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16<sup>th</sup> November 2018

Dear Rachel,

I am writing on behalf of ESP Utilities Group (“ESPUG”) (comprising the licenced companies ES Pipelines Ltd, ESP Connections Ltd, ESP Networks Ltd, ESP Pipelines Ltd and ESP Electricity Ltd). We welcome the opportunity to respond to Ofgem’s “Switching Programme: Regulation and Governance - way forward and statutory consultation on licence modifications” consultation paper (‘the ‘Consultation Paper’), dated 15<sup>th</sup> October 2018.

In summary, ESPUG broadly supports Ofgem’s proposed regulation and governance for the switching arrangements in the consultation and welcome the changes made to the legal text of the statutory license change.

### **Enduring REC Governance**

ESPUG agrees it is important to put the right governance framework in place as early as possible to achieve Ofgem’s vision for the Retail Energy Code (‘REC’). Critically, for the governance design of this code, Ofgem must take consideration of the CMA’s Market Study findings that the governance of the industry codes effectively act as a barrier to innovation. Governance arrangements have to reflect the accelerating pace of change in the energy industry; that could include accommodating new or different business models not anticipated at the time of the codes governance design. The framework must balance industry’s need for certainty with the right level of flexibility to future proof the code. It follows from this that Ofgem, as a commercially neutral party, should have a role in the appointment of future RECCo Board, and the Board should have the right powers to prevent any of these potential issues mentioned above from emerging.

We also believe it will be critical that *all* Network Operators are adequately represented on the RECCo Change Panel (‘the Panel’) given the proposed powers and functions of the Panel. GDN/DNO business models often differ from their IGT/IDNO counterparts, and we are concerned that views expressed by network operator representatives may, unintentionally, have a negative impact on the competitive market. As the proposals are developed, the difference between the IGT/IDNO and GDN/DNO constituencies must be acknowledged by Ofgem, and we encourage Ofgem to consider a separate Panel position for independent network operators for the efficient running of the code.

Finally, our preference is for code decisions to be made against linking relevant objectives of the code with the evidence presented to the Panel. This we think would potentially dilute the potential for bloc voting by industry parties if they have the opportunity to nuance their preferences with a reasoned argument against a set of objectives.

### **Duty to Cooperate**

We support the intent of the Duty to Co-operate, especially in the context of recent major industry wide IT projects including CMA's view of Project Nexus and the Smart Metering Implementation Programme. The new legal text is clearly a welcome improvement from the July consultation as it specifically links the Duty to Co-operate with the Significant Code Review ('SCR') framework. We also appreciate the clarification provided in regards to the application of the proposed duty (2.18, p15). However, we have noted that this doesn't seem to filter through into the SCR definition. We would suggest this be revised or that Ofgem issue a notice to each party which specifies in what way and how licensees are expected to engage under the Duty to Co-operate clause. In whatever form it may take we would however, like some guidance to allow us to further understand exactly what the boundaries of the Duty to Co-operate are.

Our detailed comments are set out in the appendix to this letter. If you wish to discuss any of the issues raised in our response or have any queries, please feel free to contact me on 01372 587500.

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

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Seb Eyre', with a stylized flourish at the end.

Sebastian Eyre  
**ESP Utilities Group**

## Appendix: Answers to Ofgem's Consultation Questions

### Chapter 4 Enduring REC Governance

#### **Question 4.1: We would welcome views on whether Ofgem should have an on-going role in ratifying RECCo Board appointments after the appointment of the first board.**

Agree. Our priority is to see a commercially neutral code administrator that is well run. Since Ofgem will ratify the first Board, we see no reason why in theory, Ofgem should not have a continued role in its appointments.

#### **Question 4.2: We would also welcome views on whether the REC parties should have a role in ratifying the first and/or subsequent boards.**

Yes. It would seem appropriate for REC parties also to be involved for the same reasons given above i.e. commercial neutrality and the true representation of industry parties.

#### **Question 4.3: Do you agree that the REC should place less reliance on face to face industry meetings for modification development and instead empower the REC Manager to develop and analyse proposals, procuring expert support as and where required?**

Inputs from *all* sources should be equally welcome to the code process.

We have no problem *per say* with the REC using outside consultants but we would want assurance that they are not conflicted and the information cannot be obtained in any other way e.g. by information requests to parties. Incentive for bias could be an issue if consultants are at least sub consciously thinking they may be used in future by the larger industry participants, or have had access to confidential industry wide data that would enhance their general marketability.

