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Consultation reference: URN 12D/034

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1 June 2012

Dear Sir/Madam,

Energy Networks Association Response to the DECC Smart Metering Implementation Programme Consultations – Smart Energy Code (SEC)

Thank you for the opportunity to respond to your consultation on the proposals for Smart Energy Code (SEC).

As you are aware Energy Networks Association (ENA) is the industry body representing the UK's electricity and gas transmission and distribution networks operators. The following comments are provided by ENA on behalf of its member companies in response to the DECC consultation on Smart Metering Implementation Programme published on 5 April 2012.

A number of ENA member companies have responded individually to the consultation. The comments in the appendix accompanying this letter are submitted in support of the individual submissions provided by our member companies.

If you require further information or you wish to discuss any of the content of this reply please contact

Yours faithfully

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APPENDIX

Energy Networks Association Response to: Consultation on the Smart Energy Code (Reference URN 12D/034)

1. *Please provide any comments that you have on the classification of party categories under the SEC.*

We believe that the party categories listed are the minimum that should be considered at the SEC Commencement Date. Energy Networks Association (ENA) reiterate our member's view that the role of the National Electricity Transmission System Operator (NETSO) should be added to the classification of party categories within the consultation. Both National Grid and ENA, in responses to previous smart meter consultations, have outlined how the role of the NETSO will need to interact with smart meters in order to facilitate the efficient future operation of the National Electricity Transmission System (NETS) as we transition to a de-carbonised industry. This ability for the NETSO to interact with the smart meters, in accordance with the SEC, will facilitate the economic operation of the NETS leading to benefits to the end consumer and thus it is in consumer interests. We consider that the NETSO must therefore be included as an explicit party category within the SEC classification.

We do not believe that it will necessarily be a requirement for gas shippers to accede to the SEC when registration of suppliers takes place within the SEC. Current industry governance is capable of placing obligations onto shippers through their supplier. For example, currently there are obligations on shippers within the Uniform Network Code (UNC) which specifically provides for the supplier to be the data provider. This mechanism could similarly be utilised to pass information relating to shipper activity through the SEC.

We also believe that the concerns expressed by MAPs in relation to tracking their assets are legitimate and that MAPs should be a nominated party category. In addition we suggest that consideration is also given to the DCC User Gateway Service Provider being a nominated party category, their role will be pivotal to the operation of the DCC.

2. *Are the requirements of both meter asset providers and meter operators for access to smart metering systems adequately captured in this consultation paper? If not, please provide additional details of the requirements and why they are required.*

We agree that the requirements and main concerns of MAPs and MOPs in respect of access to DCC services are captured by the Consultation. We acknowledge the relative simplicity of Option B (the 'nominated agent' approach) compared with Option C ('nominated meter party') and agree that Option B would meet Meter Operator's reasonable needs. However, we do not believe that Option A whereby Suppliers would nominate a MAP as a nominated agent is sufficient to meet MAPs' concerns.

It is important to understand the pivotal role that MAPs will play in terms of ensuring a successful and economic role out of smart meters and in terms of the ongoing management of the meter assets. Any financial risks to MAPs that are inadequately mitigated by the provisions of the SEC will lead to additional costs of financing and hence reduced net benefits to consumers. We therefore support, as a minimum requirement, the tracking of meter assets being included within the future system requirements for the new registration systems (when implemented) to be provided by DCC.

Further, we want to note that any existing issues the gas meter asset providers are having in tracking their assets over the life of the asset, should rightly be addressed in existing codes. Mandated processes for meter asset managers and meter asset providers to form a formal relationship where they exchange the correct details are the best way to ensure interoperability is maintained. These arrangements are more likely to come into effect before the DCC and therefore a better solution to the meter asset provider issues.

3. *Do you support the Government's preferred solution to implement a simple variant of Option B whereby the registration of a meter operator in the existing electricity and gas registration systems would be deemed to constitute a nomination by the supplier of that meter operator to act as its agent to perform a specific set of commands?*

We support Option B as a minimum requirement; however some of our members prefer Option C, as it still maintains the supplier hub principal and places SEC obligations directly on meter operators. This will enhance SEC compliance, data security, audit and SEC communication with meter operators.

4. *Should meter operators be given limited participation rights in SEC governance under Options B or C, and if so what rights would be appropriate?*

Our electricity members' view is that meter operators should be given limited SEC participation rights under option B and C matching the existing rights given to these parties under the supplier-hub principle. Participation should be limited to the right to raise changes to code subsidiary documents and submit comments on proposed changes to code subsidiary documents. Meter operator direct input to the code subsidiary change process would result in more effective industry processes.

Our gas members' view is that it should not be necessary for meter operators to be SEC parties as contractual arrangements with suppliers should afford them the necessary data requirements. It may be appropriate to afford some non-SEC parties rights to raise modifications within the rules if they are materially affected parties. This principle exists within the UNC in relation to changes to charging methodology and the test of being a materially affected party is taken on a case by case basis without needing to allow unlicensed parties permanent rights under the SEC.

5. *Would you support the tracking of assets being included within the future system requirements for the new registration systems, which are proposed to be provided by the DCC?*

Some of our members believe that asset tracking to support meter asset providers can be provided effectively by the current registration systems.

In electricity, meter asset providers receive notification of changes in supplier registration and can also identify suppliers registered for the meter assets they own through ECOES. Some of our members believe that asset tracking can be provided effectively by the current registration systems. However, some of our electricity members support the aspiration to track assets being included in the proposed DCC registration system as they believe that this is an area of weakness under current arrangements.

With the proposed gas changes to allow meter asset providers to access data about their assets including details of the registered supplier, our gas members feel that the asset tracking requirement is nearly met and can be achieved outside of the DECC Smart Metering Implementation Programme. This information is required to carry out the necessary calculations to convert meter readings into energy for settlement purposes. For energy settlement arrangements to remain with the gas transporters, this information will continue to be required, although the source of the data may change with future arrangements. Overall, from a gas perspective, if changes are made to the existing arrangements they should only be made if evidence shows that the benefits of making industry wide changes justify the cost.

