

Rob Turner  
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Dear Rob,

Ref: Smart Metering Consultations

Due: 1<sup>st</sup> June 2012

ICoSS would like to thank you for the opportunity to respond to your consultation. We do not consider our response to be confidential and we are happy for our comments to be shared with other interested parties.

The I&C Shippers and Suppliers (ICoSS) Group was created in 2009 to provide Shippers and Suppliers who exclusively supply Industrial and Commercial customers a forum for discussing regulatory and legislative changes in the gas and electricity retail markets. Since its inception, the level of activity undertaken by ICoSS has increased significantly and ICoSS now plays an important role in ensuring that I&C Suppliers are aware of industry developments and work effectively with Government, Ofgem, consumer and other Industry parties when tackling gas and electricity market issues.

ICoSS represents the major independent industrial and commercial (I&C) suppliers in the GB energy market, supplying 75% of the gas needs of the non-domestic sector, and 15% of the non-domestic electricity sector. The members are:

- Corona Energy
- ENI UK
- Gazprom Energy
- GDF Suez Energy UK
- Shell Gas Direct
- Statoil UK
- Total Gas & Power Ltd
- Wingas UK
- First Utility (associate)

ICoSS also engages at a senior level with DECC, Ofgem, Consumer bodies, Consumer focus, Transporters and other Gas and Electricity participants in areas of common interest.

Membership of ICoSS is available to all licensed Gas and Electricity Suppliers, who do not actively supply (or seek to supply) domestic customers directly. In addition the ICoSS Executive has invited other organisations to become Associate Members including small domestic suppliers such as First Utility.

### **Smart Metering Programme Participation**

ICoSS has participated in a number of the Smart Metering Workstreams enabling smaller Suppliers to engage in the development of the proposals. However even ICoSS has been unable to cover the large number of workgroups and sub committees that the program has spawned. As such we have had to target specific areas of interest due to resource constraints.

At a high level we welcome the programme's recognition of the fundamental differences between the Domestic and Non Domestic sectors and believe it is important that the benefits of a fully competitive commercial market are not inadvertently distorted through decision coming out of the program which is focused primarily on a Domestic market solution.

### **Competitive Market Development**

In the Non Domestic Market the commercial roll out of Advanced Meter Reading (AMR) solutions have been ongoing for several years driven by the reducing cost of AMR solutions and Customers focusing on Energy Efficiency measures to reduce costs and meet various energy saving obligations.

Therefore in the Non Domestic sector the roll out of AMR has been driven by both energy Suppliers, Consumers and Energy Service Companies (ESCO's).

Many installations are undertaken directly between the ESCo and Consumer and the Supplier is not party to the arrangements other than as a recipient of the meter reading information. From informal discussion with members we believe the market to be equally split 50/50 between installations by an on behalf of the Supplier and installations by ESCo's directly for consumers.

To support this competitive model the whole industry including Suppliers, ESCo's and Consumers have come together through the Energy Services Technology Association (ESTA) to develop an Industry Code of Practice (ASPCoP) to which all the major players in the market are signatories too.



We welcome DECC's recognition of the fundamental differences in the market through its key decisions to: -

- Not require Non Domestic Suppliers to take services through the Data Communications Company (DCC)
- Not require the mandatory provision of In Home Displays (IHD) to Non Domestic Customers
- Not require the incorporation of a remotely operable "valve" within the definition of a Non Domestic Smart Meter
- Recognition that in the Gas Market meters operating with a maximum operating capacity of greater than 6 cubic meters an hour can continue to operate and that these meters can be operated in an Advanced Mode.

As the program moves forward we believe it is important to constantly ensure that the concessions which allow a vibrant, innovative and competitive Non Domestic Energy Services Market are not compromised.

Should you have any questions on our response please don't hesitate to contact me directly

Regards

## Appendix 1 – Consumer Engagement

### **ICoSS response to consultation on the consumer engagement strategy supporting the smart meter rollout.**

ICoSS is pleased to have the opportunity to respond on the Smart Metering Rollout – in this instance specifically regarding the consumer engagement strategy.

ICoSS members are exclusively engaged in the I&C sector of the energy supply market. Typically many of their non-domestic customers have already been actively engaged by ICoSS members prior to the smart metering programme in implementation of advanced metering solutions, utilising the enhanced functionality such meters provide or have procured a service directly from an AMR Service Provider or ESCO.

We are encouraged by DECC's willingness to include all shippers and suppliers in consultation on the consumer engagement programme roll out but would recommend that active participation in customer engagement of smart metering from the retail side is limited only to shippers and suppliers who have a natural incentive in the form of significant domestic portfolios and who, to date, have not been actively engaging with their customers with regard to the benefits of smart metering.

