

Smart Metering Implementation Programme – Regulation Team
Department of Energy & Climate Change
3 Whitehall Place
London
SW1A 2AW

7 January 2013

Smart Metering Implementation Programme: Stage 1 of the Smart Energy Code – a Government response and a consultation on draft legal text

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including residential and business users.

EDF Energy welcomes the opportunity to respond to this Stage 1 SEC consultation and Legal drafting. Furthermore, we welcome the level of industry engagement from DECC throughout the development of the governance arrangements. We believe the opportunity to discuss the options in such detail has been very productive.

The Smart Metering Programme is moving from a period of development and design to system delivery and realisation and eventually to business as usual. We believe it is now appropriate for the programme to focus on the transitional arrangements and how to ensure that the industry, including DCC, DSP, CSPs and other interested parties get to the same point at the same time with the same level of certainty surrounding the availability of DCC systems and the ability to interact with these. This will require a different set of skills and requirements compared to the current programme and the business as usual work of the SEC. We believe that during this period the SEC could provide a useful governance function to resolve issues as they arise and ensure the most economic and efficient outcome for the industry and customers is achieved.

The key points of our response are:

- As the industry moves to DCC Go-Live there is a need to ensure that central DCC, supplier and other party systems are able to interact and operate effectively. This will require a period of testing, trailing and development prior to market go-live. It is likely that during this period significant issues will arise that will need to be managed to avoid delays to the DCC and cost escalation. These are likely to be technical in nature as end to end systems are designed and tested. Any changes during this period are likely to impact on suppliers as well as DCC and potentially other DCC Users. As such, there is a need to ensure that a co-ordinated approach to resolving these technical issues is taken so that the most cost effective solution for industry is implemented. Without this, there is a risk that the least cost solution identified by the DCC will create a significant cost for other parties and so overall increase costs for consumers. Due to the technical nature of these issues we believe that this role is best assured by the implementation of a technical sub-committee.

EDF Energy
30 Grosvenor Place, London W1A 3AX
(Incorporated in the UK)

EDF Energy UK
EDF Energy UK Limited
Registered Office: 30 Grosvenor Place
London W1A 3AX
Company No: 02068512

- We also consider that the SEC panel supported by a delivery sub-committee could play an important oversight role for the delivery and accreditation of DCC and DCC User systems. This will help to ensure that a co-ordinated approach to the delivery of system solutions is realised so that the DCC and industry systems are ready at the same points in time. During the period leading up to unconstrained mass roll out of smart meters there are several sequential phases that the DCC and Users will need to complete including system accreditation, integration, and market proving. This may require the appointment of third parties to oversee accreditation as well as an oversight role to ensure that the phases are completed sequentially. At a high level this role could be fulfilled by the SEC Panel, but given the skills associated with the delivery of a complex IT programme would best be supported by the creation of a delivery sub-committee.
- We note that there are several areas where there are inconsistencies between the executive summary, the body of the consultation and the legal text. For example, access to the DCC for metering agents is inconsistent between the executive summary, the body of the consultation in section 4.2.2 and section H2 of the legal drafting which does not restrict the access of a meter operator from any supplier activities. This has made it difficult to identify what is DECC's position and whether this has been adequately reflected in the SEC legal text
- In instances where the DCC is exposed to greater liabilities than its able to recover under its contractual arrangements, the SEC allows this to be recovered through fixed charges from suppliers and network owners. We do not believe that this is appropriate, as this could potentially leave licensed parties exposed to the costs of a breach caused by an unlicensed party. Instead, the DCC should ensure that any liabilities they are exposed to are backed off in their supporting contracts so that this issue is avoided.

Our detailed responses are set out in the attachment to this letter. Should you wish to discuss any of the issues raised in our response or have any queries, please contact

I confirm that this letter and its attachment may be published on DECC's website.

Yours sincerely,

Attachment

Smart Metering Implementation Programme: Stage 1 of the Smart Energy Code – a Government response and a consultation on draft legal text

EDF Energy's response to your questions

General question on SEC legal drafting

- Q1. Do you agree that the Government conclusions are appropriately reflected in the SEC Stage 1 legal drafting? Please provide a rationale for your views, and any further comments on the draft legal text.**

We have provided our detailed comments on the legal drafting as an appendix to this attachment.

