Smart Metering Implementation Programme
Department of Energy and Climate Change
Orchard 3, Ground Floor
1 Victoria Street
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29th May 2015

Dear SMIP team

Smart Energy Code – New Content

Thanks for the opportunity to respond. Our responses to the questions are enclosed and we would like here to make some high level comments.

SEC Development Timeline - We note that DECC state that much of the legal text being consulted upon within this consultation (e.g. H13) should be incorporated into the next stage of the SEC. It would be helpful for planning purposes if greater clarity regarding the timeline for future releases of SEC Consultations, SEC Decision Documents and SEC Designations (including the incorporation of SEC Subsidiary Documents into the SEC) could be provided. .With regard to the current ongoing development of SEC Subsidiary Documents, we have noted within our response to the recent DCC User Interface Specification (DUIS) consultation that we believe that there would be benefit in enabling "Other Users" to utilise the "Read Supply Status" Service Request. Given that this Service Request is listed within the SEC we would like to take this opportunity to reiterate the above position, and request that the SEC is amended to enable "Other Users" to utilise the "Read Supply Status" Service Request.

Definition of User Systems - We note that the proposed legal drafting amendment to G5.14(e) removes the reference to "User Systems" and replaces it with a broader reference to "any of its Systems". We note that there has been much debate, both at industry fora and within consultations, regarding the definition of "User Systems" over recent years. We would like to take this opportunity to state that if this debate were to be re-opened, via the proposal to implement drafting amendments such as are being proposed within G5.14(e), that this would have far reaching impacts upon design which could not be accommodated at this advanced stage of the design process.

Consultation on Implementation Milestones We note that on the 8th May 2015 the DCC published their consultation on "Proposed changes to DCC's Implementation Milestones". This DCC consultation closes on the 5th June 2015, shortly after this SEC Consultation closes. We note that there is potentially some overlap between this SEC consultation and the DCC consultation, and request that this is borne in mind.

This response is not confidential

Yours sincerely

[redacted]

[redacted]

[redacted]

Q1 Do you have any comments on the additions to the Reported List of Service Provider Performance Measures (Annex E)? Do you have any comments on the revised legal drafting in Section H13 and the proposal to incorporate Section H13 into the SEC towards the end of 2015?

We support the additions

Timely delivery of Communications Hubs, along with the timely response to and resolution of any Communications Hub "Incidents" that may arise, will be critical to our deployment plans, and we are therefore supportive of the proposal that 4 new Service Provider Performance Measures relating to Communications Hub Delivery (3 Service Measures) and Communications Hub "Incidents" (1 Service Measure) should be inserted into Schedule 11 Appendix 2.2 of the DCC Licence.

We note that DECC have advised that the Reported List of Service Provider Performance Measures will also include minimum and target service level metrics that for confidentiality reasons have not been published in Annex E, but that DECC advise that these metrics have been discussed with stakeholders. Whilst we accept that discussions regarding such metrics did take place at the Commercial Working Group and the Regulatory Group over the past few years, to the best of our knowledge no recent discussions regarding these metrics has taken place with industry stakeholders. As DECC state within this consultation document, it is important that Performance Reporting is as transparent as possible in order to ensure that the industry is able to effectively monitor the DCC's performance. We would therefore request that some engagement with the industry regarding these metrics is undertaken in the near future, in order that the industry can gain insight into the relevant metrics and obtain assurance that appropriate performance reporting and monitoring is in place.

H13.4 Drafting

With regards to the drafting of H13.4 we have the following comments:

It is important that where Performance Reporting identifies the need for remedial action to be undertaken, that this fact is made clear to all industry parties, and that the implications of this action are known and understood by all parties. For example where the DCC and/or a DCC Service Provider has failed to meet a minimum and/or target service level the industry should:

a) be made aware of this failure;
b) have confidence that the DCC understands the implications of this failure; and
c) be made aware of, and be able to monitor the effectiveness of, plans that have been put in place by the DCC to ensure that the failure does not recur.

We note that the drafting of H13.4 requires the DCC to report regularly on such matters to the SEC Panel, the Parties, the Authority and (on request) to the Secretary of State, and we are supportive of this drafting.

