

Smart Metering Implementation Programme  
Regulation Team  
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### **Smart Metering Implementation Programme: Smart Energy Code**

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

We welcome the opportunity to respond to the Government's detailed policy proposals governing the relationship between the DCC and the users of its services under the Smart Energy Code.

We are in general agreement with many of the proposals within the consultation and we note a number of positive developments, particularly around governance, accession and accreditation. We would like to reaffirm our continued commitment to the DCC being an essential component of the Smart Metering architecture. We consider that there is risk, that without the DCC being on the critical path, it is unlikely to be delivered in time for mass rollout or in worst case, cancelled. As always, it is critical for further detail to be provided as soon as possible in relation to key elements of the Programme (most importantly in relation to enrolment and adoption of early meters). We look forward to further development of Government's emerging thinking and consultation on these issues.

However, we have serious concerns over the Government's recent proposals to reduce the scope of services that the DCC will be expected to deliver. We believe that these decisions will have significant repercussions, and may jeopardise the success of the programme. In the 2010 Smart Metering Prospectus<sup>1)</sup>, the scope of the DCC was defined clearly as:

- Translation services: Providing a centralised service to ensure messages are translated to a consistent format and routed to authorised parties;
- Scheduled data retrieval: Providing a service of co-ordinated data retrieval; and
- Secure communications and access control: Providing a secure GB-wide communications network and ensuring that access to meter data is only available to authorised parties.

In our view, recent policy proposals are likely to have the effect of reducing the minimum scope of services as stated in the Prospectus. For example, the introduction of a 'quarantine area' to facilitate early non-compliant installations would increase the complexity of Translation Services, leading to potential security risks that may jeopardise the delivery of the Programme. Therefore,

<sup>1)</sup> Smart Metering Implementation Programme: Communications Business Model

EDF Energy is strongly opposed to any form of non-compliant metering system being serviced by the DCC. We believe this would lead to cost escalation, with corresponding implications for affordability and delivery of a least cost solution for the consumer.

In addition, the proposed de-scoping of 'message scheduling' places a significant burden on each DCC user. This proposal is of considerable concern due to the lack of defined end-to-end architecture and operating model. More importantly, the proposals would create a risk that the DCC will be unable to effectively manage its communications traffic, which would impact operational core services and the operation of the market as a whole. In accordance with the programme plan for the DCC, all parties are now in advanced stages of design, which means that significant policy changes will impact the parties' ability to meet their obligations.

We are concerned that 'access control' is at risk of being weakened as a consequence of this consultation. It is vital that the DCC fully manages access control and security in order to ensure trust. This must include access control to the DCC for metering agents. It is not sufficient to assume that Suppliers can contractually restrict any appointed meter operator from executing certain service requests. For example, in many cases in the gas market, deemed contracts come into force and Suppliers do not have a sufficient level of control over their appointed agents. Unless the DCC manages access control, agents would have the ability to disable a significant proportion of the UK's homes, which clearly represents a material security risk to the programme. We believe that a coherent approach to establishing trust and security is needed.

In summary, we reiterate our previously stated position that the DCC is a fundamental component of the end-to-end smart metering architecture and must be delivered with the previously defined minimum scope by Go Live. Failure to meet these requirements will lead to escalation of costs and security risks. Furthermore, we believe there is a case for DECC to consider bringing forward the migration of Registrations activity to DCC Go Live as the incremental costs of this significant development would be better achieved now, rather than reopening the development in a few years time. This would mean that the DCC delivered would be fit for purpose, secure and developed in the most cost efficient manner.

Finally, EDF Energy does not support the Government's preferred solution to restrict Meter Asset Providers (MAP) from directly accessing the DCC's services. We consider that the proposals would have a material impact on the smart metering Impact Assessment, potentially reducing net benefits by around £150m. Restricting access would result in MAPs facing additional risk (due to their reduced ability to track their assets), which they will either seek to price into meter rentals and/or termination charges, or withdraw from providing a suitable funding arrangement for the assets.

Suppliers are currently negotiating contracts with meter asset providers and meter operators for the provision of smart meter services based on alternative business models. Restricting access to MAPs and Meter Operators will have the consequence of restricting innovation in that market. We consider that Manufacturers and MAPs would be best suited to remotely diagnose and solve component faults in the new smart metering environment. Preventing MAPs from accessing the meter will remove a cost-effective means of rectifying faults, and may result in unnecessary meter replacements. Furthermore, we believe that this could ultimately lead to an inequitable marketplace that risks failing to achieve the necessary funding required for roll out as MAPs may choose to rule themselves out of the market.

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

Yours sincerely,

**Head of Downstream Policy and Regulation**

## Attachment

### Smart Metering Implementation Programme: Smart Energy Code

#### EDF Energy's response to your questions

## Chapter 3

### Consultation questions: Participation in the SEC

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

EDF Energy generally agrees with the 6 SEC Party categories described in Chapter 3 though we consider that the category 'other user' should be specified to provide clarity of the relevant parties and the roles they can perform e.g. scheme of access. The term 'other user' is a general and relatively vague group that may contain Energy Services Companies, Metering Agents, Manufacturers and Meter Asset Providers (MAPs).

## Chapter 4

### Consultation questions: Involvement of the Meter Services Community

#### **Q.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.**

The requirements of both meter asset providers and meter operators for access to smart metering systems are adequately captured but the impact of those requirements do not appear to have been evaluated fully.

EDF Energy do not support the Government's proposal to restrict MAPs direct access to the DCC for a number of reasons, particularly in respect of the potential impact of the Government's impact on the overall cost to serve. On the assumption that c£3.0bn of costs will be incurred in providing a meter asset provider function, a risk adjusted 5% cost increase could therefore reduce the benefits of the smart meter programme by c£150m.

We believe the overall cost of our proposals is below that figure. We also note:

1. It is acknowledged by all parties that the existing process which gives responsibility to the meter operators to disclose to each other relevant MAP information has not been as effective as it should in certain areas. Therefore, the meter asset provider will either seek to:
  - a. price the risk of not being able to identify the supplier using that asset, thereby increasing costs to serve to the customer; and/or;

- b. require the supplier, which is the first user of that meter to provide an indemnity that should the new energy supplier on a Change of Supplier not be known then that Supplier should indemnify the meter asset provider for loss of asset rental

Both options increase either the cost or risk of the provision of a smart meter to the supplier and therefore the customer.

