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for energy consumers

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Email: dccregulation@ofgem.gov.uk

Date: 08 December 2022

Dear Jonathan,

Derogation from requirements of SEC Section H

This letter sets out the decision of the Gas and Electricity Markets Authority¹ (the "Authority") to grant Smart DCC Ltd ("DCC", the "Licensee"), a temporary and limited derogation from certain elements of Section H of the Smart Energy Code (SEC) that came into effect from February 25 2021, as implemented by the SEC Modification Proposal 122A, pursuant to Licence Condition 22.33 of the Smart Meter Communications Licence.

The Authority may provide a derogation from certain requirements under the SEC to relieve the Licensee from obligations to comply with certain requirements in specific circumstances and to a specified extent. We consider the use of a derogation only in limited circumstances and carefully consider the implications for a given policy area.

The direction is attached to this letter and will be published on our website. It is effective as per the dates set out in the direction, unless revoked earlier or varied in writing by the Authority. Any change in circumstances relevant to the directions must be reported to the Authority without delay.

This letter constitutes notice, under section 49A of the Electricity Act 1989 and section 38A of the Gas Act 1986, of the reasons for the Authority's decision to issue the attached direction to provide relief from obligations under the Smart Energy Code.

¹ The terms "the Authority", "Ofgem", "we" and "our" are used interchangeably in this document.

Capitalised terms used in this letter, which are not defined herein, have the meaning given to them in the Smart Meter Communications Licence and Smart Energy Code.

SEC Modification Proposals MP122A and MP122B

SEC MP122 was raised by Western Power Distribution on 24 March 2020. The intention of the modification was for DCC to clearly articulate and accurately measure their performance, implementing the recommendations of the Operational Metrics Review submitted to the SEC Panel in April 2020. Ofgem set out its intention in its March 2020 Working Paper² to use a subset of the performance measures developed under this modification in the revised Operational Performance Regime (OPR).

To facilitate the implementation of MP122, two tranches of work were identified and set out in DCC's Preliminary Assessment of MP122, published on September 4 2020³. The two tranches separated the costs required to implement the modification requirements using data available to the DCC Technical Operations Centre (TOC), which could be implemented for a February 2021 SEC release; and costs required to implement modification requirements that required "external data" from service providers.

Given the separate costs and timelines associated with the different provisions in MP122, the Proposer, in discussion with DCC over its preliminary assessment, and with verbal agreement with the Working Group, took the decision on 9 September 2020 to split the modification into MP122A and MP122B to prevent delay for MP122A that was needed to implement the revised OPR. As set out in the context of DCC's Full Impact Assessment on MP122A⁴, it requires that DCC facilitate the necessary changes to the DCC system to implement and report on metrics outlined in the Operational Metrics Review, including the four areas targeted by the OPR.

In contrast, provisions of MP122 that would require further discussion and changes to DCC's service provider systems and contracts would be carried forward in MP122B, which would be implemented over a longer timeframe, and was initially anticipated for the November 2021 SEC release. MP122B originally included such provisions as the change in the number of working days by which DCC would be required to produce a report under SEC section H13.4; more granular reporting on Alerts under code

² Operational Performance Regime Working Paper (ofgem.gov.uk):
https://www.ofgem.gov.uk/system/files/docs/2020/03/2020.02_dcc_opr_working_paper_0.pdf

³ Preliminary Impact Assessment (PIA) – "August 2021 Release":
<https://smartenergycodecompany.co.uk/download/24460>

⁴ Resubmitted Full Impact Assessment (FIA) – February 2021 Release:
<https://smartenergycodecompany.co.uk/download/28178>

performance measure 3 and for Incident Categories 3, 4 and 5, relating to code performance measure 5 and 5A; as well as code performance measures 6B and 6C, relating to firmware management.

