



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

SSE
Inveralmond House
200 Dunkeld Road
Perth
PH1 3AQ

June 2012

Smart Energy Code

SSE is pleased to provide comment on the Smart Energy Code (SEC) consultation. We welcome the ongoing engagement with the Smart Metering Implementation Team and have provided answers to the specific questions posed by DECC in the attached annex.

The proposals for the SEC Panel composition combined with the proposed code modification procedures would not give SEC Parties a proper opportunity to influence the direction and strategy of the SEC Panel or to assess and vote on modifications. A representative model for the SEC Panel composition would better protect the interests of SEC parties through direct representation and by utilising the experience of industry members. SSE believes that the SEC Panel should be formed on the executive committee model as used by the MRA and SPAA. We strongly believe that the SEC Panel should not be involved in the assessment of modifications and this activity should be delegated to a modification/development board where all SEC parties can assess and vote on modifications.

The "pay now dispute later" approach proposed places significant financial risk on all SEC Parties and provides no incentive for DCC to accurately invoice for its services as it is always guaranteed payment. We would recommend a "pay un-disputed" approach where SEC Parties only withhold payment for the specific items disputed. This approach should be supported by obligations on timely resolution of payment disputes and procedures to deal with manifest error.

We welcome further decision in this area and early sight of the draft SEC. We agree with many of the high level principles under which the SEC is being created, but all our responses are based at the high level. To comment more fully we need visibility of the actual proposed details.

Please call me if you have any questions

Yours sincerely

Regulation

Annex – Consultation Questions

Chapter 3

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

SSE agrees with the classifications and the rationale to identify licensed parties specifically.

Chapter 4

- 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.**

Yes. Meter operators and meter asset managers are appointed agents of Suppliers, who have legal obligations under the Smart Energy Code (SEC). The consultation adequately captures their needs and rights in specific respect of the Smart Metering System (SMS) and the SEC.

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 the 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 is 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?**

Yes, SSE supports the preferred solution to implement a simple variant of Option B where a Supplier may want to discharge some of its obligations via an agent (MOP or MAM), and allow them to access the DCC for limited specific commands, we also want to note that this should not prohibit Supplier choice. For instance, a Supplier could choose to discharge all its obligations under the SEC, passing the relevant data back to the appointed agent, to fulfil existing Licence and Code obligations.

- 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?**

SSE believes that all industry Smart experts could be asked to play a limited advisory role in the SEC Governance processes. We suggest that this could include attending, participating and advising on Panels/Meetings/ Working and sub-groups where the Panel and Panel Chair feel it is necessary to involve advisory experts. This would help SEC parties achieve the Code objectives and implement the right changes.

We believe that only SEC Parties and the Statutory Consumer Body should have the rights to raise Issues/Change and vote on these.

Chapter 6

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)?**

Yes. SSE agrees that Government should not mandate a specific solution for the DCC User Gateway. The optimum solution for industry should be taken into account during the bidding process. Also we do not believe that the prospect of innovation should be stifled by mandating a particular DCC User Gateway.

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

SSE is satisfied with the Government's proposal to mandate the DCC, via its DSP, to evaluate the Data Transfer Network and that being proposed under option two. We would however recommend that the DSP considers the use of existing Data Transfer Networks rather than simply procuring a new DCC User Gateway. All possible solutions must be fully explored prior to any final decision being taken by the DCC (and SEC).

Further to this, in relation to structuring messages in a set/standard format, SSE would seek to clarify that we would expect these formats to be governed by the SEC, and follow its Change Management process. Additionally the service level agreements and speed of this network needs also to be considered. This will be a critical network path, especially when forwarding on payment credits or receiving alerts/alarms from the meter.

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

We agree with the proposed need for DCC service users to fulfil entry processes, post SEC Party Accession has been agreed. We envisage that this will likely be at several levels; For example, Suppliers who have many SEC obligations (to accredit/install compliant assets, manage Security and take many of the DCC Communication Services) fulfilling more levels than an Authorised third Party, who with consumer consent may only be taking very limited remote data via DCC's Communication Services needing to only fulfil one layer.