With regard to the amendment that is now being proposed to H13.4(d) we believe that it makes sense to have the proposed inclusion of the DCC's Internal Costs into this clause. However we question why only anticipated reductions in the DCC's costs (internal and external) rather than anticipated reductions **and increases** in the DCC's costs are captured within this clause?

H13.6 Drafting

We are supportive of the proposal to amend the drafting of H13.6(a) to require the DCC to consult with the Panel, the Parties and the Authority as we believe that this approach will be more inclusive than the approach provided by the current drafting, which requires the DCC to consult with Users only.

We note however that the current drafting of H13.6(a) only requires the DCC to "establish and periodically review" the Performance Measurement Methodology. We believe that it would be best for more rigorous timescales for such reviews to be inserted into the SEC. The BSC, for example, has a requirement for their equivalent methodology to be reviewed on an Annual basis; we believe that it would be good practice to introduce equivalent timescales for the review of the DCCs Performance Measurement Methodology into the SEC.

We also believe that it would be best for the legal drafting of H13.6(b) to also be updated to prescribe more rigorous timescales (eg within 10 Working Days) than those currently prescribed ie "as soon as reasonably practicable".

Question 2 – Do you have any comments on the proposal for the SoS to formally identify the initial Reported List of Service Provider Performance Measures?

We support DECC's position subject to comments

We understand the reasoning that as a pragmatic approach at this time that the proposal that the Secretary of State should formally identify the **initial** Reported List of Service Provider Performance Measures. Going forwards however, we would like to stress that it is important that all further revisions to this document should be undertaken in consultation with SEC Parties, the SEC Panel and the Authority, and that the DCC must take into account views expressed via the consultation process.

Q3 Do you agree with the proposal, and associated legal drafting, to extend the scope of User risk management obligations to include systems that are used to secure communications with the DCC?

We partially support subject to comments

Whilst we agree with the overarching intent behind DECC's proposal, i.e. ensuring that Users operate and manage securely the file signing tokens that the DCC is now to provide to Users for authentication purposes, we have the following comments regarding the proposed legal drafting of G5.14 itself, via which DECC is proposing that their intent is implemented.

As currently drafted G5.14 (e) requires "Each User to establish, maintain and implement processes for the identification and management of the risk of Compromise to any communications links established between its User Systems and the DCC Total System". DECC is now proposing that this clause should be amended so that Each User will be required to "establish, maintain and implement processes for the identification and management of the risk of Compromise to any communications links established between **any of its Systems** and the DCC Total System, **and any security functionality used in respect of those communications links or the communications made over them".**

The above proposed amendment will significantly increase the scope of the risk assessment activity that Users will need to undertake, for example:

a) the proposed drafting amendment from "User Systems" to "any of its Systems" will extend the scope of the risk assessment to also cover the computers that are used by end users to initiate Self Service Interface (SSI) connections and to send/receive email communications to/from the DCC.
b) the proposed drafting augmentation to insert "and any security functionality used in respect of those communications links or the communications made over them" will bring into the scope of the risk assessment the security controls that are in place to secure the link, or the communications over the link. In practical terms this means that items such as email virus checking; firewall security; desktop security etc will all be brought into scope.

Whilst we support the legal drafting relating to "or the communications made over them" we believe that the inclusion of legal drafting relating to "communications links" is too far reaching and request that consideration should be given to removing the reference to "communications links" from the legal drafting.

Q4 Do you agree with our proposal to limit DCC's liabilities in all cases to £1million when breaching confidentiality of sensitive information and to consequentially amend confidentiality markings?

SEC Liability Provisions that are implemented should apply equally to all SEC Parties

With regards to DECC's proposal to limit DCC's liabilities in all cases to £1million when breaching confidentiality of sensitive information (SEC M2.3) and to consequentially amend confidentiality markings, we have the following comments:

We note that the proposed revised drafting of M2.3 states that:

"Each Party's Liability for breaches of Section M4 (Confidentiality) shall be:

a) *in the case of any breach of Section M4.20 (Confidentiality of DCC Data) relating to Data that has been clearly marked by the DCC as (or to be) "classified", unlimited (save as provided in Section M2.2); and*
b) *in the case of any other breach of Section M4 limited to £1,000,000 (one million pounds) in respect of each incident or series of related incidents. "*