We note that in the I&C market the competitive nature of the market means that the supplier is not always the natural provider of these services. Indeed our members report that over 50% of all AMR units are contracted outside of the supply contract.

Members fear that requiring I&C suppliers to publicise smart metering products at the same time as other, overlapping advanced metering services would only serve to confuse customers and potentially damage current commercial programmes, slowing down overall rollout of the Business Smart solution, distorting the competitive market and reducing consumer confidence.

ICoSS therefore recommends that the licence conditions are not implemented or implemented only to shippers/suppliers with domestic portfolios. More generally we believe that consumer engagement is best met by those organisations that will have mandated domestic rollout targets, as they will have a natural incentive to sell the programme to their customers and are likely to be able to bear the costs which may otherwise be disproportionately high for smaller suppliers.



Additionally, ICoSS members feel that for any of the member companies to bear the cost of any form of consumer engagement would be unbalanced and disproportionate in consideration of the lack of applicability that smart metering has on ICoSS members' supply portfolios

In response to the questions posed ICoSS has provided answers on those pertinent to the sector in which it operates found in chapter 5:

**Q 32: "What are your Views on the state of the energy market for non-domestic consumers and its future development?"**

ICoSS sees that the energy services market that operates in the I&C sector has already evolved to meet the majority of the demands of the customers in the sector and is continuing to improve its flexibility to meet the challenges created by the change of supplier process. These products are tailored to the individual customer needs and recognise a wide diversity of requirements. It will be extremely difficult to create a homogenous message aimed solely at non-domestic customers.

**Q 33: "Do you agree that the information on current smart and advanced metering would be useful to non-domestic customers in the short term? Is there other information that could usefully be provided at the same time?"**

We are doubtful that information on smart metering could be useful to non-domestic customers as we highlighted earlier; meaningful information applied to the wide range of non-domestic customer would be impossible to produce. Information regarding smart metering is at best redundant and ultimately could be confusing as the customer will have received alternative and potentially conflicting information regarding AMR-based services from the supplier.

**Q 35: "Should the central delivery arrangements proposed in Chapter 4 extend to microbusinesses? What are your views on any centralized activities focussing on micro businesses alone?"**

We do not feel that in consideration of the myriad of specific requirements found in the microbusiness sector that any centrally arranged delivery is a feasible option.

**Q 36: "What changes might be required to the licence conditions at Appendix 2 to address the needs of the non-domestic sector?"**

ICoSS does not see the need for any licence changes for the reasons described above.

In addition we note that the competitive nature of the I&C AMR(Advanced) and smart market means that consumers are able to access competitive services and as such any obligations on I&C suppliers will put those suppliers at risk of accusation of anti-competitive practice. ICoSS would welcome assurances from DECC that it will ensure that I&C suppliers are exempted from



any such obligations or provide an indemnity to I&C suppliers to ensure they are protected from the costs of legal action.



## Appendix 2 - Data Access and Privacy

### Question 1 & 2

The majority of expected benefits of Smart and Advanced metering are achieved through the energy efficiency savings that these devices allow.

These benefits fall into three main categories:

1. Behavioural changes
2. Better investment decisions
3. Improved premise/process automation

The major problem with the IHD is that it only affects/enacts the first of these benefits. The IHD does little to assist the other two major benefits. Evidence from the I&C sector shows that behavioural change is a small part of the potential energy savings.

It is therefore vital to the success of the Smart Metering programme that consumers are easily able to access their data and to provide this to services that will help them with the other means of energy efficiency.

It is therefore vital that access to the consumer HAN is a relatively easy and consumer friendly activity.

#### *Market Distorting?*

As the DCC is open to both ESCO's and suppliers it is not clear to ICoSS why suppliers should be required to provide data directly from their supplier 'free of charge' and 'in a common format'.

As DECC is aware, suppliers will not be normally collecting 13 months of half hourly data for their own purposes. Collecting this data will therefore create an increase in cost to suppliers. As a supplier would not be able to make an express charge for this service, this cost would be hidden in the other supplier charges. This would mean that in comparison to ESCOs who would have to include their costs of data access into their energy efficiency service costs, suppliers would have a commercial advantage.

As such, ICoSS would have thought that this requirement, in the non-domestic sector at least, would be subject to 'State Aid' considerations. ICoSS would therefore like to understand whether this measure would be considered a disproportionate requirement which would fail if it were to be challenged. ICoSS is currently unaware of any argument that would suggest that this is a proportionate measure but looks forward to future discussions regarding this proposal.



#### *Industrial and Commercial Considerations*

It should be noted that the I&C market is a competitive market which is dominated by AMR and web driven technology and not the HAN/IHD technology prominent in the domestic market. The proposals regarding local data access to the HAN/IHD therefore do not apply to the I&C sector including Smart Meters operating in an Advanced Mode when part of an Advanced Service.

