

Regulatory Design Team
Smart Metering Implementation Programme
Department of Energy and Climate Change
3 Whitehall Place
London
SW1A 2AW

Direct tax

www.nationalgrid.com

1st June 2012

Dear Regulatory Design Team,

**Re: DECC Smart Metering Implementation Programme – Smart Energy Code
Consultation document (Reference 12D/034)**

Thank you for the opportunity to comment on this consultation. Please find below National Grid Gas plc (Distribution) (NGGD) reply to this Consultation. National Grid owns and operates the high voltage electricity transmission system in England and Wales and operates the Scottish high voltage system. National Grid also owns and operates the gas transmission system throughout Great Britain and, through its low pressure gas distribution business, distributes gas in England to approximately eleven million businesses, schools and homes. In addition, National Grid owns and operates substantial electricity and gas assets in the US, operating in the states of New England and New York.

We understand the logic of the proposal and would broadly support the approach DECC are taking in establishing the Smart Energy Code (SEC) and we have made comments against each of the consultation questions, as well as overall observations on the content and structure of the SEC.

We believe that consideration needs to be given to the role that parties are expected to undertake as signatories of the SEC. While gas transporters have the right to take services from the DCC, (an elective proposition), we understand that Gas Transporters will also be mandated to provide certain data items on a periodic basis to set up and maintain the access control filter, (an obligated proposition).

While it will be our decision to take services from the DCC, having the obligation to provide data is effectively a mandated service provision to the DCC and we believe that consideration needs to be given as to how these obligations should be funded. While the data may be held and any data managed by Xoserve, Xoserve cannot be mandated by licence, (since they are not licensed), and consequently any licence / SEC obligations will need to rest with the Gas Transporters¹. We believe that consideration should be given as to how these costs can be met through the regulatory funding mechanisms available, as they have not been addressed in either the current price control or RIIO-GD1. Consequently, this

¹ Ofgem are currently reviewing Xoserve's Funding, Governance and Ownership as part of RIIO-GD1/T1

issue needs to be considered as part of the SEC / Licence modification work. We have some suggestions as to how we believe this could be best achieved using simple revenue adjustment mechanisms which are similar in nature to those used in the Uniform Network Code (UNC) change process to deal with non-transporter driven, unpredicted, incremental costs.

Answers to specific relevant questions are detailed as follows:

Chapter 3: Participation in the SEC

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

It is our view that all appropriate parties are captured by the proposal

Chapter Four (Involvement of the Meter Services Community) is relevant to the meter services community, so NGG have no comments to make against Questions 2-5

Chapter 5: Accession to the SEC

Question Six: Do you agree with the process proposed for accession and the accession time limit?

The imposition of an accession time-limit seems a pragmatic approach, especially if an applicant can ask for an extension where it can demonstrate that it is making progress towards becoming an active participant and all application terminations would have to be approved by Ofgem.

Question Seven: 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?

Yes, governance should be an inclusive process and be available to all parties, even those recently acceded

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

In the interests of competition, the threshold for accession should be set relatively low, as ultimately the requirements of complying with the SEC and other specific licenses and codes will enforce rigour in terms of the companies moving from accession to full trading status.

Chapter 6: Establishing readiness to receive the DCC's communication services

Question Nine: 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)?

We agree that the government should not mandate the use of a particular communications network and that the DCC should evaluate the options available, including the construction of a bespoke network to support smart metering. In the event that an existing network is employed, it is our

understanding that the DTN would be a better option than the IX network, given the peer-to-peer nature, rather than the "all roads lead to Xoserve" construction of the IX network.

NGG have no comments to make against questions ten and eleven.

Chapter 7 Enrolling smart metering systems and questions twelve to fourteen are relevant to Suppliers, so NGG has no comments to make against these questions

Chapter 8: Core and elective communication services

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

It would seem appropriate to set up the service eligibility arrangements in this way, as it covers all permutations of user class.

Question Sixteen: 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?

NGG has comments on this question

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

Agree

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

Yes, elective services should be made available on this basis.

Question Nineteen: 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.

Yes, it would seem appropriate to cover all services with generic requirements. As services develop, it may be possible to relax requirements, but in the first instance common requirements would seem prudent.

Question Twenty: 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?

Question Twenty One: 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?

In relation to Questions Twenty and Twenty One, NGG consider that commercially sensitive terms should be exactly that, confidential, but in general the existence of services, and the terms by which they are offered, should be publically available.

Question Twenty Two: 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?

Agree

Question Twenty Three: 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?

Service requests should be capable of being submitted as soon as the SEC is in operation. The governance process and change control should dictate the date at which services are delivered.

