Smart Metering Implementation Programme
Regulation Team
Department of Energy and Climate Change
3 Whitehall Place
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20th January 2014

Dear SMIP team

**DCC licence - supporting provisions in the Smart Energy Code around the financing of communications hubs.**

Thanks for the opportunity to respond.

At high level we have some points and questions;

Scope – The four provisions in the consultation referred to a scope restricted to the 5% of communication hubs in the Northern Communications Service Provider area. The modifications appear to refer to all communications hubs.

Establishing equitable and transparent processes – for the smart programme to proceed on a firm footing, to further guarantee success, and fairness to all parties, then particularly during the early stages, as new systems and processes and contractual arrangements are developed and new industry participants settle into their new roles, that principles of fairness and proportionality will be required whilst making pragmatic decisions.

Roles and responsibilities – the contracts and licence condition drafting should be undertaken to not only strengthen the underlying processes required to ensure roll-out success during the early stages of the Programme but to also ensure that all parties are suitably obliged to fulfil their roles and responsibilities at all times.

This response is not confidential

Yours sincerely

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**Q1 Do you agree that the proposed changes to Conditions 11, 27 and 36, and Annex 5 Schedule 1, are necessary to align the DCC Licence with the communications hubs financing provisions in the SEC?**

*Yes for the 5% tranche in Northern CSP but not necessarily further*

We believe that the proposed changes appear to provide the necessary alignment that DECC wish to see between the DCC Licence Conditions and the SEC Financing provisions.

<u>Extension of Scope</u>

We believe that the intended new provisions that have been discussed during the SEC Stage 2 Consultation and the subsequent Licence Condition re-drafting, that is the subject of this Consultation, were designed to cover only the first 5% tranche of Communication Hub financing arrangements for the Northern CSP area. As such, we were not anticipating these provisions to be enduring. However, by drafting these arrangements into the Licence Conditions as they have been, it appears that they will effectively become enduring arrangements and that these arrangements could then be readily extended to all regions and for all future tranches.

Whilst the current provisions and drafting appear to provide the desired DECC alignment it is not clear how these arrangements will work once the initial tranche of communication hub financing has completed and new contracts are brokered by the DCC on the suppliers' behalf. We would therefore seek assurance that DCC Users will have the opportunity to fully engage with and comment on all communication hub financing arrangements and that these are conducted with openness and transparency. The current drafting, if not amended, will automatically apply to any future Communications Hub financing tranche – effectively tying DCC Users into these arrangements and the unnecessary and overly burdensome financial securities that have been established.

Where the intended approach is to cover first (5%) tranche of communications hub financing for the northern CSP area we believe the drafting within the licence conditions should reflect this and not be 'open-ended' as it currently stands, as without further drafting this approach will endure. Paragraph 44 of the Government response and further consultation document states that these provisions are only to apply to financing for the northern CSP area, at present. This leaves this concept open and so could result in the four provisions being extended to all communications hub financing in the future. We would ask that this is addressed, either by being specific within the drafting as to the intent of the approach or introducing an appropriate 'sunset clause' that will force the industry to openly review these conditions at an appropriate future date.

The additional drafting designed to provide clarity as to what constitutes Regulated Revenue is similarly 'open', in that it does not specifically reference third party financing, but it provides a definition that could be applied to any, or all, communication hub financing arrangements. This would leave suppliers potentially being obliged to undertake the third provision for all communication hub financial arrangements, which is not DECC's stated intention, see section 77 of the consultation response document.

Redress for bad debt

We seek clarity around the draft changes to Condition 11.12 (b) as this drafting introduces a new obligation on SEC Parties that further strengthens and gives legitimacy to the argument for financiers to be able to seek redress for bad debt under Third Party Rights (SEC M11.5) in order to ensure revenue flows to the Relevant Provider. However, this same drafting also effectively removes the obligation on those Relevant Providers (in particular CSPs) to pass on these revenues to those parties who provide the communication hub financing. We would therefore ask that the re-instatement of that obligation on the CSPs be considered otherwise there is a risk of introducing double jeopardy when drafting Licence Obligations and contracts in this way.

Conditions for non fulfilment of DCC obligations

Finally, we seek clarity around the combination of SEC drafting (section M11.5 (b)) and the new provisions and Licence Condition drafting that now appears to effectively allow the DCC to breach its obligations where "...the Authority has determined that the DCC is unable or unwilling to..." pursue bad debt. That is to say there are now provisions being put in place where the 'unwilling' DCC passes their obligation to not carry any debt over to Third Parties to recover. We ask whether or not this is the intention of these conditions or is a legitimate consequence of them.