Additionally, I&C suppliers do not always have access to this smart or advanced data (in over 50% of cases ICoSS members report that AMR is provided outside of the supply contract) but instead rely on the consumer or the consumers' service provider to supply data to the supplier. With regards to consumer data access, in most cases this data is already available to the customer in various formats and customer requested templates in an internet portal and as a file download.

#### **Questions 3-8**

The proposals are workable but ICoSS believes they would add an unwelcome and largely irrelevant layer of administration to small domestic suppliers for little/no benefit.

Large quantities of AMR and half hourly data currently exist in the I&C market. There is no evidence that ICoSS is aware of that this data has ever been abused or misused when it has been available to a supplier or their agents or that customers have expressed concern that a supplier may have access to this data.

Logically, I&C data has a greater commercial value than domestic data as it relates to greater levels of energy usage and for customers with greater levels of purchasing power. Additionally I&C consumers are not subject to the Data Protection Act in the same way consumers are. Despite this, AMR Service Providers, ESCOs, energy suppliers and consumers have been able to successfully contract with each other for services and avoid any problems with data misuse.

ICoSS recognises the 'fears' raised by a small number of consumer representatives over data misuse but is yet to be convinced that these are anything other than unsubstantiated concerns which naturally occur with new concepts and technologies.

As such it is confusing to I&C suppliers why DECC believes that such strict controls are needed to regulate supplier access to data.

#### *Domestic Viewpoint*



ICoSS recognises and has sympathy with the concerns raised by Energy UK over these proposals and their ability to create problems for domestic suppliers. Members have commented that very little perspective on the actual value of this data and the level of sensitivity of its use is currently being applied by many engaged in this debate and this is causing an unnecessary level of fear and panic around its control.

In comparison, for instance to consumers financial data (which is routinely shared by banks with no requirement to 'Opt In' or 'Opt Out') metering data is of little commercial interest or value. In environmental terms however this data may, ultimately, be priceless. As such ICoSS is yet to be convinced that an adequate case has been made that these controls will do anything other than, at best, placate a small number of concerned voices. At worst, these controls could restrict the ability of the programme to enable energy efficiency measures and ultimately reducing carbon dioxide output and so jeopardise a significant portion of the benefits identified in the impact assessment.

#### **Questions 9 - 10**

These obligations do not relate to the structure and nature of the competitive I&C market and as such should not relate to I&C suppliers.

ICoSS remains unconvinced that the proposals do not constitute an unnecessary and ineffective administrative burden on domestic suppliers. To quote one member, 'were these proposals to be enacted then the paper required to send out all these notices will easily balance out any carbon saving from energy efficiency'. While this may be a slight exaggeration, the question remains about the value that these proposal would actually add.

#### **Question 21**

ICoSS agrees with the current approach.

ICoSS recognises concerns raised by larger suppliers that access to data by third parties may not be as secure as access by licensed suppliers. ICoSS is not convinced by this argument but proposed that the Information Officers and directors of ESCO's and other Third Party DCC users should be subject to a CRB check. This would provide confidence that the third party was a legitimate entity to access data and that the data was being managed by an appropriately law abiding individual.

#### **Question 22**

ICoSS agrees that a CIN service would offer a service that third party providers could use to demonstrate with reasonable confidence that they were allowing access to a customers' own meter.



**Question 23**

See answer to question 21

**Question 24**

ICoSS is unconvinced that this requirement is necessary or useful.

**Question 25**

ICoSS agrees with the proposal to use the SEC to govern access to smart data.

**Question 26**

The proposal could be a workable solution. It relies on a degree of reasonableness and a proportionate approach to be taken by the SEC Panel over the size, scope and cost of audits.

As such ICoSS makes three observations:

1. The current DECC proposal for the SEC panel ensures it will be dominated by the Big 6 suppliers and therefore subject to influence by them. As such a reasonable and proportionate approach cannot be guaranteed by the SEC Panel.
2. Were the process open to abuse then the audit process could be used as a way to increase costs of third parties offering competing services to suppliers
3. Surely if third parties are to be audited to ensure consent has been provided then suppliers must also be subject to the same level of audit as they may be accessing data for non-supplier related reasons.

**Question 27*****HAN Access***

Paragraph 6.7 States that for meters Opted Out of the DCC, it is envisaged that non-domestic consumers would still be able to access their data locally over the HAN. This statement is at odds with the ICoSS understanding of the current design of the Smart Metering System.

Where a gas Smart Meter is Opted-Out of the DCC then the meter will no longer be linked to the communications module. Instead it will be put into an 'Advanced Mode'. In this mode it will broadcast its index read on a regular basis and this will be captured by a nearby AMR unit. These units are not expected to have any form of HAN, cannot be accessed by the consumers and do not necessarily store data locally. The data will be stored centrally and provided to the consumer (and the supplier at the consumers request), most often via a web portal. It is also



usually possible for the consumer to download their data from the web portal or via secure storage.

