

Smart Metering Implementation Programme

Smart Energy Code consultation – A Response from Energy UK:

Executive Summary

Energy UK is the new trade association for the gas and electricity sector, representing a wide range of interests and driving forward the debates on the UK's strategy for achieving a low carbon, secure and affordable energy future. It includes small, medium and large companies working in electricity generation, energy networks and gas and electricity supply, as well as a number of businesses that provide equipment and services to the industry. Energy UK welcomes the opportunity to respond to the Smart Energy Code consultation on behalf of the members of its Supplier Requirements for Smart Metering project group.

The Smart Energy Code (the SEC) will be the very first set of cross-fuel industry governance arrangements that are necessary to set out key obligations and requirements on any party taking services from the Data Communications Company (the DCC). The SEC will also include a significant number of subsidiary documents such as business processes, agreed procedures, technical and security specifications and more. It will be essential that the ongoing development of the SEC and associated subsidiary documents continues at pace so that potential SEC parties and the DCC licensee have the appropriate visibility of the anticipated arrangements at the earliest opportunity.

Any party seeking to utilise the services from the DCC must accede to the SEC, and therefore comply with the obligations and requirements within it. It is expected that the DCC will need to procure Code Administration and Secretariat services to administer the SEC arrangements and Energy UK's members have mixed views on how such services should be procured. The key issue for our members is that the DCC must deliver an efficient and cost effective service to all SEC parties, and this applies equally to the procurement of service providers required to fulfil the Code Administration and Secretariat activities.

As with any industry code or agreement, the way in which modifications can be made requires careful consideration. The modifications process must not be overly burdensome so that innovation is stifled, but must be robust enough to ensure that all modification proposals are assessed appropriately in order to ensure they meet the relevant objectives of the SEC.

Energy UK's members have mixed views on what the composition of the SEC panel should look like, but they all share the view that the panel composition should be representative and proportionate to the users of DCC's services. With domestic suppliers accounting for a significant proportion of services provided by the DCC, then it would appear wholly sensible for domestic suppliers to have more seats on the SEC panel.

Whilst this consultation provides clarity in a number of key areas, there still remain many issues that require further consideration and development. Over the coming months, this development will include the process of beginning the legal drafting of the SEC, and Energy UK and its members will continue to support this ongoing process under the relevant Smart Metering Regulation Group working group.

Participation in the SEC

1. Please provide any comments that you have on the classification of party categories under the SEC.

Energy UK Response:

Energy UK has no comments to make on the proposed classification of party categories. They appear wholly in line with our expectations. It may be necessary for further consideration on the need to break down the 'other' user category based on any decisions in relation to the ability of metering agents to become SEC parties directly. If a decision is taken to allow meter operators or asset providers to become SEC parties, then the 'other' category may be too vague if it covers such a wide range of different participants.

Involvement of the Meter Services Community

2. Are the requirements of both meter asset providers and meter operators for access to smart metering systems adequately captured in this consultation paper? If not, please provide additional details of the requirements and why they are required.

Energy UK Response:

Whilst Energy UK does not represent the interests of meter asset providers or meter operators, our members are in general agreement that their requirements have been captured adequately based on views expressed as part of the Smart Energy Code work-groups over the last year.

3. Do you support the Government's preferred solution to implement a simple variant of Option B whereby the registration of a meter operator in the existing electricity and gas registration systems would be deemed to constitute a nomination by the supplier of that meter operator to act as its agent to perform a specific set of commands?

Energy UK Response:

Energy UK's members have mixed views on this and will respond on an individual basis confirming their own company position. The mix of views ranges from some members believing that any Supplier Nominated Agents should not accede to the SEC and that communications to the DCC should remain with the supplier as per the Supplier Hub Principle, whereas some members support the principle that suppliers should have the choice as to whether or not their nominated agent interfaces with the DCC directly. For those members supporting the latter option, there is agreement that any party that interfaces with the DCC directly, they must accede to, and be signatories to the SEC in their own right in order for them to demonstrate they can meet all associated accreditation requirements, especially in relation to security of the end-to-end smart metering infrastructure.

4. Should meter operators be given limited participation rights in SEC governance under Options B or C, and if so what rights would be appropriate?

Energy UK Response:

As confirmed in our response to Question 3 above, our members have mixed views on which of the options are most suitable, and as such, will influence the response to Question 4.

However, as a general principle, Energy UK's members agree that the arrangements under existing industry governance procedures, where a supplier is able to propose modifications on behalf of any of its metering agents if there is a need have worked well up to now. Suppliers and their agents are well versed in identifying issues or areas for improvement in industry processes, and we have seen many examples where modifications have been made via this route. Our members also agree that meter operators and other metering agents should be invited to attend specific sub-groups or working groups as an 'interested industry participant' to assist with the development of modifications and change proposals where appropriate if either Option A, or B is taken forward.

5. Would you support the tracking of assets being included within the future system requirements for the new registration systems, which are proposed to be provided by the DCC?

