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16 November 2020

[ICoSS response to REC version 1.1 consultation](#)

The Industrial and Commercial Shippers and Suppliers (ICoSS) group is the trade body representing non-domestic industrial and commercial (I&C) suppliers in the GB energy market. Our members collectively supply three-quarters of the gas needs of the non-domestic sector as well as half of the electricity provided by non-domestic independent suppliers¹.

This response is not confidential.

Executive Summary

We believe the consolidation of industry code into a single document will provide a number of benefits to the market by providing a consistent overarching framework for industry governance. It also provides the opportunity to expand industry oversight of a number of regions such as metering agents. We would also support, as part of reforms proposed under the Microbusiness Strategy, the incorporation of any TPI code of practice (as well as the Ofgem confidence code for Price Comparison Websites) into the REC as part of this consolidation work.

In our response we make the following observations:

- The theft incentive regime is not fit for purpose and penalises prudent non-domestic and new entrant domestic suppliers to the benefit of former monopolies. We would support an immediate review of the process to develop an equitable regime that covers all areas of the market.



- We agree with the proposals to widen the scope of REC governance to cover Metering Agents as they have a critical role in the market and currently have limited formal oversight.
- The PAB and Change Board proposals give undue influence on non-REC parties, which can be used to impose unwarranted changes and obligations on market participants by those who do not have to either pay for, or operate to, them. An equitable balance needs to be struck on both of these committees.
- We agree that RECCo board appointments should be subject to industry vote and REC parties have the power to remove them if desired.

Response to Questions

Company and Code Governance

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

We agree with the principle that REC parties should be able to vote, as well as remove, any REC Board members.

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

Yes. We agree that MEMs should be subject to common industry standards. In the non-domestic sector in particular many customers directly appoint their own metering agents, and the Supplier has no direct contractual relationship with those parties. Placing obligations onto meeting agent via the REC therefore will ensure full accountability for their actions and improve standards within the market.

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?

There would seem to be some limited administrative advantage in consolidating metering activities under one code, rather than splitting them between codes. We do agree however that the primary aim should be to ensure that robust oversight of metering agents is maintained.

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 understand the desire for a digitisation strategy to be pursued by the RECCo. Whilst there is a potential for that strategy not to be given priority, we would expect that Ofgem and the RECCo board would appropriately prioritise RECCo activities, including the digitalisation strategy. We do not feel it is necessary therefore to formalise this obligation.

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

We agree that all of the costs of RECCo should be scrutinised continuously. There needs to be however suitable flexibility within the RECCo budgeting process to ensure that industry change can be progressed in a timely manner and delivered efficiently and effectively. In addition, we believe there may be cases where some processes (such as theft detection) would overall be more cost-efficient managed centrally and this should not be precluded by an undue emphasis on minimising REC costs.

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

Yes, as this will avoid the need for an annual vote from REC parties, whilst providing suitable oversight.

Performance Assurance

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).

No. We do have some concerns over the proposed balance between suppliers and other parties.

As currently drafted at least four voting parties (and potentially more) who are not REC parties and a further two voting parties are not suppliers. We are currently aware that the REC is seeking to appoint three suppliers to the interim PAB. This means that a majority of parties on the PAB will not be from suppliers and may therefore have little or no understanding of supplier activities. It does not seem appropriate that suppliers can have remedies or restrictions imposed upon them even if all the PAB supplier experts are opposed to them on the basis of their industry knowledge.

In addition, we question as to why the UNC and PAF administrators have voting rights. We agree that their expertise will be of value, but again it does not seem appropriate that parties from external codes can vote on remedies in the REC which do not directly impact them.

We believe that an appropriate balance between supplier experts, other REC parties and non-REC parties needs to be struck.

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. We agree that the PAB should be the body to oversee all parties that operate within the scope of the REC. Other parties, such as suppliers, in many cases do not have the ability to control the activities of other organisations, such as metering agents appointed by customers and should not be expected to.

