

Sent by email to: [retailpolicyinterventions@ofgem.gov.uk](mailto:retailpolicyinterventions@ofgem.gov.uk)

30 Dec 2022

Dear Maureen

## **RECCo response to statutory consultation on extending the MSC and BAT beyond 31 March 2023**

This response represents the views of the Retail Energy Code Company (RECCo) and is not confidential.

RECCo is a not-for-profit, corporate vehicle ensuring the proper, effective, and efficient implementation and ongoing management of the Retail Energy Code (REC) arrangements. The REC has the broadest coverage of energy industry market constituencies and stakeholders, and seeks to promote trust, innovation and competition, whilst keeping positive consumer outcomes at its heart. It sets out the rights and responsibilities of industry parties for the consumer facing processes, data and systems it manages. We are committed to ensuring that RECCo is an “*intelligent customer*”, ensuring efficacy and value-for-money of the services that it procures and/or manages on behalf of REC Parties.

Supplier obligations regarding the Market Stabilisation Charge (MSC) were formalised into the REC through REC Change Proposals R0034 and R0035 in April and June 2022 respectively. The responsibilities of RECCo in administering the Market Stabilisation Charge, as well as those of impacted parties, are now set out in Schedule 22 of the REC. We have a flexible procurement strategy and have already made provision for an extension of the scheme beyond the initially identified March 2023 end date. We can therefore confirm that the extension of the MSC as proposed in this consultation poses no operational issues for RECCo.

Since Ofgem announced its intention to implement the MSC measure and throughout our development and mobilisation of the operational process, we have consulted with relevant stakeholders and informed them of how they will be impacted. We have continued to provide this support, including renewed efforts to raise awareness through channels such as webinars, newsletters and published guidance documents since the MSC was first triggered in November. We will continue to provide such support as long as the MSC remains in effect.

Our responses to each of the consultation questions are set out below. If you would like to discuss any of the points raised in this letter or the operation of the MSC in further detail, please feel free to contact me or my colleague Joy Nnamani at: [Joy.Nnamani@retailenergycode.co.uk](mailto:Joy.Nnamani@retailenergycode.co.uk).

Yours Sincerely,

Jon Dixon  
**Director, Strategy and Development,**  
Retail Energy Code Company

## Ofgem consultation questions

- 1) Do you agree that Ofgem should modify supply licence standard conditions SLC 24A and 22B so as to maintain powers to operate the MSC and the BAT until 31 March 2024, with powers given to the Authority to renew this annually?**

We agree that in the absence of one or more alternative policies to mitigate the risks to the retail market which prompted Ofgem to introduce the MSC and BAT, they should remain in effect as long as those conditions continue to exist. However, taking lessons from the originally static nature of the Default Tariff Cap, we consider that this review should happen more regularly than annually, and potentially be triggered by some pre-determined benchmarks having been reached (similar to the trigger point for the MSC itself), otherwise there is a risk the decision will be delayed, and these interventions endure longer than necessary.

We also consider that the efficacy of the BAT in addressing the consumer detriment of the so-called “loyalty penalty” should be assessed, as this could in principle provide a more robust remedy for that issue and without the adverse consequences for suppliers that have arisen from the Default Tariff Cap. In effect the BAT *may* provide part of an exit strategy from the Default Tariff Cap policy.

- 2) Do you agree that this should continue to include, in the case of the MSC, the existing power for the Authority to terminate it early?**

Yes. As previously noted by Ofgem the MSC has a detrimental effect on competition and imposes a transfer of value from consumers who have or would have switched, to incumbent suppliers. This also risks perpetuating unduly cautious and inefficient hedging strategies beyond the point at which a more balanced approach may become appropriate. As set out in response to Question 1, we consider that the MSC should be terminated as soon as conditions allow, rather than having to await a fixed and unavoidably arbitrary date in a calendar.

- 3) Do you have any comments on the proposed drafting of the changes to the supplier licence standard conditions?**

The proposed drafting appears to achieve the stated intent of the policy.

- 4) Do you agree that we should extend the market-wide derogation from SLC 22B for fixed retention tariffs?**

We consider that suppliers must be able to effectively manage their exposure to risk. In the context of the Default Tariff Cap, which can at least temporarily require suppliers to supply consumers at less than cost, this must reasonably extend to being able to cap the number of consumers within their portfolio and/or on a particular tariff. In effect, this should allow suppliers to match consumer demand to the supplies

they have secured on the wholesale market and/or are able to self-generate, rather than necessarily vice versa. This could improve the bargaining position of retailers when purchasing energy on the wholesale markets and improve competition.

It seems entirely appropriate that while the other interventions continue to apply, including the MSC and the Default Tariff Cap itself, suppliers should also be able to offer fixed retention tariffs to existing consumers only. As Ofgem has previously noted, while this does imply a degree of price discrimination, it does not have the same detrimental impact on loyal consumers or the wider market that could arise from discrimination in favour of only new customers. We further consider that this arrangement should, and will, become more commonplace if the market is move towards the sort of longer-term relationships between suppliers and consumers that facilitate investment in the transition to a decarbonised energy system. As with the ban on acquisition only tariffs, it would be appropriate for Ofgem to assess the impact and efficacy of this policy in that longer term context, rather than purely as a reactive short-term intervention.

**5) Do you have any comments on the analysis presented in section 2?**

We have no specific comments on the analysis in section 2.

**6) Do you have any comments on the draft impact assessment presented in section 3?**

We have no specific comments on the impact analysis in section 3.