Chapter 7

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.**

We would seek to clarify that the Obligation on Suppliers to notify the DCC in advance of the Smart Metering System devices that it intends to install, we believe does not include the IHD, and that we would expect only to be sending a list of SSE available assets, rather than individual asset/metering point notice in advance of every appointment.

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?**

SSE notes that the meter(s) and IHD elements of an SMS are specifically the responsibility of the Supplier, both logically and physically.

SSE agrees that in order for the DCC to fulfil its mandated duties, it will need specific, logical, remote access to these, e.g. to test communications initially or for maintenance purposes. We would seek to highlight that it would be very limited, specific access to these elements

physically. If the instances under which it might physically access meter are outlined, we would have more confidence in any SEC clauses around this.

We would seek clarification DECC that this would not be a way for the DCC (or its agents) to utilise any Powers for Entry, which are not specifically their own in Legislation, Licence or Code. Any access granted must be clearly specified.

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

Yes, SSE agrees with the rights and obligations relating to withdrawal of smart metering systems and replacement of devices.

Chapter 8

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

Yes, but however we believe the Programme should consider one further scenario described below:

Communications exclusively for both registered Suppliers and relevant Network Operators, but which "Other Users" will not receive, e.g. Alerts/Alarms (where both may be interested in order to service the Customer/service point).

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?

No, SSE is not aware of any situation where a single smart metering system will have more than one importing supplier.

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

Yes, SSE agrees with this proposal. This will ensure transparency and the opportunity for all SEC Parties to participate in the Change Management process.

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

SSE believes all SEC Parties should be able to request elective communication services, where the changes to the existing data flows are managed in a multilateral basis via the SEC.

SSE would recommend that where the details of the exact request in terms of frequency and priority of the data and prices of the Elective terms and conditions, could be kept bilaterally between the parties requesting the Elective Services and the DCC.

Ofgem has advised that it is content to monitor regulated income and determine that the prices are not cross subsidised between Core and Elective services, but lack the technical expertise to determine if an Elective communications request will have an impact on the Core services to all other users or indeed that the terms and conditions are offered to the next requestor along who asks for the same (or similar) Elective Service.

SSE believes that these should be requested via the normal Modification process, as changes to / new Core Services will be managed. That, if implemented, any data additions needed are added to a single "SEC Data Communications Catalogue", as optional fields. This transparency helps maintain the integrity of the catalogue and the security of the data

sent and received, clarifying to all SEC parties (including DCC) what data can be securely sent and received via the DCC.

This will help to ensure confidence for all parties that the Modifications have all been reviewed, impacts and risks adequately assessed, and there are no surprises for SEC parties when these are implemented.

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.

Yes, SSE agrees strongly with this proposal. 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?

Yes, in order to provide clarity to all parties this information should be set out in a clear and consistent manner as highlighted in our response to question 19.

The terms should be available with the Modification determination process. Therefore, if the requestor then declines the terms, they reject the relevant Modification. A new modification would need to be raised to ask for that Elective service again, and at that time new terms and conditions will be available.

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?

SSE believes that the party bearing the majority of the cost developing the additional service should determine what information is made available to attract other users as follows:

- Where that party wishes to attract other users the detailed terms and conditions should be set out in the SEC; or
- Where that party does not wish to disclose any details then the detailed terms and conditions would be subject to a bilateral agreement with the DCC.
- However, in the event that another party requests effectively the same service, the DCC should make the original applicant aware such that they may reconsider their position.

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?

Yes, in order to ensure the continued provision of DCC services this should be a requirement. Also, in order for SEC Parties to manage potential risks, they need to be kept aware of any potential upgrades or amendments to the Date of Communication services being provided under the SEC.

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?

Yes, SSE agrees with this proposal. 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.

Chapter 9

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

In principle, SSE agrees with the proposed approach for DCC charging. However, consideration should be given to the competing demands of DCC's regulated and unregulated activity. Appropriate controls should be put in place to prevent the write down of regulated assets to the benefit of the unregulated parts of DCC's business.