2. Suppliers are currently negotiating contracts with meter asset providers and meter operators for the provision of smart meter services based on their business models and strategies for the provision of services to their customers. This could result in a number of different business models being implemented with meter asset providers imposing differing conditions for the operation and maintenance of their assets. Therefore a supplier and its meter operator must know with certainty what those conditions are to ensure the acceptability of the terms, otherwise a supplier could be forced to replace the asset with one provided by a MAP where those arrangements have been agreed or incur early termination penalties.
3. Meter Operators are obliged to maintain a register of Meter Asset Providers and data on the smart meter type and manufacturer of the assets for which they are contracted to service. Currently this data has to be transferred on change of supplier while a central register of this standing data would be more efficient to operate. We note currently gas Metering Agents fail to pass this information on as the requirement is not mandated in MAMCoP. This leaves the MAP unable to trace its own assets on churn.
4. Unlike existing meters, smart meters are able to be maintained and diagnostics delivered either remotely or by attending to the meter by a field operator. The lowest customer cost to serve can only be achieved by ensuring that the installed meter remains in operation for as long as possible. As Ofgem's stated strategy is to increase customer churn to increase competition within the energy market, the MAP will have an enduring relationship with the meter manufacturer and not the energy supplier or meter operator. Therefore, the MAP has the most interest in ensuring that asset is operational for as long as possible so that it can offer a competitive cost to serve. Consequently it could be best placed to remotely manage that meter and extends its useful life, for example through firmware updates. The Government's current proposals will require all suppliers and their meter operators to develop commercial agreements with all manufacturers as assets churn into their customer base.

**Q.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?**

EDF Energy believes that Suppliers should have the choice whether or not they interface with the DCC via their appointed Metering Agents (accredited MAM or MAP) or via their

own interface. Indeed some Suppliers may wish to choose different metering agents in different geographical areas or for different technical arrangements.

We believe it essential that any metering agent contracted to provide a remote service should be required to accede to full SEC membership (having met all accreditation requirements) since they will have direct access to the DCC and metering system. These parties need to be accountable for the cost and consequences of their actions.

Suppliers wishing to perform their own remote services should not have to rely on contractual arrangements with their appointed MAM to ensure that remote access to the metering system is blocked. It is essential that access control is managed for all DCC users and general security by the DCC. We must ensure that MAM access is permitted exclusively for the services required by the Supplier and for which they are contracted to provide that service.

**Q.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?**

SEC membership should be open to those parties with the greatest capability to influence the delivery of a value lead smart meter service proposition. However, we agree that meter operators are agents of Suppliers and the ultimate responsibility remains with them.

However, EDF Energy believes that meter operators should be able to become SEC parties in their own right. We are concerned that as Metering Services Agents are not able to be full SEC parties in respect of their extended obligation for the accreditation and compliance of the metering systems. We do not believe that all Suppliers are sufficiently qualified to manage this level of assurance. Secondly those Suppliers that do not wish to contract with metering agents to perform all Supplier services will not be able to restrict (other than by contract) these agents from accessing their metering system via the DCC. EDF Energy considers this to be a security risk as any malicious intent or accidental action from an appointed agent could lead to unauthorised access to large numbers of meters.

**Q.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?**

EDF Energy fully understands the government's requirements to keep change to a minimum particularly given the delay in the smart meter programme timetable. However, we do not consider that entering the MAP's details to the database to be maintained by DCC to be too onerous. We are not requesting that the DCC should track assets merely note its owner along with the MPAN details. The proposal to consider the inclusion of such details at the introduction of registration services, up to three years after the commencement of provision of services by the DCC, could give rise to details having to be included in the database of c50% of the total number of smart meters to be installed. Perversely this exercise will be all the more difficult if it is found that the proposed process is not functioning appropriately.

EDF Energy considers that it is also necessary to allow Meter Asset providers (MAPs) direct access to the DCC, as a SEC Party, under their own SEC credentials. We believe that there are new optimal business models that could be agreed where MAPs are contracted to provide additional services and ongoing maintenance of metering systems mitigating their own asset life risk and hence reducing their rental charges.

The exclusion of MAPs from the DCC could result in them being restricted from offering a competitive alternative to MAMs. Additionally, as the consultation describes, MAPs also require access to DCC to be able to track their assets. We believe that the inability of MAPs to identify the responsible supplier has a direct impact on their risk premiums which inevitably get passed on to the Supplier and to ultimately be picked up by the consumer. Failure to maintain an asset register in the DCC will require the industry to put in place expensive alternatives. This would also impact the operation of the market and lead to delays in key processes such as Change of Supplier.

## **Chapter 5**

### **Consultation Questions: Accession to the SEC**

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

EDF Energy agrees that the proposed simple process of accession to the SEC will allow parties to join in the governance of the industry. We also agree that parties must then accede to use DCC services within six months of accession and thus become a 'full member'. The SEC Code Panel should be empowered to consider expelling parties for failing to meet the accession criteria. Clearly this must not be automatic as the SEC Panel may not consider it best facilitates the applicable code objectives to do so for a new small Supplier that was taking time to start its business up, and could easily evidence this to Panel; but this power, if not automatic, is indeed considered useful to prevent frivolous, or even mischievous, SEC accession in ways or for reasons that are hard to foresee.

#### **Q.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?**

EDF Energy agrees that full accession to the SEC (with accreditation to use the DCC) should allow parties to participate in the following, as this is standard industry practice:

- Propose and be consulted on modifications to the SEC
- Nominate candidates and vote in SEC Panel elections
- Participate in working groups established by the SEC Panel
- Receive information and reports that all SEC Parties are entitled to receive, and
- Seek advice and support regarding accessing the DCC's communication services.

However, we believe that only full DCC users should be able to raise modifications to the code. We also consider that it is necessary to identify the corporate entity that parties

accede so that new entrants can not skew any voting using multiple entities as different SEC members.

We suggest that SEC accessions are held at group level.

