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16 November 2020

Dear Rachel

**Response to Ofgem's the Retail Energy Code – proposals for version 1.1 consultation**

Thank you for the opportunity to respond to the above consultation. Our non-confidential responses to the questions in the consultation document, including some additional observations, are in Annex 1 to this letter.

The key points of our response are as below:

- We have concerns about the proposal that there would be only one network/transporter member on the Performance Assurance Board and we suggest alternative approaches for Ofgem's consideration in our answer to question 3.1.
- We believe that third party service providers who only provide indirect support to parties undertaking activities governed by the Retail Energy Code should not fall within scope of the performance assurance framework. Please see our answer to question 3.2 in respect of the provision of direct and indirect activities.
- We have made some observations in respect of liabilities and sanctions in our answer to question 3.4. We think the aspect of escalation is worthy of further consideration, including, for example on how escalated liabilities might be calculated.

We are happy to discuss any aspect of our response if Ofgem would find this helpful.

Yours sincerely

*C Allanson*

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# Annex 1 – Retail Energy Code – proposals for version 1.1 consultation

1. This is Northern Powergrid’s response to Ofgem’s consultation on the Retail Energy Code – proposals for version 1.1 consultation.

## ***Section 2. Company and Code Governance***

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

We have some general observations on the terms of reference (ToR) for the Nominations Committee.

Paragraph 2.1 of the ToR does not specify where members of the Committee will come from. A Nominations Committee is typically a sub-set of the Board but the quorum includes “one industry nominee” and there is no indication as to what that means. If the Committee is to include people who are not Board Directors, the ToR should provide detail on the actual composition of the Committee.

We note, in paragraph 2.2, that temporary members of the Committee may be appointed ‘by the Authority’. If it is the intent that such appointments will actually be made by the Gas and Electricity Markets Authority itself, that intent should be specified.

The ToR would benefit from a further proof read for typos (e.g. there are two instances of “with this” in paragraph 2.7), there is inconsistency of capitalisation throughout and, in our view, there is no need to have “Nomination” before “Committee” (e.g. in paragraph 2.10).

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

2. Yes, we would agree that this is logical.

### ***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?***

3. Yes, we would agree, if metering agent activities are key to the switching process and the performance of those agents cannot be assured by the Suppliers they work for e.g. due to changes of contract.

***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?***

4. Yes, we would agree that this is sensible, given the likely rate of change in the energy industry, in communication technology and in the expectations of consumers.

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

5. Yes, we would agree, although this question is clearly more relevant to Supplier parties.

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

6. Yes, we would agree but appropriate consultation on Code budgets is always helpful and prudent.

### ***Section 3. 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).***

7. No, we would not agree entirely as we have some concerns and observations.
8. We note that in paragraph 2.3 of the REC PAB ToR document it is proposed that there is only *one member nominated by Gas Transporters and/or Distribution Network Operators*. We cannot see how such a nomination could take place as there is no formal link between the two categories of distributor. It is also unclear how the electricity networks would be able to input appropriately to the PAB if a gas member was in the seat and vice versa. We have two proposed solutions below, with a preference for the first. Both solutions would be in line with the requirement in paragraph 2.15 that the Alternate to the member must not be employed by the same organisation. However, it is not clear to us as to why the Alternate must not be from the same company and, if that remains the case, the meaning of “organisation” should be clarified i.e. does it mean from a different group of companies?
9. The first potential solution regarding network operator membership of the PAB would be to have two network operator members, one for electricity and one for gas.
10. The second solution could be for the membership to be on an alternating cycle. For example, in year one an electricity representative would take the member seat and a gas representative would be the Alternate member. That arrangement would rotate on an annual basis and there would be a requirement for the sitting PAB member to brief the Alternate member appropriately.

11. We have two additional comments:

- A Party's liability to pay Performance Charges under paragraphs 2.6 and 2.7 should be limited to the length of time that the failure/breach in question was actually occurring; and
- The second paragraph in blue in paragraph 2.18 is not sufficiently clear and appears to be missing a verb. Perhaps "shall apply" should be at the very end after "the PAB".

***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?***

12. No, we would not agree entirely. We do not think that third party service providers employed by REC Parties, such as IT support organisations/contractors, should fall within the scope of the performance assurance framework. The performance assurance responsibilities for such organisations providing **indirect** support to REC governed activities should fall on the employing REC Party. We highlight that this type of indirect service support is different to the much more **direct** services provided by metering agents to support switching.

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

13. We agree in principle that this would be in the interests of energy consumers. However, the scope of any priorities set by Citizen's Advice may need to be bounded within appropriately relevant consumer outcome matters.

***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?***

14. We understand the aim of escalation but would not necessarily agree with escalated liabilities i.e. it depends on the basis for escalating the relevant liability. If the liabilities are to be cost reflective, appropriately assessed based on the consequences of the failure and not penal, it is not clear to us how such escalated liabilities would be calculated. Furthermore, if the liabilities are those set out in the menu of performance charges (below paragraph 2.18 in the Performance Assurance Schedule) or linked to/formed from those menu items, again it is not clear how the escalated liabilities would be calculated.

15. Escalating **sanctions** rather than **liabilities** may be easier to implement and more transparent.

16. Regarding the Menu of Performance Charges, there is a reference to 'incentives charges', which do not appear to be mentioned elsewhere. Based on our comments above on escalated liabilities, we would

welcome more detail on how incentive charges are defined and how they would be calculated especially if they are set at a level that goes beyond cost reflectivity.

***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?***

17. Yes, we would agree. This is a useful mechanism that is already available in other Codes.

#### ***Section 4. Change Management***

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

18. Yes, we think there is value in producing preliminary impact assessments.

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

19. Yes, we would agree in principle. Please see our comments above on the Nominations Committee.

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

20. Yes, we would agree. This, together with the Code Manager carrying out the bulk of the assessment work, should assist Parties in engaging with the change process.

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

21. Yes, we would agree and can see the logic behind the proposed categorisation.

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

22. Yes, we would agree in principle, for example, in order to facilitate appropriate consequential changes or housekeeping matters resulting from changes to another Code. However, we think the CCDG should set clear terms of reference or boundaries for such changes that are necessary.

#### ***Section 5. Theft Arrangements***

***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?***

23. We think it is more appropriate for Suppliers to answer this question. However, we think there are clear benefits in the PAB having clear objectives and robust oversight in respect of theft investigations. Mechanisms to avoid theft investigations being deferred or put to one side due to process frustrations need to be in place.

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

24. Yes, this seems logical, although it is more a question for 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?***

25. We have no comments on this question, as it is more for Suppliers.

***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?***

26. Yes, we would agree that this seem logical.

***Additional comments***

27. In respect of paragraph 19.2 in the REC document under Data Controller Obligations, there is not the concept of an “independent” controller in data protection law so it contradicts paragraph 19.1. It should just say “...as a controller...”.