DCC Charges

- Q2. Do you have any comments on format of the DCC's Charging Statement for Service Charges?**

EDF Energy is comfortable with the format of the DCC Charging Statement. It appears to be in a simple format and covers the items that we would expect to see.

- Q3. Do you agree with the thresholds applied to the 'first comer / second comer' principle (Five Year Rule for costs over £20,000)? If you disagree please set out the reasons for your preferred approach.**

EDF Energy agrees with the principle that suppliers requesting elective services should be refunded some of their development costs if subsequent parties request the same service at the same levels. This principle would avoid the DCC either charging twice for the same work, or allowing the subsequent parties to take advantage of the initial requesting party's innovation and development.

Furthermore, we support the mechanism for the reducing scale of those costs over a realistic period of five years. This approach will ensure a more equitable distribution of benefits from innovation in the early stages of the DCC.

We believe that the £20,000 limit is low and that £1,000,000 is more appropriate. This would ensure that the DCC Secretariat is not burdened with onerous recharging arrangements in respect of small projects.

SEC Panel

- Q4. Do you think the members of the Panel nominated by industry should be drawn from and elected in equal numbers by Party category OR be elected by all Parties (as set out in the legal drafting). Please give reasons for your answer.**

EDF Energy believes that the SEC Panel must include a representative of all party categories to ensure that suppliers have their interests represented and concerns raised. We therefore have a preference for Option A, whereby SEC Panel members are drawn from party categories on an equal basis. We believe that this will ensure that no single

party category with a large number of votes dominates the panel membership with their own members. Secondly, this will ensure that the panel can benefit from the insight of a member on any issue that impacts a particular party category. It is essential that the SEC Panel is formed by experienced members from a broad range of backgrounds in the early years of SEC governance.

Furthermore, we believe that any interim panel must also be selected from a range of party categories and as a minimum include both large Supplier and network owner representation as these will be the main active parties during the initial stages of the DCC operation. It is important that Government appoints initial Panel members that have the required areas of experience and expertise.

Modifications

Q5. Do you support the proposed composition of the Change Board and its decision making arrangements?

EDF Energy welcomes the proposal to implement a tiered governance structure for modifications that reflects the need for all large suppliers to be able to actively engage in the modification process. We believe the proposed composition of the Board appears appropriate and acknowledge the benefit of the inclusion of a consumer representative on the board to ensure that consumers' interests are explicitly represented.

Furthermore, we are supportive of the proposal on how Board recommendations will be reached i.e. based on the majority view of party categories that are affected by the proposed change. However, it will be important that such non-affected parties are appropriately identified during the assessment/report phases.

We continue to believe that the suggestion of making a recommendation to the Authority will not be beneficial and may hide the fact that a supported decision was in fact, marginal with some very large impacts to certain parties. This would also preclude, if supported by Ofgem, those parties from appealing the decision. We propose that the Code Administrator report is provided to Ofgem, with out a specific recommendation, so that the Authority can make their decision based on the full set of responses irrespective of the final vote. The detail of this alternative has been previously passed to DECC.

Q6. Do you think that the SEC should provide for Parties and the consumer representative to appeal Change Board recommendations before they are submitted to Ofgem? If so, what is the appropriate mechanism for determining such appeals?

EDF Energy supports the principle of allowing SEC Parties or the Consumer Representative to appeal Change Board recommendations before they are submitted to Ofgem provided a robust, efficient and transparent process is developed. Such a right will provide the industry with the opportunity to self regulate and potentially address any issues that were previously missed. However, we would be concerned if the process started to be used regularly by parties trying to delay modifications and frustrate the operation of the code. We believe any appeals process should be time bound such that appeals should be heard by an appropriate body (possibly the Panel) within 1 month of the decision.

