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**31 July 2018**

Dear Rachel,

**Switching Programme: Proposed modifications to regulation and governance**

This submission was prepared by Citizens Advice. Citizens Advice has statutory responsibilities to represent the interests of energy consumers in Great Britain. This document is entirely non-confidential and may be published on your website.

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Citizens Advice is the consumer representative in the industry code governance framework. We have membership and voting rights on a number of the modification panels and can raise modifications on most codes. This affords us a unique insight into the range of existing code governance models.

The Retail Energy Code is a challenging endeavour, with a broad range of parties and stakeholders, governing arrangements in a retail market that is likely to see a high degree of disruptive change in the coming years. In response to this challenge we support Ofgem's ambitions for the REC to be 'best in class', and to build on the work started by Ofgem in 2017 in response to the CMA's investigation, notably through the introduction of a code manager function.

We strongly support the aim of a consolidated REC, that leads to a simpler code landscape, more focused on consumer outcomes and with reduced costs. To achieve this aim it is vital for industry to work efficiently with Ofgem to deliver a fully consolidated REC as soon as possible after the new switching arrangements go-live.

Please let me know if you would like to discuss any aspect of this response in more detail.

Yours sincerely,

Alex Belsham-Harris

Senior Policy Researcher, Retail Energy Markets

## **Chapter 2: Transitional requirements**

### **Q2.1: Do you support our proposal to introduce a high level duty upon licensees to cooperate, where appropriate, in delivering the outcome of a significant Ofgem-led programme, such as a SCR?**

Yes. We think that this will help deliver programmes in a more effective and timely manner, by ensuring that licensees take part in testing and other preparations.

We note your observations that these powers could also be useful in delivering major projects that are not the result of Significant Code Reviews, using the specific example of the delivery of the Smart Meters Bill. We agree that it would be appropriate for the duty to cooperate to be wide enough to also capture major reforms that are driven by legislation in the same way as those that are the result of Significant Code Reviews. This would reflect that such legislative changes are often highly material in their nature, at least as much so as Significant Code Reviews. It would also remove any potential for unintended consequences that might result from a duty to cooperate only existing in relation to one of these major change routes.

### **Q2.2: Do you agree that the RECCo should be established earlier than REC v2 in order to assist with the successful delivery of the Switching Programme?**

Yes. We think that this will help with delivery, and enable a smooth transition as the programme governance gives way to the enduring REC governance at the point of the new switching arrangements going live. For example, it will enable the REC Manager function to skill up and to form effective working relationships with REC parties and other stakeholders.

### **Q2.3: Do you agree that the bodies constituted under the REC could suitably play a formal part in the programme governance?**

Yes. We agree that a phased transition out of programme governance may be appropriate and reduce risks, and that participation by the REC (and its antecedents where timelines require) on the CSS procurement panel is an important step to capture stakeholder views and provide confidence to them in the procurement process.

**Q2.4: Do you agree that our definition of 'large supplier' in REC v1 is suitable for ensuring an adequate level of engagement with User Entry Process Testing?**

We agree that this threshold is likely to cover a large portion of the market by customer numbers. It is likely to cover a smaller proportion of the switches conducted in the market, as the current dynamic is generally towards independent companies (who are likely to be under the threshold) from incumbents (which are likely to be over the threshold). Depending on the needs of the User Entry Process Testing and End-to-End testing (which is also included as an obligation for large suppliers in the attached REC transition schedule) this may be a material consideration.

It is also likely that some suppliers who fall below the threshold may be using a service provider (a 'supplier-in-a-box') to complete their switches. If the combined total across these small suppliers is considered, these service providers could be involved in a large number of switches. As such Ofgem may want to consider whether there is benefit to including these service providers in the early testing requirement.