Clause M4.20, which is referenced within M2.3 above, clearly excludes the DCC *(M4.20 Each Party other than the DCC shall not disclose, or authorise access to, Data that is clearly marked by the DCC as (or to be) "classified" or "confidential" or otherwise stated by it as (or to be "confidential" in accordance with Section M4.15, provided that such restrictions on disclosure and access shall not apply to the extent.....")*

In our view it seems inconsistent that one SEC Party (the DCC), when breaching confidentiality of sensitive information, has their liability limited in all cases to £1million, whilst all other SEC Parties are subject to unlimited liability. In our view the SEC liability provisions that are implemented should apply equally to all SEC Parties. Any other solution will not give the necessary protections and causes risk of inefficient solutions.

Q5 Do you agree that Parties should nominate to the DCC individuals eligible to receive sensitive information marked as "classified" to be able to receive such information? Please provide a rationale for your response.

We believe that further consideration is required by DECC before any decision is made

As we stated within our response to the earlier SEC4 consultation, we do not support DECC's proposal to implement a two-tier system with regards to confidentiality within a legal document, as we believe that such an approach is highly unusual; will be complicated to manage and administer; and will require subjective decisions to be made regarding the categorisation of data.

That stated however, we accept that DECC have now concluded that implementation of such a two-tier approach is a proportionate means to avoid the risk of creating an unreasonably large volume of material that is subject to the unlimited liabilities regime, and we note that DECC have concluded that the terminology "Confidential" and "Classified" should be implemented:

We note that DECC are now proposing to build upon their earlier proposals by introducing a process whereby Parties would have to nominate to the DCC individuals eligible to receive "classified" information. Whilst we understand the intent behind these latest proposals, we believe that further consideration regarding how such a process would work in practice needs to be undertaken.

For example, we question:

- What would happen if classified information were sent by the DCC in error to a Party who had not nominated an individual to receive classified information was sent?
- If a Party nominates an individual(s) to receive "classified" information from the DCC what is that Party able to do with that data? Clause M4.20 as currently drafted implies that nominated individuals who receive such "classified" Data shall not disclose it or authorise access to it, which to all intents and purposes means that they are unable to make use of the data. This calls into question whether there is any benefit in nominating an individual to receive this information.
- If a nominated individual did "disclose" or "authorise access to" "classified information" what action would be taken against them and by whom? Would this individual be personally liable?
- What type of data do DECC and/or the DCC consider will fall into the "classified" category? In our view, it seems likely that quite a wide range of data could fall into this category. If that were to be the case a Party may wish to nominate an individual on a "classified data type" basis, rather than just a "classified data" basis. The provision of some examples of types of data and how they would be classified would be helpful

The above list of questions posed by this proposal is by no means exhaustive, and we believe supports our position that further consideration of this proposal is required by DECC. If such a proposal were to be progressed, we believe processes detailing the roles and responsibilities of industry parties with relation to classified information would need to be developed and incorporated into the SEC.

We note that DECC advise that a number of consequential amendments have been made to the SEC Section M4 (Confidentiality) drafting, and we have the following comments to make regarding these amendments:

M4 in general – SEC Section M4 is entitled "Confidentiality" and refers to Confidential Information and Confidentiality throughout. Given that DECC have now concluded that a two-tier system of Information should be implemented (Confidential and Classified) does further consideration need to be given to the drafting of M4 in general in order to ensure that the drafting is clear with regards to whether, for example,

the term "Confidential Information" means purely information classified as Confidential or whether it also encapsulates Classified information? Visibility of the definitions for these two terms would be useful.

M4.16 – We note that M4.16 provides a Party with the right to dispute whether or not Data which the DCC has marked as (or to be) "confidential" may be given that designation, and that a Party may refer the matter to arbitration. We believe that this dispute right should cover both "confidential" and "classified" information.

M4.18 – This clause states that "the DCC shall not disclose such Data to that Party except by providing it to one of those named individuals". Our interpretation of the process proposed within this consultation is that where a Party has nominated more than one individual to receive classified information, such classified information would be sent to all such nominated individuals not just to "one of those named individuals" as the current drafting implies. (Please see our comments above regarding "classified data type" which link through to this issue)

M4.15 (b) and M4.20 and M4.23 and M4.24 – these clauses all state "clearly mark (or otherwise state)". We believe that the drafting "(or otherwise state)" should be removed from these clauses to avoid confusion and ensure that all confidential and classified documents are clearly marked.

