

Industry Code & Licensing Team,
Ofgem.
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1st February 2023

RECCo response to Ofgem’s Energy Code Reform, Call for Input

We welcome the opportunity to respond to this call for input ahead of anticipated further consultation on energy code reform. Our non-confidential response, appended to this letter, represents the views of the Retail Energy Code Company Ltd (RECCo), and is based on our role as operator of the Retail Energy Code (REC).

RECCo is a not-for-profit, corporate vehicle ensuring the proper, effective, and efficient implementation and ongoing management of the REC arrangements. We seek to promote trust, innovation and competition, whilst keeping positive consumer outcomes at its heart. We are committed to ensuring that RECCo is an “intelligent customer”, ensuring efficacy and value-for-money of the services we procure and manage on behalf of REC Parties, include those which constitute the REC Code Manager.

As a newly formed industry code, merging its predecessor electricity and gas codes, we have had early opportunity to deliver streamlined operational and governance arrangements for the REC, and continue the work to consolidate arrangements where helpful and appropriate. We consider that all code bodies should be expected to pursue such continual improvement to further facilitate their own objectives and deliver wider benefit to the industry, and ultimately to consumers. Therefore, whilst we agree that energy governance landscape must as whole become more effective in order to meet the challenge of decarbonising the industry, it will be important to ensure that the proposed reforms do not inadvertently stymie any beneficial change in the shorter term.

We are happy to discuss any of the points raised in this response, and in particular to share lessons learnt from our experience of establishing the REC and procuring services, including those which constitute the REC Code Manager.

Yours sincerely,

Jon Dixon

Director, Strategy and Development

Appendix – RECCo responses to the Energy Code Reform Call for Input.

Code Consolidation – Proposed design principles

Q1. Do you agree with the design principles proposed to frame our assessment of code consolidation options? If not, please explain.

We broadly agree with the proposed design principles, though the subtext for each does seem predicated on the same form of consolidation, when in fact the report commissioned by Ofgem suggests that greater benefit could be achieved through reform by other means. We would agree that consolidation of two or more codes would not of itself be of benefit if the resulting code still contain the complexity of its formerly separate parts. In principle, there is no reason why future inter-code governance could not be made more effective than that of any current intra-code examples.

The design principles themselves are similar to those that were adopted for the design of the REC and could suitably be extended to the codes reform generally, rather than the consolidation specifically, which is only one possible means to an end. We consider that it would be appropriate to include a further design principle, referencing or mirroring the early principles of better regulation, which are not embedded within Ofgem’s own duties and flow down into other forms of governance, i.e.:

- transparency;
- accountability;
- targeting;
- consistency; and,
- proportionality.

Due regard to these principles may suitably inform Ofgem’s decision on future codes reforms, and in particular which option may best deliver the transformation the industry undoubtedly needs, rather than addressing the more narrow and arguable problem statement set out in the call for input.

Code Consolidation – Which codes to consolidate.

Q2. What are your views on the high-level options for code consolidation we have described

- ? No consolidation
- ? Vertical
- ? Horizontal

We welcome input on the possible benefits/disbenefits of each option.

We broadly agree with the assessment of options developed by Cornwall Insights and so do not repeat the same points here.

As noted above, we consider that the desired outcomes may be achievable without further consolidation, which would of itself require significant resource and could be a distraction from more impactful changes. More generally, we are concerned that consolidation does not accurately capture what may be involved in

practice. For instance, even with Retail Code Consolidation, it was not simply a case of merging the seemingly comparable Supply Point Administration Agreement (SPAA) and Master Registration Agreement (MRA) to form the REC. There was a prolonged and thorough review of the arrangements under each, with the eventual model selected being the best achievable fit for the governance of processes, capturing as much as possible of a relevant user journey in one place. For instance, in addition to the change to the SPAA and MRA, the governance of some processes was migrated to the Balancing and Settlement Code, while others moved in the opposite direction.

