

22nd August 2014

Smart Metering Implementation Programme – Regulation
Department of Energy & Climate Change
Orchard 3, Lower Ground Floor
1 Victoria Street
London, SW1H 0ET

Sent by email only.

Dear Sir,

Re: Brookfield Utilities UK's response to DECC's consultation on New Smart Energy Code Content (Stage 4)

We welcome the opportunity to respond to DECC's consultation on stage four of the Smart Energy Code (SEC) and accompanying legal text. We acknowledge the substantial work to date and particularly regarding this stage four.

Whilst we recognise that this stage involves definition to a large number of complex elements, we believe that, as a DCC Non-User, certainly until the period towards the end of Tranche 2 (both as an IGT and an IDNO), there is reduced impact from these latest developments.

However, there are two areas where we are impacted and have concerns.

1. The initial concern is about the approach DCC uses to apportion fixed charges to gas SEC and electricity SEC parties. The current charging approach has been in place since January 2014. Specifically, this approach uses the count of MPXNs provided to DCC by registration data providers. Currently, monthly gas transporter reports contain only 'live' connections, whereas electricity distributor reports contain all Registered MPANs, i.e. those MPANs that have an Energisation Status of 'energised' and those MPANs that have an Energisation Status of 'de-energised' (Registered and Energisation Status has the meaning given to those terms in the Master Registration Agreement). It should be noted that under current charging arrangements electricity distributors make no use of system charge in respect of Registered MPANs with an Energisation Status of de-energised. Therefore, any charges made by DCC in respect of these MPANs must ultimately be borne by other users.

IDNOs, as relatively new licensees, secure growth through new developments. As such, compared to existing incumbents they are likely to have a very high proportion of MPANs with an Energisation Status of de-energised. This means that under the current DCC charging arrangements, IDNOs bear a disproportionately high burden of charges (costs) which they are unable to recover. Therefore we contend the current charging approach is unfair.

Brookfield Utilities UK subsidiary IDNO licencees Independent Power Networks Limited (IPNL) and The Electricity Network Company Limited (ENC) are members of The Competitive Networks Association (CNA). On 21st August 2014, John Barrett, the Secretary of the CNA, forwarded a response to question 55 of DECC's consultation on New Smart Energy Code Content (Stage 4) on behalf of the CNA members. We draw DECC's attention to the concerns raised in that letter and indicate our strong support for the CNA response.

2. The second concern is the imposition of uncapped liabilities in respect of the SEC (see sections M2.3 and M2.4). As a licensee we are mandated to be a party to the SEC and see the imposition of an uncapped liability in this respect as being unfair. Whilst we note proposed drafting limits liability in respect of M4.17 (and is a step in the right direction), the proposal does not go far enough in that it fails to exclude limiting liability in respect of M4.18. Also, from a practical perspective it does not seem appropriate that the liability for DCC should be uncapped. Consider the obligations from a practical perspective. Our experience is that insurance with open ended liability is unavailable economically. Therefore, if DCC breaches its obligations and a party is successful in a claim for very high damages (higher than an insurance cap), the risk is that DCC defaults (presumably government or the regulator take control) or, if DCC does not default, then any amount over and above the insurance cap can only be recovered through higher charges to SEC parties. Neither of these options would appear to be in the broader interest of parties or customers.

On a lesser extent the following are more typographical observations:

- E2 – There are references on pages 174, 176 and 177 such as “.....to the identity of each **person** which has been (at any time within the 24 months preceding the date on which the Registration Data is provided).....” – As this is referencing Supplier organisations should this read “party” or “organisation”?
- E3.2 – Should this read “.....RDP Interface Connect **Request** has been provided.....”
- E3.2 – Is the reference to Section E3.2 correct?

We would like to take this opportunity to add that, whilst we acknowledge DECC's attempts to engage with all smart industry stakeholders, the extent to which IGTs and IDNO parties have been consulted has been limited and often 'after the event'. We would welcome increased involvement with DECC prior to being presented with solutions as to fait accompli.

Please contact me if you would like to discuss the content of this response further.

Yours faithfully