On 27 October 2020, the Authority adopted its decision to approve MP122A, bringing into effect from 25 February 2021 the amended legal text of Section H of the SEC. This legal text covered both provisions from the approved MP122A and from MP122B, on which a decision was expected to be adopted in November 2022. During the Working Group discussions, it was understood that a derogation would be required to cover the MP122B requirements of the legal text until discussions on MP122B had concluded.

On 5 September 2022, MP122B was modified to remove originally proposed provisions around reduced delivery timescales of the Performance Management Report (PMR), and firmware management, due to prohibitive costs.

On 23 November 2022 SEC Change Board approved MP122B⁵. The implementation date is now expected to be November 2023 (November 2023 SEC Release).

Background to the direction request

In February 2021 the Authority received a written application from DCC for a derogation from various elements of SEC Section H13 that came into effect from 25 February 2021.

On 16 April 2021 we published our Decision and related Direction⁶ issuing a derogation against the following requirements:

- to provide a report on Performance Indicators under Section H13.5 of the SEC, until 30 April 2021.
- Code Performance Measures (CPM) 6B and 6C of Section H13.1 of the SEC – Enhanced reporting on Communications Hub firmware, until 30 November 2022.
- SRV 11.1 (for SMETS1 only) of Section H 13.1A – Enhanced reporting on SMETS1 Device firmware, until 30 November 2022.

⁵ MP122B Conclusion Report (23 November 2022): <https://smartenergycodecompany.co.uk/download/45556>

⁶ Derogation granted to Smart DCC Ltd from requirements of SEC Section H (25 February 2021): <https://www.ofgem.gov.uk/publications/derogation-granted-smart-dcc-ltd-requirements-sec-section-h>

- to produce a report setting out the Service Levels achieved in respect of each Performance Measure within 10 Working Days following the end of each Performance Measurement Period, as set out in SEC Section H13.4., until 30 November 2022.

In our 2021 Decision we acknowledged that some of the requirements covered by the scope of MP122B were set out in the legal text that came into effect with the implementation of MP122A. Namely, provisions around firmware management - covered by Code Performance Measure 6B and 6C and SRV 11.1 - as well as the timing to produce the PMR in 10 working days. The discussions on MP122B were expected to be completed in November 2022. As these discussions were ongoing, we considered it appropriate to issue a derogation until then.

On 15 November 2022 we received a written application from DCC for a 12 month extension (until 30 November 2023) of the derogation against these requirements:

- CPM 6B and CPM 6C of Section H13.1 of the SEC – Enhanced reporting on Communications Hub firmware
- SRV 11.1 (for SMETS1 only) of Section H 13.1A – Enhanced reporting on SMETS1 Device firmware
- Section H13.4 – Reduced delivery timescales of the PMR

DCC explained that these items relied on external data and were therefore not available for reporting at the time that the requirements were brought into effect by MP122A. DCC argued that since those requirements came into effect, work was undertaken by DCC and its Service Providers to analyse the costs of implementing these reporting requirements. It said it was found that delivering the requirements for the reduced delivery timescales of the PMR and enhanced reporting on both Communications Hub and SMETS1 Device firmware would be prohibitively expensive and there were no suitable workarounds. For these reasons, those proposed requirements were removed from MP122B on 5 September 2022.

However, DCC explained that although these requirements have been removed from MP122B, they will remain in the SEC until MP122B or any other modification that proposes to remove them is implemented. MP122B is currently targeted for the November 2023 SEC Release, for this reason DCC is requesting an extension of the derogation against these requirements until 30 November 2023.

The Authority's decision

Based on the information provided by the Licensee, and having regard to our principle objective and statutory duties, we have decided:

- to issue a derogation against the SEC requirements originally under the scope of MP122B raised by DCC in their request, effective until 30 November 2023.

