

Consultation on the Draft DCC Licence

A Response from Energy UK

1st June 2012

OVERVIEW

The introduction of the Data Communications Company (the DCC) is a fundamental requirement for the operation of smart meters in Great Britain. As a licensed monopoly, it will be essential that the regulatory framework for the DCC and its activities are relevant and appropriate.

Energy UK's members are in support of the progress made so far by DECC as part of the Smart Metering Implementation Programme and welcome the opportunity to respond to the Draft DCC Licence consultation. Our response to the consultation questions is set out below.

DCC Licence

The draft DCC licence has been largely based on existing gas and electricity licences and as such there are a number of specific features which are different in the DCC licence to reflect the unique nature of the organisation.

The DCC licence will be granted following a competitive licence application process, which will be re-run periodically to appoint successive DCCs. Unlike typical existing licences, it is proposed that the DCC licence will be granted for a fixed, non-rolling term with the initial licence running for 12 years with an option to extend for up to a further 6. This is a position that Energy UK agrees with, however we do have a concern that the licence extension of up to 6 years can be granted from 31st March 2018, which is relatively early in the 12 year licence term.

Energy UK also believes that consideration should be given when granting and extending these licences to ensure that contract periods are not due for renewal at the same time as this could prove disruptive to the Industry.

There are two objectives in the DCC licence that focus on providing Mandatory Business Services effectively and economically, and to facilitate competition and innovation. This is consistent with the Energy UK position and we are pleased that the objectives around protecting consumers and promoting energy efficiency have been removed as suggested in our response to the previous consultation.

RESPONSES TO CONSULTATION QUESTIONS

1. Do you agree with the structure and content of parts 1 and 2 of the licence?

Yes, Energy UK agrees that a single licence is preferable and appears sensible based on the expectation for a single, cross-fuel governance regime sitting alongside the licensable activity.

Energy UK has previously suggested a 10 year term, extendable by up to a further 5 years, for the DCC licence. Based on the rationale provided by Government, in that it will be preferable for the DCC licensee to have operated any new or renegotiated service provider contracts for approximately 2 years in the case of a successor DCC being appointed, Energy UK agrees with the 12 year proposal along with flexibility for the Authority to extend the initial DCC's licence for a period of up to 6 years. Energy UK does have a concern that the licence extension of up to 6 years can be granted from 31st March 2018, which is relatively early in the 12 year licence term.

The proposed initial contract period for Service Provider contracts is also deemed reasonable by Energy UK.

The policy to have the ability for periodic replacement of the DCC means that the DCC licence needs to contemplate the handover of DCC activities to a successor DCC. Energy UK are pleased that provisions have been included in the licence to deal with this and to ensure there is as smooth a handover as possible to any successor DCC in order to minimise impacts on DCC users.

Energy UK believes that consideration should be given when granting and extending these licences to ensure that contract periods are not due for renewal at the same time as this could prove disruptive to the Industry, and to the operation of the DCC's services.

2. Do you agree with the proposed list of licence revocation events, in particular do you agree with the inclusion of revocation triggers linked to:
 - i. A failure of the DCC to comply with an enforcement notice issued under Section 40 of the Data Protection Act;
 - ii. A contravention of the licence condition or statutory requirement in a manner so serious as to make it inappropriate for the licensee to continue to hold the licence;
 - iii. A contravention of the independence Condition 9; and
 - iv. The licensee no longer being, or never having been, a fit and proper person to carry out the Authorised Activity?

Energy UK agrees that these revocation events seem reasonable for this type of contract. However we believe that it would only be appropriate for the Authority to revoke the Licence once the licensee had sufficient opportunity to rectify any recorded breach of the above conditions.

Energy UK is concerned at how a "fit and proper person" test will be assessed, and further consideration should be given as to how any such assessment might work in practice.

3. Do you agree that the DCC licence should be issued for a fixed-term only?

Energy UK agrees that the licence should be issued for a fixed-term only

4. Do you have any comments on Chapter 1 of the licence conditions, in particular do you have any comments on the drafting of the definitions?

Energy UK broadly agrees with the service definitions as described.

Core services should be the key essential services required for the successful operation of the end-to-end smart metering infrastructure, and as such, the DCC must be 'required' to provide these services to any authorised user – the provision of Core Services must be DCC's priority and Energy UK is pleased to note that Government has recognised this both in terms of the initial period of operation, and in ongoing operations once DCC is firmly established and fully functional.

The majority of Energy UK's members share the view that Core Services should only be available as standard services to compliant smart metering systems. As such, their view is that if an authorised user would like to take the Core Services for non-compliant metering systems, then they could be provided as Elective Services by the DCC. One member does have a view that Core Services should be available for non-compliant metering systems as well as compliant smart metering systems.

Energy UK's members have a consensus view that any variation to Core Services (such as the same activity, but on a more frequent basis) should be provided on an Elective basis.

