



Making a positive difference
for energy consumers

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Direct Dial:
Email:

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Dear Ian

Ofgem's response to the Department of Energy and Climate Change's consultation on stage 3 of the Smart Energy Code

This response sets out our views on the proposed content of stage 3 of the Smart Energy Code (SEC)¹. The Department of Energy and Climate Change (DECC) is consulting on policy proposals, and accompanying legal text, relating to: security; the Data and Communications Company (DCC)² testing; and Smart Metering System requirements. The consultation also considers the role of agents providing meter services to suppliers.

Ofgem regulates the gas and electricity markets in Great Britain. We have an important role in ensuring the interests of consumers remain protected, both during the transition to smart metering and in the enduring framework. This regulatory role includes making decisions on whether to approve certain modifications to the SEC.

Your consultation seeks views on a number of new appeal routes to, and determinations by, the Authority³ under the SEC. Ofgem's role in these appeals and determinations needs to be carefully thought through, particularly in relation to matters that could impact upon the timely completion of the transition to the enduring SEC.

DECC has established particular governance arrangements to manage the unique challenges posed by the transition to the enduring SEC regime. This includes recognising DECC's important role in the run-up to Initial Live Operations⁴. Given this role and reflecting the explicit transitional governance arrangements in place, we consider that the

¹ The Smart Energy Code is a new industry code which sets out the terms for the provision of smart meter communications services in Great Britain, and specifies other provisions to govern the end-to-end management of smart metering.

² The Data and Communications Company was established on 23 September 2013 and will offer a means by which Suppliers, Network Operators and others can communicate remotely with smart meters in Great Britain.

³ The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports the work of GEMA in its day to day work (the terms Authority and Ofgem are used interchangeably in this letter).

⁴ This is when the DCC will have built and tested its systems and be operationally ready to provide some services to certain DCC users.

Secretary of State (SoS) (or other such person he may direct) is best placed to consider any appeals in relation to the testing arrangements needed to support the achievement of Initial Live Operations.

DECC's process for determining an appeal is likely to provide for a more expedited route that allows for consideration of a different range of factors than Ofgem would be permitted to consider, including the objectives and successful delivery of the Smart Metering Implementation Programme. DECC's involvement in the stewardship of the programme will also allow it more ready access to relevant expertise and information than the Authority. Therefore, and in the interests of clarity and certainty for industry parties, we ask that the appeals provisions in Section T are redrafted to make clear that the SoS (or other such person he may direct) is the sole appellate body.

We also note that the proposed legal drafting does not always provide sufficient distinction between the provisions which relate to the transitional testing arrangements for System Integration Testing and Interface Testing, and those which relate to the enduring testing arrangements. We consider that the obligations and requirements supporting testing in Section T should fall away once Initial Live Operations commence. We suggest that this is addressed in the interests of clarity as these requirements will no longer be needed and may risk being confused with the enduring entry testing requirements.

We see some advantages in allowing agents providing meter services to suppliers to independently access DCC services. This will allow them to conduct aspects of their business more efficiently, which should result in better value for consumers. We agree with DECC that the integrity of the 'supplier hub' principle should be maintained as this should provide greater accountability to consumers because of their existing relationship with their supplier. Any departure from the supplier hub principle must also be carefully weighed against the possible introduction of additional complexity into the SEC governance arrangements.

We note that the SEC drafting refers to taking 'all reasonable steps' for some obligations, 'reasonable endeavours' for others and 'reasonable steps' in one other instance. It is not always clear to us whether you are intending to apply a different level of obligation. We will continue to work with you to try to avoid any possible confusion and regulatory uncertainty.

We look forward to continuing our discussions with you on this and the following stages of the SEC. If you would like to comment on this response, please contact

Yours sincerely,