Energy UK Response:

Yes, Energy UK's members all support the tracking of meters, but believe the importance of this issue warrants early development of existing industry processes, rather than waiting until the proposed new registration system is provided by the DCC. Meter asset owners/managers require certainty that they will be able to collect smart meter rental charges following a change of supplier event, and our members do not believe it acceptable to have a period of 2-3 years of potential lost meter asset rental revenue. If this issue remains unresolved, then meter asset providers/owners will simply build a risk premium into their meter rental prices, the costs of which will ultimately be borne by end users.

Energy UK is pleased to note that a modification proposal to the Uniform Network Code is currently being progressed to increase the visibility that Meter Asset Providers have to industry data, and our members will all continue to support the ongoing development and discussions surrounding that proposal over the coming months. However, that modification will merely permit access to data, making no provision for asset owners to be notified where a change of supplier event has taken place, therefore on its own, this modification will not deliver the overall requirements for asset owners/managers and more work will be required by industry to achieve those requirements.

Accession to the SEC

6. Do you agree with the process proposed for accession and the accession time limit?

Energy UK Response:

Energy UK's members agree with the accession process as proposed, and welcome the recognition of the need for an accession time limit, and with Government's consideration that it is necessary to prevent organisations signing up to the SEC, participating in its governance, without any intention of becoming an active participant. A 6 month time limit appears sensible.

It may also be appropriate to consider whether or not there should be some form of 'fit and proper persons' test, or additional measures/checks as part of the accession process, in order to minimise the potential for companies (or directors associated with those companies) from re-appearing as a new organisation following recent financial failure. Energy UK's members are concerned that it could be the case that a party accedes to the SEC without sufficient finances in place, enters administration (or similar), and then re-applies with no obligation to repay any debts previously incurred.

7. Do you agree that once acceded, any SEC Party should be able to participate in the governance of the SEC prior to undertaking any further entry processes?

Energy UK Response:

There will be instances where parties intending to become active participants may require changes to the SEC in order to operate in the market, and the rules within the SEC governance arrangements and accession process should allow for this. If a new SEC party wishes to propose modifications, they will proceed through the standard modifications process, and will either be progressed or rejected just as any other modification proposal would. That said, care must be taken to avoid instances where a party accedes to the SEC purely for the purposes of raising a modification, then withdraws its accession before becoming an active participant without incurring any costs if the modification proceeds.

However, if a SEC party has proposed a modification, and is subsequently expelled (and any appeal is rejected), then there has to be further consideration as to who pays the costs that the SEC Code Administrator has incurred to the point that the SEC party is expelled. We would also expect that any modification proposals in progress must be halted immediately, and SEC parties consulted on to find an alternative modification sponsor. If not alternative sponsor can be found, we would expect that the modification proposal is dropped with no further development or consideration by the SEC panel.

8. Do you have any views on the company, legal and financial information that should be provided as part of the SEC accession process?

Energy UK Response:

The information proposed appears sensible and appropriate for the initial access process.

Establishing readiness to receive the DCC's communication services

9. Do you agree that Government should not mandate a specific solution for the DCC User Gateway and that Data Service Provider (DSP) bidders should be invited to propose the solution which they consider to be the most effective (such proposals could include the option of extending an existing industry network)?

Energy UK Response:

Yes, Energy UK's members all support this approach and believe that by inviting DSP bidders to propose a solution should deliver the most economical and efficient solution for all DCC users.

10. Do you have any other comments on the Government's proposals for the DCC User Gateway?

Energy UK Response:

Whilst Energy UK's members support the expectation that the DCC should provide for parties to operate existing industry networks until they are able to make the relevant internal system changes to accommodate the chosen solution, this should not be an open-ended provision. Energy UK's members would suggest that there is a time limit of no longer than 6 months in which all parties must set out their plans for implementing the new arrangements.

11. Do you agree with the proposed DCC user entry processes?

Energy UK Response:

Yes, this is in line with our expectations.

Enrolling smart metering systems

12. Do you agree with the proposed rights and obligations relating to smart metering system enrolment set out in this chapter? Please provide your views.

Energy UK Response:

Yes, the rights and obligations as described are in line with our expectations that smart metering systems must meet the relevant technical specification, that suppliers should notify the DCC in advance of the smart metering systems it intends to enrol, and that the MPAN/MPRN has been entered into the smart metering system on installation.

Energy UK does believe further consideration is required in relation to the responsibility of the DCC to notify SEC parties that a smart metering system has been installed at premises, and is enrolled with the DCC. Our members would not support any requirement for the DCC to notify all SEC parties that a smart metering system (by reference to its MPAN/MPRN) has been enrolled, instead our members believe this should be limited to the relevant Network Operators.

There is a significant risk that by notifying all SEC parties, including Third-Party service providers, this could ultimately lead to such notifications being used as a marketing database for those companies seeking to attract customers, regardless of any protections around sales and marketing that might otherwise be included as part of the SEC arrangements. If this were the case, the resulting reputational damage caused could have a significant impact on the overall success of the smart metering implementation programme as a whole, and all of the participants within it.

