



SCOTTISHPOWER

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

16 May 2012

Dear Sir/Madam,

SMART METERING - DCC DRAFT LICENCE AND LICENCE APPLICATION REGULATIONS

Thank you for the opportunity to respond to the proposed draft licence application regulations set out in the above consultation document. This letter responds to the Government's proposals on the Licence Application Regulations; work continues on the other aspects of the consultation relating to the DCC Licence, where you have asked for replies by 1 June 2012.

In broad terms, we think that the licence application regulations are appropriate, though we think that the procurement exercise could take rather a long time to complete. This means that it would be sensible to have a way to extend an existing DCC licence if the successor appointment stalled or was derailed by legal challenge.

We would also note that there appears to be no role for suppliers, DNOs or their representatives on the licence application panel. This seems odd as decisions made by the competent authority in this process could have significant practical and commercial implications for energy suppliers and networks. This should be considered further,

Our detailed responses to questions 15-18 are set out in the attached annex. Should you wish to discuss any areas of this response in more detail, please do not hesitate to contact me using the details shown below, or

Yours sincerely,

**SMART METERING - DCC LICENCE APPLICATION REGULATIONS
SCOTTISHPOWER RESPONSE**

Question 15: For the initial licence application, do you agree with the Government's intention to apply the BAFO stage in all circumstances, so as to mitigate the risks associated with the changing requirements and improve the competitive outcomes?

The Government is proposing to make the BAFO stage discretionary, but with the intention that, for the initial procurement, it will be applied in all foreseeable circumstances. We agree that it is very likely that the BAFO stage will be needed for the initial application, but think that the Government should be open to dropping the requirement if it is clearly not necessary. A BAFO stage that was certain might cause applicants to hold back concessions at the proposal stage.

We believe the BAFO stage is likely to be particularly relevant to the initial DCC procurement process given the embryonic nature of the regulatory and commercial framework within which the successful applicant will be required to operate.

While the BAFO process could be effective in obtaining the best value for money from applicants, we believe it may be necessary to limit its application to areas where sufficient competitive tension exists, which may not be the case in all future DCC procurements.

Given that the regulatory and commercial framework is likely to be subject to ongoing change and development, we think a BAFO stage may well be desirable in future DCC procurements.

Question 16: Do you agree with the proposal not now to include a fast-track process to appoint a temporary DCC, but instead to rely upon the provisions for intervention to keep the DCC's service functioning whilst a standard licensing application process is conducted to appoint an enduring successor DCC?

Yes, we broadly support the approach set out in the proposed licence and agree that a fast-track process is unnecessary. While we recognise that the interventions set out in the proposed Condition 41 are unlikely to guarantee the survival of the DCC entity itself, they should provide sufficient time for a suitable alternative to be properly procured under the application regulations.

In our response to the DCC Regulatory and Commercial Framework (September 2011), we stated that it "should be an over-riding objective of the procurement process to avoid ever getting into the situation of revoking the DCC's licence." While we also went on to state that we were satisfied that a fast track approach could be used, we are very much of the view that timely intervention is preferable to revocation and we consider that the relevant provisions, proposed for the DCC licence, offer a suitable means of effecting such intervention.

The absence of a fast-track process does increase the risk that a successor will not be appointed in time at the expiry of a DCC mandate. There is always a risk that a tender process of this kind can be derailed by a mishap or legal challenge. We think some sort of process for extending the DCC licence in such circumstances needs to be available,

Question 17: Do you have any comments on the proposed competitive application process for the DCC licence and, in particular, on the Government's stated intention to operate an extensive 'best and final offer' stage for the first licence competition?

To be successful, we believe that the applicant must first have clearly demonstrated a capacity to satisfy the regulated business requirements. It naturally follows, therefore, that the detail of these regulated business requirements will need to have been made available to any selected qualifying bidder ahead of its BAFO submission.

However, as indicated in our response to Question 15, we perceive that the regulatory and commercial framework will develop further during the application process timeline, at least for the initial DCC licence. We therefore consider it necessary for the BAFO stage to be sufficiently flexible to enable any developments in the regulatory and commercial arrangements to be fully factored into a selected qualifying bidder's submission.

We would also note that there appears to be no role for suppliers, DNOs or their representatives on the licence application panel. This seems odd as decisions made by the competent authority in this process could have significant practical and commercial implications for energy suppliers and networks. This should be considered further,

Question 18: Do you have any comments on the draft DCC licence application regulations and, in particular, whether they effectively implement the proposed competitive application process described in this consultation document?

With regard to the restrictions to be imposed on DCC applicants, to protect the equitable delivery of services to DCC Users, the Government proposes an overriding objective to:

*"Ensure the independence of the DCC from its service users to avoid situations where any service user could use the supply chain to advantage their own position at the expense of other users."*¹

We agree with this objective and note that it is reflected in the draft DCC licence conditions. However, we note that in the summary table of restrictions², this restriction is summarised as

"The DCC should be materially independent of energy suppliers"

For the purposes of consistency, we would propose that this table entry is revised to make it clear that the proposed restriction applies to all service users, not just energy suppliers.

We also note that when the Secretary of State gives the Authority a direction under Article 5(4) of the regulations, asking the Authority to run the tender, article 7(1) (which allows the authority to determine the timing of the tender) does not apply. Who does determine the timing in such a case?

Scottish Power
16 May 2012

¹ Condoc page 102, para 5.145

² Condoc page 103, para 5.146