

January 7, 2013

Department of Energy & Climate Change  
3<sup>rd</sup> Floor Area D  
3 Whitehall Place  
London  
SW1A 2AW

Dear Sir,

**Foundation Smart Market Consultation**

Please find First Utility's response to the above consultation below.

***Question 1: Do you agree that the Government's conclusions are appropriately reflected in the SEC Stage 1 legal drafting?***

Yes, we agree that the drafting should achieve the outcome required by the Government.

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

No, this seems appropriately structured and easy to interpret.

***Question 3: Do you agree with the thresholds applied to the "first comer / second comer" principle (Five Year Rule for costs over £20,000)?***

Yes, as it is important that costs be shared fairly between users in order to avoid latecomers receiving a "free ride". We believe the proposed £20,000 threshold is appropriate in order to avoid burdening the SEC with reallocation of small costs over a long period of time. We also believe that a five year period is appropriate.

***Question 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)?***

We believe that Option B is the more appropriate of the two. We agree that this will incentivise the election of Panel members with the support of multiple party categories and a broad understanding of the relevant issues.

***Question 5: Do you support the proposed composition of the Change Board and its decision making arrangements?***

We are slightly uncomfortable with the proposal to give each of the large incumbent suppliers a seat on the Change Board and would suggest that large supplier representation be reduced to 4 standing members in order to avoid this party potentially dominating the voting.

**Question 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?**

Yes, as it will be more efficient for Ofgem to review only proposals which have already passed any appeal process. We believe that appeals could be referred back to the SEC Panel by the Change Board for consideration and also feel that this mechanism could be put in place without any significant additional cost.

**Question 7: Do you have any further comments, or view 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?**

We have no specific comments at this time other than to recommend that all costs be weighed carefully against the associated benefits with a particular view to their potential financial impacts on smaller players.

**Question 8: 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?**

Yes, this seems appropriate.

**Question 9: 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?**

The circumstances in which this would be possible should be restricted and clearly set out as, were this to be a regular occurrence, this would simply result in higher costs to consumers.

**Question 10: Do you agree that the Government's proposal to allow DCC to link service provider and SEC disputes in the arbitration process is appropriate?**

Yes, as the DCC will clearly not be able to carry the cost liability for these disputes itself. However, we would request that such costs be recovered on the basis of market share in order to avoid inadvertent creation of a barrier to entry for new market entrants.

**Question 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?**

Yes, this seems appropriate.

**Question 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?**

Yes, this seems suitable.

**Question 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?**

Yes, it seems appropriate that the Secretary of State be given veto powers during the transitional period in order to halt modifications which might significantly delay the planned DCC go live and thus also delay the attendant benefit to consumers.

**Question 14: Comments are invited on the approach to transition as set out in this chapter and section L of the SEC.**

We agree that it is pragmatic to have special rules in place during the transitional period to deal with unforeseen situations prior to the establishment of DCC and it beginning to perform its functions as envisaged.

**Question 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?**

On the assumption that this refers purely to SMETS 2 compliant meters, we would consider this to be appropriate. However, in the case of SMETS 1 compliant meters, we do not feel mandation is required.

**Question 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?**

Yes, it is imperative that all suppliers accede and comply with the SEC if smart meters are to become the standard metering technology in the GB market.

**Question 17: Do you agree that the licence conditions as drafted meet the policy requirements as set out in the chapter?**

Yes, we agree that these will lead to the desired outcome.

**Question 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, as cooperation from the network operators will be required for both suppliers and the DCC to perform their regulated functions in relation to smart meters.

**Question 19: Do you agree that the licence conditions as drafted meet the policy requirements as set out in the chapter?**

Yes.

Please do not hesitate to contact either

I have any questions

or further information.

Yours sincerely,