13. Do you agree that the SEC should require, as a condition of enrolment, that the supplier grants the right to the DCC to access its smart metering system for specified purposes?

Energy UK Response:

Yes, our members agree that it is sensible to set this out in the SEC, and look forward to continuing discussions on what levels of access the DCC might need/want under the programme work groups.

14. Do you agree with the proposed rights and obligations relating to smart metering system withdrawal and replacement of devices?

Energy UK Response:

Yes, our members agree with the proposed rights and obligations relating to withdrawal and replacement of devices. It is essential that the DCC be required to inform all relevant SEC parties that communication services are to be withdrawn from a particular smart metering system as soon as it becomes aware, as consumers may not always notify its service providers themselves. In terms of replacement of devices, Energy UK's members agree that the SEC should set out the relevant process to be followed, and the associated rights and obligations when a supplier wishes/needs to replace devices.

Core and elective communication services

15. Do you agree with the three different types of eligibility to receive core communication services that have been proposed?

Energy UK Response:

Yes, Energy UK's members agree with the three different types of eligibility proposed. By categorising eligibility in this manner, all SEC parties will have a clear understanding of the core services that are available to them. As the development of DCC's services continues, industry will

have a better understanding of which core services will need to be available to the different parties, and it may be the case that once core service may be required by two different eligibility categories.

16. Are you aware of situations where there are two or more importing suppliers in relation to a single smart metering system and if so, where do such situations exist, how many exist and what metering arrangements have been made?

Energy UK Response:

Energy UK is unaware of any situations where there may be two or more importing suppliers in relation to a single smart metering system. If our members are aware of any such situations, they will respond on an individual basis accordingly.

17. Do you agree that amendments to the set of core communication services should be subject to the standard SEC modification process?

Energy UK Response:

Yes, Energy UK's members agree that any amendments to the core communication services must go through the standard SEC modification process, as any changes (regardless of their materiality) are likely to impact all parties utilising that core service, and will therefore need to fully understand the impact of the changes being proposed.

18. Do you agree that SEC Parties should be able to request elective communication services from DCC on either a bilateral or multilateral basis?

Energy UK Response:

Yes, this is in line with the expectations of Energy UK's members. It will be essential that there are appropriate procedures that the DCC must follow when elective services are requested to ensure that in providing an elective service requested, there will be no impact on the DCC's ability to deliver its core services to all SEC parties.

19. Do you agree that the following SEC requirements associated with the provision of core communication services should also apply to elective service provision: DCC user entry processes, technical security requirements, data privacy requirements, financial security requirements and dispute arrangements.

Energy UK Response:

Yes, this is in line with the expectations of Energy UK's members.

20. Do you agree that the SEC should set out mandatory procedures for the provision of an offer of terms for elective communication services by the DCC and with the mandatory procedures proposed? Do you consider that any additional procedures should apply? What do you consider are the appropriate timescales within which an offer of terms should remain open?

Energy UK Response:

Energy UK's members agree that the SEC should set out the mandatory procedures for the provision of an offer of terms, and the proposed procedures appear sensible. It is essential that the procedures are not overly burdensome on either party, and are clear and straightforward to follow.

Our members believe that an offer of terms should remain open for 30 days, a standard period for most offers of service provision. Any period longer than this could result in the costs of providing the service becoming inaccurate based on any number of relevant factors.

21. Do you agree that commercially sensitive terms and conditions associated with elective service provision, which might include the type of communication service that is being provided, performance standards associated with the provision of that service and the price associated with that service, should be confidential between the DCC and the party or parties receiving the service unless the party or parties receiving the service consent or unless requested by the Authority pursuant to the DCC Licence?

Energy UK Response:

Energy UK's members have mixed view in this area. Some believe that in order for there to be adequate transparency of the services the DCC is to provide, then the only details that need to remain confidential are the details of who has requested, and is subsequently using an elective service.

Their main rationale for this position is that any elective service will simply be a message to and from a smart metering system, and the majority of our members do not believe there should be any objection to the DCC releasing details such as:-

- The message size and what data items it includes;
- The frequency and latency of the messages to be provided;
- Details of any associated service levels/standards that may be applicable; and
- The costs should an appropriate SEC party wish to request the service.

While we agree the need to prioritise innovation, we do not believe publishing such details will inhibit this in any way. Moreover, it will offer SEC Parties comfort that the DCC is not placing their core, or previously agreed elective, services at risk. Such transparency should also provide SEC parties with appropriate confidence that there is no cross-subsidy between the core and elective services being provided.

Other members however believe that the detailed terms and conditions associated with any elective service being requested, and subsequently provided should remain confidential. One member supports the view that they should remain confidential for a suitable length of time, possibly up to 1 year, to provide commercial protection to those seeking to innovate in the market, whereas some members support the principle that they should remain confidential, unless both sides agree to their publication.

22. Do you agree that the SEC should contain provisions requiring that the DCC notifies SEC Parties of the timing of the implementation of changes to its systems?

