



ElectraLink

ElectraLink Ltd.
Ground Floor
Grafton House
2/3 Golden Square
London W1F 9HR

T.
Fa)
www.electralink.co.uk

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

07 January 2013

Dear Sirs,

Re. Smart Metering Implementation Programme: Stage 1 of the Smart Energy Code – a Government response and a consultation on the draft legal text (08 November 2012).

Reference: URN 12D/406.

ElectraLink Ltd is pleased to respond to the Department of Energy and Climate Change's (DECC's) consultation on Stage 1 of the Smart Energy Code.

ElectraLink specialises in the management of energy market data and the initiation, development and delivery of Code Administration Services (CAS) to the UK gas and electricity markets. Since 1998 we have delivered sector-leading CAS in support of multiple governance frameworks. ElectraLink currently supports the multiparty industry codes: Supply Point Administration Agreement (SPAA), Distribution Connection Use of System Agreement (DCUSA) and the Data Transfer Service Agreement (DTSA) as well as providing flexible secretariat services to the Distribution Charging Methodologies Forum (DCMF).

The SPAA is a multi-party agreement which sets out inter-operational arrangements between gas suppliers and transporters in the UK gas retail market. The agreement provides a robust mechanism for making changes to the operational arrangements that are required to enable the flow of gas. The SPAA is a growing live agreement which has been recently expanded to include provisions for Meter Asset Management (including the Meter Asset Manager Code of Practice) and is playing a central role in the development of theft of gas arrangements.



FS 559738 EMS 559739

The DCUSA is the most recent of the electricity industry codes and was developed using best practice and 'lessons learned' from the other major agreements. A multi-party contract between the licensed electricity distributors, suppliers and generators of Great Britain, it is concerned with the use of the electricity distribution systems to transport electricity to or from connections to them. The DCUSA replaced numerous bilateral contracts, giving a common and consistent approach to the relationships between these parties in the electricity industry.

The DTSA governs the use of the Data Transfer Service (DTS), the communications network which underpins the UK competitive electricity industry, enabling market competition through inter-operability. The DTSA is a multiparty commercial agreement, whose signatories include suppliers, network operators, settlement organisations, metering organisations, and has been recently expanded to provide the mechanism for exchange of Green Deal data flows.

The Agreements supported by ElectraLink all share features with the proposed governance framework for the Smart Energy Code (SEC). For example, both SPAA and DCUSA have an executive Panel and a corporate structure including a Board responsible for the financial management of the companies and procurement of third party service providers. Both SPAA and DCUSA operate under open governance with representative voting on changes by Party and, in the case of SPAA, via a Change Board. The DTSA provides for the delivery of technical network services in an open, transparent and regulated manner with all changes being subject to User impact assessment and approved through the DTS User Group which is representative of all DTS users.

ElectraLink's industry code experience includes the development, set up and implementation of new codes. We have gone on to coordinate transitional arrangements, manage the administration of growth and change in these codes and deliver day to day operational service. ElectraLink's CAS are delivered through arms-length commercial contracts with our clients across the gas and electricity sector, including all the major retailers and distributors. Provision of these services requires ElectraLink to work independently and impartially as a cross-industry coordinating body, bringing multiple, potentially competing, participants together resulting in effective and efficient industry change. We have used our detailed knowledge of the existing industry arrangements to respond to this consultation and have focussed on the questions relating to code administration and governance.

Please do not hesitate to contact me
discuss this response in more detail.

ould like to

Yours faithfully,

SEC Legal Drafting

1. Do you agree that the Government's conclusions are appropriately reflected in the SEC legal drafting?

Please provide a rationale for your views and any further comments on the draft legal text.

Overall the SEC drafting is appropriate and aligns with the Government's conclusions.

ElectraLink's most significant comments on the proposed drafting relate to the provisions for the modifications process and the role of the Panel and Change Board therein. We believe that these should be slightly redefined to give greater responsibility to the Change Board. Removing the Panel from the 'detail' of the modification process will make the roles and duties of the Panel and the Change Board more distinct. This will ensure that the most appropriate and suitably skilled people are appointed to each committee, that there is no duplication of effort and that their respective remits are clear.

We believe that the Panel should act as the guardian of the modification process and ensure it is followed correctly. This would be in addition to the Panel members' 'non executive' role in ensuring the overall end to end integrity of the Code and its processes. The Change Board should have executive responsibility for the operation of the process and be responsible for the progression of each modification. Once a modification has been entered into the process by the Panel, it should remain under the responsibility of the Change Board until the final modification report is produced. This would be presented to the Panel for approval before being issued to Parties.

