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Rachel Clark
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16 November 2020

Dear Rachel,

The Retail Energy Code – proposals for version 1.1

Thank you for the opportunity to comment on this consultation. ScottishPower supports Ofgem's programme of consolidating the Retail Energy Codes via the phased roll out of the Retail Energy Code (REC), recognising the need to implement key parts of the REC ahead of its full implementation. This response reflects the perspective of our retail business. SP Energy Networks (SPEN) is responding separately to this consultation from its perspective as a network licensee.

Our answers to the consultation questions are in Annex 1 to this letter and our comments on the legal drafting in Annex 2. We would highlight the following key points:

- **Budget forecasting** – suppliers need regular, accurate forecasts of charges to allow us to budget and price effectively. We understand the move to forecasting two years in advance, but we would recommend that these forecasts are updated on a quarterly basis (similar to DUoS charges) to avoid any unexpected, large scale fluctuations.

- **Approving the budget** – we are firmly of the view that if regular, open and transparent forecasts are provided, the issues seen with approving the 2020-21 budget would not be repeated. It is critical that the REC's performance, including its costs, is fully accountable to suppliers. They are the sole parties funding the code so must be allowed to approve the budget.

- **Legal text** – we have provided extensive comments on the legal text in Annex 2. We believe a full review by REC lawyers should take place before RECv1.1 is published to make sure all issues are resolved before the new version goes live.

- **Conflict of Interest –** we are concerned at the Code Manager's and DCC's ability to raise any changes to the REC. This risks the possibility that the code manager or DCC might raise changes that could significantly favour them

commercially. We strongly recommend that wording is included to remove the potential for such conflicts of interests.

- **MEMs and Performance Assurance** – we assume metering processes will transfer to the REC in a way that allows smooth, efficient and easily understood cross overs between the REC, Smart Energy Code and BSC. In answering the questions we have made the assumption this would involve all SVA processes transferring to the REC.

- **Theft** – we welcome the move to review the TRAS.

Should you wish to discuss any of these points further then please do not hesitate to contact me or Lorna Mallon (lorna.mallon@scottishpower.com, 0141 614 1163).

Yours sincerely,

Richard Sweet
Head of Regulatory Policy

Annex 1

THE RETAIL ENERGY CODE – PROPOSALS FOR VERSION 1.1: PROPOSED CHANGES TO LICENCES AND INDUSTRY CODES - SCOTTISHPOWER RESPONSE

Chapter 2: Company and Code Governance

2.1 Do you have any comments on the process for appointing additional RECCo directors?

We support the rationale for increasing the number of directors, and recognise the time and effort put in by the current directors to this date. As stated in our response to the June 19 consultation, we support this only if it can be done cost effectively. Further, in our response we also recommended the codification of the Nominations Committee and we note that detail has been provided and terms of reference drawn up. We believe the current drafting of the REC suggests that Nominations Committee should be a defined term within the Interpretation Schedule.

2.2 Do you agree that MEMs should be Party to the REC?

Yes, we fully support the proposal that MEMs should be Party to the REC. We recognise that this will help support an effective change process as they will no longer require support from a Party to raise changes.

2.3 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, in theory we support efforts to reduce the duplication of effort for both codes, agents and Parties by merging audits wherever possible and, as such, reducing the burden. However, we do have concerns about the risk of detriment to a code or process if this is done incorrectly. We recognise the need for a technical assurance and performance manager under the BSC to be fully supported to ensure there is no impact on settlement accuracy, not just for REC processes. At a high level we are happy with the information provided to date, but recognise that this change cannot happen if there is a risk of detriment to either the BSC or the REC. We understand from discussions at RDUG that discussions are still continuing, and we await the detail. We would expect the BSC Panel to be fully involved in these discussions with a full risk assessment for both REC and BSC to be part of the decision-making process.

2.4 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 would require further details on this, including how it would be consulted upon, but based on the information provided to date, we have no concerns about the proposals at this time.

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

It is unclear how the adoption of zero based budgeting will work in practice. We note and fully support the requirement to publish forecasts out to two years, but we are unclear how this would be achievable with a requirement to always do a zero-based budget.

