

Ofgem Digitalisation Team
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By email to digitalisation@ofgem.gov.uk

2 February 2024

Dear Ofgem Digitalisation Team,

SSEN Distribution response: Call for input, Data Sharing in a Digital Future: Consumer Consent

SSEN Distribution welcomes the opportunity to respond to Ofgem's call for input in relation to Data Sharing in a Digital Future: Consumer Consent. SSEN Distribution is the trading name of Scottish Hydro Electrical Power Distribution plc and Southern Electric Power Distribution plc. This response is being submitted on behalf of those licensees.

We broadly support Ofgem's proposal, however we are aware of four different workstreams that are looking at very similar and overlapping topics. These four separate activities that are underway all involve looking at data provisions and sharing in one way or another: Smarter Regulation Consultation (led by Department for Business and Trade); Non-Domestic Consultation; Data Sharing in a Digital Future Consultation; and Ofgem's Vulnerability Strategy. There is a risk that each of these workstreams takes a different approach, causing further confusion across industry and a less streamlined approach. We suggest a collaborative exercise should be progressed in order to ensure alignment.

We have worked closely with other Distribution Network Operators (DNOs) at the Energy Networks Association (ENA) to consider a coordinated approach to the concept of a "Data Sharing Ecosystem". Working as part of this ENA group, we consider that rather than having a single multi-sector database, there should be an ecosystem of data sharing underpinned by robust data sharing protocols, such that databases remain managed by the current data controllers. Data Sharing Agreements and associated 'sharing rules' would be agreed between a trusted set of organisations and participants would likely need to be aligned to agreed user access. Some participants might input and extract data whilst others would only be permitted to undertake one of these roles. The government programme would need to define the entry requirements to the ecosystem, establish the rules on what data to draw on and what to share, what the use cases are for requesting and posting data about customers.

This ecosystem would address the three primary objectives for data sharing in a digital future;

- Improve consumer trust in data-sharing services.
 - Parties who will form part of the ecosystem will all be aligned to the same standards, rules and security requirements. Meaning if a consumer trusts one organisation, they can trust all. This should be governed centrally at regulator or government level, and will provide consumers trust that the parties they're sharing data with are verified to handle their data in a robust and secure manner.
- Improve access to personal data across the sector.

- Parties who are part of the ecosystem will have access to relevant data they need to provide support for consumers, or any legal basis they have to provide a service. Difference data should be tiered, meaning that parties will have access to different tiers of data depending on the need or purpose of data needed.
- Develop a consent process or mechanism.
 - By gaining consent at source, parties in the ecosystem would gain explicit consent from consumers. Once this is done, data held by parties can be shared between parties who have been approved as receivers of data.

We are aware that following Ofgem's consultation decision in relation to Data Best Practice, smart meter data has now be designated as *Energy Systems Data*, and therefore classified as Open Data. Ofgem recently stated that DNOs must develop a joint interoperable methodology for sharing smart meter consumption data by 28 February 2024, and must share the data we collect. This involves updating each DNO's Smart Meter Data Privacy Plan, as Ofgem has not previously allowed sharing of this data.

SSEN Distribution led the way on this, and we were the first DNO to receive Ofgem approval of our updated Data Privacy Plan on the 24 July 2023. We shared our approach with other DNOs to help them with their own plan updates. DNOs worked collaboratively to develop the joint interoperable methodology to ensure DNOs share data in a consistent way. On 16 January 2024 Ofgem provided formal approval to DNOs that the joint interoperable methodology fulfilled the required obligation.

We are unclear as to how Ofgem's proposals in this call for input will impact the work that has recently been undertaken by DNOs and Ofgem, as noted above. We seek clarity from Ofgem that any work they pursue in this area will not undermine that which has been completed, especially in relation to the confirmation that smart meter data is designated as Energy Systems Data.

We agree with the points Ofgem has made about the necessity for consumers to have trust in the energy sector. As noted above we have been leading in our work with Ofgem and DNOs in recent years. To this same end, we have developed standards needed for the domestic flexibility market, to ensure consumer protection keeps pace with market innovation. Our innovation project, HOMEflex, is developing a Code of Conduct for domestic flexibility services covering the main areas of consumer protection, including sales and marketing, contracts, terms and conditions, complaints and redress.¹ This project has been run alongside project partners Centre for Sustainable Energy (CSE) and Flex Assure, and will be the foundation to a well-functioning flexibility market that is shaped by transparency, inclusivity and respect.

As illustrated above, there is great work being undertaken in the distribution networks space, and we are leading in bringing confidence to consumers in the energy markets, including in relation the responsible ways in which we use their data. Noting Ofgem's consideration of "overhauling" the current mechanisms, we would ask that Ofgem considers this work that DNOs are already undertaking, and the potential risks of sending confusing messages to customers through implementation of an overhaul.

¹ [HOMEflex sets the rules for a flexibility market that consumers can trust - SSEN](#)

In addition, we have some specific concerns around:

- Priority Service Register (PSR) customers and potential confusion. In order to enable cross-utility PSR data sharing with water companies, Distribution Network Operators (DNOs) were recommended by the Information Commissioner's Office (ICO) to change the legal basis for data sharing from 'explicit consent' to 'legitimate interest' and 'substantial public interest'. As of 1 April 2023 this action has been undertaken by all UK DNOs; and
- Around the implications of a customer withdrawing consent and where that leaves DNOs in terms of lawful basis, as this would conflict with the Smart Meter Data Privacy Plan lawful basis of 'legitimate interest'.

Ultimately, very close collaboration with the Information Commissioner's Office, and industry participants will be key in relation to these more technical concerns.

