

98 Aketon Road  
Castleford  
West Yorkshire  
WF10 5DS

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

January 7, 2013

Dear Sirs

**Smart Metering Implementation Programme: Stage 1 of the Smart Energy Code**  
Ref: URN 12D/406

Northern Powergrid is the electricity distribution business for the north east, Yorkshire and parts of northern Lincolnshire, operating through its two licensed subsidiaries. We welcome the opportunity to respond to this consultation.

We have no comments on the bulk of the consultation or on the majority of the detailed drafting of stage 1 of the Smart Energy Code (SEC); however we wish to share some views in the areas of charging principles, code governance and liabilities.

Our responses to the specific consultation questions are in Appendix 1 to this letter.

In Appendix 2 we have suggested some minor changes to the draft Electricity Distribution Licence condition to accede to and comply with the SEC.

Yours faithfully

Enclosed Appendix 1 and 2

## **APPENDIX 1. Specific consultation questions**

The list of questions in the consultation document along with Northern Powergrid's answers is set out below.

### **General question on SEC legal drafting**

*Q1. Do you agree that the Government conclusions are appropriately reflected in the SEC Stage 1 legal drafting? Please provide a rationale for your views, and any further comments on the draft legal text.*

A1. No comment.

### **DCC Charges**

*Q2. Do you have any comments on format of the DCC's Charging Statement for Service Charges?*

A2. We have no comment on the charging statement; however we do have some views on the principles of the forecasting and setting of charges.

We welcome the provisions of the SEC clauses J4.2, J4.3 and J4.4 in relation to providing a level of predictability of future charges.

We also note clause K9.1 (there being no absolute need for the DCC to alter the charges part way through a regulatory year) and its intended effects are welcome in providing a level of certainty to parties in relation to their charges.

However, clause K9.4 appears to create the risk of in-year cost shocks. We would suggest that in addition to any incentives on the DCC to control bad debt risk (paragraph 90 of the consultation) there should be appropriate incentives on the DCC (and legal facilities for the DCC) to pursue the recovery of debt prior to it becoming bad debt. We would also suggest that charge adjustments for bad debt should be reflected in the following year's charges rather than create potential mid-year cost shocks. While delaying an increase in charges to the following year may create a temporary adverse cash flow effect for the DCC this should also provide an added incentive on the DCC to manage debt risk and respond appropriately to any late payment from parties.

*Q3. 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.*

A3. We have no comment on the specific thresholds applied to the 'first comer / second comer' principle, however it is unclear from the drafting of K7.10 and K8.8 what would happen to any rebate sums owing in relation to first comers where the initial contributor no longer exists.

## SEC Panel

Q4. *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.*

A4. We believe that the elected members of the panel should be appropriately representative of the party categories that will be using and funding the DCC. Even though panel members will be required to act independently and not act as party category representatives or delegates, it is reasonable that the elected members can bear in mind the perspectives and drivers of the mix of the parties using and funding the DCC. Any panel formed disproportionately from one party category may not be able to sufficiently consider the needs and perspectives of the different parties and party categories. Whichever election process is used it needs to produce a panel that is appropriately balanced in terms of experience and perspectives. Consideration needs to be given as to whether election by party categories may produce a better outcome than election by all parties given, for example, that there are many more suppliers than network operators.

## Modifications

Q5. *Do you support the proposed composition of the Change Board and its decision making arrangements?*

A5. We support the purpose of the change board; however it is unclear whether the apparent weighting of the membership of the change board in respect of persons appointed by supplier and smaller supplier parties is appropriate in relation to the anticipated use and funding of the DCC by both suppliers and network operators. A further uncertainty is the types of modifications that might be proposed and for the benefit of which parties. The proposed make-up of the change board combined with the majority voting arrangements may lead to unintended consequences. Irrespective of the chosen make-up of the change board membership we suggest that its operating arrangements be formally reviewed after an initial period of operation.

Q6. *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?*

A6. There may be benefits for parties, consumer representative and Ofgem in creating a short window to appeal change board recommendations prior to submission to Ofgem. For example, if a party felt that its response to a modification consultation had not been fully considered by a working group or the change board it could highlight this within the appeal window. Ofgem could then have the option of returning the modification proposal back to the panel for further consideration rather than face the potential risk and costs of a formal appeal to Ofgem after its decision.

Q7. *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?*

A7. No further comments.

## **Liabilities**

*Q8. Do you agree that liability provisions for intellectual property rights and confidentiality should be included in the SEC.? If so, do you agree that they should be unlimited?*

*A8. Whilst we understand the principles of including such provisions we are concerned with any potential unintended consequences of such provisions, particularly if the liabilities are unlimited. As a regulated network operator with appropriate associated price control mechanisms the impact of any inadvertent breach would need to be reasonable and appropriate. We believe the potential consequences for parties due to such provisions ought to be reviewed when the likelihood of exposure becomes clearer.*

*Q9. Do you agree with the Government's proposal that in instances where the DCC is exposed to liabilities that exceed what it can claim from the person causing the original breach, the net liabilities for the DCC will be recoverable from SEC Parties by way of an increase in the DCC's fixed charges?*

*A9. No comment.*

## **Dispute resolution**

*Q10. Do you agree that the Government's proposal to allow DCC to link service provider and SEC disputes in the arbitration process?*

*A10. No comment.*

## **Code co-ordination**

*Q11. Do you agree that the proposed legal drafting covering change co-ordination with other codes meets the requirements as set out in chapter 5?*

*A11. The drafting at C2.3 (I) appears to be fit for purpose.*

*Questions 12 through to 17 – No comment*

*Q18. 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?*

*A18. Yes, in principle.*

*Q19. 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.*

*A19. We suggest some minor drafting changes to the proposed Draft Electricity Distribution Licence condition to accede to and comply with the SEC. Our suggested changes are attached at Appendix 2 and shown as tracked changes.*

**APPENDIX 2 Draft Electricity Distribution Licence condition to accede to and comply with the SEC**  
Suggested minor changes proposed as tracked changes below:

**Condition [ZZ] – The Smart Energy Code**

**Party to the Code**

EE. 1 The licensee must:

- (a) by no later than the Commencement Date, be a party to the Smart Energy Code; and
- (b) thereafter remain a party to and comply with the Smart Energy Code.

**Derogation**

EE. 2 The Authority may (following consultation with the licensee and where appropriate any other person likely to be materially affected) give a direction ("a derogation") to the licensee that relieves it of its obligations under the Smart Energy Code in respect of such parts of the Smart Energy Code, to such extent, for such period of time, and subject to such conditions as may be specified in the direction.

**Interpretation**

EE. 3 For the purposes of this cCondition the licensee's obligation to comply with the Smart Energy Code is an obligation to comply with the provisions of the Smart Energy Code so far as they are applicable to the licensee.

**Definitions**

EE. 4 In this Condition:

**Commencement Date**

means:

(a) the date ~~that~~<sup>which</sup> is the SEC Designated Date; or

(b) where this cCondition comes into force after the SEC Designated Date, the earlier of the date on which the licensee offers to distribute electricity or the date on which it begins to distribute electricity in Great Britain.

**DCC Licence**

means the Licence for the Provision of a Smart Meter Communication Service granted pursuant to sections 7AB(2) and (4) of the Gas Act 1986 and sections 6(1A) and (1C) of the Electricity Act

1989.

**Smart Energy Code**

means the document of that name, as designated by the Secretary of State under Condition 22 of the DCC Licence.

**SEC Designated Date**

means the date the Smart Energy Code is designated by the Secretary of State in a direction given for the purposes of Condition 22 of the DCC Licence.