- Q7. Do you have any further comments, or views on the cost implications to SEC Parties, regarding the proposals for governance, the modification process and the approach to appeal rights set out here and reflected in the legal drafting of Stage 1 of the SEC?**

EDF Energy do not have any further comments to make regarding the cost implications to SEC Parties, the proposals for governance, the modification process or the approach to appeal rights set out and reflected in the legal drafting of Stage 1 of the SEC. The drafting seems to fairly reflect the policy decisions of the consultation. Overall, we would like to reiterate our view that SEC governance, including the modification process, should be developed with cost efficiency in mind at all times. The more complex that processes and structures are, the more they are likely to cost.

Liabilities

- Q8. Do you agree that liability provisions for intellectual property rights and confidentiality should be included in the SEC. If so, do you agree that they should be unlimited?**

EDF Energy supports the liability provisions for intellectual property rights and confidentiality within the SEC, provided that there is clear understanding of when these provisions are triggered. However, we have a number of specific comments regarding the liabilities;

1. Can we imply from section 170 that there is a preference for such claims between SEC users to be channelled through DCC rather than all SEC parties claiming against each other in an "uncontrolled" manner? If this is the case, suppliers could only ever bring claims against the DCC and not other SEC parties. We require clarification that the DCC can be held responsible for any failures of the system, including those caused by the negligence of a SEC party. If that was not the case, and SEC Parties were not permitted to bring claims against each other in the event of a system issue caused by the failure of one or more SEC Parties, the innocent SEC Parties would be left without any claim.
2. The areas suggested for capped and uncapped liabilities are logical. However, until the caps are identified, it is difficult for us to comment on whether the coverage will be adequate and reasonable. We seek confirmation that in all areas other than payment of charges, the liabilities are mutual. We do not believe that this is clear in section 175 in the areas of IP and confidentiality.

- Q9. Do you agree with the Government's proposal that in instances where the DCC is exposed to liabilities that exceed what it can claim from the person causing the original breach, the net liabilities for the DCC will be recoverable from SEC Parties by way of an increase in the DCC's fixed charges?**

EDF Energy does not agree that the DCC should be able to recover uncollectable liabilities by the way of an increase in DCC's fixed charges. Not least because the breach could come from an unlicensed party, who was not liable for paying fixed charges. This liability would almost entirely fall on large suppliers and ultimately the consumer. Government has previously indicated that liabilities would be "backed to back" between DCC and their

sub contractors. We do not see why such differences would be "necessary or desirable" as the Government suggest.

Furthermore, section 179 suggests that the DCC "be able to recover any amounts not directly caused by its own actions, and that it cannot recover from the service providers, from SEC Parties generally". By including such costs in the revenue the DCC is permitted to recover through its fixed charges that are payable under the SEC. i.e.

1. SEC Party A sues DCC for £50m for something done by DCC sub-contractor 1 to SEC Party A
2. DCC pays SEC Party A £50m and then brings a claim against DCC sub-contractor 1
3. DCC sub-contractor 1's liability against DCC is capped at £25m, therefore DCC sub-contractor 1 is only liable to pay DCC £25m
4. DCC is £25m short following the claim through no fault of its own
5. Government is proposing that DCC recover that £25m through its fixed charges.

The net consequence of this action is that all SEC Parties (including the victim of the original breach) are collectively £25m down through no fault of their own. EDF Energy believes this approach is neither fair nor logical, it simply results in the SEC community subsidising risk for DCC subcontractors.

Dispute resolution

Q10. Do you agree that the Government's proposal to allow DCC to link service provider and SEC disputes in the arbitration process?

EDF Energy agrees that the Government's proposal to allow DCC to link service provider and SEC disputes in the arbitration process is a sensible suggestion and should reduce administration and possibly speed up the resolution process. Furthermore, we believe parties should be incentivised to efficiently resolve disputes prior to arbitration. For example, the process outlined in the MRA states: If the Contract Managers are unable to resolve a Dispute within 10 Working Days of the reference of a Dispute to them then any Disputing Party may refer the Dispute to the Disputes Committee by notice in writing to all Disputing Parties.

Code co-ordination

Q11. Do you agree that the proposed legal drafting covering change co-ordination with other codes meets the requirements as set out in chapter 5?