Under this model, the Panel will be the expert body on the modification process, and the Change Board will be the expert on each modification proposal. The Panel can 'challenge' the Change Board and ask it to justify its process / rationale / determination but should not be involved in the detailed development of each proposal by the Change Board or any Working Groups that sit under it.

Our experience in managing Codes where the Panel is primarily responsible for management of the modification process is that the Panel agenda becomes heavily weighted with modification business, impinging on its other duties and impacting on members' ability to step back and oversee the overall code processes to ensure their completeness and integrity. Given the relatively small size of the Panel (which we believe to be appropriate for focusing on more strategic matters) it seems more appropriate to delegate responsibility for the development of a modification, once it has been entered into the process by the Panel, to the Change Board.

The other duties of the Panel relate largely to the management of Parties and the Code – e.g. party membership, performance and disputes, and corporate and fiscal responsibility through the Board of SECCo Ltd. Change Board members are more likely to be involved in the day to day operation of party activities and the experience within its members should not be limited to the 'voting' end of the process. We consider that this is the most logical and appropriate use of their skills. Vesting the Change Board with purely an administrative function would mean that valuable skills, knowledge and experience are not fully utilised.

If the SEC is adopted as currently drafted it may be that the Panel will choose to delegate some of these modification activities over time. However experience suggests it is best to start out with the correct foundations at day one.

ElectraLink also note that, whilst codes by their nature set out the high level requirements, a detailed mechanism for application is also required. Furthermore, our experience in existing arrangements shows that, however well drafted an Agreement, there is always the potential for differences in the interpretation when it is applied. It is therefore suggested that a series of code subsidiary 'procedural' documents is created within the SEC. This will allow these documents to be developed in an open framework and have a recognised status under the Code. The documents would not need to be developed at the outset but the concept recognised and a suitable mechanism for maintaining and amending this document set agreed. Other industry codes allow for such documents to be created and managed through a reduced change process – e.g. Panel consent.

Where we have identified specific comments on the drafting they have been picked up in our answers to the questions below. We have also identified some minor typographical errors within the drafting which we have set out in a separate Appendix to this response.

DCC Charges

2. Do you have any comments on the format of the DCC's Charging Statement for Service Charges?

ElectraLink welcomes DECC's approach to the DCC's Charging Statement for Service Charges. The structure enables the DCC to aggregate costs centrally and then apportion them to the DCC Users according to their use of the services.

There are significant benefits to industry of procuring DCC services centrally, rather than DCC Users incurring costs individually. This is the approach being taken for the procurement of the DCC and its services through the CSP and DSP contracts.

This is the same model used by ElectraLink to provide the Data Transfer Service. By procuring and managing these services centrally it allows for the removal of multiple instances of duplicated cost from industry. Whilst charges for the standalone central service may appear to be higher as a result, the overall cost to industry is significantly reduced compared to a situation where each market participant has to implement these services individually. A central service allows industry to share the costs of value add services such as:

- Central data validation avoiding issues of interpretation;
- Independent, on-line, real time auditing showing the status of data in real time;
- Data conversion between agreed file formats;
- Centrally managed security services, such as root authority, key management and digital signing; and
- Independent reporting based on real industry data.

3. Do you agree with the thresholds applied to the 'first comer / second comer' principle (Five Year Rule for costs over £20,000)? If you disagree please set out the reasons for your preferred approach.

N/A

SEC Panel

4. Do you think the members of the Panel nominated by industry should be drawn from and elected in equal numbers by Party category OR be elected by all Parties (as set out in the legal drafting). Please give reasons for your answer.

The SEC Panel needs to be representative of all parties to the Agreement. Only Option A will achieve this and guarantee that members from each Party Category can be appointed. Option B has the potential to disenfranchise an entire category of SEC Parties.

Modifications

5. Do you agree with the proposed composition of the Change Board and its decision making arrangements?

The establishment of the Change Board is an important tool to give Parties to the Code and Users of DCC services a direct say in the development of the SEC. The proposed composition of the Change Board is appropriate as it reflects the full community of DCC Users. Allowing party categories to determine the mechanism for appointing members seems reasonable assuming they are happy to do so. However, it should be considered that this will add potential complexity for the CAS should they be asked to administer the process if multiple mechanisms with multiple timescales are adopted. As a minimum, the processes should be documented in some form of supporting Code documentation. Whilst not recommended, this documentation could sit outside the Code.