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

EDF Energy considers that the following information should be provided on application:

- Basic company details
- Credit Report
- Financial Summary
- Proposed Party / Parties
- Estimated time required for DCC entry
- Estimated volumes and services required from DCC to ensure that capacity is available.

## Chapter 6

### Consultation questions: Establishing readiness to receive the DCC's communication services

**Q.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)?**

EDF Energy agrees that, to ensure expediency of the DCC, the Data Services Provider (DSP) should be responsible for provision of the DCC User Gateway (DUG). The DSP should have the flexibility to contract this to a third party where it is considered that a third party provides a better / cheaper solution that meets the requirements.

It will be essential that the DUG offers open standards and the interface and message format be governed by the SEC. This will avoid large numbers of invalid flows and place the responsibility for resolving errors to the polluting party.

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

We have no further comment to make about the DUG proposals other than recognising the need to develop a cost effective, efficient service that meets all of the requirements. We should not attempt to squeeze in an unsuitable, unreliable, untested solution in just because it's cheap and available quickly.

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

EDF Energy agrees with the requirements a SEC party will need to meet before taking DCC services:

- Demonstrate that it has met the necessary security and privacy requirements
- Demonstrate that it can communicate effectively with the DCC
- Demonstrate that it is capable of executing the relevant new and amended business processes, and
- Provide any necessary financial security.

In addition we believe that a party should prove that they are able to communicate with other SEC parties where applicable.

We would like to reiterate that Metering agents could be used by some parties as the major interface to the DCC yet may not be required to directly accede to using the DCC. Some Suppliers may choose to use many agents (geographically) so we must ensure that each one is accredited to the same level as full SEC parties.

### **Chapter 7**

#### **Consultation questions: enrolling smart metering systems**

#### **Q.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.**

EDF Energy generally supports the proposals relating to smart metering enrolment. However we are concerned about a number of points:

1. It is vital to ensure that the term 'certain criteria' is clearly understood and aligned to the relevant assurance and accreditation regime.
2. The notification of Metering system devices to the DCC is performed at batch level and not assigned to any particular premises aligned with the base-lined BPDG processes.
3. The DCC will only notify the relevant Supplier and Network Operator when a system is available for communications services. The current wording suggests that the DCC will be required to notify other SEC Parties (all) that a smart metering system (by reference to its MPRN/MPAN) has been enrolled with the DCC and is available for communication services. We are strongly opposed to this suggestion. If all SEC parties are informed (via message or even access to a database), there is a concern that multiple ESCOs could use this as a marketing database and start cold calling customers to offer energy services. We believe that this would cause customers concern leading to a negative public perception of the smart metering programme and all the players within it. As Suppliers will be leading the rollout, this negative perception would be unfairly aimed at us. Additionally we are

concerned that customer consent may or may not be given for marketing purposes. The DCC is not expected to hold this information so how would it be able to recognise which customers had provided consent or not. This could lead to data protection issues.

We recommend that only the Supplier(s), Networks Operators and any party with an existing relationship with that meter point, should be informed. It should not be made widely available for others.

Additionally we believe that the DCC should provide communications coverage details for the premises, where requested by the supplier, to ensure that WAN coverage and technology is available in the area. Hence, aborted visits can be minimised.

**Q.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?**

EDF Energy fully supports the requirement for Suppliers to grant rights of meter access to the DCC.

We would like to understand the implications of Suppliers supporting SMSs in their own systems prior to DCC and whether or not they will be obliged to enrol them in the DCC. Failure to enrol large volumes of metering systems could have a negative impact on the DCC's ability to fully recover its costs.

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

EDF Energy supports the right of Suppliers to withdraw from the DCC solely when referring to decommissioning and removal of meter points. However, we do not support the proposed rights for DCC to withdraw meters via the 'opt out' process suggested for non-domestic metering systems. The ability to 'opt out' has a number of significant risks:

- Consumers supplied by multiple Suppliers (e.g. for gas & electricity) cannot be supported both in and out of the DCC.
- If a Metering Services Provider (MSP) opts out, then a supplier will be unable to receive alarms, alerts and messages from the meter directly leading to a delay or at worst non-receipt of the alarm.
- Theft alarms may not reach the necessary Network or Supplier.
- Consumers will not be able to allow third parties (such as ESCOs) access to their customer data.
- SMETS will not support more than one party to access to the SMS. So if the customer is supplied by separate gas and electricity suppliers, they would both have to opt out.
- Essential firmware upgrades may not reach the metering system.
- No security requirements AT ALL have been defined for opted out suppliers (apart from those that apply automatically such as the Data Protection Act).

- A site can currently opt out, if it then became compromised (e.g. by a virus) and then opt back in again, it could potentially infect the DCC.
- Extra processes will be required to accommodate the opt out as follows:
  - Mechanisms to transfer sites in and out of DCC
  - Mechanisms and processes required to communicate the opt out decision to other parties
  - Mechanism for routing of alarms and messages to DNO and other suppliers
  - Mechanism for routing readings to other suppliers
  - Mechanism for alerting other parties to configuration changes such as disablement/enabling
- Particular problems with this approach are:
  - It does not address how an old party who is still entitled to data from their period of appointment would access that data
  - It does not address what would happen if one fuel opted out and the other opted in
  - It does not address how data is routed to and from various parties e.g. do they access the hub directly or does the import supplier act as a pseudo-DCC and access the metering system on everybody else's behalf?
  - It does not address how access control, security requirements or compliance will be enforced.

## Chapter 8

### Consultation questions: Core and elective communication services

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

EDF Energy agrees with the three different types of eligibility to receive core communications services, noting that for Type A services, import and export access needs to be provided to the relevant Suppliers.

#### **Q.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?**

We believe that there is a common scenario where a property can be supplied by a separate gas and electricity supplier. However, we do believe that DECC are referring to these in this question.

We believe that a different scenario exists in the electricity market where two or more import suppliers, in relation to a single smart metering system could exist, but it depends on the definition of a smart metering system. In this example, a customer has two separate electricity meters at his property, both are billed on the same bill account, but with differing tariffs and with two separate MPANs. One of the meters supplies their normal lighting and power circuits and the second meter registers their heating use

supplied on an old preserved off peak tariff. Each meter has its own MPAN though they should not be flagged as related in the Registrations systems for settlement purposes. Hence, they can be traded independently. Of course, we are not aware of situations that exist today where customers have traded these MPANs with multiple suppliers, as we are only aware of the MPANs that we supply and cannot confirm if other MPANs exist. The only way to obtain this information would be to request it from all Registration Services as they are the only parties that have an independent view of all MPANs, irrespective of who the supplier is. However, for this scenario we can advise you that we do have approximately 25,000 customer premises, where this scenario exists and hence could feasibly be traded independently in the future.