It is then appropriate for the DCC to be 'permitted' to provide additional 'value added' or non-energy related services if they do not affect the DCC's ability to deliver Core and Elective Services, and that any financial benefits associated with providing those 'value added' or non-energy related services are fed through to all DCC users. The added requirement for the DCC to seek Authority approval for such services will provide the appropriate protections that ensure the DCC is not placing inappropriate risks on its ability to deliver against its SLA's for the Core and Elective services it provides. There needs to be a clear, transparent and well defined sign-off process for any Elective or Value Added service.

5. Do you have any comments on Chapter 2 of the licence conditions, in particular do you have any views on:
 - i. The general objectives of the DCC;
 - ii. The way in which the Mandatory and Permitted businesses of the DCC have been constructed;
 - iii. The interaction between the mandatory and permitted businesses;
 - iv. The proposed general and security controls for the DCC?

The objectives in DCC licence are consistent with Energy UK's members expectations and we are pleased that the objectives around protecting consumers and promoting energy efficiency have been removed as suggested in our response to the previous consultation.

6. Do you have any comments on Chapter 3 of the licence conditions, in particular do you have any comments on:
 - i. the independence requirements of the DCC and the interaction with the revocation provisions;
 - ii. the broad condition on protection of confidential information;
 - iii. the scope and nature of the role of the compliance officer?

Energy UK believes the DCC should be prohibited from using any confidential information for any purpose other than its licensed activity, including the very granular energy consumption data produced by smart metering systems. This restriction must also be placed on service providers via the contractual arrangements between them and the DCC (as well as any sub-contractors involved in providing any aspect of the DCC's services). Energy UK also believes that the DCC licensee must be independent from its users and service providers in order to ensure there is no ability for such parties to influence the behavior of the DCC licensee. The requirement for the DCC licensee to appoint a Compliance Officer is a necessary requirement for any licensee operating a monopoly service of this nature. As such, Energy UK supports the proposed licence conditions within Chapter 3.

7. Do you have any comments on Chapter 4 of the licence conditions, in particular do you have any comments on the drafting of:
 - i. the transitional obligations on the DCC, possibly as part of a wider transition scheme;
 - ii. the proposals for how the DCC would set out its future business development objectives;
 - iii. the proposed inclusion of a licence condition that would facilitate future transfer of registration to the DCC?

Energy UK has no further comment to make on the licence conditions proposed in Chapter 4. Our members all support the need for transitional obligations on the DCC, for the DCC to set out its future business objectives, and the future transfer of registration activities to the DCC.

8. Do you have any comments on Chapter 5 of the licence conditions, in particular do you have any comments on:

- i. The procurement obligations, including the balance between what the DCC must competitively procure and what it may self-provide;
- ii. The most appropriate role, if any, for the Authority in influencing how the DCC should balance various competing public interests, when preparing for future procurements of Fundamental Service Capability;
- iii. Do you have any evidence from other sectors about how the public interest is taken into account by regulated bodies when making major procurement decisions;
- iv. The obligations on the DCC in relation to provision of services, recognising that these conditions will need to be reviewed in light of a more detailed definition of services; and
- v. The charging methodology provisions, particularly the objectives of the methodology?

Energy UK suggest that care is taken by the Authority if they were to provide guidance to the DCC on balancing its public interest as any future disputes would have to be determined by the Authority.

With regard to the DCC's obligations to provide elective services, the Smart Energy Code consultation proposes to restrict the DCC from providing any elective services for a specified period immediately after go-live so that it can concentrate on ensuring that the provision of core services and enrollment of meters into the DCC are operating effectively. Energy UK believes that this restriction should be reflected in the DCC's licence, otherwise the DCC is likely to be in breach of the proposed Licence Condition 17.7 (terms in respect of Elective Communication services).

The remainder of our response is covered in our response to Q4.

9. Do you have any comments on Chapter 6 of the licence conditions, in particular do you have any comments on:
 - i. The scope of the SEC as set out in the SEC condition and the SEC objectives;
 - ii. Whether the DCC should have a licence obligation to maintain and keep in force the SEC;
 - iii. The proposal to allow the Secretary of State to block SEC modifications in the period up to 31 October 2018; and
 - iv. The way in which interoperability should be addressed through the SEC objectives?

Energy UK supports the need for a licence condition on the DCC to maintain and keep the SEC in force. Any objectives of the SEC should complement the objectives within the DCC's licence, and it is essential that the SEC Applicable Objectives reference these, rather than duplicate them.

The proposal to allow the Secretary of State to be able to block modifications to the SEC does need careful consideration. Whilst Energy UK's members can understand the reasoning to allow this, such powers should only be exercised as a last resort, and only in cases where there is a clear justification following a comprehensive consultation process with DCC users. Any process will need to be quick so as not to introduce unnecessary regulatory uncertainty to any modification decisions.

Energy UK also believes as an overarching principle that for every relevant SEC objective there is no need for duplication in the DCC licence.