#### **Question 4.4: Do you consider that a recommendation to the Authority should be made by the RECCo Change Panel, with reference to the REC relevant objectives, or based on a vote of REC parties?**

ESPUG believes that both forms of recommendation can be combined successfully. The Change Panel would make a recommendation based on a vote and reasoned argument citing the relevant codes objective(s) to Ofgem. This would be reported by breakdown according to sector and parties impacted by the change.

#### **Question 4.5: Do you, in principle, support the approach to performance assurance outlined?**

In principle we agree. It makes sense for the PAB to be able to identify then solve underlying performance issues of the code.

### Chapter 5 RECv2.0 Enduring Switching Arrangements

#### **Question 5.1: Would you support the development of a REC digitalisation strategy?**

Yes. This is vital to the proper functioning of the code that parties can understand the complex regulations and the policy intent behind the decisions. This can only work in the favour of new entrants who might not have a sufficient regulatory corporate memory to comply properly with the codes. It would further reduce the scope for divergent interpretations of the same code obligation.

#### **Question 5.2: Do you agree that the draft Registration Services Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?**

Yes. Regarding Section 4 Transporter initiated registrations (4.3); we see it as prudent to wait until current Change Requests have been progressed through Switching Programme governance.

**Question 5.3: Do you agree that the draft Address Management Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?**

Yes

**Question 5.4: Do you agree that the draft Data Management Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?**

Yes

**Question 5.5: Do you agree that the draft Interpretations Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?**

Yes

**Question 5.6: Do you agree that the draft Entry Assessment and Qualification Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?**

Yes

**Question 5.7: Do you agree with our proposals that:**

- **PAB, as part of its role in mitigating risk to consumers and the market, should provide information to the REC Manager on the specific risks that it wants to be mitigated and assured against through Entry Assessment and Re-Qualification;**

Yes.

- **The Code Manager should have clear obligations to support the Applicant and coordinate with other code managers; and**

Yes. This will be a design challenge as the code administrators do not all have the same objectives and contracts in place. Code administrators may believe it's beyond their mandate to get involved in the "detail" of a proposal, and have justification for this position.

There may also be difficulties on the small number of occasions where, without clear obligations, a modification could result in a system change which would be costly to industry but benefit a particular CA.

- **Suppliers that undertake a material change to their systems, processes or people should undertake Re-Qualification?**

Yes. The definition of material change may be an issue given the diversity of industry players. To support this view, we note that in theory at least, a small change for one part of the market may have a considerable impact for another.

**Question 5.8: Do you think that PAB and the REC Manager should work with service providers to identify and mitigate risks associated with material changes to their systems, processes or people?**

Yes.

**Question 5.9: Do you agree that the draft Service Management Schedule meets the required standards set out in the Regulatory Design Principles including whether we have set out clear and workable roles and responsibilities for Market Participants, service providers and the Switching Operator that will support the effective operation of the new switching arrangements? If not, please describe how you think it should be improved?**

Yes. The performance of the new switching arrangements will of course be associated with delivery.

**Question 5.12: We welcome views on whether we should retain or amend the remit of the proposed Switch Meter Reading Exception Schedule beyond domestic consumers and electricity NHH consumers.**

Yes. We see no reason why this should not be the case.

**Question 5.13: Do you agree that we should move any requirements to obtain and process meter reads for settlement purposes into the BSC and UNC?**

Yes. It makes sense to make a clear demarcation between reading for settlement and reading for change of supplier.

**Question 5.14: We welcome views on whether the Switching Meter Reading Exception Schedule should make specific provisions for consumers with smart gas meters.**

We agree with Ofgem’s position not to propose any further changes and keep as separate within the draft Schedule. This we think would minimise any potential disruption and reduce complexity.

**Question 5.16: Do you agree that the REC should refer to existing security standards rather than develop separate and bespoke ones?**

Yes the REC as a default position should refer to existing standards as far as possible.

**Question 5.17: Do you agree that a consolidated PPM Schedule should be developed and given effect as part of REC v2.0?**

Yes.

**Chapter 6 REC v3.o Wider Consolidation**

**Question 6.1: What do you think are the pros and cons of Model A and Model B and which do you think we should use to develop an Exceptions Schedule in the REC?**

In practice there might not be much difference between Model A and B but we would support the more prescriptive approach of Model B and to use it in the Exception Schedule.

**Table 1 Model A and B compared**

Criteria	Model A	Model B
<b>Degree of compliance Certainty</b>	Less as little prescription could create uncertainty	More certain as prescription is likely to provide clear but uniform service standards.
<b>Ease of Implementation</b>	Could be harder to implement given the slightly more contingent nature of performance based approaches	Model may be easier to implement as minimum standards are likely to be carefully defined.
<b>Oversight</b>	Relative performance criteria	Absolute performance criteria

**Question 6.2: Do you agree that the theft of gas and electricity provisions should be moved to the REC?**

Yes.