However, we also agree that the current level of fragmentation is not desirable, and if the governance landscape can be simplified and made more effective without detrimental impact on operational efficacy or in-flight programmes, which should be pursued. We also consider that this could be done or at least commenced, with existing Ofgem powers and tools, such as licence modifications and the Significant Code Review rather than awaiting further legislation.

Vertical consolidation may further facilitate the sort of whole-of-system transformation that the Future System Operator (FSO) was established to plan for and coordinate. We consider that better enabling the effective discharge of the FSO role could provide a suitable basis for prioritising the areas for reform, given its importance to delivering industry transformation and enabling 2030 emissions targets to be met.

We consider that there may be further scope for horizontal consolidation, though the synergies are not as apparent in the upstream arrangements as they are at the retail level. For instance, whilst there may be benefit in a single code covering wholesale arrangements, it is unlikely that the fundamentals of the market will align across electricity and gas or be capable of being delivered through a single set of rules, processes or systems. The benefits of a single code covering what are likely to remain wholly or largely separate arrangements are therefore limited, while at the same time there may be a diminution of expertise or other impacts, such as necessary changes to one fuel suffering delay due to code manager resources being diverted to another.

At the retail level we do consider that there will be opportunities for closer collaborative working between the SEC and the REC, though these are fundamentally different codes with touch points rather than obvious synergies that could be realised through consolidation.

Q3. Do you agree with our initial preference to explore vertical code consolidation options and, if so, do you have any observations on the potential models set out in CI April 2022 report? We welcome specific views on the following:

1. Whether the UNC & iGT UNC should be consolidated
2. If/how to consolidate the Elec codes
3. Whether the REC & SEC should remain separate; and/or
4. Whether the consolidation of any codes should be prioritised, and if so, why

We agree that vertical consolidation should be explored, to the extent that industry transformation will require a whole of system approach. We consider that as far as delivering net-zero is concerned these could suitably stem from a top-down approach to ensure that the FSO is able to put its plans into effect, though as a consumer-facing code we will also seek to ensure that these top-down requirements meet the needs of consumers rather than just of market participants.

We agree that there is scope to consolidate the UNC and iGT UNC. This is already partially achieved insofar as the iGT UNC already incorporates much of the UNC provisions by reference. There may be residual provisions from the iGT UNC which may be unsuitable for migration to the UNC, such as a return of metering arrangements which were unbundled as part of the Review of Gas Metering Arrangements. To the extent that a common industry code would remain more appropriate for such provisions than bilateral commercial contracts, we would be happy to consider the suitability of such provisions instead being migrated to the REC.

We agree that there is scope to consolidate the technical electricity codes and that this would further facilitate the sort of whole-of-system transformation mentioned above. However, it may not be as straightforward to consolidate the more business process focused codes, as they underpin the commercial interests of different parties – i.e., National Grid under the CUSC and the Distribution Networks under the DCUSA. Whilst there may again be scope for closer and more effective working between them, Ofgem must be cognisant of these commercial interests and not inadvertently damage the attractiveness of the sector to investors, at the very time when huge amounts of new investment will be needed in order to deliver the transformation that the governance changes are also intended to facilitate.

As noted above, while we consider that there will be opportunities for closer collaborative working between the SEC and the REC, we do not consider that consolidation would be appropriate at this time. The REC itself was created in large part in order to govern the new switching arrangements developed by Ofgem as part of its Faster, More Reliable Switching Programme. Whilst those arrangements were originally intended to form an extension of the Smart Energy Code, subsequent assessment informed Ofgem's determination that a separate code would be preferable. This new set of governance for switching subsequently became the dual-fuel REC. We consider that the original rationale to govern switching and other retail arrangements under a separate code still stands, and that having only recently completed the Retail Code Consolidation, that it would be inappropriate to revisit this at this time. We also consider that any fundamental reform of the Smart Energy Code could prove to be an unnecessary distraction from the ongoing delivery of the Smart Meter Implementation Programme and would need to be informed by the outcome of Ofgem's review on the DCC licence, given its integral role in delivery of the Smart Energy Code arrangements.

