

16 November 2020

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By email only to switchingprogramme@ofgem.gov.uk

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 (REC); this response is on behalf of Energy Assets Networks (our IDNO business) and Energy Assets Pipelines (our IGT business)

We generally support Ofgem's proposals for the REC and its governance. However, we are concerned that by substantially reducing industry involvement compared to the other Codes, there is a risk that the full implications of a decision are not understood by the decision making Parties resulting in unintended consequences. This particularly applies to the proposal for a single network representative at the PAB and Change Panels; we believe it will be extremely challenging to find individuals with knowledge of the operational and commercial arrangements for gas and electricity, transmission and distribution, incumbent and independent networks. There have been a number of instances where the implications of a proposed change have been quite different for independent networks compared to incumbents, in part due to the differences in regulatory arrangements.

Please find our responses to your specific questions below. We have also provided a few detailed comments relating to Ofgem's proposed drafting; these are captured in Appendix A.

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

The processes described for the appointment of additional RECCo directors are in line with what is normally considered 'good corporate governance' and as such we support the proposals. We agree that the addition of expertise in customer advocacy and digital transformation would be beneficial to both the development of the REC and the progress of Ofgem's Faster Switching Programme. However, we also note that the remit and structure of RECCo is unusual in that it has a specific remit to ensure that the REC 'is given full and prompt effect in accordance with its provisions, in a manner consistent with the REC Objectives'. Therefore, it will be important that the Board membership reflects this requirement and that this is considered by the Nominations Committee; we therefore suggest that this requirement be included within their terms of reference.

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

No comment.

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?

This proposal will improve the operation of the energy industry by having all metering governance in one place rather than spread across multiple codes. We appreciate that there may be some concerns from the BSC about the loss of control, however we note that Ofgem's proposed composition for the REC PAB includes a member nominated by the BSC Performance Assurance Administrator, which should go some way toward alleviating such concerns. Including all aspects of metering assurance in a single code should reduce the audit burden for MEMs and enable a more holistic view to be taken of their performance.

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?

We support this proposal and the requirement for annual consultation as part of the business planning and budget setting process.

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

We agree that this would result in effective justification for planned expenditure, however it may lead to the business planning process becoming onerous for RECCo, leading ultimately to higher costs. A hybrid model where the budget is zero based every 3 – 5 years might lead to greater efficiency.

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

Whilst we agree that this is a pragmatic approach, we are concerned that there is very limited consultation required and that this may result in multiple appeals each year. We would suggest a clear requirement on RECCo to demonstrate how they have modified their plans in response to consultation and possibly a requirement to consult more than once.

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 agree that the proposed composition of the PAB provides a good spread of industry specific knowledge and independent expertise. However as noted above, we are concerned that it may prove challenging to identify a single, suitable representative for all networks and we would prefer to see such representation increased.

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?

We support this approach and note that when attempts are made to limit such assurance schemes it tends to leave a gap in industry governance.

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

We support the proposal the Citizens' Advice should have the opportunity to select one of the PAB's priorities. However we do not support the proposal that the Authority should have a similar opportunity. Ofgem has its own vires to investigate poor performance by any industry party and we do not consider it appropriate for it to utilise the REC PAB for this purpose.

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?

We support this approach, which should be proportionate to the breach which has occurred and should not be so penal as to cause companies to exit the energy market. We note that Ofgem retains powers to revoke

a licence should that be necessary, and suggest that there may be value in implementing a formal escalation process from the REC PAB, and, if this proves effective and efficient extending it to other Codes.

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?

We support this proposal, which is in line with sanctions in other Codes (e.g. suspension of registrations for late payment).

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

We support this proposal which should ensure that the cost implications of any change are well understood ahead of approval and implementation.

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

Any changes to the REC will effect the parties to the REC to differing degrees, it is therefore important that the members of the Change Panel have an in depth understanding of the implication of each change to enable them to make fair and considered decisions. We support the proposal that the Nominations Committee oversee this process, but believe there should be an explicit requirement to ensure those nominated are competent to carry out the role for which they are being nominated.

In addition, as noted in our introduction, 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) may be challenging, and therefore we would like to see the level of network representation on the Change Panel increased, to include a representative for the independent networks.

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

We support the intent of this proposal to increase the speed at which industry change is delivered, we do not believe it will have a material effect given that Ofgem propose to apply their current standard for decision making to REC changes.

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

Yes, given the wide range of schedules to the REC, applying differentiated governance is a proportionate solution.

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 proposal avoids the delays sometimes experienced today in identifying a sponsor for a change proposal.

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)?

No comment.

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?

No comment.

Please do not hesitate to contact me if you require any clarification about the above points.

Yours sincerely,

Heather Ward
Regulatory Analyst

Appendix A – Detailed Comments

REC v1.1

2.4 – There is a mixture of singular and plural references in this paragraph – should be one or the other

2.5 – There is a mixture of singular and plural references in this paragraph – should be one or the other

5.3(a) – there is an extraneous full stop after Objectives

5.8(b) – ‘pending such vote’ is repeated

5.21 – What is the procedure if there is no majority? (i.e. a tie)

Performance Assurance Schedule

5.1 Missing space – ‘PABfor’