Energy UK Response:

Yes, this is vital to all SEC parties to enable them to adequately prepare their own internal systems and/or procedures to reflect any such changes. Energy UK has noted that the consultation document does not discuss this provision in any detail, and expect more detail to be progressed under the relevant working group of the programme. Some of our members believe further consideration should be given to align implementation timings with existing change release dates used in other industry codes and agreements wherever possible.

23. Do you agree that the DCC should only be required to offer terms for elective communication services from a specified date, and if so, what do you consider that date should be?

Energy UK Response:

Energy UK's members agree with Government's consideration that the primary focus of the DCC's early activities should be the enrolment of smart metering systems and the provision of core communication services. As such, it would make sense to agree a specific date from which the DCC should be required to offer terms for elective services. That date should be far enough in the future to assure SEC parties that the DCC is meeting the agreed SLA's for enrolment and core service provision, but not too far in the future to prevent SEC parties from innovating early. A date approximately 6-9 months from DCC go-live would appear sensible, but with sufficient flexibility for the DCC to provide elective services earlier if it is able to demonstrate that it is ready to do so.

DCC charges

24. Do you think that the proposed approach for DCC charging is reasonable?

Energy UK Response:

Overall, Energy UK's members agree with the proposed approach, however consideration needs to be given to the potential risks in allowing the DCC to effectively have both regulated (core and elective services) and unregulated (Value-Added services) elements to its business. It is essential that industry does not see a repeat of other similar models, where assets can be written down in the regulated side of the business, then subsequently transferred to the unregulated part of the business for a nominal value. Whilst this should not be an issue with the DCC, which is expected to be an 'asset-light' business, Energy UK's members would urge that this issue is considered more generally in order to deliver the best value for all SEC parties and consumers alike.

One area of concern for some of our members is the suggestion that the DCC fixed charges will be set to recover those costs considered to be the DCC's fixed costs relating to the provision of core services from supplier and network operators in proportion to their share of the number of smart metering systems enrolled with the DCC. If core services are available to other users, then the DCC will also incur fixed costs in providing core services to those parties. The proposals as set out appear to suggest that suppliers and network operators will be subsidising the fixed costs associated with other users. Our members cannot support such a mechanism, and would therefore suggest that this needs further consideration by Government.

In terms of the DCC being able to recover its operational costs prior to go-live, our members have mixed views with some accepting that this is a sensible approach. Even though there will be no communications or data services being provided, there will still be a significant level of work for the DCC to carry out in preparing for go-live, and costs associated with providing Secretariat services for the SEC itself.

However others do not believe it appropriate for the DCC to recover its costs until DCC users are able to utilise communications and data services. They have a view that such an arrangement is likely to dampen the incentive for the DCC to ensure its services are available on a timely basis, and that the DCC licensee should commit its own investment to fund the establishment of its business structure, including the internal systems and processes required to operate the business.

25. Do you consider that the "pay now dispute later" approach is consistent with the envisaged DCC regime? If you disagree please set out the reasons for your preferred approach.

Energy UK Response:

Energy UK's members cannot support the principle of a "pay now, dispute later" approach as proposed. Despite the assumption that the SEC sets out the relevant details for dispute resolution, our members all agree that it would be more appropriate for SEC parties to pay any un-disputed element of charges, and hold back payment for the disputed element. It will also be completely unacceptable to expect any SEC party to pay charges which are obviously incorrect. For example, if a party receives an invoice for millions of pounds, and it is clear that an obvious error has been made, then there must be appropriate procedures in place for a party to raise an immediate challenge for speedy resolution.

The SEC should set out clear obligations on all parties for disputed charges, aimed at resolving any dispute before the next scheduled invoice is due. For example, if a supplier is disputing its January invoice, the supplier and the DCC should have resolved any dispute with that January invoice before the February invoice is due. Whilst it is inevitable that errors will be made, Energy UK does not believe it acceptable for disputes to go unresolved for as long as is completely necessary. There should only be limited circumstances where neither party has the information required to resolve any such dispute, and all parties must work to an agreed procedure in a timely manner in order to deliver a satisfactory and efficient outcome.

26. Do you accept that bad debt should be socialised explicitly within the current charging period across all DCC service users? If you disagree please set out the reasons for your preferred approach.

Energy UK Response:

It would seem wholly appropriate for any bad debt to be dealt with within the current charging period of when it occurs wherever possible. One of the key concerns for Energy UK's members is where bad debt is as a result of a third-party DCC user failing/unable to pay charges for DCC services, and the expectation that suppliers will have to meet some of these costs. On several occasions in the past, suppliers have been subjected to unexpected and unwelcome costs associated with defaulting parties, all adding to the overall costs to consumers.

Instead, our members all agree that the focus should be for the DCC to have the appropriate incentive to collect and act effectively in relation to all charges due. Where a default does occur, then careful consideration is required to minimise the impacts on all SEC parties accordingly.