The above valid scenario, where the MPANs can be traded independently, should not be confused with another scenario where a customer has two MPANs at a property, but linked to a single physical meter. These types of meters are usually covered by a single tariff, unlike the above example, and record normal and heating load on the same meter. These scenarios should be related in Registrations Systems as per the BSC and hence, cannot be traded independently. There are a few instances of this scenario where two meters can be fitted, typically in a three phase installation, where the heating load is recorded on one meter and their normal load on the second meter, each with their own MPAN and still billed under one tariff. But like the single meter version these MPANs, should be related and cannot be traded independently, as per the BSC.

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

EDF Energy agrees that any amendments to the core communications services should be subject to the standard SEC modification process as the impacts could be considerable to certain parties using the affected service in volume. However, we do believe that any code subsidiary documents such as the business processes, dataflow catalogue etc should be subject to a variant modification process that is more appropriate for that level of change.

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

EDF Energy agrees that SEC parties should be able to request elective services on either a bilateral or multilateral basis, the terms and conditions of which should be confidential (unless agreed beforehand) for a period of one year. This would provide those willing to innovate, the chance to develop a new product independently. We would like to see a mechanism that provides some comfort to the SEC panel that any elective service will not impact on the performance provided to core services. We suggest that a simple outline of the proposal, covering the basic message type (message or command), the size, the cost and the expected volumes should be made available to the panel. The outline needs to cover the impact to both the DSP and CSPs. It should hide the detail of the proposer and use of the message but provide some assurance that the DCC is consistent with its charging policy for elective services.

**Q.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.**

EDF Energy believes that it is critical to security to ensure that the same SEC requirements should apply to the provision of elective services.

We cannot think of any circumstances where these requirements should be relaxed for an elective service. Security and protection of the reliable delivery of core services has to remain the priority.

**Q.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?**

EDF Energy strongly believes that core services should be paramount and their provision should be thoroughly ring-fenced and protected. This in turn requires that provision of non-core services must only be permissible subject to the guarantee that core services will not be in any way compromised or disrupted. Similarly, once a core service is contracted, subsequent core or non-core services should be given second priority to the initially contracted core services.

EDF Energy believes that the SEC Code Secretariat could work, in the first instance, with the DCC to make the primary assessment, with an anonymised and "skeleton" elective service request. Complete with recommendation, this could be passed by the SEC Code Admin to Panel for its consideration. Sufficient information must also be made available to all users, in their capacity as members of the SEC governance panel to enable them to assess whether provision of the elective services would meet the following criteria:

1. Is not cross-subsidised by core services.
2. Does not impact the operation of the core services.
3. Does not compromise the performance of the core services.
4. Does not lead to discrimination across users whereby 'elective services' limit the opportunity of other users to introduce similar services or where the specific elective service prevents other elective services from being introduced.
5. Does not impact the security and privacy of users.
6. Does not compromise potential future capacity requirements for core services.

Notwithstanding the criteria above, the requested volumes of the service will be key to determine the standards and capability of the service offered by the DCC. It would be a concern if the volumes actually requested were materially far higher than contracted, thus impacting the availability of core services to other mandated users.

Some elective services will undoubtedly develop into core services over time as more users adopt them (subject to a full modification process and the approval of the governance panel). At this point, full transparency on these services would need to be provided through the SEC. Ofgem should publish suitable transparency criteria for different elective and value-added services.

We believe that the terms offered should remain open for a period of three months only.

**Q.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?**

EDF Energy believes that, for elective services, detailed terms and conditions should be withheld from the market for a suitable period (one year) to provide commercial protection to those offering new services. However, it is clear that in order for any 'elective services' to be introduced there must be clear definition of compliance with a set of DCC acceptability rules, DCC business case, and approval by an independent Governance body.

**Q.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?**

It is essential that SEC parties are advised of the timings for the implementation of changes to its systems. Any change that is introduced, without SEC party knowledge, could have an adverse impact on current services. This cannot be allowed to happen.

**Q.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?**

To support the successful delivery of its initial core services, EDF Energy agrees that it is pragmatic and sensible to withhold offering elective services until the initial go live of core services is complete, bedded in and performing consistently to the required service levels.

However, there is still some concern about the list of core services certain to be provided at go live. If the DCC is unable to support the necessary portfolio of services required to meet Supplier's basic process requirements, then these services must not be redefined as elective services and withheld. They must remain core services and be released as soon as possible to support the full end to end process. It is critical that the DCC goes live with a full set of core services that supports all current customer segments, tariffs and services.

## Chapter 9

### Consultation questions: DCC charges

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

Flat charging, per home, for DCC services in relation to domestic premises is desirable in the interests of social equity and simplicity; it also best supports Ofgem's tariff simplification agenda. However, EDF Energy has two main concerns in respect of the proposed approach to DCC charging:

Firstly, EDF Energy considers that parties other than Suppliers and Networks will benefit from DCC-related activities (e.g. ESCOs), and hence should contribute to the DCC's fixed costs. EDF Energy sees no reason why a similar mechanism for distributing fixed costs as has been proposed for Suppliers and Networks could not also be implemented for such users. For example, fixed costs could be allocated across user classes in proportion to forecast volume of usage by each class, updated as necessary for any outturn deviation from forecast.

Secondly, EDF Energy continues to oppose allowing DCC to levy charges before go live, for the reasons stated in our previous response (namely, that to do so would dampen the incentive for DCC to ensure its services are available on a timely basis).

We also recognise and support the proposal for the cost reflective charging of non-domestic metering systems but we do not understand how the DCC will be able to recognise the difference when a command is received. There is currently no non-domestic flag being developed in the DCC data catalogue. Can DECC provide the basis on how this will be determined?