For Opted In Meters ICoSS agrees that the provision of a CIN may be beneficial for some I&C customers. ICoSS therefore believes that such a service should be available to I&C customers with Smart Meters that are using the DCC.

#### *Supplier Obligations*

ICoSS is highly concerned by the suggestion that DECC is considering requiring I&C suppliers to provide access to data from Opted-Out meters. This suggestion appears fundamentally flawed in a number of ways.

Firstly this appears to ignore the fact that a majority of meters in this market are expected to be serviced by a customer directly procured service provider. As such the supplier will not have a contractual right to granular data. Rather the supplier will be reliant on the customer to provide it with the data. The alternative would be that suppliers would force customers to take their own smart/advanced service, negating the choice customers currently experience in the existing market. As this would signal the end to the competitive market in the I&C sector such a proposal would be highly likely to result in legal challenge.

Secondly, the proposal fails to recognise that suppliers that are offering this service are under considerable commercial pressure to make this data to the customer and/or their agents. If they do not then it is easy for a customer to choose an alternative service provider. Indeed in the gas market this is possible with little/no notice as AMR units can be 'daisy chained' or the data feed can be 'split' allowing more than one unit to offer data services from a single meter.

Lastly, the proposals ignore the current success of the I&C market to deliver data to consumers and third party service providers consistently.

#### **Question 28**

The proposals are workable in the I&C sector but they would add an unwelcome and completely irrelevant layer of administration and costs to I&C suppliers with no benefit.

Large quantities of AMR and half hourly data currently exist in the I&C market. There is no evidence that ICoSS is aware of that this data has ever been abused or misused when it has been available to a supplier or their agents or that customers have expressed concern that a supplier may have access to this data.

AMR Service Providers, ESCOs, energy suppliers and consumers have been able to successfully contract with each other for services and avoid any problems with data misuse.

Due to the complex pricing structures that many customer operate under, it may not always be possible for I&C supplier to know what data they will require and when/if they will need to access it. This may make it considerably more difficult for I&C suppliers to comply with these requirements than domestic suppliers with their more simplistic tariffs.

**Question 29**

ICoSS believes this issue is being addressed in gas under project Nexus. More discussion is required with the DNOs in electricity.

**Question 30**

ICoSS does not believe this is a significant problem and is unaware of any instance in the past 20 years where this issue has been raised by a 'concerned' I&C consumer. Given the levels of non-supplier contracted AMR/Advanced metering in the market ICoSS does not believe that there is a problem with I&C customers being aware and able to access the competitive smart/advanced market.



## Appendix 3 - Smart Energy Code Consultation

ICoSS has serious concerns that the SEC is being viewed in some places as a "one stop shop" for smart metering governance (governing the whole market) and in others as a commercial contract (between DCC and suppliers that use its service). This is leading to some perverse proposals that appear to ignore the parts of the market that may not use DCC services but will be subject to SEC governance.

ICoSS cannot state strongly enough that the proposals **MUST** allow the I&C market to remain open to all and strongly competitive.

This will require DECC to either change its proposals to enforce standards on the I&C market via the SEC or recognise that the SEC must be open to a wide range of participants including those not using DCC services. It must also ensure that a fair, open and transparent governance regime is used to operate the Smart Energy Code (SEC) and that all suppliers have equal access to influence that regime.

For the avoidance of doubt ICoSS would like to make clear that it believes the existing SEC governance proposal is clearly not fair and would result in market distortion. As such ICoSS believes that the existing proposal would be likely to be subject to some form of legal challenge which would be likely to delay the process.

ICoSS would therefore like to offer to work with DECC as a matter of urgency to create an alternative governance proposal which would be fair and more acceptable to all industry participants.

### **Question 1**

ICoSS believes that consideration should be given to differentiate between the large portfolio 'Big 6' suppliers and smaller suppliers. The conception of large and small suppliers (under 250,000 meterpoints) is increasingly being used elsewhere and as such this would enable the SEC to more easily reflect other codes and obligations.

ICoSS also recognises that the early use of this differentiation would aid and assist both government and Ofgem to fulfil their responsibility to assess whether measures are proportionate as it would ensure obligations are clearly aimed at large suppliers, smaller suppliers or both.



ICoSS would also suggest more thought is given to the inclusion of MOPs, MAPs and MAMs within the SEC. ICoSS recognises the ongoing work in other codes to allow these parties access. Excluding these parties may be considered by some a retrograde step in making industry systems and processes efficient and fit for purpose.