The SEC Panel

27. Do you agree with the proposed functions, powers and objectives of the SEC Panel, as set out in Boxes 12A and 12B?

Energy UK Response:

Yes, the proposals are generally in line with the expectations of Energy UK's members. There are mixed views in relation to the options for contracting with the Code Administrator and Secretariat services which may lead to a separation of the functions, powers and objectives between the SEC panel and any contracting body/organisation, if one is required or preferred. If this is the case, then there will be a requirement to review the functions, powers and objectives as currently proposed.

Whilst Energy UK's members are broadly supportive of the proposed SEC panel arrangements, there is some support for splitting out duties relating to modifications to the SEC, and establishing a separate modification panel or change board to deliver a more representative approach being taken to the modification procedures arrangements. Energy UK's members would support further consideration in this area as the SEC panel and modification arrangements are developed further.

28. Do you think that a fully independent panel is the appropriate model for the SEC? Please give reasons for your answer.

Energy UK Response:

Some of Energy UK's members would question whether or not an independent panel model is actually achievable or realistic. Whilst there could be every intention for all panel members to act independently in conducting SEC panel business, there will inevitably be situations where a decision to be made by the panel could go against the interests of the panel member's employer or organisation. In these situations, our members all believe the panel member will have little choice but to vote based on the position of his/her employer or organisation, rather than acting independently.

Whilst a constituency model may appear to present some difficulties, it should ensure that any panel member will be basing his/her decisions/voting on the particular constituency they are appointed by. If constituency members have any concerns in relation to how their representative is acting on their behalf, then the SEC should set out the procedures for raising any such concerns along with arrangements for appointing a new constituency representative if issues cannot be resolved.

29. Do you agree that the proposed SEC Panel composition set out in Box 12C is appropriate? Please give reasons for your answer, Alternative proposals for the panel composition are welcome.

Energy UK Response:

Energy UK's members have mixed views on the composition of the panel, and will therefore provide their views individually. However, all of Energy UK's members share the view that the panel composition should be representative and proportionate to the users of DCC's services. With domestic suppliers accounting for a significant proportion of services, then it would appear wholly sensible for domestic suppliers to have more panel seats.

With the assumption that the majority of non-domestic suppliers are unlikely to utilise the services provided by the DCC, it would be appropriate for them to have a panel seat. That said, there does need to be sufficient flexibility in the composition of the panel to accommodate the development and progression of the market. For example, if significant numbers of non-domestic consumers are enrolled into the DCC by non-domestic suppliers, then the panel composition could be revised accordingly.

30. Do you agree with the proposed division of voting and non-voting members, and in particular do you believe that the DCC should be a non-voting member in respect of any or all aspects of panel business?

Energy UK Response:

As with Question 29 above, our members have mixed views on the proposed SEC panel composition, and as such, will have differing views on the division of voting and non-voting members. Each of our members will respond separately setting out their preferred position.

31. Do you agree that the proposals for the independence, appointment and term of office of the panel chair are appropriate? Please give reasons for your answer.

Energy UK Response:

Yes, Energy UK's members support the proposal for the panel chair to be independent, and be appointed for a fixed term of office. With such a mixed and varied group of users of the DCC's

services, and therefore SEC signatories, it will be important that the panel chair is able to oversee matters without the potential to have any particular influence from any individual or particular group of SEC signatories. Some members believe that the Chair should not be afforded any voting rights if the Panel's decisions (potentially based on the Chair's casting vote) might then be subject to an Authority decision/determination. They believe that this could potentially expose the Panel to questions about its independence and could even prejudice subsequent appeals.

Some of our members support the proposal for the Authority to appoint the panel chair, whereas others support an approach similar to the CUSC arrangements whereby the chair could be appointed by an appointments committee with support from the Secretariat, or for the Secretariat or Code Administrator to appoint a chair.

32. Do you agree with the proposed arrangements for panel member elections and appointments?

Energy UK Response:

Energy UK's members have differing views in relation to the arrangements for panel member elections and appointments, and will respond on an individual basis accordingly.

33. Do you agree with the proposed rules in respect of proceedings and decision making at SEC Panel meetings?

Energy UK Response:

Generally, the proposed rules are in line with Energy UK's members expectations. However, as discussed in our response to Question 27 above, some members support there being a separate modifications panel or change board, which if adopted would result in there being a need to revise the proposed rules suggested.

34. Which of the two options for remuneration of panel members do you prefer, and why? In particular which of these options do you believe would be most aligned with each of the options for the panel to be either an independent or a representative body as a whole?

Energy UK Response:

The key issue should be to keep all costs to a minimum. Our members recognise there are different models applied to existing codes where some allow for panel members to claim expenses, whereas others do not. Whilst some of our members do not support the ability for panel members to claim expenses, they all agree that panel members should not receive any remuneration (nor benefits) for acting as a panel member. Despite there being no remuneration for acting as a panel member, Energy UK firmly believes this should not impact the ability for the panel to be either independent or a representative body as a whole.

Code Administrator & Secretariat

35. Do you think the Code Administrator and Secretariat chosen by the SEC Panel should be contracted through the DCC or through a SECCo?