6. Do you agree with the process proposed for accession and the accession time limit?

We agree with the proposed process for accession and that parties must start to take DCC services within 6 months and that the SEC Panel has the discretion to extend this period if a party is actively working to take DCC services. This process is consistent with arrangements elsewhere in the industry.

Most of our members have commented that it is likely that within the first six months of DCC go-live, such a low volume of meters will be installed that network operators will still be in the process of developing the appropriate systems to manage the data. We accept that it is appropriate that a time limit is imposed to ensure that only active participants are involved in the process; but our members are concerned that network operators will be obliged to accede to the SEC but are unlikely to benefit from taking DCC services until sufficient volumes of meters installed (which may not be until later in the mass roll-out). Given this timeframe Network Operators whilst acceded to the SEC may not have completed the DCC entry process and could fail to meet the accession time limit. ENA therefore recommends that DECC considers accession scenarios for Network Operators who may not be actively taking DCC services.

7. Do you agree that once acceded, any SEC Party should be able to participate in the governance of the SEC prior to undertaking any further entry processes?

The majority of our members agree that it is consistent with existing gas codes that accession allows parties all rights without the requirement for further processes.

However, one of our members holds the view that unlike the existing industry codes, parties acceding to the SEC are likely to be offering a wide range of services and operate a variety of different business models. Therefore from DCC Go-Live they would favour the position that parties acceding to the SEC should have access to appropriate SEC services but not participate in the governance process until they start to take DCC services.

8. Do you have any views on the company, legal and financial information that should be provided as part of the SEC accession process?

During the accession period each prospective SEC Party should provide enough detail about itself in order to allow the DCC (Code Administrator) and SEC Panel to determine if it is a genuine party of its classification, if it holds the relevant, active Licences, company details and that it can pay any future charges levied upon it.

The Balancing and Settlements Code (BSC) sets out a level of detail which we believe is relevant, and provides enough confidence in that Party to allow it to be entered into accession.

9. Do you agree that Government should not mandate a specific solution for the DCC User Gateway and that Data Service Provider (DSP) bidders should be invited to propose the solution which they consider to be the most effective (such proposals could include the option of extending an existing industry network)?

Existing industry parties have infrastructure to support one or both of the existing industry networks. These will need to be maintained until at least when registration activities are undertaken by the DCC. To minimise the impact of change and risk we favour an open standards solution that would allow parties the option of delivering /receiving data via one of the existing industry networks of their choice. By using an open competitive process, it is more likely that the eventual solution for the gateway will be cost effective and suitable for the SEC purposes. While existing mechanisms exist within both the gas and electricity regimes, neither are currently installed with all prospective SEC parties. Whilst we recognise the benefits of your chosen option we need to ensure that, when evaluating the bids, due consideration is given to the industry impact, and costs associated, with the need to have potentially two service providers offering data transfer services. If the approach adopted does not justify such a requirement, consideration should be given to Option 1

10. Do you have any other comments on the Government's proposals for the DCC User Gateway?

We agree that government should not, as a matter of principle, mandate a specific solution for the DCC User Gateway. However, while we agree that the DSP bidders should be invited to propose a solution, it will be important to ensure that the solution meets the needs of prospective DCC Service Users (SEC Parties). It will be important not to exclude the extension of an existing industry data networks; indeed we believe there would be considerable merit in terms of de-risking the implementation of DCC services by giving full consideration as to how an existing and proven industry network might be suitably extended to provide the required Gateway. We therefore propose that DSP bidders should not only be invited to propose a solution, they should be explicitly required to give full consideration to the use of an existing industry network and provide full economic justification to support any decision not to use such a network.

We would anticipate that the selection criteria against which DSP bidders and their proposed user gateway solutions will be measured will include the following:

- robustness;
- stability of underpinning technologies;
- timescales for delivery;
- performance;
- cost to serve;

- economic justification if decided not to use existing data network; and
- scalability / flexibility.

Distributors have a licence obligation to provide data transfer services. It is understood that this provision will still be required as well as the DCC having an obligation in its licence, however there may be a need to amend this requirement to make it clear under what circumstances it will apply when the DCC is in place.

11. Do you agree with the proposed DCC user entry processes?

Our members broadly support the proposed approach to entry processes, as outlined in the consultation document. However, some of our members believe that considerable development work is still required to develop these basic principles into a detailed process that is fit for purpose.

Taking these high level proposals individually, the consultation document suggests that SEC Parties will need to demonstrate that they can:

- meet the necessary security requirements;
- communicate effectively with the DCC;
- execute the relevant business processes, and
- provide any necessary financial security.

Clearly the need to meet the security requirements of the SEC will be of paramount importance. However, questions, such as whether Parties need to secure accreditation to an established security standard (e.g. ISO 27001) or if they need to merely demonstrate compliance, have still to be answered. Consideration should perhaps be given to a risk based methodology, which would promote the level of flexibility that better suits new entrants to the market. It is also important to ensure that the specific requirements, when established, are proportionate and will not unnecessarily disadvantage smaller industry participants.

12. Do you agree with the proposed rights and obligations relating to smart metering system enrolment set out in this chapter? Please provide your views.

It will be important for the SEC to stipulate the requirements on suppliers and DCC in respect of enrolling (or withdrawing) smart metering systems and notifying relevant SEC Parties. We therefore agree with the proposed rights and obligations set out in Chapter 7. We also agree that in the specific circumstance of a network operator replacing a smart meter (for example as part of a contracted emergency service) the network operator is acting as the supplier's agent; hence the obligation in respect of notification remains with the supplier.

However, Chapter 7 makes no provision for MAPs to be informed of any withdrawal (by a supplier) of a smart metering system from the DCC communications network. With reference to our comments under Q2 - Q5 above, we believe that there should be an obligation on DCC (once the DCC becomes responsible for meter registration) to also notify the relevant MAP. Similarly, in the event of a supplier or their agent replacing a meter (for example a network operator in providing an emergency service), the DCC should be responsible for notify the registered MAP for the removed meter.