10. Do you have particular comments on how best to ensure the consumer interest is met in the SEC Objectives, in particular:
 - i. Can you identify any potential scenarios where a modification might be proposed which would be in the interests of consumers but which would not be supported by the objectives set out for the code; and

- ii. If you think the objectives could be set out to better capture the interests of consumers, as opposed to the proposed approach for SEC objectives to be balanced in the round with due regard for energy consumers' interests, how do you think this could be done?

We are unable to identify any scenario at this stage where a modification might be raised in the interests of consumers. However, Energy UK believes that considerations should be given to some of the tensions between the DCC Licence and the SEC. Such as the development of new products to support consumer usage patterns would help to meet the licence condition objective to promote or facilitate competition in energy efficiency, however, these developments would potentially be constrained by the SEC objective to protect data.

11. Do you have comments on the proposed condition allowing the Authority to put forward code modifications and for this power to be limited to specific areas defined in the SEC?

Energy UK believes that the Authority should be able to put forward code modifications in limited circumstances. These circumstances should be defined narrowly and be based on the Authorities' primary objectives of the protection of consumers, and security of supply.

12. Do you have any comments on Chapter 7 of the licence conditions, in particular do you have any comments on:
 - i. The proposals in relation to financial security, in particular the requirement to provide a performance bond in addition to financial security?

The proposed provisions in relation to financial security are welcomed by Energy UK. Whilst it is assumed that the DCC licensee will be a relatively thin organisation, the importance of its role in the market must dictate the need for it to provide appropriate levels of financial security in order to demonstrate its commitment to the role for the duration of the licence term.

13. Do you have any comments on Chapter 9 of the licence conditions, in particular do you have comments on:
 - i. The need for the revenue restriction conditions in the DCC licence to evolve as the DCC's role changes;
 - ii. The need to incentivise the DCC to concentrate on achieving programme milestones at the beginning;
 - iii. The proposal that the DCC's internal costs should be passed through with a £/annum margin applied;
 - iv. That incentives on reduction in the DCC's internal costs and on output measures should be applied later;
 - v. That the DCC should be subject to an element of bad debt risk unless it takes reasonable measures to recover such debt; and
 - vi. Particular KPIs that could be applied to the DCC after it starts to deliver services?

The proposals all appear sensible, and we are particularly supportive of the proposal that incentives on reduction of DCC's internal costs and on output measures should be applied later, allowing the DCC to concentrate on delivering the Core services required as the roll-out progresses in earnest.

Suppliers have on several occasions picked up the socialised cost of defaults to existing Codes and the DCC must have incentive to collect and act effectively, recognising the DCC has limited capital.

14. Do you have any comments on Chapter 10 of the licence conditions, in particular do you have any comments on:

- i. The proposed arrangements applying to Management Orders, including the scope of the powers of the Authority in such circumstances;
- ii. The arrangements proposed in relation to the Business Handover Plan and the process for resolution of matters between the outgoing and incoming DCC;
- iii. The scope of matters that the Business Handover Plan should provide for;
- iv. The scope of the matters that may need to survive for a period of time to continue to ensure a smooth handover to the DCC's successor and whether the two year timeframe is appropriate; and
- v. The proposed approach to Intellectual Property Rights?

Energy UK believes it is absolutely essential that any critical services can be transferred to a successor in order to ensure there is seamless service provision during any transfer period and as included in our previous response to this earlier consultation we believe it is essential that the DCC's licence includes appropriate provisions to facilitate and possibly incentivise a smooth transfer between the incumbent and successor DCC. We are pleased to see that the proposals include:

- Provision of arrangements for the transfer of key assets (should there be any);
- Specific details requiring parties to participate in transition testing, with specific details of processes and procedures detailed in the SEC; and
- Provision of arrangements to facilitate modifications/change process during transition.

Energy UK would like to understand how Government intends for the issues below to be dealt with during transition in the absence in any SEC governance arrangements:

- Provision of arrangements to manage any SEC compliance issues (of SEC users) during transition; and
- Provision of arrangements to manage any ongoing disputes between SEC users and the DCC, and disputes between SEC users during transition.

Consideration should also be given to establish if it will be beneficial to provide some form of financial incentive on the outgoing DCC to facilitate the smooth transfer of the DCC licence. For example, it may be possible to withhold some element of the outgoing DCC licence holder's financial security payment to cover any costs that the new licence holder incurs as a result of the outgoing licence holder's actions. Of course, this could add complexity to the arrangements, but it could also provide an appropriate incentive for the outgoing party to behave appropriately during the licence transfer process.

Finally, it will be essential that the incoming licence holder has an appropriate knowledge and expertise of the energy industry. Regardless of the timing of a change of DCC licence holder, the nature of the energy market is such that there is always significant change and development occurring, and as such, any incoming licence holder will need to be able to hit the ground running to ensure minimal disruption to the services for all DCC users.