The decision making process is appropriate although ElectraLink considers that further decision making powers could be given to the Change Board – e.g. determining which category of parties is entitled to vote. Our experience under existing Codes, where the Panel fulfils this function, shows that the Panel is often unwilling to make such a determination and defaults to allowing all Parties to vote, limiting the value of the role. A better mechanism would allow the proposer to indicate its opinion at the outset, the working group to validate or challenge that view and the Change Board to determine when the Modification Report Consultation responses are returned.

Under existing industry arrangements, some Change Boards also have the ability to agree minor changes to modifications prior to point of voting. This means that any minor drafting errors or points of concern raised in the final consultation period can be addressed promptly and the modification moved forward without delay. We recommend that a similar process would be worthy of consideration to aid efficiency.

In relation to the modification process, and further to our earlier points about costs and efficiency, we would recommend reconsidering D1.12, which allows parties to "make written representations" at any time regards modifications. Whilst an open and transparent modification process that allows parties to comment on the proposals is essential, providing a mechanism for parties to make any comment at any time could result in material issues being brought to light far along the modification process, leading to reduction in efficiency and increase in costs.

6. Do you think that the SEC should provide for parties and the consumer representative to appeal Change Board recommendations before they are submitted to Ofgem. If so, what is the appropriate mechanism for determining such appeals?

ElectraLink believes that there is merit in the introduction of an appeals process before appeal to Ofgem but recommends that the process should be clearly defined, a suitable 'decision making body' should be determined, the process should be time bound (i.e. a limit on the point at which such appeals can be raised) and that it should not prevent or preclude any further appeal to Ofgem or subsequently the Competition Committee.

We consider that there could be two 'types' of appeal and it may be appropriate to deal with them separately. The first would be an appeal where a party considers that due process has not been followed. Such appeals could be heard by the Panel as the governors of the process. In such a case the Panel would determine only on the process, not the outcome of the Change, and re-enter it into the process.

The second would be an appeal against the voting outcome / overall recommendation. We do not consider that the Panel would be best placed to hear this appeal, nor do we consider that responsibility should be delegated to a subset of parties. Under the SPAA and the MRA initial appeals are considered at an all-party forum. A similar mechanism would be appropriate for the SEC.

It is important that the forum gives the opportunity for new evidence / supporting information to be considered, and possibly that amendments made to the modification proposal or legal drafting to prevent it being merely a 're-run' of the original vote. We do not consider that the voting mechanism should be varied at the appeals stage as this would undermine the primary decision-making criteria.

ElectraLink also believes there may be merit in allowing Panel decisions to be appealed to the same forum. There is precedent for this under existing codes which acts as a reasonable check and balance for Panel activities.

7. Do you have any further comments, or views on the cost implications to SEC Parties, regarding the proposals for governance, the modification process and the approach to appeal rights set out here and reflected in the legal drafting of Stage 1 of the SEC?

ElectraLink's experience shows that the costs of a Code, and particularly Code Administration, are driven by the volume of change and the way that change is managed, and the level of support required by Parties across all processes. The role of the Code Administrator, and particularly the balance of responsibilities between Code Administrator and Parties, will have a significant impact on both the costs of administering the SEC and determining whether costs are centralised or directly incurred by users.

The SEC is well drafted and clearly sets out, at a high level, the CAS service. It does not, however, detail how the processes will work in practice or the weight of responsibility for carrying out activities which will drive the costs of the CAS. For example, SEC D6 sets out that the Code Administrator will attend and support the Working Group and SEC D7 sets out that the Code Administrator will prepare the Modification Report in accordance with instruction from the Working Group. The extent to which the Code Administrator is required to drive the process, carry out analysis, give an opinion, direct or challenge the Working Group, develop solutions etc; and the extent to which the Working Group will carry out analysis, submit drafting, review the documentation etc will drive central costs and costs on parties.

The level of support required by Parties across the other code activities also needs to be considered. Examples may include the provision of a help desk service, dedicated party account managers, provision of training / support to new entrants and the degree to which specialist knowledge on the code processes is required.