13. Do you agree that the SEC should require, as a condition of enrolment, that the supplier grants the right to the DCC to access its smart metering system for specified purposes?

The right of the DCC to access a meter system on enrolment is essential to support the enrolment process, security and provide services to DCC parties including network operators' smart grids functionally.

14. Do you agree with the proposed rights and obligations relating to smart metering system withdrawal and replacement of devices?

We agree with the proposed rights and obligations related to withdrawal and replacement of smart metering systems.

15. Do you agree with the three different types of eligibility to receive core communication services that have been proposed?

We agree with the proposed three specified core communication service eligibility categories. In particular we agree that the core communication services should be available to the relevant electricity distributor or gas transporter. The separation of services to eligible party types allows for quick and effective initial verification prior to carrying out full validation of the requesting party. This classification should also allow groups of users to have suitable control over proposed changes to these core services.

We are not aware of situations where there are currently two or more importing suppliers (or parties) in relation to a single smart metering system. We would not however preclude the possibility that such a scenario might in future occur; for example it is not inconceivable that a supplier might in future offer a specific service relating to an application served by a dedicated circuit in the consumer's property. An example might be an electric vehicle charging service metered through a dedicated register in the smart meter (or alternatively using a sub-metering arrangement).

16. Are you aware of situations where there are two or more importing suppliers in relation to a single smart metering system and if so, where do such situations exist, how many exist and what metering arrangements have been made?

N/A

17. Do you agree that amendments to the set of core communication services should be subject to the standard SEC modification process?

We agree that amendment of core communication services should be subject to SEC modification process. It is essential that parties have visibility and ability to influence control of core services. The codes modification processes within gas and electricity networks industry ensure that all parties are aware of potential change and have an opportunity to influence this. It is appropriate that such changes within the SEC are subject to the same opportunity.

18. Do you agree that SEC Parties should be able to request elective communication services from DCC on either a bilateral or multilateral basis?

It will be important to maintain control over the range and scope of core communications services without stifling innovation or precluding the possibility of elective services becoming core services. With this in mind, the proposal of using the standard SEC modification process seems sensible.

We agree that it should be possible to request elective services on either a bilateral or multilateral basis.

In the case of a party requesting a service that is of a generic nature that is likely to be of use to other users, it would be efficient for such requests to be made on an open basis. This provides an opportunity for the costs associated with development to be shared with other potential users and provides transparency of services provided. In cases where requests are company specific and likely to have impact on matters of commercial sensitivity bi-lateral services would be appropriate. The DCC may be able to assess the likelihood of requested elective services being suitable for each path and advise the requestor accordingly.

We do not see any reason to differentiate between core and elective services in terms of SEC requirements for DCC user entry processes relating to the important matters of technical and financial security and data privacy, or indeed to dispute arrangements. Such provisions are essential to the overall integrity of the smart metering system and the functioning of the DCC.

19. *Do you agree that the following SEC requirements associated with the provision of core communication services should also apply to elective service provision: DCC user entry processes, technical security requirements, data privacy requirements, financial security requirements and dispute arrangements.*

We agree that all the listed requirements should also apply to the provision of elective services to ensure the same safeguards are in place for all parties. The risk to the entire system is exactly the same regardless of the services being requested. Such services fall under the Regulated Duties definition to be offered by the DCC and therefore all parties should adhere to the same Governance and entry process accreditation. The requirements should be made clear to all parties requesting such services.

20. *Do you agree that the SEC should set out mandatory procedures for the provision of an offer of terms for elective communication services by the DCC and with the mandatory procedures proposed? Do you consider that any additional procedures should apply? What do you consider are the appropriate timescales within which an offer of terms should remain open?*

We agree that the SEC should set out a process for the provision of an offer for elective services by the DCC. It should recognise that the DCC should have right not to provide terms for an elective service due to capacity or technical constraints.

Once a party or parties have been offered terms by the DCC for an elective service the offer should remain open for a period of three months. Once accepted both the DCC and the party or parties may need an agreed time to implement the elective service.

It will be essential to ensure that any requested elective communication service is subject to terms and conditions that maintain the necessary levels of security and data privacy, and that the nature of the elective service is such that did not amount to a breach or compromise of the principles of data privacy protection laid down in chapters 3, 4 and 5 of the Data Access and Privacy consultation (in respect of Suppliers, Network Operators and Third Parties respectively).

21. Do you agree that commercially sensitive terms and conditions associated with elective service provision, which might include the type of communication service that is being provided, performance standards associated with the provision of that service and the price associated with that service, should be confidential between the DCC and the party or parties receiving the service unless the party or parties receiving the service consent or unless requested by the Authority pursuant to the DCC Licence?

Whilst we understand the argument that non-disclosure of commercially sensitive information in relation to elective services might promote innovation (effectively through protection of intellectual property) we would also be concerned that a proliferation over time of elective services which may have several common features could lead to an uncoordinated and inefficient provision of services by DCC. We question in any case how it will be possible to maintain confidentiality as consumers will presumably need to be made aware of the services they are being offered (and/or competitors will quickly analyse the nature of the elective service that is behind a consumer proposition).

It is also questionable how much scope for innovation there really is and whether the (probably temporary) benefits to the party resulting from that service remaining confidential for a period of time would not be more than offset by the potential benefits arising from elective services being sufficiently visible that collaboration between parties seeking to offer similar services would be encouraged. Collaboration should result in lower overall charges due to standardisation and economies of scale.

These concerns are to some extent addressed by the proposal that DCC should notify SEC Parties of the timing of implementation of changes to its systems and by the fact that the Authority will monitor that the DCC is complying with its revenue restriction condition (and hence not effectively double charging for similar services and over-recovering fixed costs). Nevertheless, our belief remains that full disclosure of information associated with elective services is likely to lead to greater efficiencies and hence lower costs for consumers and that collaboration over elective service provision might actually lead to superior service offerings.

