



Rob Turner
Smart Metering Implementation Programme

30 May 2012

Dear Rob,

Ofgem's response to DECC's consultation on the Smart Energy Code

We welcome the opportunity to respond to DECC's consultation on the Smart Energy Code (SEC). Ofgem regulates the gas and electricity markets in Great Britain. We have an important role in ensuring that the interests of consumers remain protected both during the transition to smart metering and in the enduring framework. We will also play a key role in monitoring and, where appropriate, enforcing compliance with any new regulatory obligations relating to smart meters.

The SEC is a key element of the smart meter framework. It will be a new industry code, covering both the gas and electricity sectors. Its purpose is to facilitate the effective and efficient operation of smart metering. It will set out the detailed provisions governing the relationship between the Data Communications Company (DCC) and its users, and other issues related to smart metering.

We note that the SEC is in the early stages of development. We broadly support the approach that DECC is adopting in developing the SEC, drawing on experience of the operation of existing codes and the outcomes of Ofgem's Code Governance Review (CGR)¹. We consider it is important that the rules and obligations within the SEC are consistent with the principles of better regulation.

We note that many of the proposals discussed in the April consultation require more detailed development. There are also a number of key issues that were not covered in the April consultation – these include the SEC transitional arrangements; security rules; how certain subsidiary documents (eg the smart meter technical specification or 'SMETS' and the security rules) will be incorporated and governed under SEC; and including how it is intended these subsidiary documents and other SEC rules may apply to non-DCC meters. We note these are all important areas that could have significant implications for the gas and electricity markets, consumers and Ofgem's role. We think it is critical that more detailed proposals are developed in a timely way. We welcome that DECC are planning separate consultations on these, and other, issues over the coming months.

We set out below some initial observations on DECC's proposals in relation to the enduring SEC, in the order in which these proposals are discussed in DECC's April consultation.

¹http://www.ofgem.gov.uk/licensing/IndCodes/CGR/Documents/1/CGR_Finalproposals_210310.pdf

Participating under SEC

We note that the SEC will set out detailed provisions governing the relationship between DCC and its users, which would appear to be consistent with the approach adopted in other industry codes in the gas and electricity markets. We note that the SEC will also set out other detailed provisions relating to smart metering systems. The April consultation sets out these will be provisions that DECC considers are necessary to ensure that the requirements of smart metering are managed in a holistic and consistent manner where necessary, to deliver the Government's policy objectives for smart metering. It is not clear at this stage what these issues may be. It would be helpful if DECC clarifies this in its forthcoming consultations on SEC, in particular on the scope of any such provisions and how they will be governed.

The SEC will apply to both licensed parties (including DCC) and unlicensed parties, including energy service companies ('ESCOs'), and other parties participating in the metering market. We agree with the categories of participants DECC has proposed. In developing the detailed rights and responsibilities of the different types of parties, we think it is essential to ensure a proportionate and non-discriminatory approach, to avoid any barriers to entry, in particular for smaller market participants.

Using the DCC's Communication Services

The April document sets out that there will be an entry process that SEC users would complete, to demonstrate that a user is capable of receiving communications services from DCC. Amongst other things, this would include provision of any necessary financial security. We think it is important to ensure that any financial security provisions should be transparent, proportionate and non-discriminatory. We look forward to seeing DECC's more detailed proposals on this area.

The SEC will set out rules in relation to the provision of core and elective services. We note that government is developing a strategy to engage with users, to support its work to determine the list of core communication services that will be available under the SEC from DCC go-live. Elective services will be offered upon request by users. We think there is merit in ensuring transparency around the provision of such services, to seek to avoid over-reliance on ex post assessment by Ofgem. We anticipate that it should be possible to develop an approach that ensures a suitable degree of transparency, whilst protecting commercially sensitive information.

The SEC will set out the DCC charging methodology. DCC charges related to core services to domestic premises will be uniform across Great Britain. Charges related to core services to non-domestic premises will differ by location, to the extent that the underlying costs vary. As a general rule, we support the principle of cost reflective charging, and understand that this approach seeks, amongst other things, to avoid distorting the data communications market and to avoid a cross subsidy between domestic and non-domestic sectors. We also note that it is important to ensure the charging arrangements are proportionate, predictable and, perhaps of most relevance in this context, non-discriminatory.

Governance and change control

The SEC Panel will oversee the day to day governance of the code. The proposed governance arrangements appear to be broadly consistent with other industry codes, such as the Balancing and Settlement Code (BSC). We note there is a question around whether the SEC Panel should be 'representative' or 'independent'. We consider that the arrangements for the SEC Panel should be consistent with the principles of Ofgem's CGR, including in relation to the development of appropriate self governance arrangements, the appointment (by industry) of an independent Panel chair, and suitable arrangements to support small participants and consumer representatives. As DECC and industry will be

aware, we have launched the second phase of CGR², to extend developments made to the BSC, Connection and Use of System Code (CUSC) and Uniform Network Code (UNC) into the remaining industry codes and agreements.

There will be mechanisms within the SEC for parties to propose changes. We look forward to getting further clarity over the coming months on how any modifications process will apply in relation to the subsidiary documents that may sit under SEC (such as SMETS and security rules), as this is an area that could have potentially significant implications for industry and for Ofgem's role.

We have set out our views on the proposed SEC objectives in our response to DECC's consultation on the DCC licence³.

Assurance and enforcement

We have set out our views on the proposed audit arrangements in relation to data access requirements in our response to DECC's consultation on data access and privacy⁴.

We note that the compliance and assurance techniques under SEC require further consideration. We agree that, if designed appropriately, this framework could complement other elements of the regulatory framework (such as licence enforcement), and provide a flexible and transparent means by which parties could be held to account for non-compliance. We think this is an important element of the framework, and look forward to seeing the detail as it develops in the coming months.

We appreciate the constructive engagement with your team thus far and look forward to this continuing in the coming months. If you would like to discuss this response in the meantime,

Yours sincerely

²<http://www.ofgem.gov.uk/licensing/indCodes/CGR/Documents1/Industry%20Code%20Governance%20Review%20-%20Second%20phase%20open%20letter.pdf>

³<http://www.ofgem.gov.uk/Markets/sm/metering/sm/Pages/ltm.aspx>

⁴<http://www.ofgem.gov.uk/Markets/sm/metering/sm/Pages/ltm.aspx>