Rachel Clark
Switching Programme Director, Consumers & Markets
Ofgem
10 South Colonnade
Canary Wharf
London, E14 4PU                                                        16 November 2018

Dear Rachel

**SWITCHING PROGRAMME: REGULATION AND GOVERNANCE- Way Forward and statutory consultation on licence modifications**

Gemserv acknowledges the ambition and intent around the creation of a "best in class" code. We also recognise the challenge associated with that particular vision. We see evidence of innovative thinking in how the REC is being developed and enthusiastically support this approach. However, we believe there is a golden opportunity to go further and make the REC a truly transformative platform for energy governance. While continuing to deliver for today's market and market participants, we also need to set the right direction for the market of tomorrow and for the type of market participant and consumer that has yet to be defined.

In representing existing retail energy code Parties, we have already contributed significantly to the design and drafting of the REC. Through this involvement, we have been fortunate to share the thinking and insights of a wide range of Suppliers. The, sometimes considerable, differences that exist in Suppliers' requirements will set unrealistic expectations. Indeed, we fully appreciate there will be perceived "winners" and "losers" in a new design and this perception will naturally drive resistance to change. However, we must challenge this resistance and demonstrate that in a fair, modern and consumer-focused market there is opportunity for all types of Party. Gemserv has seen this market paradox at first hand in its Innovation Workshops: there can be consensus between Suppliers operating on different business models and on different scales. We have brought our findings together in a series of thought leadership papers that show how the motivated can engage in an innovative market promoting competition among Suppliers, and value for money for the end consumer.

Gemserv's own opinion and understanding of digitalisation has undergone considerable revision since our recent acquisition of a business specialising in that environment. Market design and governance can no longer be developed on the basis of known technologies. We need to develop on the basis of creating a framework capable of accommodating unknown and, to some extent, currently unimaginable technology. With data offering new and innovative opportunities in the market, we need to be open to the power of digitalisation. We need to understand the full implications and a proper data strategy needs to be established, to avoid the development of arrangements that inhibit the Code Manager from offering new and innovative solutions, aimed at improving the working and efficiency of retail arrangements.

As always, if you have any queries or require clarification on any aspect of our response, I would be very happy discuss with you further. We will continue to support you and the programme as we work toward the vision of a 'new way' in governance.

Glenn Sheern

Head of Market Design, Gemserv

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

The appointment of RECCo Board members is crucial to the smooth running of new arrangements and full transparency should be apparent in this process. We believe there is an ongoing role for Ofgem in the ratification of the Board members and, therefore, for the Directors of RECCo. It is important that the nominations committee consists of a broad profile of stakeholders and interested parties, but also has an independence from Parties to the REC.

We would suggest that consumers are represented on this committee and on the RECCo Board to give the consumer voice in the new code. It is our experience, from more than 20 years of code Governance that, once these standing groups are established, the membership changes very little. We have seen it work well and not so well and it must be right from the beginning. Where consumer representation is active, broader views contribute to a better balance, resulting in better outcomes for all.

**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.**

It is important that REC parties are involved in ratifying members of the Board in order to be part of this new governance approach.

**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?**

We welcome the introduction of a mission statement and objectives that are more consumer focused. There are many meetings throughout the industry where modification groups are convened for meetings either forcing Parties to travel long distances or suffer poor remote facilities. It is a challenge to get input from all parties on modifications and although some face to face meetings will always be the preference for meetings, use of multi-channel routes to allow parties to interact with the code are essential.

It is important that the REC manager is empowered to develop and analyse proposals at an early stage and it is also important that Parties can and do interact where they have the opportunity and not stifle progression by not facilitating change where it is needed or directed by the authority.

**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?**

We advocate a model where the REC Change Panel makes a recommendation on material changes based on the REC objectives (and mission statement where the solution might not necessarily fit in with the objectives). Party involvement is critical for the assessment of the solution and should be sought as part of the development process. However, recommendations need to be based on benefits to consumers and the industry.

Too often, a recommendation is included in a relevant objective for the sake of convenience. In a modern forward-looking code, we must be open to new and innovative models that allow flexibility and agility in code governance. It is too easy to replicate existing models, without considering new ways of working for a more digital world. We believe there is the opportunity, in future releases, to move to a code landscape where there are bespoke rules that can sit alongside overarching rules, in contrast to the current model where everyone follows the same rules irrespective of their disposition and resources. Models like this should be explored and any drafting of the physical REC should allow for innovative future arrangements.