If it is felt important to stimulate innovation by providing some first-mover advantage then a reasonable approach could be that commercial confidentiality relating to an elective service is protected for a defined period of time before being disclosed to all SEC parties.

We see benefit in DCC being restricted to providing requested elective services only from a specified date. This would enable DCC to consider request in the round and hence design its services so as to exploit synergies within such requests and hence reduce its costs (clearly disclosure of elective service offerings would further facilitate such synergies). This should not however preclude DCC from being permitted to consider such requests in the meantime, including before it begins to operate services (especially if such consideration enabled parties to collaborate where synergies became apparent).

We see no reason to specify the time when DCC should be permitted to offer terms but we agree that the DCC should not be obliged to do so until such time necessary to enrol smart metering systems and establish core communication services had elapsed.

22. Do you agree that the SEC should contain provisions requiring that the DCC notifies SEC Parties of the timing of the implementation of changes to its systems?

We agree that the SEC should contain provisions requiring the DEC should notify parties of timing and implementation of system changes.

Similar to the UNC requirements contained within section U, the SEC should have suitable notification periods to enable all SEC parties to also make necessary changes to systems. Minimum notification periods may vary dependant of the type of change and complexity. This ensures that all parties are able to take services without uncertainty about the means of obtaining the services.

23. Do you agree that the DCC should only be required to offer terms for elective communication services from a specified date, and if so, what do you consider that date should be?

We agree that the DCC should only be required to offer terms for elective services from a specific date. DCC should focus on the enrolment of smart metering systems and the provision of core communications. DCC should have the ability to offer elective services after such time that it can reasonably demonstrate that systems in relation to core services are well established and operating in an efficient manner.

24. Do you think that the proposed approach for DCC charging is reasonable?

The consultation rightly notes that benefits to network operators will be minimal until (at least) such time that roll-out is substantially complete. Energy Networks Association (ENA) has provided substantial evidence both to quantify and explain the nature of the potential benefits for electricity network operators associated with the smart metering system. The major component of such benefits will be long-run in nature, i.e. related mainly to the potential for reduced future capital expenditure associated with preparing electricity distribution networks for low carbon transition (in particular the electrification of heat and transport and increased levels of decentralised renewable generation) and the potential for consumers to be influenced through cost-reflective charging to avoid unnecessary electricity consumption at times of peak electricity demand.

This contrasts sharply with the immediate benefits that suppliers will begin to accrue from avoided meter reads and more efficient consumer transactions as smart meters are rolled out and DCC begins to operate services.

The ENA has also critically examined its requirements in respect of both data volumes and data latency and have responded positively to requests from the SMIP team to review those requirements that could potentially be cost-drivers. Significant reductions in requirements have resulted from such reviews. We also suggest that the major component of data flows over the smart metering system relates to import consumption data which is required by both suppliers and network operators.

Notwithstanding the above, we agree in principle with the concept of cost-reflectivity in terms of how DCC charges are apportioned between SEC Parties. However, this should include all parties; we are aware of no evidence to support the implicit argument that other parties should be exempt from fixed charges on the basis that this is necessary to promote competition; neither can we see how this might result in consumers paying for fixed costs twice since the Authority would ensure that this is not possible. On the contrary, by not paying a proportionate share of fixed costs, services provided by other parties on the basis of lower than reflective DCC charges could result in a cross-subsidy by suppliers' consumers to consumers enjoying the benefits of energy efficiency (or other) services provided by other parties.

Our GDN members are unlikely to be material users of DCC services. We therefore envisage that any element of fixed costs attributable to their use will be negligible. GDNs are subject to allowed revenue which is relative to their efficiently incurred costs and is set for price control periods. Our GDN members have recently submitted business plans for the period 2013 to 2019 to the Authority, and these do not currently include costs associated with being party to the SEC or interacting with the DCC. It should also be noted that electricity network operators' allowed revenues over the period to the end of March 2015 (the end of the DPCR5 period) make no provision for charges for DCC services.

If it is deemed necessary for GDNs to incur an element of the fixed costs of the DCC this will give rise to a requirement for their price control to cater for this through uncertain costs mechanisms.

As all GDN costs are ultimately borne by shippers and suppliers these costs will be passed on through the transportation charges. To avoid the need for more complex arrangements within the price control period our GDN members suggest that it would be more practical and transparent for suppliers to bear the costs of the DCC directly.

It should also be noted that there is a current expectation that the Gas Transporters, through their agent, will provide information to the DCC to enable access control to operate efficiently. The exact nature of the obligations has not yet been established, although it can be assumed that this will be either directly through the GT Licence or contained within the SEC as an obligation on Gas Transporters. The funding of this arrangement has also not been established and the Gas Transporters are currently carrying out work to establish how to efficiently facilitate this. Elements of the necessary changes may be carried out through the UNC to obligate shippers to pass information to the central supply point register, but the onward transmission of this data to the DCC, including obtaining and transmitting iGT data, will incur both development and ongoing costs for which the funding has not yet been established.

Finally, in determining apportionments of costs between suppliers and network operators, it should of course be remembered that, irrespective of the apportionment methodology, it is consumers who will ultimately meet these costs.

25. Do you consider that the “pay now dispute later” approach is consistent with the envisaged DCC regime? If you disagree please set out the reasons for your preferred approach.

Our members are divided in their opinion regarding the “pay now dispute later” issue.

Some agree in principle with the proposal in respect of ‘pay now dispute later’ and that for pragmatic reasons (and recognising that the SEC financial security management regime will seek to protect creditors from the risk of bad debt) in the event of a bad debt arising, this should be socialised within the current charging period across all DCC service users.

Some strongly disagree with the “pay now dispute later” approach. Their view is that if there ever were large discrepancies or errors in DCC invoicing, a party should not have to shoulder that risk, by paying outright the invoice to dispute its balance later. There needs to be a regime where the party could pay some proportion of the costs, what it believes is due, disputing the excess and therefore having that investigated. They believe that since the DCC will be managing its daily Value at Risk, in the same way that Distributors manage this to cover the DUoS bills it has outstanding, it should never leave itself exposed to a value which it cannot cover. If a party starts to misbehave then there should be clauses set out to explain the impact of this.

