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16<sup>th</sup> November 2020

Dear Rachel,

**Response to The Retail Energy Code – proposals for version 1.1**

Drax Group plc (Drax) owns two retail businesses, Haven Power and Opus Energy, which together supply renewable electricity and gas to over 350,000 business premises. Drax also owns and operates a portfolio of flexible, low carbon and renewable electricity generation assets – providing enough power for the equivalent of more than 8.3 million homes across the UK. This is a joint response on behalf of Haven Power and Opus Energy and is non-confidential.

We generally support the interim changes proposed to be introduced in version 1.1 of the Retail Energy Code (REC) and continue to support longer-term endeavours to consolidate existing retail code governance. There are clear efficiencies with code consolidation, including but not limited to having more provisions subject to the same change management controls, alongside a commensurate reduction in the number of industry meetings and change papers.

In particular, we support the establishment of a nominations committee that drives the opportunity for the Change Panel to take a more dynamic, flexible and independent approach. However, the energy market is complex and therefore requires experienced industry representatives familiar with supplier processes and systems to feed in to change proposals and develop solutions. It is critical that this wealth of experience is not excluded from critiquing proposals and recommending solutions/alternatives. This is particularly important given the Code Manager's expanded remit.

Our response to the specific consultation questions are appended. If you would like to discuss our response in more depth, please do not hesitate to get in touch.

Yours sincerely,

**Matt Young**  
Group Head of Regulation  
Drax Group plc



## **Appendix – Consultation Questions**

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

No. The proposed process appears reasonable.

### **Q2.2 Do you agree that MEMs should be party to the REC?**

Yes. Given the aim is to consolidate the metering Codes of Practice (CoPs) into the REC, this feels sensible.

### **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?**

In principle, this feels like a logical step. However, as Ofgem recognises, this would be a significant change and would require careful planning and consultation with relevant parties.

### **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. It seems sensible that a meaningful strategy for the REC be documented and maintained in the interests of transparency and to ensure RECCo doesn't lose sight of its key actions and objectives.

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

Yes. We believe this approach encourages greater scrutiny. However, it is important to retain visibility of previous budgets so costs can be compared, and any duplication of analysis is avoided.

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

Yes. The proposed model is similar to that currently operated by DCUSA, which we believe works well. Specially convened forums are often poorly supported, so we would be happy with RECCo Board approval subject to appeal by REC parties.

### **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).**

We broadly agree, though we expect experience and suitability to be considered as part of the recruitment process. It's important that there are sufficient industry expert representatives on the PAB so that requirements are justifiable, and costs don't escalate, particularly as suppliers and DNO's are amongst the REC parties more likely to be required to make changes to processes and systems. We're not opposed to the appointment of independent performance management experts if it can be demonstrated they add value.



**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. As the REC is being developed to govern all retail activity through retail code consolidation, it is imperative that all organisations undertaking activity are in scope of the performance assurance framework. This mitigates against any weaknesses in REC processes/assurance.

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

We do not support the proposal for Citizens Advice to have a discretionary 'pick', as it has the potential to unduly skew the PAB's priorities without consideration of the wider market landscape and broader objectives for the sector. We would however support Ofgem having a discretionary pick, which it could do in collaboration and consultation with Citizens Advice, and in consideration of its own primary accountabilities and objectives for the sector, including but not limited to protection of today's and tomorrow's consumers.

**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?**

In principle, it seems appropriate for the PAB to have discretion to escalate liabilities, but additional detail is needed in order for us to give an informed view. It would be easy for this to become complex and costly to administer. RECCo can learn lessons from BSC modification P393 '*Disapplication of Supplier Charge SP01*' and the associated flaws with the application of liquidated damages in the BSC. RECCo needs to ensure that there is an appeals process and that costs remain efficient and proportionate.

**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?**

Placing restrictions on a supplier's ability to register new sites should only be utilised after a robust escalation process has taken place, ensuring reasonable timescales are allowed for the supplier to pay invoices or improve performance. Any restrictions on acquiring new customers should only be used as a last resort for the most serious performance issues, as this action is likely to have considerable financial and reputational consequences for suppliers. In light of the potential consequences of these restrictions, we would expect an associated appeal process to be in place.

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

We broadly agree with these proposals. However, it is important that the costs associated with the production of IAs are carefully managed and controlled. While reducing and withholding fees may go some way to guarding against excessive costs, lessons could be learned from engagement with SECAS who are currently carrying out a review of the SEC modification process. SECAS has noted the frustration of the SEC Panel and Change Board over high DCC costs associated with impact assessments and consequently SECAS are reviewing the need for a 2-stage assessment which invariably adds to costs and lead-time.