Q6 Do you have any comments on the proposed amendment to the drafting in Section M8.6 which reinstates the ability of the Panel to remove a Defaulting Party's right to receive core communication services or local command services, but subject to the consent of the Authority where that Party is acting in the capacity of registered supplier or registered network operator?

We support DECC's position

We note, and are supportive of, the policy intent that Supply Licence Holders and Network Licence Holders rights cannot be suspended by the SEC Panel without the Authority's prior consent, as any such suspension could inhibit the licensee's ability to comply with other regulatory requirements and could negatively impact consumers.

We therefore support the revised drafting of SEC Clause M8.6 which is being proposed within this consultation, which we note will ensure that the Authority's approval is obtained as per the intent.

Q7 In relation to the proposed licence condition requiring suppliers to take all reasonable steps to secure systems used to communicate with DCC enrolled meters, do you agree with the proposed approach and legal drafting?

No – we do not agree

The new Licence Conditions that are being proposed (ELC 46A/GLC 40A: Security Controls in relation to Smart Metering Systems Enrolled with the DCC) would introduce an obligation upon licensees to take "all reasonable steps" to ensure that the "Supplier and Enrolled Smart Metering System" is designed, developed, configured, tested, operated, maintained, decommissioned and disposed of in such a manner as to protect it from being Compromised.

Given that Suppliers already have obligations relating to security both within Licence and within the SEC we believe that the implementation of these proposed new Licence Conditions would simply duplicate the existing obligations that are already in place.

In addition to the above comment, we have the following detailed comments that we would like to make regarding the proposed legal drafting:

We note that the new term "Supplier and Enrolled Smart Metering System" is defined as comprising "all of the equipment (together with any associated software and ancillary devices) which fall into one or more of the following categories…..". The terminology "Any associated software and ancillary devices" is very broad and could, we believe, be open to interpretation.

46A.2c(ii) (and the gas equivalent) specifically refer to equipment that is enrolled in accordance with the Enrolment Service, however the overarching clause A46.2 (and the gas equivalent) refers to "all of the equipment….. which fall into one or more of the following categories……" We believe that the drafting as it currently stands could mean that all devices will be covered via this definition, regardless of whether or not they are enrolled with the DCC. We are unclear whether this is aligned with DECC's intent.

We have a concern that the legal drafting that is being proposed could bring all of our User Systems into the Foundation Scope, along with every Smart Metering System regardless of whether or not it is enrolled with the DCC. We believe that this would be overly onerous, and given the existing obligations already in place (within Licence and the SEC) is unwarranted.

Question 8 - Do you have any comments on the scope for further amendments to each Implementation Due Date and Implementation Milestone Criteria?

We do not support DECC's position

Whilst we understand the intent of what DECC are trying to achieve via this proposal; we have a concern that implementing such a proposal could introduce the ability for further, and repeated, change to the plan being implemented going forwards.

Having just completed a lengthy re-planning exercise it is important that the industry (including the DCC) now have a stable and static plan to work to. Introducing the ability for further changes, whilst perhaps seeming to be a pragmatic approach on the face of it, could prove to be unnecessarily distracting and destabilising at a time when stability and security is required.

Q9 Do you have any comments on the amendments to the definition of "Baseline Margin Implementation Total"?

We do not support DECC's position

As the name "Baseline Margin **Implementation** Total" implies, this term was developed to denote the total of the DCC's Baseline Margin for the period from licence award, which took place during RY 2013/14, through to the completion of Implementation, which was originally envisaged to take place during RY 2015/16.

Whilst we accept that this term is no longer aligned with the new DCC Delivery Plan, which now places the completion of Implementation within RY 2016/17, we do not support DECC's proposal to amend the definition of BMIT to remove the reference to the completion of implementation. We feel that such a redefinition would fundamentally alter the intent of the term which is, as the name itself suggests, meant to have a fundamental link through to the completion of implementation.

We remain of the view that the definition of BMIT still needs to refer to completion of implementation, as was the original intent, and are therefore unable to support DECC's proposal to amend the definition to remove the reference through to completion of implementation.