Energy UK Response:

Energy UK's members have mixed views here, with some supporting the SECCo type model, whereas other do not believe it is necessary to create a further legal entity. Our members will respond on an individual basis accordingly.

36. If a SECCo was established what should its funding arrangements, legal structure, ownership and constitutional arrangements be?

Energy UK Response:

As with our response to Question 35 above, our members have mixed views and will respond on an individual basis accordingly.

Modification process

37. Do you have any views on the proposals regarding which parties should be entitled to raise SEC modification proposals?

Energy UK Response:

The proposals are broadly in line with Energy UK's members expectations. The rights for consumer representatives to raise or propose modifications must be restricted to those representatives entitled to nominate a SEC Panel member, and we would suggest that the entitlement should refer to those consumer representatives that operate under a statutory obligation. Under a constituency type approach, this should not affect the ability for other representatives to seek constituency support for a modification proposal – it will also help provide other SEC parties with the necessary assurances that the proposal has support, and has been discussed and debated prior to submission.

38. Do you have any comments on the proposed standard progression paths for different categories of modification?

Energy UK Response:

No, the proposals are in line with Energy UK's members expectations.

39. Do you have any comments on proposed criteria that the panel would apply to judge whether a proposal is non-material and so to determine which path should be followed?

Energy UK Response:

The majority of Energy UK's members believe that the proposed criteria appears sensible and is in line with their expectations. One member does not support the panel judging on materiality due to the potential for more disputes being raised if a decision goes against the proposer.

40. Do you think it is for the panel or for the Authority to decide whether a modification proposal should be considered urgent and determine its timetable?

Energy UK Response:

In the first instance, the proposer of a modification should indicate whether or not they believe a modification proposal meets the criteria for urgent modifications. The SEC panel should then determine whether or not a modification proposal meets the urgent criteria, along with any associated timetable agreed based on an initial assessment of either the SEC Administrator, or by any relevant group asked to assess the initial proposal. Once the SEC panel (or equivalent modifications panel or change board) has passed the modification proposal to the Authority, the Authority will make the ultimate decision, subject of course to an appropriate appeals process.

41. Do you have any views on whether any non-standard modification rules and procedures should apply to any particular parts of the SEC?

Energy UK Response:

As a general principle, there should be an agreed set of modification rules and procedures for any type of change being proposed, rather than any 'non-standard' arrangements. Our members support the need for different rules and procedures for changes to SEC subsidiary documents compared to those that apply to the Legal text of the SEC document itself, and it was also be appropriate for other aspects of the SEC framework to have different arrangements (urgent modifications for example should have their own set of rules and procedures). However, they should all be 'standard' agreed rules and procedures and no modification proposals should be progressed outside of them.

We note that the consultation sets out one set of arrangements, and based on our members views, more work will be required to develop appropriate rules and processes for the change proposals to the different aspects of the SEC arrangements.

42. Do you agree with the proposal that responsibility for making final decisions or recommendations on SEC modification proposals should always rest with the SEC Panel and that this power should not be capable of delegation?

Energy UK Response:

Yes, Energy UK's members agree that the SEC panel (or Modification Panel/Change Board if such a model is adopted) should have this responsibility, and this responsibility should not be delegated to sub-groups/work groups/sub-committees of any kind.

43. Are there any further matters relating to the modification process which you would like to comment on?

Energy UK Response:

The majority of Energy UK's members do not see the need for Secretary of State to have powers to direct that a modification proposal should not be made. Whilst they appreciate that Government wants to ensure that the programme is delivered effectively, they do not believe that the modification process creates any additional risks.

The SEC has clear relevant objectives all of which either support the licence conditions of Suppliers and those of the DCC. Whilst modification proposals have to be evaluated against the relevant objectives our members fail to see how this power is required or indeed how it would be used.

Reporting

44. Do you agree that that the SEC should place certain obligations on the SEC Panel and, possibly, SEC Parties with regard to the production, provision and publication of certain information and reports? If so, what do you believe these should be?

Energy UK Response:

Energy UK's members believe that it would appear sensible for the SEC to set out any obligations in relation to reporting, if they are needed.

Energy UK and its members are currently working with the programme to better understand the requirements and objectives for all aspects of reporting under the programme, and to understand how suppliers can meet those requirements and objectives. This work is still at a relatively early stage of development, and as such it is inappropriate to speculate what any obligations in the SEC might be.

Compliance and assurance

45. Are there any particular areas of risk that you believe should be addressed by appropriate compliance/assurance techniques under the SEC?

Energy UK Response:

Energy UK's members have welcomed Government's early intentions for there to be a robust compliance and assurance regime for the end-to-end smart metering infrastructure.

All SEC parties need to be given the appropriate assurances that other SEC parties, the DCC or any other 3rd party that interacts with the end-to-end system does so in an appropriate manner. Ensuring that this compliance and assurance framework is right will go a long way to providing this comfort and as a mechanism to detect non-compliances.

46. Do you have any views on the most appropriate governance arrangements for any compliance/assurance framework under the SEC?