We agree that the wording of the proposed legal drafting covering change co-ordination with other codes does meet the requirements as set out in chapter 5.

Passing registration information to the DCC

- Q12. Do you agree that the proposed legal drafting for the SEC covering obligations on SEC Parties to pass registration information to the DCC is appropriate? Please provide a rationale for your views.**

It is essential that network parties including IGTs are obliged to pass daily updates of registration data to the DCC. This will be a fundamental prerequisite of the DCC functionality. We believe that the wording in the legal drafting is appropriate and should ensure that this happens on a timely basis.

While the drafting in Section E does seem to reflect this requirement, we would like to understand how under section E2.4 a supplier will be able to provide a flag for a premises being domestic or non-domestic. It is not clear that the supplier is the best source of this information?

Transitional arrangements

- Q13. Do you agree with the proposed variation to the SEC modification regime in the transitional period, including a right of veto for the Secretary of State?**

EDF Energy believes that it is appropriate for the Secretary of State to have the power to veto certain urgent modifications prior to DCC go-live. This should ensure that DCC go-live arrangements are not disrupted by any SEC modifications in the transitional period.

- Q14. Comments are invited on the approach to transition as set out in this chapter and section L of the SEC. Please provide rationale to support your views.**

EDF Energy supports the drafting of Section L of the SEC, such that only urgent or fast-track modifications should be allowed during the transition period, and that the Authority must have the ultimate decision making powers to determine whether a modification should be treated as urgent during that period.

We believe that the focus of the programme should now be on the transitional arrangements and how to ensure that the industry, including DCC, DSP and CSPs, get to the same point at the same time with the same level of certainty surrounding the availability of DCC systems and the ability to interact with these. This will require a different set of skills and requirements compared to the current programme and the business as usual work of the SEC. We believe that during this period the SEC could provide a useful governance function to resolve issues as they arise and ensure the most economic and efficient outcome for the industry and customers is achieved.

As the industry moves to DCC Go-Live, there is a need to ensure that central DCC, supplier and other party systems are able to interact and operate effectively. This will require a period of testing, trailing and development prior to market go-live. It is likely that during this period significant issues will arise that will need to be managed to avoid delays to the DCC and cost escalation. These are likely to be technical in nature as end to end systems are designed and tested. Any changes during this period are likely to impact on suppliers as well as DCC and potentially other DCC Users. As such there is a need to ensure that a co-ordinated approach to resolving these technical issues is taken so that the most cost effective solution for industry is implemented. Without this there is a risk that

the least cost solution identified by the DCC will create a significant cost for other parties and so overall increase costs for consumers. Due to the technical nature of these issues we believe that this role is best assured by the implementation of a technical sub-committee.

We also consider that the SEC panel supported by a delivery sub-committee could play an important oversight role for the delivery and accreditation of DCC and DCC User systems. This will help to ensure that a co-ordinated approach to the delivery of system solutions is realised so that the DCC and industry systems are ready at the same points in time. During the period leading up to unconstrained mass roll out of smart meters there are several sequential phases that the DCC and Users will need to complete including system accreditation, integration, and market proving. This may require the appointment of third parties to oversee accreditation as well as an oversight role to ensure that the phases are completed sequentially. At a high level this role could be fulfilled by the SEC Panel, but given the skills associated with the delivery of a complex IT programme would best be supported by the creation of a delivery sub-committee.

Licence conditions

Q15. It is the Government's intention to introduce a regulatory obligation on suppliers to enrol SMETS-compliant domestic meters with the DCC and that this obligation would apply in relation to smart meters installed (from a specified point in the future). Do you agree with this intention? Please provide a rationale for your views.

EDF Energy believes that all foundation meters that meet the enrolment criteria must be enrolled into the DCC once the DCC systems are stable. All suppliers should be obliged to enrol such meters. This will ensure that large volumes of meters are not operated outside of the DCC under the enduring arrangements and the DCC is able to achieve the economies required. This will also help to ensure that consumers are not denied functionality as they are restricted to the services of an SMSO.

