

June 1st, 2012

Smart Metering Implementation Programme
Department of Energy and Climate Change
55 Whitehall
London
SW1A 2EY

Smart Metering Implementation Programme – Smart Energy Code Consultation

Dear Sir,

Please find First Utility's response to the above consultation below.

Chapter 3 – SEC Party Categories

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

These seem appropriate.

Chapter 4 – Involvement of the Meter Services Community

Question 2 – Are the requirements of both meter asset providers and meter operators for access to smart metering systems adequately captured in this consultation paper?

Yes.

Question 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?

This seems a simple and appropriate solution.

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

Limited participation rights should be provided to meter operators in relation to aspects of the SEC which are likely to impact directly on them.

Question 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?

This would seem appropriate in order to assist in the prevention of theft and fraud.

Chapter 5 – Accession to the SEC

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

This seems reasonable. However, we would appreciate more detail as to the manner in which the level of the administrative fee will be determined by the SEC for each party.

Question 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?

Yes.

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

We believe the information delineated in the consultation document should be sufficient.

Chapter 6 – Preparing to Use the DCC

Question 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)?

This seems appropriate although full consideration should be given to the cost / benefit balance of each specific proposal.

Question 10 – Do you have any other comments on the Government’s proposals for the DCC User Gateway?

Not at this time.

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

We agree that new users should be required to undergo testing in relation to communication with the DCC User Gateway and demonstrate their capability to execute related business processes.

Chapter 7 – Enrolling, Withdrawing and Replacing Smart Metering Systems

Question 12 – Do you agree with the proposed rights and obligations relating to smart metering system enrolment set out in this chapter?

These seem reasonable.

Question 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?

Yes, as this will be necessary for DCC to properly perform its function.

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

Again, this seems reasonable.

Chapter 8 – The DCC’s Provision of Communication Services

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

Yes.

Question 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?

This is rare but possible at a site with multiple MPANs where these are supplied by different suppliers. However, we are unable to estimate the total size of the issue and the simplest solution would likely be to make one of the two suppliers responsible for the smart metering system. However, this would be likely to require some form of agreement between the two suppliers as regards responsibility for data sharing etc.

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

Yes.

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

Yes, we agree that this will provide SEC Parties with a greater level of flexibility.

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

Yes, as the overall impacts and requirements of these processes will remain the same whether they are applied to core or elective services.

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

Yes. We do not believe that additional procedures are likely to be required. A three month timescale for an offer of terms to remain open should be sufficient.

Question 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 standard 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?

Although we understand the reasoning behind this suggestion, we are uncertain what would then happen if another party or parties then expressed interest in making use of the same elective service. It would potentially be difficult for the party or parties concerned to make an informed decision without access to the full details of the terms and conditions that would apply.

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

Yes.

Question 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?

Although we are unable to propose a specific date at this stage, we would suggest that DCC should not be required to offer terms for elective communication services prior to the full establishment and testing of its services. Perhaps a period of three months after DCC go live would be suitable as by this time any technical issues should have been ironed out.

Chapter 9 – DCC Charges

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

Yes.

Question 25 – Do you accept that bad debt should be socialised explicitly within the current charging period across all DCC service users?

Yes, provided that any socialisation of bad debt is carried out on the basis of market share.

Chapter 12 – The SEC Panel

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

Yes.

Question 28 – Do you think that a fully independent panel is the appropriate model for the SEC?

Yes, we agree that a fully independent panel would be the most appropriate model in this case.

Question 29 – Do you agree that the proposed SEC Panel composition set out in Box 12C is appropriate?

We believe that 3 large suppliers and 2 small suppliers would be more appropriate. In addition, we would appreciate more detail in relation to the SEC Panel Chair's discretionary appointee,

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particularly on what basis the Panel Chair would make this appointment and who would be eligible for consideration.

Question 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?

The division between voting and non voting members seems appropriate. We believe that DCC should be given a vote on issues that are likely to have a direct impact on it.

Question 31 – Do you agree that the proposals for the independence, appointment and term of office of the panel chair are appropriate?