#### **Q.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.**

EDF Energy has reservations about the proposed approach, which we are not confident will provide DCC with sufficient incentive to ensure smooth and timely resolution of disputes. Whilst EDF Energy acknowledges that DCC will have limited ability to finance payments that are withheld by Suppliers, we would expect that the contracts with Service Providers should allow for DCC to withhold payment from Service Providers in the event of a dispute. This would, in turn, permit Suppliers to withhold payment pending resolution of the dispute without damaging DCC's own financial position.

We would be more receptive to the use of "pay now, dispute later" in respect of services provided by DCC itself as opposed to those provided by Service Providers, providing that DCC was in turn subject to strictly monitored and enforced KPIs and incentives in respect of the efficient resolution of such disputes.

**Q.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.**

EDF Energy acknowledges that DCC is unlikely to be able to absorb costs associated with bad debt, and that most or all of the bad debt risk would ultimately need to rest with DCC users.

EDF Energy's preference would be for bad debt originating from a given user group e.g. Suppliers be socialised within that group only, such that all users would only be exposed to bad debt risk originating from within their own class.

Clearly, the above position is fully conditional on DCC being subject to well-defined and strictly monitored/enforced KPIs and incentives in respect of bad debt management. In the absence of a credible set of incentives, it would be necessary for EDF Energy to revise its position on this issue.

## **Chapter 12**

### **Consultation questions: The SEC Panel**

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

The answer to this depends on the model adopted for contracting the Code Administrator (CA) and the Secretariat. As set out in the answer to Q35 a preference is for the SECCo model to be adopted. Given this, the separation of the functions, powers and objectives between the SEC Panel and SECCo will need to be developed. Under this model some of the items set out in Box 12A would need to be allocated to the SECCo as opposed to the Panel.

The lists provided in 12A and 12B appear appropriate. It is noted that there is no mention of a power to recover the costs of the Code Administrator and the Secretariat from SEC parties.

EDF Energy agrees to all of the SEC Panel functions listed below:

- A. Appointing and overseeing the performance of the Code Administrator and Secretariat functions.
- B. Implementing (or supervising the implementation of) the SEC accession process.
- C. Implementing (or supervising the implementation of) the SEC modification process.
- D. Taking steps to ensure that the SEC is given effect in accordance with its terms.
- E. Deciding any matter which, under any provision of the SEC, is referred to the SEC Panel for decision.
- F. Taking steps to ensure compliance by SEC Parties with the provisions of the SEC, including deciding on the expulsion or suspension of the rights of any SEC Party.
- G. Establishing arrangements for the resolution of disputes under the SEC.

- H. Establishing sub-committees and working groups, and delegating powers, functions and responsibilities to any such sub-committees and working groups.
- I. Developing, consulting upon and publishing a three-year panel business plan.
- J. Publishing an annual report covering progress against business plan and providing or arranging for the provision of other reports and other information to SEC Parties and the Authority.
- K. 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.
- L. Periodically reviewing the SEC and operations under it in order to evaluate whether these continue to meet the Relevant SEC Objectives, and undertaking a review of such parts of the SEC as the Authority may specify.
- M. Establishing joint working arrangements with other relevant industry panels and committees. And
- N. Arranging for third parties to undertake certain actions and appointing and removing professional advisors (or directing other relevant bodies to do so) as required to facilitate the full and proper discharge of the panel's functions.

Additionally we consider that the SEC Panel should play a wider role in assessing the impact and applicability of Elective services through the SEC modification process

We also agree with the proposed objectives of the SEC panel detailed below:

- That the SEC is given effect fully and promptly and in accordance with its terms.
- That the SEC is given effect in a manner that facilitates the achievement of the Relevant SEC Objectives (as set out in the DCC Licence).
- That the SEC is given effect in a fair manner and without undue discrimination between any parties or classes of party.
- That the panel conducts its business in a transparent and open fashion.

Security and privacy are very important, so that an "obligation" rather than "one objective of several" approach is indeed more appropriate.

Given that there is a European dimension in terms of a smart metering target, that may develop, it is worth considering the practice in the Applicable Objectives for other industry codes. In each case an additional Objective was added by statutory order last October, so that there is a new objective, which we recommend adding to the SEC.

"Compliance, insofar as this is relevant to the development of the SEC, with any relevant legally binding decision of the European Commission (EC) or of the Agency for the Cooperation of Energy Regulators (ACER)"

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

EDF Energy believes that panel members could and should act in an independent manner when discharging the functions, powers and objectives placed on the Panel by the SEC. This is the model adopted under a number of the existing major industry codes. Panel

members should act independently of their organisation and constituency for the good of the industry but be representative of their particular groups.

**Q.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.**

Agree that to ensure the Panel operates in an efficient and expeditious manner it is important that the size of the Panel is appropriately set. Given the SEC will span both the electricity and gas industry a Panel larger than other industry codes may be required. That said, 16 members is on the large side. We do not see the requirement for a Government and Authority appointee.

EDF Energy proposes the following make up of the SEC panel:

#### Voting

**6 large Suppliers.** The Suppliers are responsible for and leading the domestic rollout of Smart Meters and each of the large suppliers should be provided a seat.

**1 Gas Networks rep** - Single representative from the networks constituency providing single vote.

**1 Electricity Networks** - Single representative from the networks constituency providing single vote.

**1 Small Suppliers** - Single representative from the Small Suppliers constituency providing single vote.

**2 Other DCC Users** - Single representative from the Energy Services Providers constituency providing single vote.

**1 Consumer Representative** - Single representative from the Consumer Advisory Group constituency providing single vote.

**1 Chairman** - Casting vote only.

#### Total 13 Voting

#### Non Voting

1 Ofgem - Appoints chairman.

1 DCC - Interested Party.

1 DECC - Interested Party Ofcom Interested Party.

Sub Group Chairmen - For reporting and advisory, as determined by the Chairman's Agenda

SEC Secretariat - For reporting and advisory, as determined by the Chairman's Agenda

Existing Governance Body Chairmen - For reporting and advisory, as determined by the Chairman's Agenda

Trade/Industry Organisations - Attendance and contributions by Chairman's invite.

**Q.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?**

Generally, EDF Energy agrees with the split between voting and non-voting but not necessarily the make up proposed. Our suggestion is shown above (see Q. 29). The main difference being that we believe all large Suppliers (mandated to use the DCC) should all receive a seat on the panel and an associated vote.