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

We note that Ofgem believes there are lessons to be learnt from the establishment of the UNC PAB and, based on our experience with the Gas PAFA, we agree with this assessment. Timely access to accurate data and an industry-wide data strategy would solve many of the problems currently faced by the Gas Performance Assurance Committee (PAC).

There is a unique opportunity to devise a more targeted and proportionate methodology for performance assurance. We are not convinced it is right to specify traditional approaches to monitoring. We should be empowering the REC Manager to consult in this area, enabling a more progressive approach. The REC Manager can be incentivised to use the data at its disposal, to deliver an approach that is more agile and able to accommodate earlier and easier intervention.

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

Yes, we would fully support the development of a REC digitalisation strategy

Noting the distinction made in the consultation between digitisation and digitalisation, we strongly support the REC Board being responsible for the development of a REC digitalisation strategy. We believe digitalisation is fundamental to encouraging competition, ensuring the new arrangements can adapt to changing consumer and market needs in future and, ultimately, maximising levels of consumer participation in the retail energy market. We are fully supportive of the non-exhaustive examples of digitalisation identified in the consultation as enhancing participant experiences of specific areas of the REC, i.e. the accession, change and performance management arrangements.

The currency of digitalisation is data. A key enabler of successful digitalisation is the ability to identify, access and interpret data to drive accurate and timely decision making. We therefore believe that it is critical that the REC Board, Panel and Manager are not unnecessarily frustrated in formulating and executing the digitalisation strategy. Within the constraints of data protection legislation and the best interests of the consumer, minimal barriers should exist to accessing and utilising data that would allow the benefits identified for the digitalisation strategy to be realised. This principle should be enshrined in the REC, to avoid a situation where unnecessarily constrictive data governance acts as an impediment to delivering the benefits of the REC.

We also believe that the benefits of digitalisation to competition and the consumer extend into the wider retail and wholesale energy arrangements. The REC's digitalisation strategy should be intrinsically linked to, and developed in conjunction with, an industry-wide data and digitalisation strategy. Many of the issues with the current arrangements, which have necessitated the switching programme and the REC, are not unique to the registration and switching domain, and cannot be solved entirely within it. We would therefore be supportive of wider consideration of how new approaches to data and digitalisation could improve competition and benefit the consumer. We believe that this wider data and digitalisation strategy should consider how the partial harmonisation of gas and electricity arrangements being delivered through faster switching and the REC would benefit from or act as a catalyst for similar harmonisation in wider gas and electricity data architecture and governance.

Without a clear strategy for data and digitalisation that is broader than just the REC, we are likely to compound the existing problems of fragmented data governance and out of date and inflexible infrastructure, which have consistently confounded innovation and competition and resulted in unnecessary additional cost to the consumer.

**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?**

Firstly, we have some generic points relating to the approach to all the draft schedules, we will then explore further comments on schedules where appropriate.

Whilst the schedules work for version 2 of the REC we believe there is still considerable work to be undertaken before REC v3 comes into force.

Current design focuses largely on the switching solution and not the mission of the REC. We would like to see the drafting principles more focused on the outcomes the full REC is intended to deliver. This means that harmonisation work needs to be challenging the status quo, in order to ensure the new arrangements deliver the intended mission of the REC i.e. innovation, designed with consumer needs in mind. Arrangements should be effective to take account of the needs of the retail market as a whole, and new entrants and business models that are finding it challenging to engage, and to bring new solutions to the market.

The schedules that focus on the issue resolution and interactions with consumers will need to be designed differently – drawing out and separating out consumer outcomes and requirements from supplier to supplier and party processes.

**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?**

There are references to the MRA and UNC that could be more future proofed to stop the need for modification later when the MRA ceases to exist. How much emphasise on the continual monitoring and improvement of the REL should be subject to review by PAB and the code manager to ascertain if this is a worthwhile exercise.