Code Consolidation – How to deliver code consolidation.

Q4. Do you agree with our preferred implementation approach (Option 2)?

If so, do you have any additional observation on what we should consider when further developing this approach, including which code provisions should be considered within the scope of governance arrangements?

If not, please provide details.

We agree Ofgem should utilise Option 2 (Common contractual framework and governance arrangements). This would enable review, simplification, clarification, and rationalisation of the separate, commodity specific, technical, or operational requirements under the new code.

Ofgem has existing, regulatory powers to direct new code change or carry out a significant code review, if necessary. By allowing the Code Manager to manage their own work and progress change through the

code's change management processes Ofgem will be able to hold the Code Manager suitably accountable, while retaining their independent oversight of code governance.

Code Manager Licensing – Content

Q5. Are any of the contents we have identified for the licence conditions unnecessary, or, would be more effectively covered outside the licence (e.g., in the codes)?

We consider that the industry codes and licences are in effect complementary governance tools, and that as far as practicable licence should be limited to principles, and to areas where Ofgem would if necessary be prepared to intervene in order to assure compliance. Where it is reluctant to do so, or where there is a reasonable expectation that requirements may need to evolve in light of market developments, etc, such provisions would be better placed in the code where change can be managed on a more dynamic basis and day to day oversight provided by a dedicated body pursuant to that code. For example, the REC performance assurance regime is intended to provide oversight and accountability of REC service providers, and indeed RECCo itself, as well as the acceded Parties.

Q6. Are there any additional areas that should be subject to licence rules?

We would advocate a principle-based approach to licence drafting, leaving the code managers to develop arrangement in a manner best suited to meet the evolving needs of their stakeholders. Those principles could suitably extend to data management and stakeholder engagement.

Depending on the services provided by the code manager and/or through the relevant code, it may also be appropriate for the licence to include objectives for a charging methodology, and around budget setting.

Q7. Do you agree with our indicative prioritisation for policy development, and do you identify any specific dependencies that you think we should factor into our policy considerations?

Whilst we agree that each of the areas highlighted by Ofgem for a future code manager licence will be important, we question whether all of them should necessarily form part of the licence. As previously mentioned, we consider that the industry codes and licences are in effect complementary governance tools, and that as far as practicable licence should be limited to principles, and to areas where Ofgem would if necessary be prepared to intervene.

Q8. Are there any issues that we should take into account when considering moving the current code owner licence provisions to the new code manager licence (such as unintended consequences)?

- Ensuring continued compatibility with any existing overarching Act conditions, which have directed the licence/code ownership, development requirements;
- Consider whether licence conditions to accede and comply with the code, will ensure the licensee will continue to play their part under the code and that this is sufficient for all activities they are currently responsible for.

Stakeholder Advisory Forum

Q9. What do you think the stakeholder advisory forums key roles and/or functions should be, and what areas (other than code change) should the forum(s) potentially have a role in?

Rather than stand-alone stakeholder advisory forums, it might be better to consider how codes can allow diverse participation in relevant discussions, development or decisions. There is no one-size-fits-all approach which can be applied to every code, rather it is, to some extent, dependent on the subjects the code covers. Each might have its own subset of participants in addition to the parties the code governs; from subject-matter-experts (e.g., industry, academic), consumer advocates, interested parties, regulators, governance departments, wherever useful, relevant, or required.

Beyond change assessment, there are a variety of areas where code arrangements could be expanded for stakeholders engagement;

- Share/consider key issues/trends from the customer contact they have. Consider periodic sharing of key trends, outcomes, maybe include case-studies to illustrate (as Citizens' Advice and the Energy Ombudsman have both done via the Smart Metering Implementation Programme – aiding insight and allowing market participants to overlay a better understand of prevailing sentiments, impacts etc).
- Share/consider energy related initiatives – being explored or ongoing (ad-hoc, where relevant and appropriate).