**Q2.5: Do you agree that it would be appropriate to have in place interim governance arrangements prior to REC v2 coming into effect?**

Yes. We agree that interim governance arrangements are necessary, and that it is appropriate for Ofgem to manage change through the programme change control process. We also agree that in the absence of the relevant REC bodies being in place, MRA/SPAA should act as the interim REC Panel and Ofgem as the interim REC Manager. However, it would be preferential for these bodies to be in place for the reasons set out above (in Q2.2).

Ofgem should set out how changes in areas of SPAA/MRA relevant to REC version 2 will be assessed and integrated during the REC drafting process. We support Ofgem's approach of delaying the raising of modifications to current codes as near to the end of the DBT phase as possible. However, it should consider how to deal with urgent SPAA/MRA changes in relevant areas that come into place after these modifications have been raised, but before go-live. Alternatively, Ofgem should set out if it expects there to be a freeze period in SPAA/MRA changes in content relevant to the REC. There may be a need to make immediate changes to the REC after go-live to deal with such changes.

### **Chapter 3: REC Governance**

#### **Q3.1: Do you agree with the proposed powers and functions of the RECCo Board, REC Panel and REC Manager, and how they would be distributed amongst them?**

We strongly support Ofgem's vision - set out in the REC mission statement - of the REC as a consumer-centric code, with a focus on delivering good consumer outcomes through innovation and competition (where appropriate). To deliver this, we broadly support the proposed governance framework and distribution of powers, and think that this will help achieve the mission statement. We think that the structure introduces strong accountability and oversight of the Code, which is vital to ensure that it acts in the interests of consumers. The REC Manager function is a positive step to facilitate a more efficient change process and ensure that stakeholders who are not parties to the code are able to engage with it. Moving many of the traditional Panel functions to the Manager role should reduce the burden on industry and free up the Panel to act more efficiently than in existing codes. The Manager role will be a significant undertaking, and needs to be properly resourced in order to be successful.

We support the proposal that the Manager's performance is overseen by the Board and measured qualitatively rather than simply on numerical KPIs. The Board should ultimately be able to procure a new Manager if performance falls significantly below the agreed requirements. The proposed Manager mission statement and objectives seem appropriate for the enduring REC management. It is unclear if these can be amended by the Board, or by code parties through the modification process, in future as the REC strategic priorities change or whether Ofgem would have to give consent for these changes to be made. If the Manager is procured in advance of go-live we would also expect the Board and/or Ofgem to develop interim objectives for the Manager. One of these could relate to development of the version 3 REC, as it seems likely the Manager could play a useful co-ordinating role (similar to the BAU 'cross-code collaboration' objective) in enabling these changes to be made.

The proposals give the REC Manager a higher degree of autonomy and a greater role in developing, and delivering, strategic reforms to the code than has typically been the case for existing code administrators. This creates some risk of conflict between the REC Manager and Ofgem itself, in so far as the REC Manager role as specified has some characteristics of being a 'regulator in miniature.' To mitigate this risk, you may wish to consider giving the REC Manager an objective requiring it to

pay regard to any strategic guidance given to it by Ofgem (similar to the requirement already proposed for the RECCo Board) from time to time outlining how it thinks the code arrangements should evolve.

**Q3.2: Do you agree with our proposal that independent Non-Executive Directors (NEDs), potentially from outside of the energy industry, should be present on the RECCo Board and that the composition of the RECCo Board should be subject to thorough review, both periodically and/or whenever the scope of the REC/RECCo Board responsibilities changes substantively?**

We are strongly supportive of NEDs from outside the energy industry having the largest constituency on the Board. This should bring in the expertise and experience to drive good consumer outcomes and enable innovation from outside the energy sector.

However, we feel that having some Panel members on the Board as Executive Directors is likely to foster a better working relationship between the two, and a greater understanding of the decisions made by one another. This could also engender a greater sense of enfranchisement for REC parties, while maintaining independent control. Our preferred option in relation to the Board composition is therefore the hybrid option (Model C). We think that a similar approach to this already works well for the Balancing and Settlement Code (BSC), which has a mixed board of independent members and Panel representatives.