We have set out in Schedule 1 how the individual SEC provisions map onto the above approach. Our decision is based on the following reasons:

- As we said in our 2021 Decision, we acknowledge these MP122B provisions around firmware management - covered by Code Performance Measure 6B and 6C and SRV 11.1 - as well as the timing to produce the PMR in 10 working days, were set out in the legal text that came into effect with the implementation of MP122A. At the time of our 2021 Decision, the discussions on MP122B were expected to be completed in November 2022. Therefore, we issued a derogation against these provisions until then.
- Discussions on MP122B have now been completed with SEC Change Board approving the modification proposal on 23 November 2022. We acknowledge that these requirements have now been removed from MP122B due to the costs being prohibitive. However, they will remain in the SEC legal text until MP122B, or any other modification that proposes to remove them, is implemented. Because the implementation date of MP122B is now expected to be November 2023 (November 2023 SEC Release), we consider that the derogation against these requirements should be extended until then.

Under this direction, DCC must inform the Authority without delay of any changes in circumstances that are relevant to the decision to grant this derogation.

If you have any questions about this decision, please contact the DCC Oversight team, at dccregulation@ofgem.gov.uk

Yours sincerely,

Ayena Gupta

Head of DCC Oversight and Regulatory review

Signed on behalf of the Authority and authorised for that purpose

Attachment 1: Smart Metering Communications Licence

The Data Communications Company
2nd Floor
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Direction issued by the Gas and Electricity Markets Authority under Licence Condition 22.33 of the Smart Meter Communications Licence granted under sections 7AB(2) and (4) of the Gas Act 1986 and sections 6(1A) and (1C) of the Electricity Act 1989 to Smart DCC Ltd

To: Smart DCC Ltd ("the Licensee")

1. The Authority issues this temporary direction pursuant to Licence Condition 22.33 ("LC22.33") of the Smart Meter Communications Licence ("the Licence") granted under sections 7AB(2) and (4) of the Gas Act 1986 and sections 6(1A) and (1C) of the Electricity Act 1989 to the Licensee.
2. Capitalised terms used in this Direction which are not defined in this Direction shall have the meaning given to them in the Licence.
3. LC22.33 provides that the Authority may, after consulting with the Licensee and, where appropriate, any other person likely to be materially affected, give a direction relieving the Licensee of any one or more of its obligations under the Smart Energy Code ("SEC") to such extent, for such period of time, and subject to such conditions as the Authority may direct.
4. The considerations and rationale of the Authority's decision are set out in the accompanying letter to the Licensee, dated 08 December 2022.
5. The Authority directs the Licensee is relieved of its obligations regarding Code Performance Measure 6B and 6C as set out in Section H13.1 of the SEC, and Service Reference Variant 11.1 (in relation to SEMTS1 only) , as set out in Section H13.1A of the SEC, until 30 November 2023.
6. The Authority directs that, subject to the condition set out below, the Licensee is relieved of its obligations to comply with the requirement to produce a report setting

out the Service Levels achieved in respect of each Performance Measure within 10 Working Days following the end of each Performance Measurement Period, as set out in SEC Section H13.4. This Derogation will remain in force until 30 November 2023.

7. The Licensee may only rely on the derogation if it produces a report setting out the Service Levels achieved in respect of each Performance Measure within 25 Working Days following the end of each Performance Measurement Period.
8. This Direction shall take effect on and from 08 December 2022 and shall remain in force until the expiry dates set out above, unless it is revoked earlier or varied in writing by the Authority.

Dated: 08 December 2022

Ayena Gupta

Head of DCC Oversight and Regulatory review

Signed on behalf of the Authority and authorised for that purpose

Schedule 1 – Derogations from section H of the Smart Energy Code

SEC provision	Derogation approach
Section H13.1 Code performance measure 6B & 6C (firmware management)	This Derogation will remain in force until 30 November 2023
Section H13.1A – SRV 11.1 Update Firmware (for SMETS1 only)	This Derogation will remain in force until 30 November 2023
Section H13.4 – produce a report setting out the Service Levels achieved in respect of each Performance Measure within 10 Working Days following the end of each Performance Measurement Period	This Derogation will remain in force until 30 November 2023 This is subject to the condition that DCC produces a report within 25 working days