Q10. What options/issues should be considered in terms of constituting the stakeholder advisory forum(s), in terms of membership and securing appropriate representation?

Industry codes have traditionally found it hard to attract and sustain representation from consumer groups and other stakeholders who do not have the same commercial interest in the day-to-day operation of the code as the Parties. Even engaged stakeholders generally have a specific area of interest or even a particular change proposal that they wish to follow and/or advocate and may not have the resources available or ability to justify its expenditure without that specific interest.

Under the REC we have sought to augment the support provided by organisations such as Citizens Advice, with independent experts who attend RECCo sub-committees including the Change Panel and Performance Assurance Board. Whilst these individuals are remunerated through contract with RECCo, enabling us to procure the necessary expertise and competencies to fulfil that particular role on the groups, their terms also clarify that they should otherwise be free of conflicts of interest, and must declare any potential conflict to the relevant Chair, who will determine whether they should be recused from any particular decision. Whilst Ofgem propose that the stakeholder forums are to be advisory rather than decision making, and therefore specific subject matter expertise and continuity may not be quite as important, it may nonetheless be appropriate to consider remuneration of at least some of the key stakeholder attendees.

Other principles might be:

- Ensure SAFs are accessible – ensure balance of remote and in person meetings
- Ensure sufficient review/analysis time – to ensure views are considered positions. Especially useful/appropriate where proposing representation of a constituency, to enable that party to meet with their peers to seek/represent views. Ensures process fair, not biased to attendees.
- Ensure flexibility of membership – allow participants to have an alternate(s) (this needs to be an open, transparent, engaging forum).

- Consider ability to allow additional representative attendance or individual company representation; useful on ad-hoc basis for significant/high-impact change. Avoids unconscious bias and maintains transparent open decision making. Tests change appropriately. May be used sparingly, i.e., once every few years.

Q11. Are there any lessons learned (good & bad) from the current code arrangements that should be considered?

As set out in our covering letter, we agree that energy governance landscape needs to become more effective in order to meet the challenge of decarbonising the industry. However, it will be important to ensure that the proposed reforms do not inadvertently stymie any beneficial change in the shorter term or impact critical operations whilst in transition.

The industry increasingly needs to consider how it will interact and integrate with emerging energy initiatives and new arrangements need to accommodate ways to stimulate engagement.

Development needs to draw on new expertise, whilst maintaining a voice which harnesses the rich knowledge and experience pool, without undue control. Thus allowing development of arrangements to benefit from a new approach, whilst being tested to avoid unintended consequences or risk – ensuring industry has the chance to learn from past mistakes. Development of the Smart Energy Code was nearing designation, before the concepts/approach were tested as Critical National Infrastructure, at which point some major redevelopment/redrafting of the code occurred to introduce an end-to-end trust model between all parties, introducing more complicated technical design.

- Get it right first time. Allow for flexibility in change/development processes to allow for an appropriate timetable for development, analysis, impact assessment. This would increase the likelihood, particularly for significant or complicated issues, for the identification and resolution of issues or risks, ahead of approval/test/implementation.
- Allowing broad range of stakeholders to participate in discussions, and development brings informed decisions. For significant, impactful change, allowing a diverse house of experts, from varied roles/business models (including consumer advocates, the regulator and government, where appropriate) to be convened, can help ensure change is informed and tested by different expertise, viewpoints, and experiences.
- Avoid an overloaded landscape of significant change. Whilst needing to progress change when it is necessary for the appropriate evolution of arrangements to keep them relevant for the times they work in, there have been moments where the volume of significant change has limited stakeholders' ability to carry out rigorous assessment of developments, engage, and inadvertently caused operational impacts during transition.
- Allow flexibility. For development of evidence-based timetables to be developed and followed. Following a pre-determined timetable, can bring certainty, but can introduce risk if it has not been developed considering a fair assessment of what development will entail, or a periodic test to ensure it continues to be fit for purpose.