26. Do you accept that bad debt should be socialised explicitly within the current charging period across all DCC service users? If you disagree please set out the reasons for your preferred approach.

Our members broadly disagree with the approach for socialising bad debt across DCC service users. They hold the view that debt management should be an integral part of the DCC’s business and that DCC should have appropriate procedures to avoid incurring bad debt.

If a bad debt does occur, it would be one that DCC has failed to manage within the limits of the bonds held from DCC service users. In this scenario, our members believe that DCC should pay a proportion of the debt costs or have its allowed revenues adjusted to prevent the DCC licence holder from profiting from failure.

27. Do you agree with the proposed functions, powers and objectives of the SEC Panel, as set out in Boxes 12A and 12B?

Our members are broadly in agreement with the proposed functions and powers set out in boxes 12A and 12B. These powers are consistent with the principles of existing industry codes. The extent to which some of these activities may be carried out by the Code Administrator to ensure efficiency will need to be addressed in the more detailed drafting of this section of the SEC.

For 12A item C one of our members believes that the SEC Panel should discharge the Implementing of the Change Process to a Development Board. The Panel could oversee the approval of additional Working and/or Sub groups to review modifications and issues as set out in Box 12A H. The Panel will have sufficient business for an agenda with the remaining functions outlined.

One of our members is not persuaded that the Panel should be responsible for the appointment of the Code Administrator. They believe that this could be a function of the DCC, perhaps with a Panel right of veto.

Nonetheless, in their view it is reasonable for the SEC Panel to appoint its own Secretariat. There is no objection to the same entity providing both administration and secretariat services, but there may be advantages in them being separate entities, such as obviating conflicts of interest with regard to procurement etc.

Some of our members question the suitability of placing an obligation on the SEC Panel to secure party compliance with Authority information requests. The main reason for this view is that it is unlikely that the Authority will have any power to require such data from unlicensed parties that might accede to the SEC.

We question the use of the 'and/or' term in the drafting of Power K, which states: "Securing the compliance of any SEC Party with any requirement to provide information about the operation of any of the arrangements set out in the SEC on the request of the Authority, and/or publishing such information".

28. Do you think that a fully independent panel is the appropriate model for the SEC? Please give reasons for your answer.

Our members do not agree that a fully independent panel is the appropriate model. Given that the panel will be constituted of elected parties, it will be more appropriate if they are elected members from within the industry. This ensures that the Panel is constituted of experienced industry members and that all SEC parties will be able to have direct representation. This provides clarity of role and allows the panel member to more clearly put forward the views of those they represent. This model has been proved to work well in existing codes.

29. Do you agree that the proposed SEC Panel composition set out in Box 12C is appropriate? Please give reasons for your answer, Alternative proposals for the panel composition are welcome.

The division of voting and non-voting members is consistent with other industry codes. However, given that most large suppliers supply electricity and gas, a two electricity, two gas supplier split is an artificial distinction. Therefore, in the opinion of some of our members, three large suppliers and one small supplier panel members should be able to represent this class of panel membership.

In our view it is appropriate for a consumer representative to be able to express views, although whether this is required to be a full voting right may be dependent on the subject matter in hand. The inclusion of consumer representatives on the panel is consistent with the constitution of other panels.

The inclusion of a discretionary voting member could be used to ensure that an affected non-code party that is likely to be impacted by a particular modification has an appropriate voice in the decision making process. However, one of our members cannot see the need for the discretionary appointee. Their view is that the Panel should have the power to co-opt whoever it needs to help its deliberations therefore they cannot see the need for this appointee by the Chairman.

In our view it would be appropriate for the electricity distributor representative and gas transporter representative to be appointed through Energy Networks Association to act on behalf of all members.

The DCC, as a SEC party, is likely to be affected by modification to the SEC, and to that extent it is appropriate for them to be able to vote, although the extent to which SEC change is considered a pass-through item in the terms of their allowed revenue should also be considered as it could be that the impact of change is not material or exposing the DCC to any risk.

One of our members believes the duty to "Implement the SEC Modification process" should be discharged via a separate Development Board, to which all SEC Parties can have a vote and attend to discuss the modifications. This keeps the process transparent and allows all SEC parties to participate and engage with modifications to the Code, as these are of commercial impact to SEC Parties. With this in mind, the member believes that the Panel composition for voting members needs to reflect the Classified SEC Parties balancing the interests of Suppliers, Network Operators and Other Users. They consider this particularly important given the expected increased reliance on smart metering data to support future smart grid activity and energy related services. Given its obligated duty to oversee that due process is followed and that the SEC runs efficiently, the decisions of the Panel will be against set criteria and Code Objectives and open to appeal the Authority. Until parties can see the weighting of the votes attributed for SEC, it will be hard to comment on the make up of the representation. If the Panel should take on the duties to also manage the Modification process, voting and creating reports, then this Panel needs to be larger and establish a mechanism whereby all SEC parties have the opportunity to outline their concerns and have their views taken into account.

It is important that all parties affected by change are able to suitably influence those changes, and by ensuring a transparent change process with appropriate consultation views of all parties can be effectively considered by the SEC panel.

30. *Do you agree with the proposed division of voting and non-voting members, and in particular do you believe that the DCC should be a non-voting member in respect of any or all aspects of panel business?*

Please see our response to question 29.

Given the position of the DCC some of our members propose that the DCC should be allowed to speak but not vote at panel meetings. Also, the chair should also have the power to exclude the DCC from a closed panel session in exceptional circumstances.

Some of our members are of the view that the DCC, as a SEC party, is likely to be affected by modification to the SEC, and to that extent it is appropriate for them to be able to vote, although the extent to which SEC change is considered a pass-through item in the terms of their allowed revenue should also be considered as it could be that the impact of change is not material or exposing the DCC to any risk.