It should be noted if the meter is fully compliant and the communications contract is not adopted it may require the communications hub to be changed which will require a site visit. We believe that the installing supplier must fund any additional costs associated with the enrolment of a foundation stage meter, including the costs of replacing the communications hub where this is necessary. Furthermore, EDF Energy is concerned that the data enrolment criteria as currently drafted, will give rise to foundation meters being enrolled into the DCC that would increase the DCC's costs over and above that compared with the enduring solution. Given the proposed DCC charging mechanism this would result in suppliers and customers not party to those arrangements incurring additional costs. We do not consider this policy to be equitable.

EDF Energy's position on the enrolment of foundation stage smart meters is as follows:

1. Smart Metering Systems ("SMSs") should be compliant with as a minimum SMETS 2 in order to qualify for enrolment;
2. All SMSs that do not qualify for enrolment must either be upgraded or replaced with a qualifying meter which must then be enrolled with no termination payment being payable by the second tier Supplier.

3. Any costs associated with the enrolment of foundation stage SMSs must be borne by the installing supplier.
4. At a minimum, SMSs must include ISO 27001 certification security and privacy features in order to qualify for enrolment;
5. The SMS must support firmware upgrades while maintaining normal metrology functionality in order to qualify for enrolment at the risk of the installing supplier;
6. The smart metering system must support DCC Core and Elective Services in order to qualify for enrolment.

Q16. Do you agree in principle with the placing of a licence condition on gas and electricity suppliers to accede to and comply with the SEC?

EDF Energy agrees that a licence condition on gas and electricity suppliers to accede to and comply with the SEC is required.

Q17. Do you agree that the licence conditions as drafted meet the policy requirements as set out in the chapter? Please provide a rationale for your views.

EDF Energy has reviewed the draft Licence Conditions in Annex C. We believe that the drafting is consistent with the policy set out.

Q18. Do you agree in principle with the placing of a licence condition on gas and electricity network operators to accede to and comply with the SEC?

EDF Energy agrees that a licence condition on gas and electricity network operators to accede to and comply with the SEC is required.

Q19. Do you agree that the licence conditions as drafted meet the policy requirements as set out in the chapter? Please provide a rationale for your views.

EDF Energy has reviewed the draft Licence Conditions in Annex C. We believe that the drafting is consistent with the policy set out.

Appendix 1

EDF Energy comments on legal drafting

When reviewing the legal drafting of the Stage 1 Smart Energy Code in detail, we would like to make the following comments;

Section	Reference	Comment; and Proposed amendments
A	"Approved Products List"	Is the DCC going to maintain the Devices? Suggest word changed to supported
	"Designated Premises"	Improve wording with "has the meaning given to that expression in the Electricity Supply Licences or the Gas Supply Licences".
	"Domestic Premises"	This definition will capture 'domestic premises' that fall outside the formal definition within the licence and hence the roll-out obligation e.g. those domestic premises that fall within a multi-site contract and which are classed as non-domestic premises will be captured under this definition.
	"Meter Operator"	Should read "has the meaning given to that expression..."
	"Meter Asset Manager"	Should read "has the meaning given to that expression..."
	"Related Person"	Drafting appears convoluted. Suggest using the term "immediate family" rather than the list at the beginning.
	"Smart Metering Equipment Technical Specification" and "SMETS"	Don't need two defined terms for the same thing. Amend first term to "Smart Metering Equipment Technical Specification (or SMETS)"
B	B1.5	Insert the word "reasonable" before "costs incurred by or on..."
	B1.8 (c)	Notification to each Party should also be required.
C	C1.2	Typographical error in line 3; delete "are set out in"
	C2.3 (c)	"Budgets" is not a defined term
	C2.3 (d)	"Modifications" is not a defined term
	C2.3 (j)	No sense of what a reasonable request would be. Should at the very least be limited to information that the Authority reasonably considers is required for it to carry out its statutory functions etc.
	C2.3 (k)	Delete the word "invited" and replace with "entitled to attend and speak"
	C3.3	Add the word "prior" after "from time to time by"
	C3.4	Add the word "prior" after "from time to time by"