**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?**

We believe high quality and accessible data is critical to the consumer experience and is a key retail energy asset. It should be designed and managed accordingly. Timely industry access to data enables positive outcomes for the consumer, including more choice, greater competition and more engagement. Market Domain Data is a key enabler of the REC's ambitions to engage and empower the consumer. We understand gas-specific changes are currently being proposed to ownership of elements of gas Market Domain Data (MDD) ahead of a final Ofgem decision. We believe this may fetter design discretion on a harmonised MDD.

Currently being proposed as part of the REC is a new data catalogue. This would only centralise descriptions of the current MDDs, rather than resolving the underlying defects. Harmonisation of MDD across fuels is the best way to ensure timely access to accurate information.  True Harmonisation can only be accomplished by ensuring a coherent, cross-fuel approach to data governance under the REC and across the industry.

We cannot avoid the fact that inadequacies in the current processes have been driven by the current errors in the current processes. Progresses cannot be made without changes in data governance.

**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?**

There are definitions her that pre-empt decisions that are with the Authority and therefore may fetter the decision process. This Schedule should only reflect policy decisions that have been made.

**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?**

We believe it is an improvement to include entry assessment for both fuels and that this will be carried out on a risk-based approach. This methodology must be flexible enough to learn from experience and be specific to any individual participant.

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

**a) 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;**

In principle, we agree with this an approach of this nature, whether it is the sole responsibility of the PAB to highlight specific risks we are not convinced. The REC Manager should have its own input here with lessons learnt through their dealings as a critical friend to Parties.

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

Parties face considerable challenge here and would benefits of having a single interface for entry, the REC Manager coordinating the planning process to help parties navigate across the market requirements relating to entry.

Centralisation enables better examination and rationalisation of requirements as well. If we want the REC to be progressive, centralisation is key alongside the ability of the REC Manager to raise changes to REC arrangements. Support and coordination should be extended to all code managers and administrators and driven by the REC manager. In this sense Performance Assurance could be measured against other codes cooperation and support.

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

Re-Qualification may go too far dependent on the nature of the changes, but certainly a re-assessment of the risks to the industry should be made to identify any new obligations Suppliers may have to abide by.

**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?**

We would envisage an approach like the one outlined for Parties where the impact on the industry, is assessed and risks mitigated.

**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?**

We have no comments on this schedule.

**Question 5.10: We also welcome views on the draft service levels set out in Appendix B of the draft Service Management Schedule.**

We would caution about being too prescriptive with service levels, as the details of the service have not been fully realised at this time

**Question 5.11: Do you agree that the draft Switch Meter Reading Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?**

There are some concerns in this schedule in that it is too focused on legacy systems and processes. We note that in section 5 there is a mandation to use the DTN as a method of filer transfer this is a fundamental change from the current arrangements under the MRA which does not specify a method of transfer (except for a small number of green deal flows). As no mandated method of file transfer has been agreed to our knowledge this should be amended.

**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.**

We should be designing rules and regulations that encompass all consumers and fuel type should not be a distinguishing factor.

**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?**

The fragmentation of requirements could be a mistake that makes the governance processes in the future complex and maintains barriers to entry for innovative models. We constantly hear anecdotal stories of innovators being denied access to data and are stifled by differing governance arrangements when trying to make solutions work for all. This is an opportunity to bring all meter reading processes which essentially a retail activity under one new governance vehicle. Whist settlement undoubtedly is an important area of concern for Parties to those codes, clear open data access arrangements would not hamper their functioning. We find this works under the MRA today in its interactions with the BSC.

**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 should be designing rules and regulations that encompass all consumers and fuel type should not be a distinguishing factor. Future proofing the REC means that the requirements need to be designed with both fuels and metering types in mind, avoiding unnecessary fragmentation where possible.

**Question 5.15: Do you agree that the draft Debt Assignment Protocol Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?**

We would echo our concerns here over the change to mandate the Data Transfer Network (DTN) when there has been no decision on file transfer mechanism.

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

Security standards should be reviewed and revised to ensure that the evolving threat landscape is addressed, and lessons learnt from Smart rollouts, Smart Energy Code (SEC) compliance, GDPR compliance and the Network and Information Systems directive (NIS) are built into the code. Existing standards may be unsuitable for the technology and threats to that technology that exist today. Having developed security standards across the SEC and the Republic of Ireland National Smart Metering Programme, our experience is that the capability of existing standards should not be over-estimated. As part of the UK's key national infrastructure, adequate security standards will continue to be an ongoing challenge for the future energy market. In recognition of this challenge, Gemserv invested in the acquisition of a separate expert information security practice, now embedded within our day-to-day working practices.