**Q.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.**

We fully support the proposal for a fully independent chairman to be appointed. This is consistent with other major industry code arrangements and we continue to support Panel Members acting in an independent manner. We believe that the chairman could be appointed by an appointments committee of the SEC Panel with administrative assistance from the code administrator. This is similar to the arrangement in the CUSC whereby the chairman is appointed by an appointments committee of the SEC Panel with administrative assistance from the code administrator. We believe a three year term of office for the Chair is appropriate, and see no reason why a Chairman cannot be eligible for reappointment for another term subject to a meeting to consider the matter at which the Chairman was not present.

EDF Energy agrees that the panel chairman should be fully independent with the term set for three years.

There is differing practise between CUSC, UNC, and BSC as to whether Workgroup members convened to process a modification proposal, are independent, or representative of the firm they work for. We prefer the independent model and recommend it for the SEC.

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

We agree that it is important that SEC parties have a say in who is nominated and appointed to the Panel in respect of the industry constituencies proposed (large supplier, small supplier, gas transporter and electricity distributor). We believe that to a large degree the arrangements should replicate similar arrangements found in other major industry codes.

However, arrangements will need to be put in place to ensure that no one party, that is both a large supplier in the electricity and gas supply market, is able to dominate the nominations. For example, it would not be appropriate for a party to be able to have more than one nomination across the industry constituencies. One method would be to restrict a corporate group to only one nomination in total, but allow it the freedom to decide which relevant constituency it would like to represent. Despite this restriction on

nominations, a SEC party would be free to vote in each relevant constituency that applied to it.

We believe that votes should be allocated on the basis of one vote per corporate group per applicable constituency. This will ensure that all parties within a constituency are provided with the same voting power irrespective of market share and corporate structure.

EDF Energy agrees that the panel members should be voted for on the basis of one vote per corporate group for each relevant party category. This would ensure that votes could not be skewed by corporate make up or the market share of certain parties.

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

We believe the high level proposals in respect of proceedings and decision making are appropriate.

EDF Energy agrees that the decision making rules should be based on 1 vote per member with the chair providing a casting vote only. This is standard industry practice.

**Q.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?**

Practice differs between other major industry codes where members are required to act in an independent capacity. In the case of the BSC, the members are permitted to claim expenses, but in the case of the CUSC, UNC, and Grid Code, they are not. We believe panel members should be eligible to recover reasonable costs and expenses incurred when attending panel meetings. In the event that members are able to act as direct representatives of the interests of particular parties or classes of party we do not believe it appropriate for such members to be able to recover their costs and expenses from a centralised fund.

## **Chapter 13**

### **Consultation questions: Code Administrator & Secretariat**

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

We consider there to be benefits in terms of independence and transparency from the establishment of a SECCo that would be the contracting party with the service provider for the CA and Secretariat functions. This is a proven model that has been adopted in other industry codes and we see no reason to move away from this arrangement. Given

this model is well recognised within the industry we do not believe it should introduce any added complication or burden for any SEC parties.

Furthermore, whilst we recognise that the roles of Code Administrator and Panel Secretariat are distinct, we fail to see any advantage of contractually separating these roles. We believe that allowing the two roles to be performed by separate entities, would be inefficient and introduce unnecessary complication and costs.

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

We believe a model similar to that adopted under the MRA would be appropriate for the SEC. All parties to the SEC would be allocated a single share in SECCo on accession to the code. The Board of SECCo should be constituted from a subset of representatives of the Panel with a view to ensuring that no one single shareholder has an undue influence on the operation of the SECCo and the Panel.

The costs associated with SECCo (including the Code Administrator and Secretariat costs) need to be transparent and appropriately managed and controlled. We consider these objectives can be achieved irrespective of whether the costs are recovered from all parties directly by SECCo or through the DCC. However, from an efficiency and administrative perspective using the DCC's costs recovery processes may be beneficial.

## **Chapter 14**

### **Consultation questions: Modification process**

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

The proposals for which parties should be entitled to raise modifications to the SEC appear to be appropriate, namely, SEC parties (DCC Users), the DCC, consumer bodies, the Authority or the Panel.

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

On the basis that the proposals are based on existing industry code practice we believe the proposed progression paths are appropriate.

**Q.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 proposed criteria are appropriate.

**Q.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?**

We believe it should primarily be for the modification proposer to justify why its proposal should be treated as urgent in accordance with criteria set out within the Code. This should be reviewed by the Panel and a recommendation provided to the Authority as to the urgency status and the proposed timetable for progression. However, ultimately it should be for the Authority to approve or otherwise the recommendation of the Panel.

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

As a principle the default position should be that standard modification rules apply to all parts of the SEC. However, due to the nature of a full modification process, we believe that certain subsidiary documents should fall under a separate, more appropriate process. These documents may include:

- Data Transfer Catalogues
- Data Item Catalogues
- Business Processes
- Working Practices, guidelines and codes of practice

**Q.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?**

Yes. All SEC parties and stakeholders need to be confident that all modification decisions are taken in an independent and transparent manner and based on achieving the Relevant SEC Objectives. The proposed formulation and constitution of the Panel is designed to ensure that these objectives are met. Currently, we do not believe that circumstances could arise where these provisions should be capable of being circumvented.

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

EDF Energy believes that the modification process reflects a good industry standard and we broadly support the proposals outlined.

The procedures used by CUSC, UNC, and BSC differ with regards to the number of alternative variants of a modification proposal that can be developed. The BSC is limited to a maximum of one alternative variant for any modification proposal which can be unduly limiting when there is more than one aspect that could be varied. It can limit the number of choices available to the Authority and could cause a modification to fail entirely where there was a permutation of characteristics that would have been beneficial. The Authority is not permitted to give any signals to the workgroup as to which variant to take

forward, for fear of fettering its own discretion. We would prefer that the CUSC approach of unlimited variants per modification proposal, be adopted for SEC, subject to a workgroup acceptance vote for each variant. We feel that this is a better than the BSC approach.