One of our members strongly believes that the Panel business should not include that of a Modification or Development Board who develop, review and change manage proposed modifications, creating reports to Ofgem. Also, they do not agree that the Panel chair should have a casting vote and/or discretionary appointee vote. To maintain independence, the chair can have no vote. Equally the Panel should be constituted by an odd number, with appropriate quorum rules, such that it does not need the chair to utilise a casting vote.

31. *Do you agree that the proposals for the independence, appointment and term of office of the panel chair are appropriate? Please give reasons for your answer.*

The independent chair is an important aspect of existing codes. We suggest that the Code Administrator must be able to provide an impartial chairperson who is independent of SEC Parties. This would help to ensure that a fair and even handed approach is taken with all code parties in matters of governance. The tenure of an independent chair needs to consider the extent to which the chair will be expected to have industry knowledge or whether the position is purely administrative.

32. *Do you agree with the proposed arrangements for panel member elections and appointments?*

Our members support relevant SEC parties nominating and voting by class for SEC panel members to represent them. As mentioned above, one of our members is of the view that the election arrangements are not sufficient if the Panel are voting on Modifications, which are of commercial impact to all SEC parties.

Our members support the principle that SEC party votes are weighted by market share. Given the importance of smart metering rollout, market share should be based on the total number of meters (smart + non-smart) within the mandatory smart metering roll out definition. This principle also works on an enduring basis on post the rollout phase.

This approach allows all active SEC parties to vote and prevents distortion by one group with multiple IDs or large numbers of other users of DCC communication services each with a very small number of customers.

The appointment of group members on a 1 or 2 year basis to ensure that not all members change at the same time offers continuity in panel matters. The Gas Transporters have agreed to utilise such an arrangement for SPAA representation. This allows for a fair sharing of responsibilities and maintains vital aspects of continuity. The appointment basis for each group is likely to be different and should be open and transparent in all cases.

33. *Do you agree with the proposed rules in respect of proceedings and decision making at SEC Panel meetings?*

We agree with the proposals for SEC panel procedures and decision making with the provisos contained in our answer to Q32.

On a practical point we propose that the right for a SEC party to attend SEC meetings should be subject to notifying the chair in advance and be limited to one person per party.

34. *Which of the two options for remuneration of panel members do you prefer, and why? In particular which of these options do you believe would be most aligned with each of the options for the panel to be either an independent or a representative body as a whole?*

ENA members support Option 1 coupled with a representative body, please see our response to question 28.

Any proposals to remunerate SEC representatives either directly for expenses incurred, or as a specific payment for panel duties is not consistent with other industry codes governing our members. If appointment to the various classes is carried out openly and allows for all parties within each class to have the opportunity to take on the responsibilities of panel membership, it may not be necessary to make specific arrangements. We are, however, conscious that the remit of the SEC Panel is wider than that of other industry codes, and consider that if specific remuneration is considered it would seem appropriate to keep this to reasonable expenses incurred.

Payment of panel members may not necessarily attract the best candidates and a method needs to be devised that ensures the panel members have relevant up to date experience coupled with a genuine desire to represent SEC members.

35. *Do you think the Code Administrator and Secretariat chosen by the SEC Panel should be contracted through the DCC or through a SECCo?*

The majority of our members have the view that to show true transparency and independence from the DCC they support the Code Administrator, Secretariat and other specialist services being contracted through a SECCo; as this would prevent any conflict of interest and works well for other codes. However, one of our members considers that it would seem more efficient to carry out the contracting through the DCC rather than creating a new SECCo specifically for this purpose.

36. *If a SECCo was established what should its funding arrangements, legal structure, ownership and constitutional arrangements be?*

If a SECCo was established, it should be owned by/paid for equally by all SEC Parties with each party holding one share. We would support the formation of a limited liability company, similar to the MRA model. To minimise cost and complexity, shareholders could be limited to licence holding parties. Similarly, to prevent the need to maintain a billing and collection system, SECCo income from SEC parties should be collected by the DCC.

37. *Do you have any views on the proposals regarding which parties should be entitled to raise SEC modification proposals?*

Our members consider that all SEC Parties, who have fulfilled accession, should be entitled to raise and participate in the SEC Modification process. Including raising modifications, receiving all modifications to impact assess and vote on and are able to participate in all Modification Development Board meetings.

One of our members is of the view that unless an emergency change was required in less than 24 hours, the SEC panel should not be able to raise a change. This is so that the SEC panel is seen to maintain an independent roll in the change processes.

38. Do you have any comments on the proposed standard progression paths for different categories of modification?

Our members are of the view that there should be one Modification process. This should manage all SEC changes. It should include all SEC content, including all annex content changes. Given that the SEC will be governing the current SMETS, Security Specifications, Accreditation regime, any proposed changes, amendments or clarifications should be raised to the normal modification process.

The Modification Process should have set stages, criteria of validity (see Code Licence Objectives) and set modification timescales whether a normal or urgent Modification.

A single, well defined, process, with set timescales (depending on the priority of the modification) will be essential to a clear and transparent process. Where all participants are clear when they need to raise, respond, vote, appeal and implement modification proposals.

39. Do you have any comments on proposed criteria that the panel would apply to judge whether a proposal is non-material and so to determine which path should be followed?

The Panel, or Development Board, should not be determining the materiality of the modification. Such classification of modifications under this Code would be wholly subjective. In order to transparently engage with all SEC Parties, all relevant SEC modifications should be given the opportunity to progress through due process.

If once the change is agreed for implementation there needs to be an Implementation Board to help the DCC Service Providers (Code Administrator, Communications Provider, or Data Provider) to group agreed changes to releases then this should be the stage to consider the impacts.

40. Do you think it is for the panel or for the Authority to decide whether a modification proposal should be considered urgent and determine its timetable?

Our gas members' view is that within the UNC (Uniform Network Code) urgency is a matter for the Authority, although it is considered alongside the views of the panel. Ofgem consulted in 2011 on the criteria for urgency and this provided further clarity on which proposals are likely to be successful in obtaining urgent status. As the progression of urgency is likely to be requested for matters of some materiality, some of our members are of the view that it is appropriate for the Authority to make the final assessment on this path. Other members have the view that given the expertise and advice available to the panel, that the panel should be able to decide if a change proposal is urgent and determine the time scale.