SSE is concerned that the fixed costs charged to Suppliers and Network Operators could in effect subsidise access to DCC services by other users. DECC should review this element of the proposed charging approach and consider further measures to eliminate any distortion.

SSE is also concerned about aspects of fixed charging of Network Operators from DCC go-live. In particular:

- No allowance for these charges has been made in the current electricity price control review period (DPCR5).
- Network Operators are unlikely to benefit from Smart Metering data until significant volumes of meters are installed.
- Network Operator charges will be based on the extent of Supplier's roll-out activity and will plan their costs on the basis of Supplier forecasts. The accuracy of such forecasts is essential for accurate and to prevent overcharging.

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.

SSE strongly disagrees with the "pay now dispute later" approach. 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.

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.

The DCC will be holding bonds for SEC Parties, therefore able to pull sufficient funds from the bank to cover a short term shortfall. Where invoices could be disputed if incorrect, within set criteria, then it incentivises the DCC to manage its billing processes and possible exceptions.

- 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.**

SSE disagrees with the approach for socialising bad debt across DCC service users. Debt management should be an integral part of the DCC's business; therefore, the 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, SSE believes 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.

Chapter 12

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

The proposals set out in Box 12A seem appropriate. However SSE would recommend the following refinement to Box 12A.

"C - Implementing (or supervising the implementation of) the SEC Modification process"

SSE believes 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.

The proposals set out in Box 12B seem appropriate.

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

No, 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 a direct representation.

- 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.**

SSE believe 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, SSE 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. We 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.

- 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?**

Yes, however SSE believe all SEC Parties should be a voting member. However, careful consideration needs to be given to the weighting of the votes against the different classification of SEC Party.

As the code governs the DCC's licence obligations, SSE believes that the DCC should be allowed to raise and vote on Modifications, since these have commercial impacts on its ability to deliver its Regulated Duties.

SSE strongly believe the Panel business should not include that of a Modification or Development Board who develop, review and change manage proposed modifications, including creating reports to OFGEM.

SSE does 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 the right 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.**

No, SSE would recommend that the Code Administrator must be able to provide an impartial chairperson who is independent of SEC Parties.

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

Yes, an executive committee style Panel. As before, if the Panel are voting on Modifications, which are of commercial impact to all SEC parties, then the election arrangements are not sufficient.

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

Please see our response to question 32.

- 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?**

All Panel, Development, Working or Sub groups should have a 'no remuneration' option. This leaves the level of costs within the control of SEC Parties. Using either option means all Parties have to pay their part of costs incurred.

It is disingenuous, as suggested in some of the workgroups that some parties would be disadvantaged by the associated costs of being an elected Panel member.

There should be a number of ways to carry out meetings for the SEC, including, where appropriate, teleconferencing, with the ability to have papers presented electronically. This should limit the costs to participants.

Where remuneration is considered, a variant of Option 1 is the preferred option for SSE. This should apply to Panel members only and those on Development board meetings should not be able to recover expenses. However, this should contain a limitation on what is considered appropriate and relevant travel costs. For example, given that some SEC parties may now be global participants, we would not anticipate world travel to be covered.

Chapter 13

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

Yes. It seems appropriate that all SEC Parties should contract to own the SECCo legal company to manage the SEC. This would allow SEC Parties to keep the Code Administrator, Secretariat and any Auditing of the DCC independent of the DCC licence holder.

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. This is similar to the arrangements that apply to other industry codes.

Chapter 14

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

All SEC Parties, who have fulfilled accession, should be entitled to raise and participate in the SEC Modification process. This includes raising modifications, receiving all modifications to impact assess and vote on and being able to participate in all Modification Development Board meetings.

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

SSE believes there should be one Modification process. This should manage all SEC changes. For clarity, we believe this 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 facilitate a clear and transparent process. All participants would therefore be 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?**

The modification raiser should be able to indicate whether a change should be considered urgent and seek a decision from the Authority that this can be progressed, through due process, as an urgent modification. This is consistent with other industry codes such as the Balancing and Settlement Code and the Uniform Network Code.