Energy UK Response:

Energy UK's members support the need for a central compliance and assurance function to oversee all aspects of compliance and assurance associated with the SEC framework arrangements. This function should form part of the services provided by the Code Administrator.

Liabilities between the DCC and DCC service users

47. Do you have views on the options for the creation and enforcement of liabilities between the DCC and service users described in this chapter?

Energy UK Response:

Energy UK's members all support a liability framework that incentivises the DCC to meet agreed levels of performance balanced with appropriate mechanisms to compensate affected SEC parties where those performance levels are not met. The details of the liability framework will require further consideration as part of the work under SMRG Working Group 2 and our members look forward to contributing to those discussions over the coming months.

It will be equally important that the DCC's contractual arrangements with its service providers also reflect the performance standards agreed, in order for the DCC to manage its performance of the end-to-end infrastructure, and where necessary it can protect itself financially when compensation is due to DCC users.

In terms of suppliers' liabilities to the DCC, the key liability is the requirement to pay charges levied by the DCC for services taken. Our members all agree that it is wholly appropriate for the DCC to be able to apply late payment and interest charges, and the DCC must take appropriate steps to limit the exposure of any payment liability to all SEC parties/DCC users.

48. Do you agree that there should be a cap on liability for specific types of breach between the DCC and service users (including security breaches and physical damage). If so, what do you believe the appropriate level of these caps to be?

Energy UK Response:

Energy UK's members all agree that any relevant financial cap needs to be sufficient that it adequately compensates the parties affected, but is capped at a level to avoid a situation that requires an over insured industry that creates greater costs for all SEC parties, and ultimately consumers. Further consideration is required in this area, and our members would welcome further collective discussion in order to ascertain suitable and appropriate limits on any such liability.

49. Are there any other specific types of liability between the DCC and service users that should be addressed in the SEC? If so, how should these be treated?

Energy UK Response:

Energy UK's members have varied views on other specific types of liabilities that might be addressed in the SEC and as such, will respond on an individual basis accordingly.

Obligations and liabilities between SEC Parties

50. Do you have views on the options for the creation and enforcement of obligations and liabilities between SEC Parties (excluding the DCC) described in this chapter?

Energy UK Response:

Energy UK's members all believe that due to the level of shared infrastructure required to support smart meters, and the number of interdependencies on different industry participants to install, maintain and operate smart meters, then there is a genuine need for the SEC to include obligations and liabilities between SEC parties and for them to be enforced under the compliance and assurance regime within the SEC.

The majority of Energy UK's members agree that any liabilities will need to be capped accordingly, and further discussion is required as part of the ongoing development of the SEC to develop these further. One member supports there to be no capping of liabilities if other SEC parties are affected by the actions of a party who's actions undermines the encryption or enciphering protocol used in any part of the end-to-end smart metering infrastructure through its own negligence.

51. In your view, do any of the potential matters between parties described in this chapter (or any other such matters that you are aware of) merit the inclusion of obligations or liabilities that are directly enforceable between parties under the SEC?

Energy UK Response:

Energy UK's members all support the need for obligations or liabilities to be directly enforceable between parties under the compliance and assurance framework within the SEC. The risks associated with one SEC parties' actions causing a detrimental impact on another are too great without such arrangements. There are no other sensible alternatives, and parties should not have to rely on other legal routes of redress.

52. Do you agree that it would generally be preferable to enforce party obligations "centrally", for example through an appropriate compliance or assurance framework under the SEC?

Energy UK Response:

Yes, Energy UK's members all support the enforcement of obligations centrally under a compliant and assurance framework under the SEC.

53. Are there any scenarios where you believe that it would be appropriate to allow for cost recovery between parties under the SEC? If so, what form should these arrangements take?

Energy UK Response:

Energy UK's members have mixed views on this. Some members support the ability to recover reasonable costs incurred by the inappropriate actions of another SEC Party, whereas others believe that the liability provisions should be set at an appropriate level that would deem any additional arrangements unnecessary.

Disputes

54. What types of dispute do you believe might arise under the SEC?

Energy UK Response:

Energy UK's members share Government's view that there are likely to be 4 main types of dispute that might arise under the SEC.

- Financial disputes are likely to occur between the DCC and SEC parties in terms of invoice reconciliation, but it is highly unlikely that there could be any financial disputes between different SEC parties;
- Compliance disputes between the DCC Secretariat and SEC parties;
- Technical disputes could be between different SEC Parties, or between a SEC party and the DCC. As such, the SEC will need to set out appropriate resolution procedures for both scenarios; and
- Commercial disputes are likely to arise between SEC parties and the DCC.

55. Do you agree with the proposed framework for resolving various different categories of dispute, as outlined in this chapter?

Energy UK Response:

The majority of Energy UK's members support the proposed framework and believe it offers the right balance that allows parties to do all they can to resolve disputes between the affected parties themselves, whilst offering a formal resolution process (albeit via the SEC panel, or ultimately via the Authority) for those that are either more technically detailed, or those that just simply cannot be resolved between the relevant parties themselves.