41. *Do you have any views on whether any non-standard modification rules and procedures should apply to any particular parts of the SEC?*

There should only be one modification procedure (as discussed above), with associated rules. It is only the timescales to progress the change that will be different, if the modification is awarded urgent status, with rules to set out ex-committee processes to support the progression.

42. *Do you agree with the proposal that responsibility for making final decisions or recommendations on SEC modification proposals should always rest with the SEC Panel and that this power should not be capable of delegation?*

Our members are divided in their views on this issue.

One of our members is of the view that the Panel should be more an Executive Committee. They consider that modifications need to be circulated to all SEC Parties, and defined interested industry participants. This will help ensure that all parties are given ample opportunity to respond to the Modification. These Responses can be circulated to allow all parties to review, to create, confirm, or amend their views (and potentially their vote) prior to the Development Board meeting. This meeting can then review the comments, any amendments by parties and take a vote (which could be via proxy sent in). Votes counting in their chosen constituency, weighted within, then all constituency votes counting towards whether the board indicatively accept, reject or amend the Modification. This would then form the report sent to the Authority for a decision.

Some of our members consider it inappropriate for the final decision making of the Panel to be delegated to non Panel parties. It may be appropriate for the terms of reference of some sub groups to include the ability to make limited decisions which do not materially impact the wording of the SEC. However, other ENA members proposed that the SEC panel should be able to delegate the final decision on particular modification to a suitably qualified sub group; provided that this is linked with a safeguard that a SEC party may appeal a decision of that sub group to the SEC panel.

43. *Are there any further matters relating to the modification process which you would like to comment on?*

No.

44. *Do you agree that that the SEC should place certain obligations on the SEC Panel and, possibly, SEC Parties with regard to the production, provision and publication of certain information and reports? If so, what do you believe these should be?*

We agree that in order to satisfy sections of the SEC and Licence, certain information and reporting is necessary. We would need further discussion on the detail of the expected reporting, in order to fully answer this question.

45. *Are there any particular areas of risk that you believe should be addressed by appropriate compliance/assurance techniques under the SEC?*

There are a number of areas that should be addressed by appropriate risk based compliance and assurance techniques:

- Certification of SMETS
- System Security Requirements
- Entry qualification – focusing on processes and procedures interfacing with the DCC and protection of customer data obtained from the DCC. Care must be taken not to duplicate entry qualification under other codes.
- Equipment – processes are in place only to procure accredited equipment which is installed to ensure correct and secure operation with the DCC.
- Monitoring reports – from BSC parties, the DCC and others which may merit further investigation including site visits.
- A reconciliation and disputes process – to resolve inter party differences.

46. *Do you have any views on the most appropriate governance arrangements for any compliance/assurance framework under the SEC?*

A compliance and assurance subgroup should be set up by the SEC to review performance assurance activities and data. The subgroup needs to report regularly to the SEC panel including recommendations to change the performance assurance framework and risks that need to feed into the SEC risk register.

47. *Do you have views on the options for the creation and enforcement of liabilities between the DCC and service users described in this chapter?*

It is anticipated that the five traditional heads of liability will apply between the DCC and service users as a minimum, namely death and personal injury; property damage; breach of statutory duty; third party claims; and breach of intellectual property rights. Otherwise, in our view is that in the majority of cases where liability arises there should be an appropriate mechanism for the recovery of loss and that the mechanism for the recovery of loss should be commiserate with the likelihood, frequency and nature of the loss that might be experienced.

Principally we understand that liabilities will apply at contract in relation to those five traditional heads of liability. Beyond this, subject to a determination in each case, it is anticipated that no single mechanism of those identified as a potential mechanism can be suitably applied to all circumstances where a liability might arise and it is for this reason that some of our members support the position that it may be considered appropriate to apply some combination of the approaches across the range of matters that might arise between parties.

48. *Do you agree that there should be a cap on liability for specific types of breach between the DCC and service users (including security breaches and physical damage). If so, what do you believe the appropriate level of these caps to be?*

In principle, to support the purpose of the SEC and provide certainty for the DCC and service users, there should be a cap on liability for specific types of breach, including security breaches and physical damage. However, in determining the suitability and the value of the cap regard must be given to the extent of loss and the potential mitigations that might be applied to avoid the occurrence of loss (and any lack thereof, as the case may be). Additionally, the determination of an appropriate cap should not be constrained by financial facility; regard must be given to the potential loss of all parties and the commercial availability of appropriate insurances.

Without further analysis of the loss it is not possible to determine a cap or caps for each head of liability at this time. DECC should consider facilitating an analysis with service users to establish the scope of each potential loss under each identified head of liability rather than agree an arbitrary cap.

49. *Are there any other specific types of liability between the DCC and service users that should be addressed in the SEC? If so, how should these be treated?*

N/A

50. *Do you have views on the options for the creation and enforcement of obligations and liabilities between SEC Parties (excluding the DCC) described in this chapter?*

Where there is a potential for loss (and thus liability) we would support the determination of an appropriate mechanism for the recovery of that loss (and the remedy of the liability) through a defined enforcement mechanism, commiserate with the likelihood, frequency and nature of the loss that might be experienced.

However, it is not anticipated that the SEC will address matters which are better addressed under contract by the parties thereto (inclusive of those five heads of liability referred in our response to question 47) unless it is the intention of DECC to create a common framework. Rather that the SEC might create and enforce obligations and liabilities where the rules on privity of contract apply (preventing the recovery of loss) or where the reliance on the contracting mechanism might create an ill-favoured outcome for one of the contracting parties due to an imbalance between the positions of the contracting parties.

Where the determination of a liability is agreed at contract or it is determined that a standing mechanism for each head of liability should apply, DECC might consider the application of a dispute resolution model where the parties are unable to agree or where there is a manifest injustice in the application of the applied mechanism.