#### **Question 2**

The options appear to confuse access to systems and processes, commercial agreements to act as a parties agent and membership of the SEC. While ICoSS is largely agnostic to whether MOPs, MAMs and MAPs have access to DCC systems and processes it can understand the argument made by ESTA, SBGI and others that MOPs, MAMs and MAPs will be significantly affected by the SEC and as such should have the ability to access change governance of the SEC for the areas that materially affect the way in which they operate their businesses.

For example it is important that MOPs, MAMs and MAPs are able to formally signal their agreement with terms in the Installation Code of Practice as they will have to deliver these arrangements for smaller suppliers (who will not have their own in-house MAM).

#### **Question 3**

See above

#### **Question 4**

ICoSS believes that greater consideration should be given to allowing MAMs, MOPs and MAPs access to the SEC. ICoSS notes that SPAA governance is currently being altered to allow this to happen for the elements of the MAM activities that are now governed by SPAA.

#### **Question 5**

ICoSS has concerns that the consequences of the decision to include SPA processes within the DCC is not currently properly understood. It would appear that the answer to this question is far too complex and interrelated with other issues such as the nature and structure of the Nexus project rebuild of GT Agent systems to answer at this time.

ICoSS would welcome leadership from DECC and Ofgem on this issue as it believes a high level industry plan on these issues is essential for the efficient delivery of customer benefit.

#### **Question 6**

ICoSS has a number of concerns with the proposals for the SEC Panel to be able to expel parties from the code on the basis that they had not and would not be taking DCC services. This assumes that the only reason a party would choose to be a member of the SEC would be to take DCC services.



For example it has been stated by DECC that all suppliers must sign the SEC but they may not choose to take DCC services.

ESCO's may not choose to use the DCC for its services but may in the future need access to the SEC to gain access to SPA and meter asset information.

**Question 7**

Yes

**Question 8**

ICoSS would suggest that using this process to perform CRB checks on ESCO's Information Officers may reduce the concerns raised about non-licensed parties gaining access to consumer information.

**Question 9**

ICoSS is agnostic to the DCC User Gateway solution. It notes however that its members already subscribe to a number of existing industry networks and it would appear most efficient for suppliers to have a limited number of solutions they are using.

ICoSS notes that during the rollout of competition in the gas metering market, Ofgem's analysis clear demonstrated the benefit in allowing parties to utilise the existing networks. ICoSS would therefore wish to see the existing networks allowed to also bid for this service.

ICoSS members also recognise that the risk that if the cost of accessing DCC services is constrained through the choice and pricing of the DCC User Gateway service then this may restrict the ability of small suppliers and ESCOs to use DCC services. This in turn would impact on the ability of small suppliers and ESCO's to compete fairly in their respective markets.

It is therefore essential that whatever solution is chosen that it is sized and designed to meet the needs of all sized market participants.

**Question 10**

NA

**Question 11**

ICoSS fundamentally disagrees with the premise of the proposal put forward by DECC.

The DCC should have appropriate validations and systems in place to ensure users cannot breach its security and/or place its systems at risk.

This proposal appears extremely similar to the current operation of the UK electricity supply market where parties must spend considerable sums of money proving the ability of their systems to communicate with industry systems (usually considered to be in the region of £1m - £2m). ICoSS members have confirmed that these costs are a considerable barrier to entry to this market.

ICoSS members cannot find another UK market that has such onerous market entry requirements. Even the financial services and banking industry has less onerous obligations and requirements to connect to banking and exchange services.

**Were the current proposals to impose an electricity style regime requiring a party to 'demonstrate' system functionality through some form of compliance testing and auditing then ICoSS is convinced this will seriously restrict the ability of small entities to use its services and as a result the DCC will not fulfil its energy efficiency aspirations.**

It should be noted that the gas industry systems do not require the same level of testing with no noticeable difference in data error rates between the markets.

As the DCC will reject all messages that are not correctly formatted there is no rational reason to require small suppliers or ESCOs to 'Demonstrate that it can communicate effectively with the DCC' and 'Demonstrate that it is capable of executing the relevant business processes' etc.

As ICoSS has repeatedly provided DECC with feedback about its concerns in this area over the past two years it is concerning that DECC appears blind to the significant and serious consequences of applying a entry process which is not proportional to the size of the supplier or ESCO.

#### **Questions 12 - 14**

ICoSS generally agrees with the approach set out. It notes however that the consultation largely ignores the enrolment and withdrawal of I&C meters from the DCC. It would be helpful to see these matters addressed as soon as possible. ICoSS will continue to work with DECC upon request to resolve issues relating to the I&C market.

#### **Questions 15 - 23**



ICoSS members note that DECC has previously provided statements that the DCC will be expected to offer terms to existing AMR Service Providers to use DCC communications services for AMR units. It would be useful for ICoSS members to understand when and how this will be possible.