One member supports a disputes committee approach similar to the arrangements under the BSC, with the SEC panel being able to over-turn decisions made by the committee, or refer the dispute back to the committee for further consideration.

Default

56. Do you have any views on the suggested framework for dealing with defaults under the SEC, including the events, consequences and procedures described? In particular, do you agree with the proposed role for the SEC Panel and have any view on what SEC rights or services it would be appropriate to suspend in the event of a default?

Energy UK Response:

The suggested framework is in line with Energy UK members expectations, and we have no further comments to make in relation to the events, consequences and procedures described. The proposed role for the SEC panel appears sensible.

In terms of rights or services that would be appropriate to suspend in the event of default, our members believe that these should be stripped down to the bare minimum services that the defaulting party requires in order to meet essential regulatory duties only. For example, if the defaulting party is a supplier, then the only services that the supplier should receive are the key core services required under licence (such as a monthly read for billing purposes, or key messages relating to prepayment).

Non-essential core services such as any daily or half-hourly meter readings, or any elective services being taken should be suspended. For non-licensed parties, our members believe that all services should be suspended.

Ceasing to be a party to the SEC

57. Do you agree with the proposed rules and procedures governing withdrawal and expulsion from the SEC described in this chapter?

Energy UK Response:

Yes, the proposed rules and procedures are in line with our expectations.

Intellectual property rights

58. In addition to the proposals above relating to the suggested intellectual property provisions to be included in the SEC, are there any other intellectual property provisions which should be considered for inclusion within the SEC?

Energy UK Response:

Energy UK's members are generally supportive of the intellectual property provisions to be included in the SEC. For clarity, any intellectual property rights held by the DCC should clearly be the property of the DCC licence holder, rather than the legal entity or company acting as the DCC.

Confidentiality

59. What information should be classified as confidential under the SEC?

Energy UK Response:

Energy UK recognises that confidentiality of information under the SEC has not been discussed at any length as part of the SMIP so far. That said, we agree with Government's proposals that the SEC itself should clearly define what will be classified as confidential information, and that there is also a need for an appropriate frameworks of obligations and protections.

Basic information relating to SEC parties, such as their name, the nature of their business and the relevant user category should be freely available to all SEC parties, but anything more detailed than this should remain confidential unless covered by the proposed exemptions suggested.

60. How should a balance be struck between transparency and data publication under the SEC, whilst maintaining confidentiality?

Energy UK Response:

There will need to be a balance that allows efficient operation of all procedures under the SEC, whilst protecting critical confidential information about SEC parties themselves. In terms of data publication, Energy UK believes that this needs consideration as part of the wider piece of work on reporting that is currently being progressed under the programme, and any data requirements coming out of that work will need to be fed into the SMRG Working Group 2 discussions in the coming months.

Unforeseen events

61. Please detail those events which you believe would warrant the force majeure provisions being exercised and indicate who should declare a force majeure event.

Energy UK response:

Industry already uses a number of well-defined set of events where force majeure can be declared, but with the expected reliance on a new or existing communications infrastructure for smart metering, it is sensible to seek to identify any additional events that may be relevant.

Whilst a force majeure event declaration may be required due to the event affecting one of the DCC's service providers, Energy UK's members believe that any final decision on whether an event can be declared must rest with the SEC panel, in conjunction with input and advice from the Code Administrator. The Code Administrator must gather all of the relevant information and present the details to the SEC panel for immediate consideration, and the SEC will need to set out a clear process for such events, including the information that service providers will be expected to provide, the timescales for providing that information to the Code Administrator, the process and timescales for the Code Administrator to present the information to the panel, and the process and timescales required for panel consideration.

There will then need to be an appropriate procedure for passing on the force majeure declaration to all affected SEC parties, along with details of how the DCC expects to resume normal service at the earliest opportunity. This information will also need to be passed onto any central communication body responsible for the key communications strategy on behalf of the programme.

62. Please provide your thoughts on the proposal that the SEC should define a set of contingency business process arrangements and associated service levels/obligations which will apply in the event of a major service failure.

Energy UK Response:

It will be important for the SEC to define a comprehensive set of contingency arrangements along with associated service levels and obligations that SEC parties can expect in the event of a force majeure service failure. Whilst SEC parties should not expect a full service if such an event is declared, the focus for the DCC should be to deliver as many services as is possible, and SEC parties will need to be fully aware of what those services might be, and the service levels and obligations that apply.

Energy UK recognises the difficulty the programme will face in trying to cover every eventuality, and that there will need to be significant input from DCC's service providers once appointed. As such, we fully believe there will be an evolving process over the coming months to define and develop the required contingency processes and associated service levels and obligations.

Transfer of the DCC Licence

63. Please provide your comments on the proposals outlined for the DCC transfer and whether there are any other specific provisions that you suggest need to be covered within the SEC, in addition to the proposed novation agreement for the SEC.

Energy UK Response:

The proposals outlined for the DCC transfer are in line with our expectations and we have no further comments to add.