Suppliers require not just an annual estimate but also regular updates on the current and the following years' budgets. Since REC go-live, we have had no estimated charges to allow us

to forecast accurately. For example, the finalised 2021-22 budget will not be published for some months and, to date, no estimated budget has been provided. The large increase in the 2020-21 budget was not disclosed to suppliers in advance so we could not forecast effectively. We were forced to accommodate a 115% increase in the finalised published budget relative to the previous estimate[1]

As a minimum, we would request that RECCo is obligated to provide the annual forecast up to 3 years in advance and additionally provide a quarterly update to suppliers for the current and next year to allow suppliers to forecast effectively.

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

No, we do not agree that RECCo Board should approve the budget in isolation. As the only Parties funding the REC, we cannot understand why suppliers would not be given a direct role in approving budgets, rather than simply having resort to a right of appeal. The issues with the 2020-21 budgets (REC, MRA and SPAA) were caused by lack of updates and forecasts. If the recommendations we make in our response to Q5 are taken on board, the risk of that happening again will be mitigated as suppliers will have early sight of any fluctuations in budget. However, as stated above, there is still concern about the 2021-22 budgets, so we would expect RECCo (and MRA/SPAA) to learn from 2020-21 to make sure suppliers (and DNOs for the MRA) are kept up to date with estimates until the finalised budget can be published. We welcome the recent information published by MRA and SPAA and would expect similar information from RECCo shortly.

We also have concerns about plans to push "bad debt" onto the rest of suppliers as detailed in clause 9.19. This could cause a serious detriment to a supplier's budget, so must be done in an open and transparent way to allow at least one quarter's notice of any smearing of bad debt. There is no equivalent in SPAA and MRA, and this was not called out within the consultation document. We believe this needs to be reviewed in more depth and that the current drafting is not adequate.

Chapter 3: Performance Assurance

3.1: 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, we agree with the Terms of Reference but note that the Schedule is incomplete, as several defined terms are missing or incomplete. See Annex 2 for examples.

3.2: 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 fully support this as it allows for a fully open, honest and transparent code. We would expect a fully documented appeal process to be included, and we note the reference to appeals in clause 6. We would expect this to be expanded upon, including timescales and process for RECv2 when the PAB is ready to become operational, for example referencing the appeals process in the REC itself (clauses 22.7-22.8). We would expect 'appeal' to be a defined term.

[1] RECCo Board Letter, "The revised Retail Energy Code budget for the 2019/20 financial year"

We also believe that the reporting requirements need to be defined once the PAB has established the requirements. These must be codified and an appropriate lead-in time set to allow time for all Parties, Service Providers and agents to build and test the reporting required. We would expect PAB to request data from a centralised source wherever possible to reduce the risk of different interpretations, and also to reduce the burden on the industry as the ETPAB has done.

We would also expect that PAB would take all reasonable steps to make sure the Performance Levels are fully understood by all Parties before they are applied. We would expect PAB to be in conversation with poor performers in advance of the implementation of any charges process. We note there is no mention of what will happen to the charges levied. Will these be allocated to Parties performing well, used to fund the PAB or something else? The full end to end process must be documented, not just the levying of charges.

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

Yes, we fully support this and would hope the priorities would already be known at PAB and the wider industry.

3.4 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, though, as noted above, this needs to be supported by a fully documented appeals process.

3.5: 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, we support this, however, as with our response above, there should still be the right of appeal.

Chapter 4: Change Management

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

We have concerns about the powers being given to the Code Manager, particularly their ability to stop a change from being discussed if they believe "the proposal has no reasonable prospect of being approved" (Change Management Schedule, Clause 8.1(d). We do not accept that the Code Manager would have the required end-to-end knowledge to allow this to happen, which could result in change being stifled rather than encouraged. There is a real risk of disengagement with the process, particularly if the powers are to be extended to any time during the change process, as set out in clause 8.5 of the Schedule. As mentioned in response to Question 4.4, we also believe these arrangements could give rise to a conflict of interest.

There have been a number of recent examples of poorly drafted industry changes, eg the recent roll out of the SDEP tool, which did not match expectations as SPAA and MRA parties were not allowed to engage with the service provider. This and other examples were project managed by the code administrator and we need to be certain that this cannot happen again.

The Schedule states that a new change will be passed to the Cross Code Steering Group (CCSG) for review but neither the Change Management Schedule nor the terms of reference

of the CCSG state how frequently it will meet. Is this stage just for information as part of the process? If it is a decision point, it has the potential to slow down the process unless meetings are at the correct frequency.