#### **Questions 24 - 26**

ICoSS understands that DECC is proposing a different charging regime for I&C meters to those proposed for domestic meters. These proposals appear to largely ignore the differences between these two types of meters and it is therefore not clear to ICoSS whether they are expected to apply to all meters or purely domestic meters.

ICoSS recognises that as the service offered to I&C suppliers is in the context of a competitive market it may be appropriate that the nature of the charging is different. This suggests however that the nature and terms of the service may also need to reflect this. For example while a pay now - dispute later clause may be normal in a commercial contract, it would appear bizarre to requests a clause that required other customers to carry the risk of another customers debt.

#### **Question 27**

ICoSS believes the structure of the SEC Panel and the SEC change governance needs more thought and consultation. The proposed model appears to be based on the current electricity market model which has consistently failed to deliver significant competition over the last decade and has been consistently criticised by smaller market participants as being impossible to influence and subject to cronyism from the larger suppliers.

Given the I&C gas market has consistently been identified as the only market where significant competition exists it is therefore confusing to ICoSS why DECC has chosen to use the electricity market model rather than the gas market model as the baseline for the SEC governance structure.

*NB The gas market governance has consistently resulted in 2/3 of the five Shipper representatives on the UNC panel being from the Big 6 suppliers/shippers and 2/3 being from the I&C/Producer shipper/suppliers. This has ensured a reasonable balance in influence and ensures representatives act in a reasonable manner.*

ICoSS broadly agrees with the proposed Objectives as set out within the consultation in box 12B. However, we believe that the objectives require further consideration before final drafting is agreed.



ICoSS members agree with the aspiration to ensure that the SEC panel must facilitate the competitive markets in both energy supply and energy efficiency services. Experience from other codes suggests however that simply putting an objective in a code or a licence will not stop a commercially interested party in attempting to influence the panel against this objective.

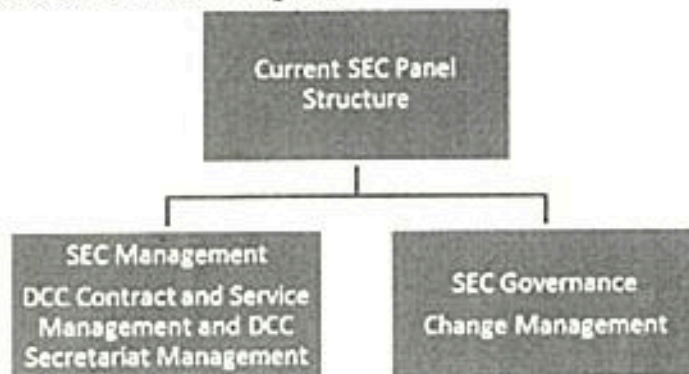
It is vital that the makeup of the SEC Panel and the change governance is designed in such a way that there is an appropriate tension between the interests of different parties. If this balance is not maintained then no number of objectives will avoid market distortions from occurring. Understandably market participants will be interested in ensuring that they gain as much influence as possible in the new SEC governance structure.

Were all industry participants similarly sized then this would not in itself be an issue. Unfortunately as the UK has six (seven including National Grid) organisations that are considerably larger than all the others, this leads to a situation where these organisations are able to field considerably greater resources than all the other organisations involved in the SEC.

Unless the governance regime is carefully designed then this disparity will inevitably lead to the largest parties having an unfair commercial advantage when competing proposals are considered via the SEC no matter the strength and nature of the objectives.

ICoSS agrees with the majority of the proposed functions of the SEC Panel but believes that Change Governance of the SEC should be handled outside of the SEC Panel. Instead the panel's functions should be limited to the administration of the DCC contracts and the DCC secretariat function. This would allow an extremely small SEC Panel with the skills, experience and knowledge to actively manage the day to day issues without the distraction of the politics of change management. The SEC Change Governance could then be undertaken by a separate panel with representative constituents.

This framework is laid out in the diagram.





ICoSS believes that this structure has significant benefits over the structure proposed.

#### **Question 28**

ICoSS disagrees that a fully independent panel as proposed is the most appropriate model for the SEC. ICoSS prefers a more honest model that recognises the commercial interests of the large market participants and allows smaller participants to have an equal opportunity to propose and influence the SEC and the DCC services.

In the model proposed by ICoSS (see description above) it would be possible that the SEC Management panel members could be independent representatives as the work they would be doing would be unlikely to provide any commercial benefit or advantage to one party or parties. Were a Security Advisory group to be maintained under the SEC governance structure then, again, this may also be considered a group where representatives could be considered 'independent'.