Section	Reference	Comment; and Proposed amendments
	C3.5 (a)	Delete the word "reasonably"
	C3.5 (f)	The word "required" is not appropriate. Suggest "the Panel Chair may continue...."
	C3.6 (b)	A person having an interest in the SEC arrangements is too vague. It should be limited to a SEC participant (a Party) whose interests are not adequately represented.
	C4.1	Typographical error in last sentence "wit" to be replaced with "with"
	C4.2	Should the reference to "Section C4.3" be "Section C4.4"?
	C4.2 / 4.3	Propose that these provisions should be amended to reflect the preference for Option A i.e. equal number of members per category group
	C4.4	General Question, Are retired elected members allowed to be re-elected?
	C5.10	Add words "Subject to Section C5.9" to the beginning
	C5.15	Should it not be within the power of the Panel Chairman to exclude, on grounds of confidentiality, any non Panel Member from a part of a Panel meeting? For example, the Panel will have a role regarding disputes and it may not be appropriate for Party reps to be in attendance during such sessions.
	C5.16	Should not the minutes be approved before circulation? In which case 5 working days appears too short. Standard process is that minutes are circulated to Panel Members and then approved at the following meeting and then published. Why the difference here?
	C6.2	Is there any real difference between a fixed period and finite purpose?
	C7.7 (f)	Typographic error; delete "ensure that"
	C8.11	The words "prepare and" are not required
D	D1.1	For clarity reference to the transition provisions in Section L should be inserted.
	D1.3 (d)	Could be interpreted as the Authority could direct itself to raise a proposal.
	D1.7	Proposer should be required to identify the defect that the proposal is seeking to address. This is particularly important when alternatives are considered as such alternatives must be addressing the same defect. Proposer should be required to make a statement that its proposal is not within the scope of an ongoing SCR – links to the restriction on modification proposals that are within the scope of an ongoing SCR proceeding through the mod process until such time as the SCR has concluded.

Section	Reference	Comment; and Proposed amendments
	D2.3 9b)	Could be interpreted as the Authority could direct itself to raise a proposal.
	D2.3	Inconsistent use of terms – in place proposals are “raised” and in others they are “submitted”.
	D2.5 (e)	More appropriate to be “undue discrimination”?
	D3.5 (b)	Why the different timescales for fast track mods?
	D3.6 (f)	Typographical error. Delete “for”
	D3.6	Comment linked to D1.7 – consideration of whether the proposal is within the scope of an ongoing SCR
	D4.1	Why can't the Panel be able to move proposals from Path 3 to Path 2 without the need for an explicit Authority determination?
	D5.1	Delete “support for the”. Confusing, the right is to withdraw the actual proposal not just its support.
	D6.2	No mention of a Working Group Chairman – it should be the Panel's responsibility to appoint a chair.
	D6.4	Any Party (& Authority?) should be free to attend Working Group meetings and speak if invited to do so by the Chairman.
	D6.7	Reference should be to “Section C6” not “C7”
	D6.8 (d)	Is this not covered by (a)? Therefore is a duplication
	D6.14 (a)	Insert “legal” before “text”
	D6.15	Key concept of alternative proposals is missing. An alternative proposal needs to address the same defect identified by the proposer of the original proposal. Also to be a valid alternative it needs to better meet the code objectives when compared to the original proposal. This would need to be the majority view of the Working Group.
	D7.8	Do not understand why the DCC cannot participate in Mod report consultation.
	D7.8 (c)	“next meeting” unclear when this is. Is it the next meeting following the ending of the consultation period on the mod report? If it is, it is not clear.
	D8.9 (d)	Given the vote should be on the basis of SEC objectives why can't all Change Board Members express a view and vote on all modification proposals irrespective of whether their particular party category is affected? The consumer rep gets to vote on every one!
	D8.12	For quorum, is at least three from Supplier Parties enough?
	D8.14 (b)	In the event that both the original and alternative are deemed to better meet the SEC objectives that both should be capable of being recommended for approval to the Authority (Path 1 and 2 only). A preference could be provided between the two, but should be capable of being recommended for approval.