We note the ability to use Subject Matter Experts but as this has not been clearly defined we struggle to comment. Clause 11.4 suggests it would be up to the Code Manager to decide which industry parties whether additional Subject Matter Experts can or cannot take part. This is not an open and transparent way to develop change.

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

At a high level, yes, we can see the rationale for this. However, we would need to understand the costs of this process and we would want assurances about the expertise of those carrying out this process.

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

Yes, we fully support this, and we have been impressed with the smooth running of SPAA Change Board and MRA Development Board remotely. However, the process must allow all impacted parties the time they require to fully review the changes and comment on them. Having the meetings more than monthly makes that a complicated process that would need to be resourced. We fully appreciate that decisions may sometimes need to be made more frequently, but having monthly impact assessments timescales (published in advance) is cost efficient and helps ensure that nothing is missed or has unintended consequences.

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

While we agree with the proposed categories and change paths, we do have concerns that the proposal to allow the REC Code Manager and the DCC power over the process has the potential to give rise to conflicts of interests, as they would have control over changes that could result in changes to their own contracts or charges. We would expect a clause to detail under what circumstances it is or is not appropriate for the Code Manager or DCC to raise changes.

Clause 12.4 states that both a free, high level impact assessment and a paid for, detailed impact assessment will be provided. We would expect that a detailed impact assessment would only be required once there was industry agreement that the change was required, and the Code Manager has confirmed a full impact assessment was needed before a final decision was made. Requesting the detailed impact assessment too early could result in wasted budget.

It is difficult to determine the difference between Clause 13 and Clause 19. Both seem to be suggesting that industry views will only be requested if the Code Manager has decided they are required. We totally disagree that industry (Party) impact assessment can only take place if the Code Manager has decided it is necessary. As has recently been seen with DTC CP 3579 (Removal of seven redundant DTC Data Flows), what may be seen as a simple, housekeeping change can have unforeseen impacts on Parties that can only be established during their impact assessment. Any industry participant (especially the proposer but not limited to them) should have the ability, at the very least, to appeal against the Change Plan.

Clause 22.2 suggests that any decision made that goes against a Code Manager's recommendation should automatically be appealed against unless the Code Manager

changes their recommendation. We believe this is a time- and resource-intensive step that will not improve the change process. Instead, we believe it would be more constructive if the Code Manager reviewed any decisions that did not match their recommendations and justified why they made that recommendation in the first place, to help ensure their knowledge basis is increased for the future.

Clause 22.4 should detail all outcomes of an Appeal to the Authority, uphold the Appeal, reject the Appeal or push back to the Change Panel. It currently only mentions reject and push back but clause 22.3 mentions accept as an option.

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

Yes, we agree to this to some degree, however, as with our response above, we believe this could give rise to a conflict of interests. Further, we have concerns about each code administrator / manager having the appropriate level of expertise to raise accurate and fit for purpose changes quickly and efficiently.

Chapter 5: 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?

Yes, we fully agree that the valid objection reasons should be extended to include ongoing theft investigations, as this will allow investigations to reach a conclusion including resolving any Health and Safety issues in a timely manner. In terms of the 'period of time', we would recommend these should be in line the Revenue Protection Code of Practice Categorisation codes (A, B&C) response times. This clearly states the timelines for investigations and would allow time for the investigation to be concluded.

As the new objection reason would be a system change for all suppliers, we would recommend this is included in RECv2 not RECv1.1 to allow suppliers to fully develop their solution, including any reporting requirements.

PAB may wish to consider how it monitors objections for theft investigations. The objection reason is currently not on any electricity data flows, so suppliers would have to report on it themselves. To create a new objection code will require system and process changes but we fully appreciate why PAB would wish to audit this from the start.

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

Yes, we fully support this, especially given the issues this year with the figures for April / May 2020 and the resulting recalculation which has impacted all suppliers. We would like to recommend a full review prior to transition to RECCo. This should have been included with the annual Performance Assurance review of TRAS and ETTOS.

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?

We believe reducing the target would allow suppliers to reduce their focus on investigating theft. First and foremost, these are health and safety issues, and we consider that reducing the target would send the wrong message to the wider public.

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 fully support the stopping of TRAS. We believe RECCo should not be forced to meet the one-year timescale and there should be a review of theft as the only figures quoted at industry remain those drawn up 2013 (£440m). Any scheme implemented must be cost-effective and fit for purpose.