Chapter 9: DCC Charges

Question Twenty Four: Do you think that the proposed approach for DCC charging is reasonable?

Without seeing charging methodologies, at this stage, the approach seems fair

Question Twenty Five: 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.

While the "Pay Now Dispute Later" solution appears to offer a low risk solution for the DCC, consideration needs to be given to situations where an invoice that is manifestly wrong is released. A "Pay Now Dispute Later" regime could lead to inappropriate cash-flow concerns for a user involved in such a dispute. Providing suitable safeguards are introduced, "Pay Now Dispute Later" works, otherwise the right to dispute prior to payment needs to be incorporated.

Question Twenty Six: 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.

Rules that permit the socialisation of bad debt are a risk to those users with healthy balance sheets. Therefore, in order to safeguard the wider community, socialisation should only be considered if adequate securities are lodged and managed through a credit framework established in accordance with industry best practice.

Chapter 12: The SEC Panel

Question Twenty Seven: Do you agree with the proposed functions, powers and objectives of the SEC Panel, as set out in Boxes 12A and 12B?

We note that the SEC panel has a similar role and function to that of the BSC. As a Gas Transporter, we have no first hand knowledge as to whether the BSC panel functions as expected or the level of resource that a panel member need to devote to his/her functions.

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

Given the role and responsibilities, we believe a fully independent panel is appropriate.

Question Twenty Nine: 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.

A majority supplier presence would seem appropriate; given the SEC is a supplier centric code. However, it is a moot whether there should be four large suppliers on the SEC Panel, given that the energy market operates on a dual fuel basis and there should be representation from both the domestic and non domestic markets.

Question Thirty: 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?

Agree that the DCC should be non-voting.

Question Thirty One: 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.

The arrangements seem appropriate.

Question Thirty Two: Do you agree with the proposed arrangements for panel member elections and appointments?

From a Gas Transporter perspective, one vote per SEC party would seem reasonable.

Question Thirty Three: Do you agree with the proposed rules in respect of proceedings and decision making at SEC Panel meetings?

The proposal seems reasonable.

Question Thirty Four: 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?

We believe Option 1 is appropriate. In terms of Option 2, it should be the donor company that should be remunerated, given that the panel member is unlikely to have his salary withheld for the time he / she was on panel duties.

Chapter Thirteen: Code Administrator and Secretariat

Question Thirty Five: Do you think the Code Administrator and Secretariat chosen by the SEC Panel should be contracted through the DCC or through a SECCo?

In the interests of streamlined governance, and given that we believe that the panel could function using DCC as the contracting vehicle, on balance we believe that SECCo should not be established. On the other hand, given our involvement in SPAA Ltd, we acknowledge that an intermediate, single purpose company contracting for governance services works.

Question Thirty Six: If a SECCo was established what should its funding arrangements, legal structure, ownership and constitutional arrangements be?

We see strong analogies between SECCo and SPAA Ltd. Given that both contracting arrangements are strongly supplier centric, we believe that SECCo should be supplier funded. Coupled to that, if funding were to be requested from the transporter / distributor, this would have to be funded through allowances, which in turn materialise in transportation charges. It is notable that our current price control does not have any allowances for funding this activity, so we would only expect to fund this activity if allowances were provided through RIIO-GD1.

Chapter Fourteen: Modification Process

Question Thirty Seven: Do you have any views on the proposals regarding which parties should be entitled to raise SEC modification proposals?

All parties should be permitted to raise modifications – the governance process should ensure that only modifications that meet the relevant objectives get approved.

Question Thirty Eight: Do you have any comments on the proposed standard progression paths for different categories of modification?

It is appropriate to have different progression paths for modifications. In the UNC modification process, urgent modifications are few and far between and generally avoided if the standard process, (with or without compressed timescales), can be adopted, but on the odd occasion they are needed they serve a valuable purpose.

Question Thirty Nine: 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?

Consideration should be given to the adoption of the "self governance" modification route for non-material modification proposals. Introduced as part of the Code Governance review, implemented just over a year ago, the process works well for reducing the volume of modifications requiring Authority intervention.

Question Forty: 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?

We believe that the panel should recommend but the Authority should make the decision.

Question Forty One: Do you have any views on whether any non-standard modification rules and procedures should apply to any particular parts of the SEC?

No, but a single process with collapsible / variable timeframes works satisfactorily in the UNC panel.

Question Forty Two: 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?

Yes

Question Forty Three: Are there any further matters relating to the modification process which you would like to comment on?