Liabilities between SEC parties could be difficult to monitor and administer. There will be limited areas where parties will interact directly with each other through the SEC other than issues of shared equipment which does not impact on GDNs but could impact on DNOs. We propose that SEC parties should have access to a SEC resolution and disputes process if they are not able to resolve it directly between themselves.

51. *In your view, do any of the potential matters between parties described in this chapter (or any other such matters that you are aware of) merit the inclusion of obligations or liabilities that are directly enforceable between parties under the SEC?*

N/A

52. *Do you agree that it would generally be preferable to enforce party obligations "centrally", for example through an appropriate compliance or assurance framework under the SEC?*

Our members are divided in their views relating to this issue.

Some support a central compliance, assurance and enforcement framework under the SEC as this mirrors good industry practice used elsewhere in the energy sector.

Others are of the view that to centrally enforce party obligations through an appropriate compliance or assurance framework would not appear to be a practical approach at this time given the relatively limited understanding of the inter-relationships between users, the obligations and liabilities. Instead, their preference is that the SEC defines and sets out a mechanism for the resolution of disputes to be applied where a party fails to meet its obligations or where there is a manifest injustice in the application of a SEC defined mechanism.

53. *Are there any scenarios where you believe that it would be appropriate to allow for cost recovery between parties under the SEC? If so, what form should these arrangements take?*

N/A

54. *What types of dispute do you believe might arise under the SEC?*

Based on current drafting of the SEC and comments from our members we believe the following might arise under the SEC may be summarised as:

- Provision of Metering systems that fail to provide complete and accurate data and functionality to other users.
- Physical damage of equipment.
- Security breach related to data or viruses.
- Disputes relating to rights of access to smart metering systems.
- Performance of DCC activity.

55. *Do you agree with the proposed framework for resolving various different categories of dispute, as outlined in this chapter?*

We agree with the need to have a robust framework in place. We advocate the following route base on knowledge of other codes, for non Authority issues:

- Good faith negotiation and internal escalation
- Mediation
- Disputes sub-committee
- Arbitration

56. *Do you have any views on the suggested framework for dealing with defaults under the SEC, including the events, consequences and procedures described? In particular, do you agree with the proposed role for the SEC Panel and have any view on what SEC rights or services it would be appropriate to suspend in the event of a default?*

The default provisions are consistent with those within other industry codes. It is important that the responses to particular events are proportionate, reasonable and enforceable. Our members agree with the role of the SEC panel in the suspension and expulsion of SEC parties.

57. *Do you agree with the proposed rules and procedures governing withdrawal and expulsion from the SEC described in this chapter?*

Our members are in general agreement with the proposed rules and procedures set out in Chapter 20. However, until such time as the detailed aspects of the SEC are available for review it is not possible to respond in detail to the proposals. Clear, unambiguous steps are essential and it is appropriate that other users are kept informed of the progress of a party exiting the SEC. It is important to allow a party to take necessary actions that will remove the obligation to pay DCC costs in a timely manner. For voluntary exit this can be managed, but for expulsion the removal process will pass financial risk to other users and this should be minimised by ensuring a swift exit process is possible.

In order for the DCC to function properly it does need to hold a bond for SEC parties, and needs an allowance in the SEC rules to be able to draw down on the sum, to cover any outstanding debt, especially where the party is expelled for non payment

58. *In addition to the proposals above relating to the suggested intellectual property provisions to be included in the SEC, are there any other intellectual property provisions which should be considered for inclusion within the SEC?*

Further consideration needs to be given to the intellectual property of SEC Materials on change of DCC. There needs to be a clear DCC licence provision that the intellectual property for all SEC Materials must be transferred without charge to the next DCC. Without this provision it would inhibit future DCC competition and may result in SEC parties paying twice (once for the development then via service charges from the new DCC). An alternative model would be for SEC Materials intellectual property to be held by the SECCo.

59. *What information should be classified as confidential under the SEC?*

As a general rule, all closed session meetings, where parties have signed confidentiality agreements. Also, elements of security requirements, reporting, disputes and breaches should also be classified as confidential under the SEC.

Information protected by the Data Protection Act and other personal information should be managed in line with existing industry arrangements. Within gas, it has been established that the MPRN and address is not confidential, but when combined with the Annual Quantity this can be construed as personal information. The aspects of the 'Data Access and Privacy' consultation addresses this in further detail. Information of obvious commercial sensitivity should remain confidential and parties should not be able to view data pertaining to portfolios other than their own. While agreeing with the principles set out in chapter 22, without further details of SEC drafting it is not possible to comment any further on this question.

60. *How should a balance be struck between transparency and data publication under the SEC, whilst maintaining confidentiality?*

Use of aggregate reporting or anonymous reporting should be considered for information that will be published into the public domain. Under the Panel proposals it is anticipated that reporting could be made available in a confidential forum and reporting in a non-anonymous manner the Authority will ensure that an appropriate balance can be found for the various aspects of the SEC. In order to maintain a balance between transparency and data publication, the SEC will need to consider what information it can publish that can provide a benefit to those outside the SEC whilst not unintentionally jeopardising any of its member's respective commercial positions.

61. *Please detail those events which you believe would warrant the force majeure provisions being exercised and indicate who should declare a force majeure event.*

The existing codes all have similar definitions of Force Majeure to that quoted in section 481 of the consultation. The final wording will depend on the content of the final SEC.

62. *Please provide your thoughts on the proposal that the SEC should define a set of contingency business process arrangements and associated service levels/obligations which will apply in the event of a major service failure.*

It is appropriate for the SEC to contain a clear set of contingency arrangements for major service failures. The SEC panel should have an obligation to regularly review business continuity plans and results of business continuity tests, prepared by the DCC and the Code Administrator.

63. *Please provide your comments on the proposals outlined for the DCC transfer and whether there are any other specific provisions that you suggest need to be covered within the SEC, in addition to the proposed novation agreement for the SEC.*

Please see our response to question 58.