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

No. We note that Citizens Advice has a guaranteed voting position on the proposed PAB and so should have sufficient oversight and influence over any priority setting. Mandating a specific priority from Citizen's Advice seems an unnecessary restriction on the PAB's activities and goes against the independent and collaborative approach proposed for the PAB.

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?

At this stage it is very difficult to ascertain the likely effect that this ability will have as the potential liabilities and incentive mechanisms are unknown. Whilst we understand the benefits of having an escalating incentive to encourage remedial action to achieve compliance, experience with the BSC demonstrates that to force compliance with meter reading targets, the charge would have to be extremely high (for example for some hard to read sites the cost to obtain a read can be in the thousands of pounds). We do not believe it would be feasible to strike a balance between a reasonable incentive and protecting suppliers from excessive charges. Liquidated damages are ineffective in driving supplier behaviour.

Again, as has been shown by the BSC, a more effective mechanism for ensuring compliance is the Error and Failure Resolution process where a supplier can agree a remedial plan with the PAB.

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?

In principle Yes; however as stated above we have concerns that the majority of voting members of the PAB will not be suppliers and may have little understanding of the challenges a supplier may be facing. We would therefore not be supportive of the PAB having such powers without a more equitable balance in voting rights.

Change Management

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

Yes. We agree with the concept that Impact Assessments are developed and provided promptly, though this must be with the active engagement of the proposer (if they wish). Also, there must be full industry engagement at all stages, including evaluation of any impact assessment.

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

No. We have concerns with replicating the composition of the PAB, where the majority individuals with no stake in the effective or efficient running of the REC or are impacted by changes. Allowing the RECCo board to appoint members will remove any link between those who operate to the REC contract and those who manage it. Any Change Board should be answerable to those who will be impacted by any change, REC parties, and so the election process followed in other codes should also be utilised here.

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

We have no views on the frequency of Change Panel meetings, but agree that the change process should seek to progress proposals in a timely manner.

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

We have no concerns over the proposed categorisation of documents. The principle that any material change that impacts REC parties can be sent to the authority for determination should be maintained, including the ability to raise appeals against any Change Panel decision.

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

We agree that in very limited circumstances administrators of other codes and managers should be able to raise consequential changes to ensure that changes between codes are suitable coordinated; the primary responsibility for progressing change should remain with the proposer of the original modification however to ensure the solution is delivered as intended.

Theft Arrangements

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?

Whilst we agree with the principle that theft investigations should not be impeded by the customer switching supplier, there are a number of challenges to allowing objections to be raised as a result of a theft investigation.

We would be keen to understand how Ofgem sees how the obligation under SLC14.3 would apply in practice. If the customer is prevented from switching as it is suspected they may be committing a criminal offence, it would seem counterproductive in some cases to inform them of this fact. We are also mindful of the provisions of the Serious Organised Crime and Police Act 2005 which place obligations to not prejudice investigations into certain organised criminal activities (which energy theft may be a part of, for example Cannabis production).

Considerable care will therefore be required in draft any new obligation process to ensure it addresses these concerns.

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

Yes. We do not believe that the current regime is fit for purpose, in that it operates on the assumption that theft is evenly distributed amongst all suppliers (it is not and we note that Ofgem

references the BDO report which highlighted this fact), and does not seek to incorporate transporters, either as a source of information or as part of the incentive scheme. The current regime currently penalises domestic suppliers who have recently entered the market (and so have active customers who have a far lower rate of theft) and prudent non-domestic suppliers who undertake appropriate due diligence on new customers, to the benefit of former monopoly suppliers.

We would therefore support an immediate revision of the current theft regime to ensure it becomes effective and appropriate and covers both networks and suppliers.

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 theft target has always been an arbitrary figure which has never been achieved by the industry and was based on limited analysis. We believe that the value should be based on the number of thefts detected in each market sector over the last few years.

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?

We agree that theft reduction should be part of the RECCo's remit, covering both suppliers and networks.