## Chapter 15

### Consultation questions: Reporting

**Q.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?**

EDF Energy believes it is inevitable and essential for the SEC Panel to request reporting from SEC parties though we are already concerned over the volume, cost, burden and duplication of reporting requirements being suggested by different parties. We note that DECC are consulting on Smart reporting separately in June.

We are concerned that the reporting requirements would add a significant burden and cost to Suppliers and that the data provided could be exposed to unforeseen consequences. The mass of data already being requested includes some:

- that is commercially sensitive,
- that could be linked and used to report more than is agreed,
- that could interpreted inappropriately, and;
- that could be made public by various means including via freedom of information request.

With this in mind we ask that reporting is consolidated where appropriate and requested with the above challenge in mind. There needs to be an economical assessment for each report requested as it seems sensible to try to identify the most cost effective source of data. For example one report from the DCC could save the cost of 20-30 reports from other parties.

## Chapter 16

### Consultation questions: Compliance and assurance

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

EDF Energy believes that compliance and assurance of smart metering equipment is essential for ensuring interoperability between manufacturers and security of the end to end system. This will be critical to the success of the programme and the validation of the impact assessment. The list of compliance /assurance techniques seems appropriate to cover all aspects of risk.

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

EDF Energy believes that an appropriate level of compliance/assurance techniques under the SEC requires further detailed consideration.

We agree that such a framework could complement other elements of the regulatory framework (such as licence enforcement) and provide comfort and certainty to SEC Parties that there is an effective, flexible and transparent means by which other SEC Parties would be held to account for non-compliance. We believe that the assurance should come under the ultimate control of the SEC panel with delegated powers to a possible assurance board.

## **Chapter 17**

### **Consultation questions: Liabilities between the DCC and DCC service users**

**Q.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?**

EDF Energy recognises that the DCC is a service provider. If it fails to provide a service we believe Suppliers will incur cost. Some of those costs will be mitigated though others will not. We believe that there needs to be a mechanism to ensure that the liability regime proposed, whether liquidated or unliquidated, provides Suppliers with sufficient mechanisms to recover those costs.

The proposal seems to be that the majority of cover will be via Liquidated Damage cover. Assuming that the LDs, and SLAs are appropriately defined and meet our operational requirements, then the role of general damages is likely to be lower and therefore a more limited cap might be possible.

In relation to our liability to the DCC, our most significant obligation (if not sole obligation) would be to pay DCC fees. Supplier's liability should be limited and there is no need to have anything but the most smallest of caps.

**Q.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?**

EDF Energy believes that a one size fits all approach would be difficult to achieve given the varied nature of the obligations and the wide ranging cost impacts these breaches could result in. Providing for different categories of breach with different liability regimes will allow for greater tailoring of risk allocation and provide a better opportunity for liability caps to be more appropriately set in such category than would be possible with a simple broad brush approach of one liability cap for all.

EDF Energy are unable to suggest a cap to the liabilities until we have performed some analysis and scenario tests on the potential breaches that could occur in this area and

establish what we feel the likely costs would be on a per event or annualised basis that EDF Energy would have some comfort of being appropriate to at least cover the key areas of loss.

Where an SEC Party undermines the encryption or enciphering protocol used in any part of the smart metering system through its own negligence, there should be no cap on cost-based liabilities identified at court payable to other affected Parties. This is to ensure the necessary very strong incentives to maintain a high standard of conduct and design in this area, are in place.

**Q.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?**

EDF Energy cannot add to the types of liability described in the context of the information provided.

**Consultation questions: Obligations and liabilities between SEC Parties**

**Q.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?**

EDF Energy is concerned that one of the major issues arising from similar industry governance on settlements, is that bilateral losses were left down to ad-hoc bilateral arrangements. This approach should be avoided at all costs with the Programme as it leads to uncertainty, cost and inappropriate resolution.

For each category of dispute that may arise there needs to be a clear escalation path and final determination point. Following which if the parties are still dissatisfied more formal action can be taken. This is especially important given that we are not only talking about addressing direct service failures by DCC, but also indirect service failures caused by the incorrect behaviour of another SEC participants. We would therefore expect to see a mixture of Option1, Option3 and Option4 (these options are not mutually exclusive), with the potential of Option 2 required for key liability issues, if the initial internal determination process failed to resolve matters to both affected parties satisfaction.

EDF Energy believes that where a SEC Party undermines the encryption or enciphering protocol used in any part of the smart metering system through its own negligence, there should be no cap on cost-based liabilities identified through court proceedings payable to other affected Parties. This is to ensure the necessary strong incentives on Parties to maintain a high standard of conduct and design in this area, are in place. There would be exceedingly grave consequences arising from any breach of HAN or WAN encryption. The credibility of the smart metering system and the remaining rollout could be put in doubt by such a breach. The breach could even cause a need for a visit to all homes to change the HAN or WAN module.

- in relation to any other decision of the SEC Panel which has a commercial impact, e.g. decisions in relation to the DCC charging methodology. This is distinct from SEC Panel voting on a SEC change proposal. Here the next stage of the process is for the Authority to make the final determination (other than for modification proposals which have been allocated to the self-governance route);
- when SEC accession disputed. Where a party attempting to accede is unable to do so and it believes the SEC Code is being incorrectly administered/applied in processing the accession application;
- when the application of credit arrangements and security calculations / draw downs is disputed. Although the security calculations / draw downs must be made in accordance with the relevant finance department of the SEC Code Administrator in the interim, to maintain the required protections.

It is possible that the SEC panel may play a role in monitoring the performance of the DCC, just as PAB under the BSC monitors the delivery of some BSC agents. However, it is not clear if this could give rise to disputes. That possibility may exist.

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

We believe that the SEC Panel should convene a disputes committee to resolve commercial disputes where the finding of the SEC disputes committee is not accepted. If a materiality threshold is met, the committee's finding could be appealed in the first instance to the SEC Panel itself, just as the TDC disputes committee rulings under BETTA are referred in the first instance to the BSC Panel. The SEC Panel should have the power to either overturn a SEC disputes committee ruling, or refer back to the SEC disputes committee for further consideration – exactly as is the practice under the BSC.