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

We agree that the REC panel should act independently rather than in the interests of particular constituencies. Nevertheless, we believe industry experts, particularly from parties most likely to be impacted by costs and system changes, should have opportunities to feed in to change proposals and develop solutions. Without this, and given the Code Manager will be prioritising change, there is a risk that changes with high implementation impacts and minimal benefits could be prioritised over more essential changes.

The proposed appointment of the Change Panel offers a more dynamic and flexible approach. It should be recognised that the energy industry is complex, and as such, the inclusion of independent Change Panel members offers an opportunity to move the industry forward, away from the constraints of self-interested modifications. We agree that it is fair to reimburse Panel members for any reasonable expenses incurred but we disagree with further remuneration. Aside from the unnecessary cost, we have seen no evidence to suggest that individuals with the right level of commitment and experience will need to be further incentivised.

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

More frequent Change Panels should allow progress to be made in a timelier manner, providing sufficient time is afforded to reviewing actions from the previous meeting. Although, the infrequency of meetings is by no means the only reason for delays in the current code modification process.

We also welcome the proposals for Change Panel determinations to be accelerated by the production of reports by the Code Manager. However, if change is to progress at pace, and expert industry attendance to be more selective than under current arrangements, parties (especially those who do not attend and are solely reliant on meeting minutes) need assurance that minutes are an accurate reflection of the discussion and the broader context in which that discussion took place. This has not always been the case for minutes produced in the current regime.

If meetings do occur more frequently, it would be sensible and cost-effective to hold those remotely by default. However, we disagree that RECCo should move away from face-to-face meetings completely as these facilitate valuable discussions and a level of engagement that cannot be achieved with virtual meetings.

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

Yes. In particular, we believe it is sensible for the REC to have a simpler path for low-impacting changes, e.g. housekeeping changes. We also welcome the proposal to move away from reliance on Authority decisions and for the Code Manager and Change Panel to take more substantive roles. This approach should improve efficiency and speed up the change management process.



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

We would support developments that enhance open governance principles. We agree that code administrators should actively promote joint cross-code working groups, so that impacts across multiple codes can be discussed simultaneously by expert representatives of each group. This can be achieved using current arrangements but have not been utilised consistently by code administrators. Cross code working has been shown to be effective through the Targeted Charging Review implementation and has brought benefits in reducing the need for the same representatives to attend separate groups. We would support code administrators clarifying the current process and criteria applied to implement cross code working.

We are unsupportive of code administrators sponsoring substantive code modifications. If code administrators are allowed to raise changes themselves, then they should be limited to low impact and incidental changes only, which are associated with approved modifications that have already been through open governance and full consultation process.

**Q5.1: 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?**

We agree that Ofgem should extend the valid reasons for objections to permit suppliers the option to object in the case of ongoing and timebound theft investigations, but this should *not* be mandatory. Whilst it would be beneficial, there may be occasions when it is in the customer's interests to switch supplier, e.g. if a domestic customer finds themselves being supplied by a non-domestic supplier. Furthermore, if the supplier encounters very few instances of theft, it may not be worth them making system changes to account for an additional objection reason.

Timescales associated with energy theft vary considerably, so it is difficult to suggest an appropriate period of time.

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

Yes. The existing incentive schemes have been in operation for a number of years and it has become apparent that they operate better for some suppliers than for others. The introduction of the RECCo Theft Strategy is an ideal opportunity to analyse lessons learned from the current incentives and to introduce a framework for their periodic review.

**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?**

The usefulness of TRAS leads in detecting theft varies across suppliers, so any gap in provision will impact some parties to a greater extent than others. We don't consider a hiatus in the TRAS service is in itself a reason to reduce theft targets for the incentive schemes. To ensure a fair and consistent approach is taken, we would expect any reduction to be introduced following a review of the methodology used to predict the prevalence of industry-wide theft.



**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. Ofgem acknowledges that its current estimates of energy theft stem from IA's carried out several years ago and now form an outdated basis on which to make investment decisions or to accentuate the issue of theft. Any credible PAB objective to reduce energy theft must be based on a robust and up to date methodology. Likewise, the TRAS methodology has remained largely unchanged since its inception and is one reason why the TRAS in its current form is not deemed to be cost-effective by industry.