*NB It should be noted that the SWIG Group was initially billed as being for independent experts only. Yet later DECC officials referred to members of that group as representing individual companies. This demonstrates the tendency for representatives to be viewed as representing interests even when chosen as independent.*

#### **Question 29**

ICoSS does not agree with the proposed SEC Panel composition as it appears designed to maintain the influence and power of the six (seven including national grid) largest incumbent energy companies. The model as proposed fails to recognise the needs of smaller independent suppliers in both the I&C and domestic markets, ESCOs and the MOP/MAM/MAP community to have an equal opportunity to influence the change management process as the large incumbents. As such the proposed model appears to fail to meet the proposed SEC Objectives.

On the basis that the SEC Management Panel acts as the executive committee only, and therefore oversees policy, budgetary activities, accession and strategic issues, we feel that the group is too large. This panel could be made up of a small number of individuals (ICoSS suggests 5 - 8 in number), voted in a simple ballot by all SEC signatories.

#### **SEC Governance (Change Governance)**

The Smart Energy Code is a new code with new market arrangements in which parties will obviously want to be involved and heard in change governance discussions but we have the following comments on the proposed composition:



- It is not clear why the Big 6 require four Large Supplier seats other than to ensure their continued domination of the energy supply industry. This proposal appears to be at odds with the current public statements that DECC wishes to encourage small suppliers and to see greater levels of competition in the energy market. Given the difference in access to resources between large suppliers and small suppliers it appears bizarre to tilt the table so heavily in favour of the Big 6 through the governance process.

**Proposal - Big 6 to be limited to two seats. One for Gas and one for Electricity**

- There is only one proposed smaller Supplier panel member. This is not acceptable as it does not provide an adequate and equal opportunity for smaller suppliers to influence the change management process. Smaller suppliers should have at least equal representation as the larger suppliers.

This also fails to allow for the differences between smaller suppliers (gas and electric, I&C and domestic). Not only would it mean the 'small supplier' representative would be unable to adequately represent all small suppliers, it would make it virtually impossible for a mainly single market, single fuel supplier to ever put forward a representative. As most small supplier specialise in one market and one fuel this would essentially discount most small suppliers from being able to provide a potential candidate for the SEC.

**Proposal - Small Suppliers to have equal representation in line with the proposal above i.e. two seats. One for Gas, One for Electricity.**

- Two panel members are proposed for other users of DCC communication services. It is vital to ensuring the adequate representation of ESCOs that these seats are not used by suppliers as a back door into the SEC panel.

**Proposal - ESCO's to have two seats. Must have no supplier group interest.**

- There is only one electricity distributor panel member and one gas transporter member. This ignores the iDNO' and iGTs.

**Proposal - iDNOs and iGTs to have two seats. One for Gas, One for Electricity.**

- ICoSS recognises that DECC wishes to ensure that the consumer perspective is given sufficient voice and weight and has proposed two consumer representatives.



ICoSS agrees that Consumer Focus should represent domestic consumers. ICoSS has serious concerns however with Consumer Focus representing I&C customers as ICoSS believes that it has neither the experience nor the mandate to do so adequately.

**Proposal - I&C consumers to have the opportunity to provide a representative**

- Again, ICoSS notes that the absence of MOPs, MAPs and MAMs appear a little strange. This is especially so as it is proposed to have non-code signatories as voting panel members on the basis of interest.

*Basis of Membership*

As previously stated ICoSS does not believe that members of the SEC Governance panel should be considered 'independent' rather they should be representative of a constituency. ICoSS believes that the way in which that member votes and operates should be agreed by between that member and their constituency.

**Question 30**

ICoSS disagrees with the proposed division of voting and non-voting members for the reasons stated within our response to Q29. The proposed Panel is too large, heavily biased to the larger suppliers with little representation from smaller suppliers.

**Question 31**

ICoSS agrees with the proposals for the independence and term of office for the Panel chair and believe that the approach for the appointment seems reasonable. However, for the initial appointment for the Panel chair, it would envisage a transparent process with the Authority issuing a job advert with available job description for the individual to take on the role. If the SEC Panel were split into a SEC Management Panel and a SEC Governance Panel then the Code Administrator could provide the chair for the SEC Governance Panel and any subsequent subcommittees or workgroups.

**Question 32.**

ICoSS believes that the only way to ensure large parties do not abuse the size and scale of their organisations is to limit each group to a single vote. This currently happens in the UNC without any issues.

ICoSS believes that a group should only be able to vote once in a single constituency and this constituency should be the constituency in which they have the greatest interest. To avoid

game playing there would be a process by which a party would be placed in a category by means of ranked interest.

For example:

- Large Supplier
- DNO/GT
- Small Supplier
- iGT
- ESCO

Any appeals about categorisation would be heard by the Independent Chair and their decision final.