These seem appropriate.

Question 32 – Do you agree with the proposed arrangements for panel member elections and appointments?

Yes. We believe one vote per corporate group would be appropriate.

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

Yes.

Question 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?

We believe that Option 1 would be the most appropriate.

Chapter 13 – Code Administrator and Secretariat

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

This should be contracted through the DCC. We agree with Ofgem that the establishment of a corporate vehicle ("SECCo") would add unnecessary cost and complexity to SEC governance arrangements.

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

We do not support the establishment of a SECCo.

Chapter 14 – Modification Process

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

The parties specified seem appropriate.

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

These seem reasonable and appear to closely resemble the progression paths used under the UNC.

Question 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?

These seem appropriate. However, consideration should also be given as to whether or not a proposed self governance modification relates to any ongoing Significant Code Review.

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

The Authority should decide whether or not a modification should be considered urgent and determine its timetable.

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

We feel it is appropriate to have special rules and procedures for urgent modifications.

Question 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.

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

Not at this time.

Chapter 15 – Reporting

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

Yes, the SEC Panel should be required to report on the progress and status of SEC modifications, the performance of the Code Administrator (we believe this should be a function of the DCC), budgets for activities within the functions of the Panel, activities of committees and workgroups resulting from modifications or SEC related functions and any other information required by the Authority.

Chapter 16 – Compliance and Assurance

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

Areas where the actions of one party might be likely to affect another party should receive an appropriate level of scrutiny.

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

This should be subject to governance by the SEC Panel as part of its overall function.

Chapter 17 – Liability Provisions

Question 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?

In order to avoid the development of significant barriers to entry, we believe the approach should be adopted whereby liability is excluded for all code obligations other than where a specific remedy is explicitly provided for.

Question 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?

Yes. We believe that the cap should be based on the size of the SEC party involved.

Question 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?

We are unable to think of any at this time.

Question 50 – Do you have a view on the options for the creation and enforcement of obligations and liabilities between SEC Parties (excluding the DCC) described in this chapter?

We believe that Option 3 (enforce obligations through a compliance/assurance framework) is the most appropriate as this would be neater and mitigate risk to a large degree.

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

Please see our answer to Question 45 above.

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

Yes.

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

We believe that any cost recovery process between parties should be addressed bilaterally outside the SEC framework.

Chapter 18 – Dispute Resolution

Question 54 – What types of dispute do you believe might arise under the SEC?

We agree that commercial, technical and financial disputes are the most likely to occur.

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

We agree that it is appropriate for there to be an obligation on disputing parties to attempt to resolve any disputes between themselves prior to escalating the dispute to formal procedures. The proposed process whereby specific dispute sub committees are formed to deal with issues with the outcome being appealable to the SEC Panel and, finally, to arbitration or determination, is also appropriate.

Chapter 19 – Suspension of Rights and Expulsion in the Event of Default

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

The SEC Panel should be provided with the appropriate powers to enforce compliance with the requirements of the SEC. We would suggest that it may be appropriate to give the SEC Panel the right to suspend a party's ability to register new smart metering systems with DCC in certain cases.

Chapter 20 – Ceasing to be a Party to the SEC

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

These seem appropriate.

Chapter 21 – Intellectual Property Rights

Question 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 are unable to think of any at present.

Chapter 22 – Confidentiality

Question 59 – What information should be classified as confidential under the SEC?

Any information which has been designated by the party that released the information as confidential and commercially sensitive information belonging to SEC parties.

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

Provision of information could be required under certain circumstances for commercial purposes. However, we would suggest that the release of such information be subject to approval by the SEC Panel.

Chapter 23 – Unforeseen Events

Question 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.

Force majeure should be generally defined as events beyond the control of parties to the SEC which prevent them from carrying out their obligations in line with the code and which they could not have reasonably foreseen.

Question 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.

This would seem a prudent idea.

Chapter 24 – Transfer of the DCC Licence

Question 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.

These seem appropriate.

Please do not hesitate to contact me if you have any questions or would like any further information.

Yours sincerely,

Regulation Manager