Under a hybrid model, we recognise that there may be areas of competence where it is necessary to limit decision-making to NEDs only, to limit conflicts of interest by Panel members who also sit on the Board. This could include instances when the Board is acting to review Panel decisions, or oversee performance of the Panel and Manager.

We support the proposal to select NEDs by independent bodies, such as Ofgem or ourselves, and that this composition should be reviewed periodically and when the Board function changes. It is not clear in the proposals who would carry out such a review, but we assume that it would be undertaken, or overseen in some capacity, by Ofgem. This process could also seek the views of non-REC parties who are nonetheless impacted by the decisions taken by the REC. If Panel members are included on the Board these could be elected by REC parties.

### **Q3.3: Do you agree with the principles for REC Panel composition as set out in paragraph 3.43?**

We agree that Ofgem's four principles are the right ones to consider in relation to Panel composition. These will need to be carefully balanced to achieve the outcome of a well-functioning, expert group with a focus on consumer outcomes, including through innovation. For example, we agree that Panel members should have relevant expertise, and that the size of the decision-making group is important to ensure that meetings can achieve resolution. This could, as suggested in the expertise principle, involve Panel members being called upon only where necessary. Ofgem should consider the extent to which this approach would reduce knowledge on the background to decisions and the Code content, and therefore reduce the opportunity for Panel members to proactively identify issues and dependencies. Our experience of other codes has been that it can sometimes be difficult to attract candidates, and we are concerned that this could also limit the attractiveness of joining the Panel. While the new REC Manager function may ameliorate some of these risks (for example, by supporting members to understand the implications of change proposals) it is unlikely to compensate for in-depth, ongoing engagement with the Code that comes from member participation in a broad range of decisions.

We strongly support the inclusion of independent members on the REC. As independent members of other Code Panels, we promote the consumer interest and hold codes to account for their consumer objectives. Similarly, we think that the REC Panel should have at least one (ideally two) independent member(s) to represent consumers. For example, the Unified Network Code (UNC) currently has two consumer representatives representing different constituencies. Independent members on some other codes are able to attend but cannot vote on decisions. We think it is vital that independent members (including consumer representatives) have voting rights in the REC. This is commensurate with the importance of the interests they represent, enables objections by these members to Panel decisions to be clearly recorded and visible to Ofgem, and enables organisations to justify investment of resource in membership.

We agree with Ofgem that membership of industry governance bodies can be resource intensive, in preparation, travel and attendance for lengthy meetings. This can mean that these bodies are dominated by large and incumbent market participants. We support Ofgem's view that the REC needs to be more accessible in order to achieve the principles for composition and wider aims for the REC as a 'best

in class' code. Steps including use of technology to enable remote attendance of meetings and reimbursement of reasonable travel costs could help achieve this. We think that other features of the Code, including digitisation, plain English drafting and support from the REC Manager should enable participation and engagement from a wide range of REC parties and non-member stakeholders.

**Q3.4: Do you agree that there should be entry and systems testing requirements placed on new entrants, comparable to those that we expect incumbent suppliers to undergo as part of the transition to the new switching arrangements?**

Yes. We have ongoing concerns that suppliers are able to enter the market without being adequately prepared to do so. Entry and systems testing requirements are one important component of this, to ensure entrant suppliers are capable of interacting appropriately with other suppliers and industry systems.

Testing should also be required when suppliers migrate their systems, which is likely to occur as they gain customers (for example from a 'supplier-in-a-box' service to a bespoke system).

**Additional feedback on the Code Modifications process and REC objectives and mission statement**

We support the ambition for a modification process that is efficient with reduced need for Authority involvement. The triage process and REC Manager's role in assessing the impact of the proposals on the relevant REC objectives should mean that the Authority is asked for consent only when relevant, and based on clear evidence that the change is needed and meets the Code objectives. However, we think the proposed REC objectives (para 3.51) may not be sufficiently detailed, to help Proposers, the Panel or the Manager in this process. While these are good high-level aims, we would expect there to be a need for complementary detail underneath this, for example that might be in relation to specific licensees/market functions, or that relate to the need for housekeeping by the REC (for example, the need to comply with external legal and regulatory change).