Section	Reference	Comment; and Proposed amendments
	D9.2	<p>Could this not be construed as putting an obligation on the Authority which is not permissible? We don't believe this wording is required as the Authority can only act in accordance with its statutory duties.</p> <p>If this comment is ignored and the wording remains then (d) should be deleted. No grounds for any other consideration other than that set out already.</p>
	D9.3 (b)	Important that any revised Modification Report follows the same process as if it was the original report i.e. it goes out for consultation etc.
	D9.4 (a)	<p>"within 10 working days" – although the Code Administrator has to communicate the decision of the Change Board there is no timescales placed on this – therefore the 10 days needs to be linked to when the decision is published and not necessarily the date of the decision.</p> <p>Needs to set out the grounds for any appeal, can't just simply disagree – relevant for (b) also.</p>
	D9.4 (c)	Path 3 modifications should not be implemented during the appeal window. This would prevent the need to reverse implementation.
	D9.5 (e)	As above.
	D10	No consideration is made as to the impact of any appeal, be it an appeal under the code or in accordance with the Energy Act. For example, an appeal may provide for the suspension of implementation whilst it is being considered.
H	H2.11	This seems to be inconsistent with p16 (24) of the consultation that restricts the services available to Meter Operators. We are concerned that the drafting does not include this restrict or provide detail of where it will be placed.
L	L1.3 ©	Some timescales should be applied to the SoS's right to cancel – you don't want the Panel, Ofgem and any working group assessing and refining a proposal and then find at the end that the SoS cancels it.
J	J1.9	If the DCC invoices in error such that the amount paid is significant. Should the party be able to claim interest at a default rate on the monies paid?
	J2.4 (d)	What is the deadline for providing papers into the panel in the event of a dispute?
	J3.3	Need clarification on whether charges will include VAT or not?
	J3.7	Credit reports tend to have recommended credit values contained. What happens if the credit required is lower than recommended?
	J3.9	Parties should be sent notices at 80% of their cover to allow them

Section	Reference	Comment; and Proposed amendments
		to take action immediately. Suppliers to either pay an invoice or choose to increase their cover.
K		We do not agree with the Government's proposals to allocate fixed costs based on Suppliers' share of 'mandated Smart Metering Systems (i.e. Suppliers market share). We consider that fixed costs should be allocated based on Suppliers' forecast rollout profiles updated for actual numbers of smart meters rolled out to date. Our proposed approach will ensure that fixed costs are recovered on a cost reflective basis thereby providing appropriate incentives on all market participants to minimise costs where ever possible (i.e. allocative efficiency) Governments opposed approach will force some suppliers to pay for fixed costs in respect of services from which they are not yet benefiting. We note that the current proposals represent a deviation from Government's previous position but that the Government has not provided any clear rationale for this change.
	L1.3 (d)	This potentially has an impact on appeal rights to the Competition Commission C. To be able to appeal you need to have a divergence in view between the Authority and the decision making body under the code. Under normal SEC arrangements this decision will be that of the Board, whereas in transition it will be the Panel – need to ensure that the appeals rights reflect this position.
	L2.2	The consultation document (p74) refers to the original elected members still being appointed following the election process that will apply during the enduring process, but will be formally nominated by the SoS. However, the wording of the code makes no reference to the process to be adopted by the SoS and appears to give total flexibility as to how the SoS nominates the six individuals. Propose that additional wording is included that cross references the election process set out in C4.2.
	L2.3	Who or what determines which of the three elected members retires 12 months after designation? Given the election process still proceeds for the original membership, why should the term of the designated panel members be different to the enduring panel term of two years?
	L2.4	In the period where there is no formally appointed Panel Chair (could be up to 5 months) voting could be tied given a Panel membership of 8. What happens in such an event?
M	M4.3 (e)	This should be restricted to use of data and not disclosure. As drafted it would allow disclosure of Confidential Information if the information was lawfully acquired.
	M7.1	Insert "within reasonable timescales" after "Dispute"

Section	Reference	Comment; and Proposed amendments
	M8.8 (b)	Delete. This is not a SEC issue. It's a licensing issue between the licensee and Ofgem that should sit outside of the SEC framework.

EDF Energy
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