**Question 6.3: Do you agree that the REC Manager should undertake the (re)procurement of any services due to commence at or after REC v2.0 implementation?**

Yes.

**Question 6.4: Do you support the establishment of an industry-wide data catalogue that all code bodies incorporate by reference into their own codes and collaborate on the maintenance of?**

Yes. This would be a major advance in efficient running of the change of supplier process.

**Question 6.5: Do you think that the REC should have the responsibility of hosting the industry-wide data catalogue?**

Yes, this makes sense given its centrality to the other codes.

**Question 6.6: Do you think that an industry-wide data catalogue should be developed for REC v2.0 (to enable REC CSS messages to be incorporated from day 1) or should consolidation be undertaken as part of REC v3.0?**

Yes. A unified catalogue will be more efficient.

**Question 6.7: Subject to further development, assessment and consultation, would you in principle support aligning the gas and electricity metering codes of practice under common governance?**

We see merit in this proposal. We would note that the differences between gas and electricity meters will still need to be recognised in the new amalgamated code, so it might not make a quite as bigger difference than anticipated in the consultation in practice.

**Question 6.8: If yes, do you consider that the REC would be a suitable vehicle for such common governance?**

Yes the REC is a logical place for common governance.

**Question 6.9: Do you consider that the SMICoP should be incorporated into an industry code, and if so, do you agree that this should be the REC?**

The SMICoP was specifically set up for smart meter roll out in the context of a program end date and therefore should fall away. If it is to have a host code then it should be REC.

## **Chapter 7 The DCC**

**Question 7.1: Do you agree with the five incentivised milestones identified? Do you think any milestone should be given greater importance and therefore a larger proportion of margin placed at risk?**

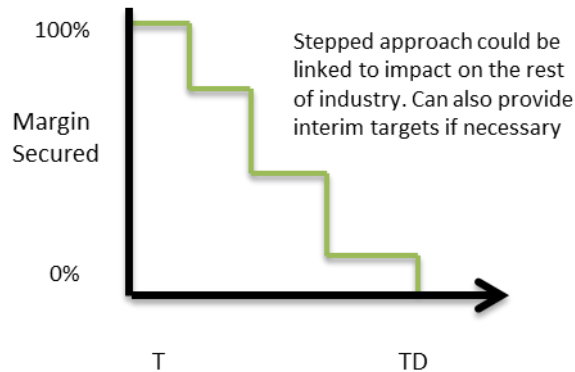
Yes we agree.

**Question 7.2: Do you agree with our proposals for the shape of the margin loss curves. Do you have any suggestions for other margin loss curves which may better incentivise DCC to achieve its milestones in a timely manner while encouraging quality?**

We suggest a minor revision. We note that the shape of the margin losses has to reflect the relative risks associated with project delivery to measure true performance. We are not certain the proposed curve fully reflects project risk or consequential losses to the industry, an important part of calculating margin loss.

We suggest using a stepped approach rather than a curve in calculating margin loss reflecting late or poor quality performance. By replacing a smooth curve with a stepped approach it is possible to set interim targets and could be altered to reflect the wider impact on other industry parties (i.e. externalities) as we have suggested above.

**Figure 1 suggested margin loss curve**



**Question 7.3: Do you agree with our proposal for a potential recovery mechanism? Please give reasons. What types of criteria could be considered for demonstrating clear, transparent communication and what portion of lost margin should be available to be recovered?**

Agree, but this proposal’s effectiveness is down to Ofgem successfully using its discretionary powers.

The criteria chosen for margin recovery should be linked to contracted deliverables only. The economic impact of the change on other industry parties should be taken into consideration when setting margin recovery.

**Question 7.4: Do you agree with our proposals for a discretionary reward where it can be demonstrated that DCC has gone above and beyond established requirements for REL Address matching? Please give reasons.**

In principle yes, however discretionary awards only work if the work is over and above expectations rather than being simply about meeting existing expectations.

### Chapter 8 The Way Forward

**Question 8.1: Do you agree with the proposed collaborative approach to consultation and modification report production?**

Yes, we agree.

**Question 8.2: Would you in principle support REC v3.0 code consolidation being progressed as a SCR separate to, but run in parallel with, the Switching Programme SCR?**

Yes, we would in principle support this proposal as it enhances flexibility.