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

No, as above SSE believes there should only be one modification procedure, with associated rules. It is only the timescales to progress the change, 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?**

No, as we have outlined above, the Panel should be more an Executive Committee.

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.

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

We have no further comment on the modification procedure other than those made above about the appropriateness of the SEC Panel make modification decisions rather than putting modifications to a vote of SEC Parties.

Chapter 15

- 44. Do you agree 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?**

SSE agrees that in order to satisfy sections of the SEC and relevant obligations, certain information and reporting is necessary. We would welcome further discussion on the detail of the expected reporting, in order to fully answer this question.

Chapter 16

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

Yes, SSE believes that Certification of SMETS and system security requirements should be addressed by appropriate compliance and assurance technique under the SEC.

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

SSE agrees with the proposed governance arrangements as suggested within paragraph 387; however the Panel must be able to consider all of the relevant factors that could lead to potential compliance or assurance concerns prior to coming to any final decision.

However, the Programme must bear in mind that, for suppliers, networks and the DCC, compliance with the SEC is ultimately a licence obligation. Therefore, ongoing failure to comply with the SEC could potentially result in Ofgem enforcement action. We believe that the governance and assurance regime should therefore maintain a focus on those parties that are not required to comply with the SEC through licence obligations.

Chapter 17

- 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?**

Broadly, 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 it is SSE's consideration 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 SSE understands 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 SSE supports 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?

Presently, SSE has not yet given any regard to the full extent of liabilities that might apply and whether any liabilities should be addressed in the SEC (or how they should be treated).

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) SSE 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, commensurate 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.

Indeed, 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.

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?

Regard might be given to obligations relating to the (mis)handling of data and security liabilities, and any other obligations which warrant a common position for the purposes of certainty across parties.

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?

No. 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, and as indicated above, it would be SSE's preference 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. There are precedents for this in existing industry codes.

- 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?**

Yes, though we would welcome further discussion on the scenarios. Especially considering there need to be further policy decisions around some of the scenarios, WAN/HAN and SEC parties' obligations for restoration.

We would also look to have further discussion with DECC around how the DCC could pursue a party on behalf of other SEC Parties, where their action has caused a loss of DCC Communications Services to the SMS.

Chapter 18

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

SSE believes that the broad categories of disputes identified in paragraph 429 are those likely to arise under the SEC.

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

Yes, SSE agrees with the proposed framework for dispute resolution.

Chapter 19

- 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?**

No, SSE has no further views on the suggested framework.

Chapter 20

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

SSE agrees with the proposed principles outlined, but would welcome sight of the draft SEC in order to provide a complete response.

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.

Chapter 21

- 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?**

The intellectual property provisions in Chapter 21 will be dependent on whether a SECCo is established, in such a model it would be sensible to implement an alternative approach to intellectual property.

The intellectual property treatment of works such as audit or professional services commissioned by the Panel should be considered to allow independence of Panel activities from the DCC licence holder.

Chapter 22

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.

SSE will comment further when a draft of the SEC is available, to confirm what we agree should be considered confidential.

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

SSE would oppose the publication of any sensitive or commercial information that could materially affect competition in any of the relevant energy sectors over which the SEC has influence.

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 outwith the SEC whilst not unintentionally jeopardising any of its member's respective commercial positions.

Chapter 23

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.

SSE would agree with the force majeure provision as described within paragraph 481. We also agree that this should be a non-exhaustive list in order to account for any unforeseen circumstances that would materially affect the SEC Party's compliance.

In relation to declaring a force majeure event, SSE would welcome the suggestion that the Authority has the ability to determine upon such events.

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.

SSE would expect that the DCC deliver contingency arrangements in line with a recognised standard such as BS25999. WE would welcome the opportunity to work further with the DECC programme to develop the appropriate contingency processes and service levels.

Chapter 24

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.

SSE believes the proposed novation agreement under the SEC to be sufficient. It is key to protect the successor DCC from assuming any responsibility at any time for the underperformed obligations of the previous DCC.