plan should be developed as part of the introduction of the REC. This will provide visibility to REC Parties on expected costs for the new code. While these are REC Products, and may not be referenced within this section, the requirement should be recorded.

To aid the overall operation of the REC we would also expect the following to be in place for REC v2. The documents should be subject to appropriate, formal change control procedures:

- ECOES, DES and MIS accession agreements
- REC Modification and Change Report templates
- Derogation request forms
- Breach / non-compliance report forms

Q4.11: Do you believe we have assigned the correct responsibility for producing each REC subsidiary document? If not, please provide further details.

Yes, we have no concerns with the proposed responsibility for producing each REC subsidiary document.

Chapter 5: The DCC licence Question

5.1: Do you agree with the role we have set out for DCC during the DBT phase and steady state operations? If not, why not?

Although we understand Ofgem's rationale for the DCC's role to be extended into steady state operations, we do not support the proposal and are concerned with the added costs this will incur for Suppliers and consumers. We are also unconvinced that the DCC's execution of the smart programme to date has justified the allocation of such a pivotal role in the industry to the DCC.

Instead we believe Ofgem should consider whether the REC Panel and RECCo Board could interact directly with the CSS Service Provider sooner to achieve the aspirations of the roles outlined for steady state operations. This is the approach taken for instance for the Theft Risk Assessment Service (TRAS), where the service provider is responsible for reporting directly with industry on its performance and costs and therefore responsible to answer any concerns directly.

Question 5.2: Do you believe that our proposed drafting to amend LC 15 of DCC's licence would, if implemented, accurately reflect our expressed intentions? If not, why not?

Yes, however regarding clause 15.5AA b) we do not believe 'Provision' within iii) requires capitalisation. We also note that the only reference to the CSS being economic is in reference to adapting to future market requirements under 15.5AA b) III) we would therefore like to see the delivery and upkeep of the CSS and any reporting being provided economically and efficiently.

Question 5.3: Do you agree with our proposal to add new CRS specific price control terms. Do you think any of these terms are unnecessary or are there other terms we should consider adding?

Firstly, we do not agree with the DCC's role being extended into steady state. However, if this is the case then we agree there needs to be a price control framework in place to regulate expenditure and the DCC's revenue. Where there is poor performance and failure, significant amounts of the DCC's revenue must be at risk.

We also believe the terms listed are appropriate and should enable transparency of DCC's costs.

Finally, we encourage Ofgem when reviewing DCC's proposed costs, to bear in mind the costs of other industry central systems to ensure spending remains economic and is proportionate.

Question 5.4: Do you agree with the high-level programme outcomes we believe the programme should look to incentivise? Can you suggest further areas we should look to include and are there aspects you believe should be prioritised?

Yes, we consider the proposed programme outcome incentives to be appropriate. We would like to see similar incentives being carried over to the post implementation and stead state operations (where the DCC's licence is extended to cover steady state operations) to ensure a high quality and cost-effective service is continually delivered following implementation.

Chapter 6: The SCR process

Q6.1: Do you agree with the changes that we propose to make to the scope of the Switching SCR?

Yes, we agree it is appropriate to make changes to the Switching Significant Code Review (SCR) based on development within the programme and Ofgem's published decisions in February 2018. We would however like to emphasise that whenever the scope of a SCR or where regulatory powers are extended, great care should be taken to ensure that robust checks and balances are in place.

In reviewing section 6.7 of the consultation our only comment is that within the scope excludes section, bullet point eight contains a capitalised 'T' within 'This' (following a comma) which requires amending.

Q6.2: Are there any further changes that you consider we should make, either to bring something into scope, or to explicitly rule it out of scope?

Our only comment is that it may also be appropriate to include reference to the creation of the new REC to house the new switching arrangements as this is of major significance to the overall programme.

Q6.3: Do you agree with our proposed approach of publishing the drafting of all SCR related changes circa Q1 2019, but waiting until systems have been proven through testing before submitting the proposals into the modifications process?

Yes, in the spirit of left to right planning we agree that any SCR related Modifications should not be raised until Ofgem and industry have complete confidence in the systems readiness. We however would encourage continued dialogue with Ofgem on their expectations for the code changes being raised and what the implementation timeframes will be so we can ensure business readiness.