The MRA has established a standing security group which we manage. Uniquely, this group has brought the MRA, its systems and their security into a position where they are secure in an ever-changing world of threat to

security. This has been achieved through the use of a suite of tools that our in-house experts have at their disposal. We would advocate a similar group under the REC.

We would recommend a security and data workstream which would review existing arrangements at an early stage and ensure that security is at the core of the code.

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

We would echo our concerns here over the change to mandate the Data Transfer Network (DTN) when there has been no decision on file transfer mechanism.

**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?**

Model A is key to unlocking innovation, allowing the REC Manager to monitor future obligations, and drive up performance standards in the market.

There may need to be a transition period rather than a big bang implementation. Model B could be a starting point, using the performance assurance regime under the REC should be to inform the design and as a basis for the review of the effectiveness of the requirements and how they may need to evolve.

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

When the current theft arrangements were put in place it was envisaged that the arrangements would transfer into the SEC at the time the only Dual Fuel code. As theft is essentially a retail provision, and with the creation of REC, it would seem to be the appropriate vehicle for these arrangements. This would seem to be the ideal time to transfer the provision to coincide with a re-procurement of the service under version 3 of the code.

**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?**

This would seem the most sensible way forward and that all the management and procurement of services required under the code are transferred and re-procured by the REC Manager. There are obvious benefits in terms of cost efficiency and the REC Manager will be able to ensure services are fit for purpose in an innovative REC.  The REC Manager needs therefore to have the procurement experience that comes with long term successful management of industry codes and services.
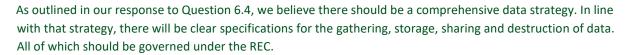
**Question 6.4: Do you support the establishment of an industry-wide data catalogue that all code bodies incorporate by reference into their own codes and collaborate on the maintenance of?**

One central industry data catalogue may right way forward but it is critical that the governance and standardisation of all reference and master data is considered as part of this decision.

The establishment of a central data catalogue does not mean it needs to be a new catalogue, the DTC already contains data flows that are being used for settlement and retail operations. It may be most cost efficient to develop from this existing catalogue.

Before we consider the establishment of industry wide catalogue, we should be considering what is the industry wide data strategy that we should be following. Once we have an agreed strategy, we should then look at whether a data catalogue in the way we know them today is required. Multi code collaboration whilst desirable proves difficult particularly where the ownership and governance of data is concerned. This could be solved within the REC providing overarching governance and other interested parties having clear guidance on how to access data.

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

As outlined in our response to Question 6.4, we believe there should be a comprehensive data strategy. In line with that strategy, there will be clear specifications for the gathering, storage, sharing and destruction of data. All of which should be governed under the REC.

**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?**

Subject to an industry wide data strategy, the REC Manager should be responsible for developing any data catalogue with thought for how data is transferred in the future under an open data framework.

**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?**

Yes, we consider alignment and consolidation is desirable, as it brings many benefits.

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

The REC is the only consumer-focused governance vehicle that is suitable to hold the 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?**

Metering, and especially SMICoP, covers consumer-focused aspects of the smart roll out and these arrangements should be contained within the REC?

**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?**

We have no comment on this question.

**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 have no comment on this question.

**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?**

We have no comment on this question.

**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.**

We have no comment on this question.

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

In principle, we would always support a collaborative approach to consultation and modification report production.

**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?**

Separating out this development is desirable, as it will not only ensure that it de-risks the Programme implementation, but also ensures there is time to consider wider aspects and engagement with parties interested in the wider retail arrangements. All this work needs to be progressed under a strong governance framework and a joint industry plan, driven by the REC Manager.

For REC version 3 and beyond to be best in class as Ofgem envisages, it needs to be designed differently. We need to be cognisant this design should enable digitalisation in the retail energy market. Separating out this work should also reduce the workload on industry Parties and ensure better prioritisation of requirements for industry.

In the meantime, we need to be mindful of change that is being progressed in existing codes and that they are aware of and take account of the direction of travel, so that future work is not compromised or that it is unnecessary and needs to be unwound in the future.