Annex 2

RETAIL ENERGY CODE V1.1: PROPOSED CHANGES TO LICENCES AND INDUSTRY CODES - SCOTTISHPOWER COMMENTS ON LEGAL TEXT

General Comments

- Believe the legal text requires a further review. There are a number of issues with defined terms, spelling and grammatical errors, use of square brackets.

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REC Main Body

- 2.2 – should say Centralised Registration Service (CRS) to tie back to the use of CRS throughout the document.
- 2.2 – need to spell out definition of CSS, as with CRS.
- Need to be consistent on defined terms – for example Sub Committee is a defined term but is not capitalised in Clause 2 of the Performance Assurance Schedule
- 9.14 and 9.23 – need to spell out definition of RMP.
- 11.3 – we would recommend the following wording be used as the current wording states only the reporting party would be considered as not in breach "Where there is any inconsistency between the requirements of this Code and the requirements of an Energy Licence or other Energy Code, no Party shall be considered to be in breach of this Code where such breach arises as a result of that Party complying with its obligations under an Energy Licence or other Energy Code".
- 13 - New categories of IP rights have been added (CRS Services IPR, RECCo Services IPR and Services Data) but there are no defined terms for any of them. We need to see the defined terms to understand the effect of the updates.
- 13.11 - the terms "CRS Provider" and "CSS Provider", and "CRS Services IPR" and "CSS Services IPR" are both used: should this clause only refer to CRS?
- 13.19 – states some data items will be owned by Gas Transporters or Distribution Network Operators. However, many of these data items can only be updated by shippers / suppliers. The wording needs to make sure it does not confuse the industry processes behind the data items.
- 13.19 – believe this clause should be written for the current view then updated for CSS go live. It is quite confusing as it is as it relates to a mixture of future and current processes.
- 13.19(c) – is the use of the term MPAS correct? It has not been defined. We expect this to be clarified in RECv2.
- 14 – Charges is not defined
- 18.1 – do not understand why reference to DCC has been removed

Performance Assurance Schedule

- 3.1 – Terms of Reference is capitalised but is not a defined term.
- Use of square brackets e.g. clause 3.3(e), 8.2, 9.2, 9.6 etc.
- 3.4 – who would PAB delegate to? We assume this would be to Code Manager, but it needs to be clear, for example reference to clause 4 – Role of the Code Manager.
- 7.17 – superfluous full stop.
- 10 – Provision of data – expect this to be documented further ahead of RECv2 go live as PAB understands where it wishes to focus.
- Annex B – 2.14 – notify spelt incorrectly.

- Note Risk Register and Performance Assurance Methodology have not been defined. While we appreciate these are still to be fully developed we would expect some form of definition to be included.
- Performance Assurance Operating Plan – clause reference is incorrect. Should be 7.8.

Theft Reduction Schedule

- No comments

Change Management Schedule

- 2.3 – Change categories need to be explained
- 10.2 and number of other clauses – Subject Matter Expert has not been defined. Checked the last consulted on version of the Interpretation Schedule which states it should be defined in this Schedule.
- 11.6 - Missing full stop after approval.
- Appendix 1 – it is unclear which is required for RECv1.1 and which will be held until RECv2

Cross Code Steering Group Terms of Reference

- Note there is no mention of meeting frequency

Change Panel Terms of Reference

- We cannot confirm if we accept the terms of reference without the number of supplier representatives confirmed.
- Square brackets need to be removed
- Expenses have not been allowed under SPAA and MRA before, though we note some BSC meetings do allow for it. We would recommend this should be managed by the Code Manager booking the travel rather than claiming expenses.

Performance Assurance Terms of Reference

- We cannot confirm if we accept the terms of reference without the number of supplier representatives confirmed.
- Square brackets need to be removed
- Expenses have not been allowed under SPAA and MRA before, though we note some BSC meetings do allow for it. We would recommend this should be managed by the Code Manager booking the travel rather than claiming expenses.

Nominations Committee Terms of Reference

- Use of the word “board” – expect this should be Board as we have assumed it is short hand for RECCo Board.
- Use of the word “committee” – expect this should be Committee as it refers to the Nominations Committee as per clause 1.1
- 2.9 – should be “the secretary”

ScottishPower
November 2020