There are a number of energy industry codes that have been in operation for many years with mature governance arrangements. It should be possible to pick the best aspects from each or adopt existing arrangements without having to re-invent the wheel in terms of governance.

We have no comment to make against Chapter Fifteen Reporting and question forty four.

Chapter 16: Compliance and assurance

Question Forty Five: Are there any particular areas of risk that you believe should be addressed by appropriate compliance/assurance techniques under the SEC?

We believe that the SEC should permit performance audits to be carried out if a party of the SEC is failing to performance to the requisite standards. We believe it should also be in the remit of any performance auditor to improvement notices and for all audit findings to be made available to an independent panel.

Question Forty Six: Do you have any views on the most appropriate governance arrangements for any compliance/assurance framework under the SEC?

From a performance assurance perspective, the BSC arrangements would seem to provide a suitable model.

Chapter 17: Liabilities between the DCC and DCC service users

Question Forty Seven: Do you have views on the options for the creation and enforcement of liabilities between the DCC and service users described in this chapter?

The SEC should not create liabilities between SEC parties.

Question Forty Eight: 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?

We agree that liabilities should be capped but we require more information required on the value of the contract to set levels.

Question Forty Nine: 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?

Liabilities in the SEC should relate to performance under the SEC. We agree the views set out in Option 1 that there is a significant regulatory architecture in place to deal non-SEC activities undertaken by SEC parties.

Question Fifty: 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?

The SEC should not create obligations and liabilities between any parties other than the signatory and DCC directly.

Question Fifty One: 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?

The SEC should not create liabilities between parties

Question Fifty Two: 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?

We agree with a centrally administered compliance framework – SEC parties should not be able to take legal action regarding SEC activities with other SEC parties

Question Fifty Three: 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?

The only sharing arrangement should be if a party fails to pay and there is a funding shortfall with a predetermined arrangement set out in the SEC to share the liability.

Chapter 18: Disputes

Question Fifty Four: What types of dispute do you believe might arise under the SEC?

The DCC / SEC arrangement is essentially an IT services agreement; therefore we could envisage disputes relating to data miss-management, as well as obvious ones such as invoicing disputes. Additionally disputes could potentially arise, if as part of the assurance framework, incorrect information was placed in the public domain. However, under the UNC there is a disputes section, and in the 16 years the UNC (previously network code) has been in place the procedures have yet to be tested. It is our experience that concerns that arise under the gas codes tend to get resolved by issues raised prospectively through the governance process rather than retrospectively as formal disputes.

Question Fifty Five: Do you agree with the proposed framework for resolving various different categories of dispute, as outlined in this chapter?

We agree that the dispute resolution proposal appears comprehensive and should cater for all eventualities.

Chapter 19: Default

Question Fifty Six: 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?

Certainly default procedures are required, but generally, as SEC parties will probably be holding other licenses, default will probably have industry wide ramifications rather than be bound just by the SEC.

Chapter 20: Ceasing to be a party to the SEC

Question Fifty Seven: Do you agree with the proposed rules and procedures governing withdrawal and expulsion from the SEC described in this chapter?

The proposal seems fair and balanced, and should serve to reduce the risk for remaining parties.

Chapter 21: Intellectual property rights

Question Fifty Eight: 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?

We agree with the proposed IP arrangements.

Chapter 22: Confidentiality

Question Fifty Nine: What information should be classified as confidential under the SEC?

Information which is provided to the DCC which is particular to the operation of the SEC parties business, or gathered on a bilateral basis, should remain confidential. Information obtained under an assurance framework, or as gathered as part of a code-wide information gathering arrangement, should not be made to be classed as confidential.

Question Sixty: How should a balance be struck between transparency and data publication under the SEC, whilst maintaining confidentiality?

The best way to avoid disputes during the running of the SEC is to agree all reporting and published information as part of the SEC development, essentially by negotiation. As transporters, we are used to making information available on request; it is more likely that suppliers are more concerned over the confidentiality provisions.

Chapter 23: Unforeseen events

We have no comment to make against question sixty one.

Question Sixty Two: 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.

Full BCM arrangements should be considered unless it is decided that the service failure is an option. This all depends on how parties view service availability.

Chapter 24: Transfer of the DCC Licence

Question Sixty Three: 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.

The outline proposals seem appropriate. The key to any novation of activities such as these is the effectiveness of the hand over arrangements, given that one party is exiting. Perhaps some consideration could be given to a performance bond through the SEC licence to incentivise the exiting party to remain engaged in the hand-over process?

If you would like to discuss any aspect of this response please contact:

Yours sincerely,

by email

Cc

smartmetering@decc.gsi.gov.uk