Where the findings of the SEC Panel in relation to a dispute remain disputed, there are references in the consultation document to (Para 413, 432) arbitration, and specific references to the Electricity Arbitration Association (EAA). It is likely that at some stage the Electricity Arbitration Association arrangements that are embodied in the BSC and CUSC will be reviewed, possibly abandoned. There is a level of dissatisfaction in some quarters with the absolute lack of transparency over EAA findings, and with the cost of maintaining the "list of experts" for use when the EAA is invoked. The cost of maintaining the "list of experts" used to be £100,000 per year under the Pool (1990-2001), and is currently £80,000 per year, funded entirely under the BSC. Total payments to an individual to maintain this list of experts since 1990, therefore, come to £1,980,000. This annual fee does not cover the actual cost of the use of the arbitrators who are suggested to parties making an approach for arbitration services. The names of potential arbitrators are provided and if parties wish to proceed, as we understand it, fully commercial rates are payable to the appointed arbitrators – none of the £2m name-list maintenance fee, pays for the actual arbitration costs.

We would dispute the text in the consultation document "most electricity disputes go to the Electricity Arbitration Association (EAA)". Our information is that no BSC or Pooling and Settlement Agreement dispute has ever been so referred, as there is a lack of confidence in the currency and cost-efficacy of the EAA arrangements.

We should very much prefer that references of decisions on disputes by the SEC Panel should be direct to the Authority. We do not wish to see the EAA further embedded in any of the industry codes.

As to whether the Authority may also have the option of redirecting a dispute to arbitration or expert determination, we would suggest that the Authority could use consultants to assist it in making a determination on a disputed SEC matter. In any event, the expert or arbitration body ought not to be the EAA, and if the Authority wishes to make a reference on a dispute on which it cannot opine, we suggest it should be able to make a reference to a court for a court determination.

We agree that an obligation on the disputing parties to resolve matters between themselves in good faith prior to escalating the dispute to a more formal and binding procedure, this is a positive step that could reduce the workload of the SEC disputes committee.

We agree that if they can be properly defined in the SEC, it would be reasonable for some specific disputes considered to have particular regulatory and/or competition significance to be reserved for the Authority to determine e.g. those relating to SEC accession, DCC charges and terms of core and elective service provision.

## Chapter 19

### Consultation questions: Default

**Q.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?**

EDF Energy agrees that payment default should be declared within 10 working days of a failure to pay DCC charges due.

We agree that the position of the consumer should be carefully considered in how to treat the various default events. A shut-down of all DCC services to the defaulting party would be likely to impact adversely on relevant consumers. The shut-down of only elective communication services seems far more reasonable, as these are not core to consumer service and less likely to have major consumer impact (accepting that if a bespoke product offering is built around an elective service, consumers can still be impacted).

Apart from not being able to vote in SEC Panel elections and being declared publicly to be in default of the SEC, a worthwhile penalty that could be effective in some cases, it is hard to think of meaningful penalties on defaulting parties other than expulsion from the SEC.

It is normal for the BSC Panel to sit in confidential, closed emergency session (which is often a teleconference) in an event of a party default to decide on whether expulsion from

the BSC is warranted. We agree that the SEC Panel should be able to use its judgement in each individual case on such penalties in a similar fashion.

## Chapter 20

### Consultation questions: Ceasing to be a party to the SEC

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

EDF Energy agrees with the proposed rules and procedures governing withdrawal and expulsion from the SEC described in this chapter.

## Chapter 21

### Consultation questions: Intellectual property rights

#### **Q.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?**

We agree for simplicity, protection and clarity that the intellectual property that is comprised in SEC modification proposals, unless already patented, should belong to the DCC, so that parties raising such proposals cannot pursue vexatious litigation (as was once the case under the Pooling and Settlement Agreement – the legal bill in dealing with the matter came to almost £2m). It would not be desirable for the DCC to be able to make money from the ideas of others; however, it seems unlikely that SEC Modification Proposals would truly embody unique and valuable IPR, and where this is so the relevant concept could be first patented.

## Chapter 22

### Consultation questions: Confidentiality

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

EDF Energy agrees with the types of information identified in the consultation as:

- Any information relating to any specific party to the SEC, where that party has designated in writing to the DCC or other SEC Party to which it has released that information, that this is confidential information, and
- Any information which would be considered as being obviously confidential by its nature; for example, personal details or commercially sensitive information belonging to SEC parties, and which is disclosed in connection with the SEC or the disclosing party's activities in connection with the SEC (even when it has not been designated as such in writing, as above).

We have nothing further to add.

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

EDF Energy is concerned that the data provided to the SEC Panel and the Government could be:

- commercially sensitive,
- linked and used to report more than is agreed,
- used to make inferences that are inappropriate
- made public by various means including via freedom of information request.

We note that DECC will be consulting on reporting in June and EDF Energy will endeavour to work with DECC to ensure that reporting obligations and confidentiality concerns are considered and balanced.

## **Chapter 23**

### **Consultation questions: Unforeseen events**

**Q.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.**

EDF Energy recognises that the Industry already uses a number of well-defined set of events where force majeure can be declared, but with the expected reliance on a new or existing communications infrastructure for smart metering, the industry should look to the communications industry for further guidance on what events could warrant a force majeure.

Whilst a force majeure event declaration may be required due to the event affecting one of the DCC's service providers, we believe that any final decision on whether an event can be declared must rest with the SEC panel, in conjunction with input and advice from the Code Administrator.

A defined process for the progression of such events must be developed including the provision of important information such as:

- The nature of the event
- The scale of the event
- Likely resolution timescales
- Communications strategy

**Q.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.**

EDF Energy believes it will be essential for the SEC to define a comprehensive set of contingency tested business processes necessary in the event of a force majeure event.

EDF Energy recognises the enormity of resolving every potential force majeure event but it is essential that the main scenarios are recognised, impact assessed, planned and tested to ensure that the impact to SEC parties and the consumer is minimised during a real event.

## **Chapter 24**

### **Consultation questions: Transfer of the DCC Licence**

**Q.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.**

EDF Energy believes that the process of transferring the DCC licence from one party to another is vitally important and will need to be planned and performed in a strictly controlled manner that ensures:

- ongoing continuity of service
- no loss of performance
- outstanding issues (both financial and customer) are resolved before the leaving party exits
- the handover of compliance issues
- the novation of all contracts

**EDF Energy**  
**June 2012**