ICoSS believes that each constituency should be able to vary how it chooses to operate any ballot/voting process but that the SEC should require the re-election of the member at least two years and that the process must allow all SEC signatories in that constituency to apply to be the representative.

#### **Question 33**

ICoSS favours an alternative model for the composition and remit of the SEC Panel. However, on the basis that the SEC Panel acts more like an executive committee and does not take responsibility for change modifications and security, then the proposed procedures look reasonable as long as there is quoracy.

#### **Question 34**

ICoSS has concerns with both options but is happy to discuss alternatives with DECC.

#### **Question 37**

All parties who are code signatories or are governed by the SEC must be equally able to raise changes.

#### **Question 42**

See answer to questions 27,28 and 29

#### **Question 45 & 46**

Most of these proposal appears extremely similar to the current operation of the UK electricity supply market where parties must spend considerable sums of money proving the ability of their systems to communicate with industry systems (usually considered to be in the region of £1m - £2m) and may be subject to audits and assurance measures. ICoSS members have confirmed



that these costs are a considerable barrier to entry to this market and are an effective tool for ensuring smaller parties cannot compete on an effective basis with larger ones. It should be noted that the gas industry systems do not require the same level of testing with no noticeable difference in data error rates between the markets. As the DCC will reject all messages that are not correctly formatted there is no rational reason to require the disproportionate burden that these assurance measure would place on small suppliers or ESCOs.

In combination with the proposals to stack the SEC panel with four times the number of larger suppliers to smaller suppliers, these proposals appear highly open to abuse.

It would appear to ICoSS that the proposals are neither proportionate, fair or offering value for money to the end consumer. They stray well beyond the reasonable, effective, efficient assurance clauses that would be expected to be found in a long term commercial data communications contract and rather mirror the ineffective, inefficient, anti-competitive regimes found stymying the electricity supply markets.

ICoSS do agree that there is value in:

- A testing environment for potential users of DCC services to test to ensure their systems and processes work
- A assurance regime for security
- A disputes process for any kind of DCC/SEC party dispute
- An ability to claim liquidated damages in the event of a breach by a DCC party

ICoSS believes greater thought needs to be given in this area to the needs and requirements of smaller parties such as small suppliers and ESCOs. If this is not done then the process could be subject to legal challenge. ICoSS is happy to work with DECC to ensure proposals are proportionate and are therefore not able to be successfully challenged.

#### **Questions 47 - 53**

ICoSS notes that many of the proposals made by DECC in this area significantly vary from the commercial norms currently in operation in the market. ICoSS would question why this is the case and remind DECC that the DCC service contract is likely to impact the current market norms.

It is concerning to ICoSS that DECC appears to be suggesting that the SEC may become an avenue for one party to take legal action against another. Given the monopolistic nature of the service and the difference in size between potential users of the service this could be considered an approach that is fraught with hazards.

**Questions 54 - 55**

ICoSS agrees with the proposals.



## Appendix 4 - DCC Licence Conditions

### Question 8 v)

ICoSS has a number of serious concerns with the changed view of DECC that non-domestic services should be costed on a geographic basis and is concerned that the rationale for its proposal is fundamentally flawed, ignoring the existing market conditions.

The premise of the argument presented by DECC is that non-domestic services would cherry pick areas where the DCC was less expensive. This is incorrect for a number of reasons and has been developed without a clear understanding of the current market<sup>1</sup>:

- All services currently operating in the I&C market that ICoSS is aware of are currently costed on a non-geographic postage stamp basis
- Based on the DECC data the DCC is expected to be cheapest service provider in all areas of the country by some clear margin
- The costs of the communications service is a tiny fraction of the cost of service provision and therefore non-domestic suppliers are not driven by cost in this area. Members report that they regularly use more expensive service providers because they offer a better signal quality and therefore less risk of return to site visits.

DECC raised concerns that a non-geographic, uniform charging basis would distort competition. ICoSS members believe the opposite. By introducing geographic pricing into the market, the DCC risks changing the market norm, distorting the current competitive market which has delivered a simple, non-geographic pricing structure.

ICoSS notes that DECC's proposal would add significant extra cost into both the DCC and suppliers to bill, reconcile and pass on costs to customers with pass through arrangements. As the DCC's charging arrangements are likely to set the market norms then this would also impact on non-domestic customers market experience with multi-site customers being quoted differing costs geographically for the first time.

*NB: ICoSS notes that were DECC to continue with this proposal then clearly the larger the geographic region in a price band the less the market distortion. For example, were three prices given for each of the three communication service provider areas, then this would limit the*

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<sup>1</sup> ICoSS members represent a large majority of the AMR deployed in the I&C market.

*distorting effects and the impact on the competitive markets. However postcode by postcode pricing would be highly distortive and would result in huge administration costs for I&C suppliers using the DCC service.*