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Consultation Response: The Retail Energy Code – Proposal for version 1.1

Dear Rachel

Thank you for the opportunity to respond to your recent consultation regarding the implementation of the next version of the Retail Energy Code.

We are supportive of this industry governance evolution and the principles that are being applied in its implementation. Many of the proposed new approaches to industry governance should improve the experience for industry parties such as ourselves.

The proposals for a resilient industry performance assurance mechanism are welcome and ultimately should help reduce costs for REC parties and improve the overall experience that energy consumers enjoy.

The change process for the new REC seems aimed at being both flexible and tailored to the specific requirements of the different documents which is good. We especially welcome the emphasis on improving cross code working.

We are concerned that the details regarding how the change process will function are not yet clear. The view that the Change Panel might be small and have a single individual to represent the views of all network operators is quite ambitious. Finding an individual with good knowledge of the practical and commercial implications of change for gas and electricity transmission owners, system operators, distribution networks and independent network owners will be challenging. There is a risk that change proposals are not assessed by people with a sufficient understanding of their impacts and incorrect decisions made.

To a lesser extent these concerns also apply to the RECCo Board membership. The intent to have independent membership, with individuals chosen for their specific skills, is in line with corporate good governance.

The remit and structure of RECCo is however unusual in that it is not a regular company but instead has a specific remit to serve the energy industry. Therefore, it will be important that the Board membership reflects this requirement and that this is considered by the Nominations Committee. Including this within the terms of reference of the group should be considered to ensure it is embedded within their future considerations.

Responses to consultation questions:

Q2.1 Do you have any comments on the process for appointing additional RECCo directors?

No comments, the process proposed in the consultation is logical and in line with best practice.

Q2.2 Do you agree that MEMs should be Party to the REC?

Yes, metering agents are an integral part of the energy sector. Their activity and performance have a direct impact upon other industry parties and consumers. Ensuring they operate in a safe and competent manner is vital.

Their role also makes them important in ensuring that data quality within the industry is accurate. They are also one of the most visible aspects of the energy sector to consumers as they physically attend customers premises.

Ensuring that they are engaged with industry governance and are held to account for their performance is critical. Making MEMs direct parties to the REC governance will help ensure these objectives are met.

Q2.3 Do you agree in principle that the obligations currently placed upon metering agents by the BSC could be integrated with the REC performance assurance framework, subject to certain conditions being met?

Yes, it aligns with the objective to improve industry regulation to have all metering governance in one place rather than having it spread across a number of different codes. The challenges and costs of engaging with multiple different industry codes was an issue that the Competition and Markets Authority highlighted in their review of the energy market in 2016. Bringing together all metering governance in one place should go some way to alleviate these issues.

We appreciate that there may be some concerns from the BSC performance assurance activity about the loss of direct control of some governance activity. However, the introduction of a REC performance assurance function opens an opportunity for the two functions to collaborate and work together as both undertake similar activities.

The objective of the BSC performance assurance regime is limited to electricity settlement accuracy. The REC performance assurance is not so constrained and includes all aspects of the Code, including metering. The needs of the BSC from electricity metering could therefore be easily be included in the scope of the REC performance assurance regime. Having accurate metering equipment is clearly a need of well-functioning retail energy market.

Additionally, the constitution of the REC PAB is expected to include a person from the BSC performance assurance arrangement which should help address any issues of communication between the two codes. Ultimately the performance assurance regimes of the REC, BSC and UNC are going to have to work collaboratively together in the future to ensure that the energy market functions as well as it can.

At the RDUG meeting on the 5th November a proposal was presented to split metering governance between the REC and the BSC based upon a 'market split'. This suggested that metering governance be separated between SVA (retail) metering within the REC and CVA

(generation) metering requirements in the BSC. This seems a pragmatic split and inline with overall objectives of the respective codes.

Q2.4 Do you agree that the RECCo should be required to develop and maintain a Strategy for the REC, including but not limited to digital transformation of REC processes and data?

Yes, all companies should have a strategy to help define its near and medium term objectives. Having a clear strategy that is consulted upon will help ensure that RECCo has the buy-in of industry stakeholders.

Q2.5 Do you agree that RECCo should adopt zero based budgeting from 2021/22?

Yes, this is good budgeting practice.

Q2.6 Do you agree that future RECCo budgets should be decided upon by the RECCo Board, subject to appeal by REC Parties?

Yes, this is a model that is used in other codes and avoids the need for an industry forum. These are of little material value to most industry stakeholders and many industry codes have encountered challenges with engagement and meeting the requirements for quoracy. The route of appeal to Ofgem should provide the protection that REC parties need to ensure that RECCo and the REC Board operate in a reasonable manner.