We agree with the intention that the REC Manager should raise modifications on behalf of third parties in most cases, but that circumstances may arise where it is appropriate for the third party to do so directly. During a recent third party designation by Ofgem for the BSC<sup>1</sup>, we were concerned that the decision-making

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<sup>1</sup>BSC Modification P355, 'Introduction of a BM Lite Balancing Mechanism'

process was not sufficiently transparent and took a long time to complete. We would prefer that any designation of third parties for this purpose is done through a transparent process, run by the Code, with a decision by the Manager and/or Panel (with an appropriate appeals mechanism to the Authority). This approach would align with Ofgem's aim that the Code is less reliant on the Authority, and could be more efficient, enabling innovation.

The consultation does not ask any questions in relation to whether the proposed REC mission statement is appropriate. We think that it is unnecessarily narrow, which has a knock-on impact on the focus of the code. The proposed mission statement is that 'the REC will facilitate innovation, competition and cost-effective arrangements that protect and promote positive customer outcomes in the retail energy market.'

This suggests that positive consumer outcomes can always be related back to one of those three characteristics: innovation, competition or cost-efficiency. In many cases this will be true, however there will be cases where necessary consumer protections cannot be tied to any of these three things. Indeed, proposed code objective (b) itself effectively acknowledges this by explicitly mentioning data protection as an additional consumer interest, while also potentially acting as a 'catch all' clause that could cover any 'customer interest' that does not fall under code objective (a).

We are concerned that this constraint in the mission statement could exclude other relevant considerations in decision making. We note that Ofgem's own statutory duties are more nuanced than this, for example requiring it to consider whether non-competitive approaches would better protect consumers before considering a competitive approach.<sup>2</sup>

We think that this could be resolved by rewording the mission statement to simply focus on better outcomes for consumers: "The REC will protect and promote positive customer outcomes in the retail energy market." Considerations related to innovation, cost effectiveness and competition could be appropriately included in REC objectives to ensure that these deliver the mission statement as appropriate.

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<sup>2</sup> <https://www.ofgem.gov.uk/publications-and-updates/powers-and-duties-gema>

## **Chapter 4: REC Content**

**Q4.1: Do you agree with the proposed minimum content for REC v2 (as listed in Appendix 3)? Is there any other content we should consider for inclusion in REC v2? If yes, please provide further details.**

Yes. We support Ofgem's approach that version 2 should focus only on switching related provisions, with wider retail provisions being integrated in version 3.

We support Ofgem's ambition for the Code to be digitised, to allow the content to be more accessible to parties and other stakeholders, and to base this around market roles and/or products and services offered, rather than based on which licences are held. This will future proof the Code for changes that may arise from the Ofgem's review of future supply market arrangements.

**Q4.2: Do you agree with our proposal that the REC Code Manager should collate Switching Domain Data and make it available to Market Participants? Or do you consider that the Data Master for each element of Switching Domain Data should make it available to Market Participants?**

Not answered.

**Q4.3: Paragraphs 4.20-4.24 suggest that the DCC should be subject to a data quality objective and performance standards around the quality of REL Addresses. Do you have suggestions on the quality measure areas and levels quality measures will take? Do you believe that the REC Panel should have a role in setting these targets (initially and/or on a periodic basis)?**

We support the REC Panel having a role in setting these targets on an initial and periodic basis. As representatives of CSS users, and those who pay for the CSS, it is fair that they get a say in setting the performance standards around data.

**Q4.4: Paragraph 4.25 outlines that the REL Address data quality indicator is currently intended to be an internal measure for the CSS. Do you believe there is value in making this available to other market participants? If so, please provide your rationale for this and outline which market participants should have access.**

Not answered.