Please refer to Annex A below for full responses to the specific questions raised by Ofgem in the call for input.

If you have any questions in relation our response, please do not hesitate to get in touch.

Yours sincerely,

Rose Tresidder
Regulation Manager

SSEN Distribution

Annex A

A.1.1 1. Yes/No: Do you agree that a Consumer Consent solution is required as per the taskforce's recommendation?

We are generally supportive, as a technical solution would remove barriers and be an efficient solution for SSEN Distribution and project partners. It also signals a clear direction change for other industry actors.

A1.2 2. Could you please provide any reasons why the current methods for obtaining consent from a consumer might be ineffective or inefficient?

In order to answer this question, we must assume that Ofgem is referring to the four use cases, of which only 'Energy System Flexibility' and 'Reduced barriers to market entry and increased competition' directly apply, albeit we benefit from the 'Consumer empowerment, protection, and trust piece'.

Obtaining consent is fraught with complications due to the need to record it, for it to be specific, informed and unambiguous, as well as the right to remove consent at any time.

A.1.2 3. Do you believe that consumers are sufficiently motivated to engage with the consent solutions proposed in this Call for Input? Please elaborate on your answer.

We do not consider that consumers are currently sufficiently motivated and work would be required to publicise/educate as many of the up-front benefits to consumers, in addition (as with Open Banking) to the unexpected, derived benefits. A lack of knowledge, trust and general consumer suspicion around large companies having consent to process their data is a barrier, but could be removed considerably with the right approach.

A1.4 4. Do you agree that the four use cases referenced (below) are high priority use cases? Can you describe any other high priority use cases?

- **Retail specialisation:** While this is not applicable for SSEN Distribution we appreciate that for consumers this is an applicable use case.
- **Energy system flexibility:** We strongly support this as a high priority use case, as this is a critical enabler to Net Zero.
- **Reduced barriers to market entry and increased competition:** Yes, for both of the above reasons.
- **Consumer empowerment, protection, and trust:** Yes, this will deliver benefits to DNOs, suppliers and consumers and is critical for innovation.

A1.5 5. Do you believe that a new Consumer Consent solution would enable the improvements to the energy system described in the four use cases? If not, could you please elaborate?

Yes. The lack of a consistent approach, the number of energy actors involved, and the complexity of obtaining consent are hurdles for both consumers and suppliers/DNOs etc. We would like to see close collaboration with the Information Commissioner's Office to ensure that the end solution is not just GDPR compliant, but also future proofed.

A1.6 6. Do you agree with our method and scoring of options? Data Sharing in a Digital Future: Consumer Consent

Yes, and our preference would be Option 1. Whilst there are risks in terms of the development time, funding and ownership, we believe close collaboration with the ICO and ENA (amongst representatives from major actors) could result in a truly ground-breaking solution that would pay dividends on creation.

We consider that Options 2 and 3 would not yield the same results, and do not fully respond to the use cases outlined, nor do they result in a consistent and uniform approach for the customer, which we believe is critical to the success of the end solution. Best practice guidelines and a voluntary confidence code, whilst broadly pushing actors to deliver outcomes in a similar way, could still result in differences and ambiguity and it is critical that we keep the customer at the centre of this project and their end experience to keep it accessible.

A1.7 7. Which of the options referenced in chapter three do you believe would be the most appropriate Consumer Consent solution, for the industry, the government, and the consumer?

- **Option One: A single technical solution to obtain consent, such as a Consumer Consent dashboard. This proposal builds on the Energy Digitalisation Taskforce's recommendation to deliver a technical consent solution.**
- **Option Two: A set of principles outlining a consistent way for trusted market participants to obtain consent, such as Data Best Practice.**
- **Option Three: An industry-developed code of conduct outlining a consistent way for trusted market participants to obtain consent, such as the Confidence Code.**

Please refer to our response in A1.6.6.

A1.8 8. Please can you explain why you chose a specific option? Do you have any suggestions on how to improve this option?

Please refer to our response in A1.6.6.

A1.9 9. What barriers do you see to the successful implementation of a new consent solution?

A big concern for us is in relation to customers in vulnerable situations, and those who are on the PSR. There is a potential confusion around consent with PSR customers which could be a backwards step, as DNOs now rely on legitimate interests/substantial public interests, as at 1 April 2023.

In addition, for consumption data only available to DNOs via smart meters, to what extent is Ofgem considering smart meter data and how would this impact DNO Standard Licence Condition 10A (Smart Metering – Matters Relating to Obtaining and Using Consumption Data) and the application of legitimate interests as the lawful basis? For example, if DNOs are required to aggregate to five customers, and one of those five customer withdraws their consent, this could leave DNOs without a legal basis for obtaining and using consumption data, providing a further reduction in the benefits from smart meters. This would need careful consideration to ensure all processing is compliant with GDPR and that any implications are also not a backward step for all parties involved.

GDPR compliance for the technical solution would have to be very granular. This aspect appears to be at odds with Ofgem's comments around the level of detail required. As previously noted, close collaboration with the ICO could provide solutions. It is also important that there is a defined purpose.

Consideration and safeguards also need to be in place to protect customers in vulnerable situations, in relation to degradation of consent.

A1.10 10. What do you think are the roles of Ofgem, industry and other stakeholders in enabling a simple and effective consent solution?

Stakeholder engagement with consumer groups is particularly important to ensure usage, application and accessibility with the end-user is kept at the centre. This solution should empower individuals to make an informed decision about who has access to their data and for those parties to offer tangible benefits which must be made clear. We consider this is critical for the project's overall success.