We recommend that industry parties give further consideration to the 'breadth and depth' of the CAS role and the potential impacts of the potential models – e.g. an 'intelligent or expert level' CAS versus a largely administrative function. Based on our experience and given the scope of the SEC, ElectraLink would recommend that the service be weighted towards the former. Although an administration service at its core, the CAS should incorporate such necessary flexibility to allow for expert resource to be procured as and when necessary to ensure efficiency and that costs are aligned with industry requirements.

Liabilities

N/A

Disputes

10. Do you agree that the Government's proposal to allow DCC to link service provider and SEC disputes in the arbitration process?

Yes, allowing the DCC to link service provider and SEC disputes in the arbitration process is consistent with the low risk regime being established under the DCC Licence. Also, linking the SEC and service provider disputes will ensure a consistent approach and outcome whilst reducing the administrative burden on the DCC, SEC Panel and Code Administrator.

However, linking of disputes should not place any undue burden on SEC Parties either in terms of delays in dispute resolution or increased costs and resources. The SEC disputes procedures should seek to resolve matters in an efficient and timely manner thereby minimising impacts upon SEC Parties, the DCC and Consumers.

Overall, the proposed dispute procedures appear sensible and are consistent with those operated under existing codes within the industry. However, ElectraLink believes further definition is required in particular with regard to timescales. This level of detail has been included in section J13.14 (credit cover disputes) but is missing from the main disputes section in M7. For clarity and consistency of drafting, M7 should be expanded to include relevant timings and where the disputes process is referenced elsewhere throughout the document a pointer to M7 should be included.

Code Co-ordination

11. Do you agree that the proposed legal drafting covering change co-ordination with other codes meets the requirements as set out in chapter 5?

Cross code co-ordination is an important feature of code administration ensuring a collaborative approach to change and improving efficiency for Parties. Such coordination will also ensure that industry change is addressed 'in the round' and code 'silos' are avoided. The proposed drafting meets these requirements and is consistent with the existing industry arrangements. In practice the Panel may delegate these duties to the Change Board or Code Administrator.

Passing registration information to the DCC

12. Do you agree that the proposed legal drafting for the SEC covering obligations on SEC Parties to pass registration information to the DCC is appropriate? Please provide a rationale for your views.

ElectraLink agrees with the intent of the proposed SEC obligations on SEC Parties to pass registration data to the DCC, however, we wish to make the following comments with regard to the legal drafting.

Clause E1.3 as currently drafted exonerates the DCC from any liability for services provided, or not provided, in error as a result of inaccuracies in the Registration Data regardless of the source of, and reasons for, the inaccuracies. Whilst ElectraLink agrees that the DCC should not be held liable for errors resulting from the failure of either an Electricity Distributor or Gas Transporter to provide accurate Registration Data, we are of the opinion that should inaccuracies be introduced as a result of failure within the systems or processes operated by the DCC, or its agents, then liability for these inaccuracies should rest with the DCC. The drafting of clause E1.3 should be updated to reflect this.

Clause E1.4 currently places an obligation on the Panel to periodically request Registration Data from the DCC but is then vague with regard to the Panel's use of the data requested. ElectraLink agrees that the Panel may require such data either on a regular or an ad-hoc basis in order to exercise its duties, powers and functions but believes that the requesting of the data should be optional rather than mandated. Therefore, clause E1.4 should be updated to read 'The Panel may periodically request

Clause E1.4 makes reference to the use of Registration Data to establish into which Party Category a Party falls. ElectraLink's understanding is that Party Categories for each Party will be determined by the Accession and Entry Processes and therefore we question the need for the statement in clause E1.4.

Clauses E2.1 and E2.2 place obligations on Electricity Distributors and Gas Transporters to provide a list of data for each MPAN/MPRN respectively, collectively defined as Registration Data, to the DCC. As currently drafted, to meet the obligation the list of data, items should be provided in its entirety for each MPAN/MPRN. There will be instances where, for various reasons, a registration record will be incomplete therefore certain data items will not be available. For this reason both clauses E2.1 and E2.2 should be updated to oblige Electricity Distributors and Gas Transporters to provide data only where available in the appropriate registration system. Also, consequential changes to existing industry codes are currently being progressed by MRASCo and xoserve to deliver this facility, the final drafting of Stage 1 SEC should be consistent with these changes.

Transitional Arrangements

13. Do you agree with the proposed variation to the SEC modification regime in the transitional period, including a right of veto for the Secretary of State?