**Q4.5: Paragraph 4.25. suggests that the DCC should set out the methodology it will apply to meet the REL Address data performance standards on an annual basis. Do you agree that it would be beneficial to make this methodology publicly available?**

Yes. This will allow stakeholders to understand the steps that DCC is taking to meet its KPIs, and if they have failed to do so, what corrective steps they are taking to improve. It will also allow stakeholders to share views and suggest changes if necessary. Given that DCC occupies a monopoly role we do not think there should be any commercial arguments against publishing this methodology.

**Q4.6: Do you support the creation of an Enquiry Services Schedule in REC v2? If so, which of the options around the requirements (in paragraph 4.32) do you prefer? Please provide details to explain your answer.**

Yes. As set out elsewhere in our response we are strongly in favour of code consolidation, wherever possible, through the creation of the REC. We recognise however that this case is not straightforward. We recommend that Ofgem write to the Joint Office of Gas Transporters who, as the Code Administrator for the UNC, are well placed to give a view on which of the three options offers the most efficiency. We think that issues with all three options could be mitigated from the REC side by the REC Manager, in line with its cross code collaboration objective.

**Q4.7: Do you agree with our proposal to create a REC Exceptions Schedule to be contained in REC v2, with the scope outlined in Figure 3? If not, please provide further details.**

Yes. We support the creation of the schedule, and support Ofgem's view that the version 2 REC should include those non-standard processes that will change as a result of the introduction of the new switching arrangements. We also agree with Ofgem's preferred approach of redrafting these exceptions from a consumer perspective in a range of scenarios. This should make the code more accessible to parties and stakeholders, and meet the ambition that the code is consumer-centric.

**Q4.8: Do you agree that the grey areas highlighted in Figure 3 should be out of scope of an Exceptions Schedule for REC v2? If not, please provide further details.**

Yes. We agree that it is right to focus only on those areas which are directly affected by the change as part of the SCR. We would like to see the grey areas transferred as rapidly as possible as part of the delivery of REC version 3.

**Questions 4.9 - 4.11:**

Not answered.

**Chapter 5: The DCC licence**

**Questions 5.1 - 5.3**

Not answered

**Question 5.4: Do you agree with the high-level programme outcomes we believe the programme should look to incentivise? Can you suggest further areas we should look to include and are there aspects you believe should be prioritised?**

We support the high-level programme outcomes that should be incentivised from the DCC. Some of the outcomes - including timely and quality delivery, economic and efficient delivery, reliable systems and improved data accuracy and switching reliability - seem like good candidates for specific and measurable incentives with margin put at risk. It may be harder for margin to be put at risk against some of the outcomes, as is the case in the current phase with the stakeholder engagement incentive. Further work could consider how the adaptability and stakeholder engagement incentives could be linked to DCC's margin.

**Chapter 6: The SCR process**

**Q6.1: Do you agree with the changes that we propose to make to the scope of the Switching SCR?**

Yes. We particularly support the changes to more clearly signal that wider industry code consolidation (towards a version 3 of the REC) should take place on complementary and coordinated timelines, and that Ofgem will work with industry to produce a coordinated plan for this work. We fully support Ofgem's aim that the version 3 REC is achieved as soon as possible, if not at the same time, as version 2.

This will simplify the wider code landscape and allow the REC to focus on operational and future issues from CSS go-live, rather than ongoing amalgamation of aspects from other codes.

**Q6.2: Are there any further changes that you consider we should make, either to bring something into scope, or to explicitly rule it out of scope?**

No.

**Q6.3: Do you agree with our proposed approach of publishing the drafting of all SCR related changes circa Q1 2019, but waiting until systems have been proven through testing before submitting the proposals into the modifications process?**

Yes. We agree that this should minimise the need for immediate changes to the REC due to system changes at the end of the DBT phase.