Q3.1: Do you agree with the proposed composition of the PAB, as set out in the Terms of Reference published with this document (see Appendix 2).

Yes, this seems a pragmatic approach. The initial PAB can be relatively small and be focused upon the issues of establishing the new REC performance assurance framework, working alongside the new REC Code Manager.

Q3.2: Do you agree that any organisation undertaking an activity governed by the REC would be within scope of the performance assurance framework in respect of those activities?

Yes, experience of some other codes performance assurance schemes that restrict or limit its scope of activity has shown that this leaves a void in industry governance. Making the scope of the REC performance assurance broad enough to cover all activities within the code should ensure that these same issues are not encountered.

Q3.3 Do you agree that at least one of the PAB's priorities should be determined by Citizen's Advice?

Yes, having one from Citizen's Advice seems a reasonable compromise. This will ensure they continue to be interested in the REC performance assurance process when considering where to allocate their resources. It will also focus the performance assurance process on issues that are relevant to consumers and that may not be so high on the priority list for industry stakeholders and parties to the REC.

Q3.4: Do you agree that the PAB should have discretion to escalate liabilities within a defined range if the earlier application of charges does not achieve the desired effect?

Yes, although it will require quite an advanced understanding of the finances of specific companies to understand a true tipping point where liabilities will incentivise a behaviour change.

The level of liabilities cannot be limitless otherwise they will move from being an incentive to deliver improved performance to something that might drive companies out of the market, therefore a defined range will be needed.

If a breach of the code or performance issue is so serious that it justifies a company's expulsion from the market, there are already sufficient powers for Ofgem to undertake this activity by the revocation of a licence.

There should be a clear escalation path between the REC performance assurance process and Ofgem enforcement activity to provide a clear process for industry stakeholders and REC parties to understand.

Q3.5: Do you agree that suppliers with serious performance issues should face restrictions on their ability to acquire new customers until those issues are resolved?

Yes, this is a good example of a measure that has proven to work in focusing suppliers on improving their performance without getting into issues that liquidated damages can bring. Finding other such measures as an alternative to financial incentives should be a priority of the REC performance assurance process.

Q4.1: Do you support our proposals regarding the production of preliminary and detailed IA?

Yes, we have seen frustrations with both Xoserve and DCC IA for potential code changes so a mechanism to address this issue is something we would support.

Q4.2: Do you agree that the Change Panel should be appointed by the RECCo Board, following a process overseen by the nominations committee?

It is not clear at this stage how the nominations committee would decide upon who to appoint to the Change Panel. Changes to obligations will have implications for parties to the code and there is a concern that impacts to parties would not be understood by a potential future change panel.

The composition of the initial Change Panel seems quite small. We are concerned that finding an individual with a good understanding of all networks (gas and electricity, distribution and transmission, small independent to large incumbent) issues may be challenging.

Q4.3: Do you agree that the REC should encourage shorter and more frequent Change Panels, to be held remotely where possible?

Yes, although from a pragmatic basis the length of the meetings will probably reflect the complexity of the change in question. What is important is that the process should be as efficient as possible.

Q4.4: Do you agree with the proposed categorisation of REC documents and associated change paths?

Yes, this seems a logical suggestion, however the identification of what 'does not directly and materially impact industry parties' is potentially going to be challenging for the Code Manager to determine. Understanding whether a change should follow the Cat 1 or Cat 2

path might not be easy. How changes may move from one path to another is something that therefore warrants further consideration.

Q4.5 Do you agree that code administrators and managers should be able to raise any changes identified as necessary by the CCSG?

Yes, this seems a good development to help with cross code working. We have seen a number of instances where consequential code changes have been identified by one code but there has been difficulties and challenges in getting these raised and implemented. This proposal would address these concerns and is therefore something that we would support.

Q 5.1: Do you agree that we should extend the valid reasons for an objection to include ongoing and time-bound theft investigations, and subject to monitoring by the PAB? Do you have any suggestions for the period of time during which it should be possible to maintain investigations as a reason for an objection and what should trigger the start of that period of time?

No comment.

Q5.2: Do you consider that the RECCo should be required to periodically review the effectiveness of the incentive scheme(s)?

Yes, maintaining an ongoing review of the effectiveness of any scheme is good practice.

Q5.3: To what extent, if any, do you consider that the Theft Target should be reduced pending the replacement of the Theft Risk Assessment Service?

No comment.

Q5.4: Do you agree that the RECCo should procure a theft methodology, and use that to assess the effectiveness of a Theft Reduction Strategy, which it should also develop?

Yes, this is a good idea, the true amount of theft may never be known but a more accurate assessment than is currently available is needed to determine the cost benefits of any new industry initiatives.