To aid the smooth implementation of the SEC and DCC services, ElectraLink understands the need for a period of stability in the development of the SEC at certain critical stages of the programme. Clearly the development, testing and implementation of the DCC system is one of these critical phases. In the period building up to the DCC services going live it is essential to have a stable baseline to ensure that resources are not distracted from testing and other critical readiness preparations.

ElectraLink therefore supports a variation to the SEC modification process during the transitional period to suspend the standard modification process in order to limit the types of modification that can be raised. We also recognise that serious defects within SEC may be identified during the transitional period which could impact on implementation of DCC services. Therefore, the proposal to implement the SEC Urgent Modification process to deal with such issues is a sensible approach which we support.

However, we do not agree that the Panel should be responsible for voting on the modifications raised and propose instead that the Change Board be appointed during the transitional period.

The concept of the Change Board has been developed with the consent of industry and not using it during the transition period risks undermining this work. The mechanisms to support the Change Board (i.e. the CAS) will already be in place and should be utilised.

As identified earlier, the role of the Panel and Change Board will be separate and the skill set of members distinct. Merging the roles during the transition period could mean impact the type of nominations received for the initial Panel. We believe that the Panel will have a significant amount of work to do in the initial period without the additional burden of change management.

It is possible that the changes raised in this period will be significant and potentially technical in nature with commercial impact for parties. A decision by a simple majority of Panel members is not appropriate for such changes.

Furthermore, our experience with the early operation of new Codes shows that only by working through each process and applying it, can it be properly tested. Establishing and using the Change Board in the transition will allow the full change process to be fully tested and give comfort to parties on its operation and effectiveness. Any amendments to the process which are identified can then be developed in preparation for Go Live.

We recommend that as a minimum, the Panel should have the right to establish the Change Board in this initial stage.

For the reasons outlined above, we also question whether it is necessary to allow for Fast-Track Modifications during transition. By their very nature Fast-Track Modifications have little or no impact, require little or no analysis and implementation is not time-critical. An alternative approach may be for the Code Administrator to maintain a log of minor variations and for a single 'housekeeping' modification to be raised either periodically or once the standard process is available.

There may be instances where the progression of a proposed urgent modification may have an unintended detrimental effect on the delivery of Government smart metering policy. It would therefore seem appropriate for the Secretary of State to have the proposed right of veto during the transitional period. That said, ElectraLink believes the current drafting contained in section L is too open and should be more prescriptive as to the circumstances in which the veto can be used. We would like to see the drafting amended to restrict the Secretary of State's power of veto to those circumstances where the progression of a modification would be detrimental to the delivery of Government policy.

14. Comments are invited on the approach to transition as set out in this chapter and section L of the SEC. Please provide rationale to support your views.

Subject to the comments made with regard to the variations to the modifications process in our response to question 13 above, we have no further comments or issues that we wish to raise on the proposed approach to transition as set out in section L. The SEC variations proposed during the transition period seem sensible and appropriate.

Licence Conditions

15. It is the Government's intention to introduce a regulatory obligation on suppliers to enrol SMETS-compliant domestic meters with the DCC and that this obligation would apply in relation to smart meters installed (from a specified point in the future). Do you agree with this intention? Please provide a rationale for your views.

N/A

16. Do you agree in principle with the placing of a licence condition on gas and electricity suppliers to accede to and comply with the SEC?

Placing of a licence obligation on gas and electricity suppliers to accede and comply with the SEC is consistent with the approach taken for a number of existing industry codes and as such ElectraLink agrees with the principle. Lessons learnt through the development of the SPAA show it is important to ensure appropriate membership requirements are in place at the outset.

ElectraLink would however like to make the following comment on the draft licence condition. The proposed drafting of GG.4(a) states 'the SEC Designated Date; and' where it should read 'the SEC Designated Date; or'.

17. Do you agree that the licence conditions as drafted meet the policy requirements as set out in the chapter? Please provide a rationale for your views.

Notwithstanding the drafting note raised in answer to question 16, the licence conditions as drafted meet the policy requirements as set out in this chapter.

18. Do you agree in principle with the placing of a licence condition on gas and electricity network operators to accede to and comply with the SEC?

Yes, ElectraLink agrees with the principle of placing a licence condition on gas and electricity network operators to accede to and comply with the SEC. This is consistent with current industry practice for a number of other codes.

19. Do you agree that the licence conditions as drafted meet the policy requirements as set out in the chapter? Please provide a rationale for your views.

Yes, the licence conditions as drafted meet the policy requirements.