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Consumer Consent Solution Consultation

EDF is the UK's largest producer of low carbon electricity. EDF operates low carbon nuclear power stations and is building the first of a new generation of nuclear plants. EDF also has a large and growing portfolio of renewables, including onshore and offshore wind and solar generation, as well as energy storage. With over five and a half million electricity and gas customer accounts, including residential and business users, EDF aims to help Britain achieve net zero by building a smarter energy future that will support delivery of net zero carbon emissions, including through digital innovations and new customer offerings that encourage the transition to low carbon electric transport and heating.

We welcome the opportunity to comment on this consultation on the development of a consumer consent solution. EDF is committed to supporting all its customers to save cash and save carbon. It is why we have completed a successful migration to the Kraken platform. It is why for two years running we have been the best performing large supplier on smart installs, and why last winter we made an additional £40m of support available to help our customers most in need in response to the ongoing Cost of Living crisis. This commitment to our customers is reflected in our Trustpilot score recently increasing to 4.6 out of 5.

Executive Summary

We do not agree with Ofgem's proposals for a consumer consent solution as set out in the consultation. The case for Ofgem intervention has not been made; there is no clear risk of consumer detriment, or evidence that industry parties will not deliver the right outcomes for consumers in the absence of Ofgem intervention. Without evidence, we do not agree that there is an actual consumer need for a centrally implemented consent solution at this time.

Before proceeding with any changes, especially ones that could result in significant costs to industry parties, Ofgem must carry out a full impact assessment and a cost-benefit analysis. This is necessary to understand how much a consumer consent solution could cost and determine whether that cost can be justified by the benefits to be gained, whether direct or indirect. It is not clear why Ofgem has skipped these critical steps of the policy development process in this case, instead relying on a single report by the Energy Digitalisation Taskforce as the basis for these policy proposals.

We agree that it is vital that consumers are in control of their energy data, and that data should only be accessed by third parties that consumers have actively given their consent to - unless of course a different legal basis for sharing is being used, such as legitimate interests, a

legal obligation, or the performance of a contract. This is possible now and industry parties, including energy suppliers such as EDF, have already developed robust processes for managing consumer consent, as have third parties who require consumer consent to access smart meter data via the Data Communications Company (DCC).

Where there is a need for consent processes to improve, the commercial pressures of the energy market and the need to engage consumers in new products and services will drive parties to innovate to meet those consumer needs. We already see this in the market with products such as the n3rgy portal created by Smart Metering Systems. Ofgem's focus should be on encouraging the market to develop innovative solutions to meet a clear consumer need, rather than imposing a single, centralised solution on industry where the purpose, design and business case are all unclear.

We also have several other concerns regarding the proposals set out in the consultation:

- It is not clear how the solution will operate, specifically regarding who the relevant actors are, what the process flow for the use of the consent solution will be and how the solution will interact with the actual sources of the data for which consent is being sought. Without further information it is difficult to provide feedback on the proposed design or architecture, as it is hard to understand how the solution is intended to work as part of an end-to-end process.
- The underlying assumption in the consultation appears to be that suppliers will fund the consent solution, with the potential for some of that up-front investment to be recovered from future users of the consent solution, should any emerge. It is highly uncertain that any other parties will use the consent solution in the absence of mandate and given that suppliers already have consent solutions in place it is not appropriate for them to fund something neither they nor their customers will benefit directly from, especially if they are not able to recover that cost from consumers.
- It is not appropriate to make use of a consent solution mandatory for suppliers and not for other parties in the market. Suppliers already have effective mechanisms in place manage consumer consent to meet their supply licence and General Data Protection Regulation (GDPR) obligations, including those relating to the collection of data from smart and advanced meters. Any risk is associated with other industry parties, however there is no plan to require them to use the solution, rather it is hoped that they will choose to do so.
- It is not clear if and how the consent solution will be populated retrospectively, to enable information about data consent that has already been granted to be held.
- The consultation states that the scope of the consent solution could be extended to additional datasets beyond half hourly consumption data '*at the Delivery Body's discretion and without another Ofgem consultation*'. This is not acceptable, and effectively provides the Delivery Body with free reign to expand the solution, and incur additional costs, without industry input or approval. Each new use case for the solution must be assessed on its own merits and there must be a clear process for making any decisions to extend the scope, including industry input and consultation, and the provision of a robust business case.

As a result of these concerns we strongly recommend that Ofgem reconsiders its approach, and whether a consumer consent solution is necessary and is a good use of consumers' money.

We would also like to take this opportunity to highlight that consent is not the only basis on which suppliers and other parties are able to obtain and process personal data. It is one of six and, as noted by the Information Commissioner's Office (ICO), *'no single basis is 'better' or more important than the others'*¹ In many cases, such as the processing of data related to the Priority Services Register (PSR), parties will rely on other lawful bases for data processing, such as legitimate interests, as the basis for processing personal data. The proposed consent solution will not cover these other bases for data processing, and so will not provide consumers with a complete picture of how their personal data is being processed. This further brings into question the benefits to be gained by consumers from implementation of the solution.

Should you wish to discuss any of the issues raised in our response or have any queries, please contact Paul Saker or myself.

I confirm that this letter and its attachment may be published on Ofgem's website.

Yours sincerely

A handwritten signature in black ink, appearing to read "Denise Willis".

Denise Willis
Senior Manager of Industry Change

¹ [A guide to lawful basis | ICO](#)

Attachment

Consumer Consent Solution Consultation

EDF's response to your questions

Q1. Do you agree with these Design Principles? Would you recommend any additional Design Principles?

No.

While many of the design principles appear broadly reasonable, we do have some specific concerns:

- Interoperability – this section of the consultation document notes that the Minimum Viable Product (MVP) for the consent solution will be limited to the sharing of half-hourly consumption data from smart and advanced meters, but that the scope could be extended to additional datasets *'at the Delivery Body's discretion and will not require another Ofgem consultation'*. There is no mention of consultation with industry by the Delivery Body to inform decision making. This is not acceptable, and effectively provides the chosen Delivery Body with free reign to expand the solution, and incur additional costs, without industry input or approval. This is especially concerning as some of the future use cases, such as time of use tariff data, would require suppliers to be data providers rather than consent seekers, which is likely to require system and process changes to be made. There must be a clear governance process for making any decisions to extend the scope of any solution, including industry input and consultation, and the provision of a robust business case.
- Agile, flexible, and scalable – in line with the concerns noted above, the consultation notes in this section that the consent solution will need to *'iterate through time of use tariff data, Energy Smart Appliance (ESA) data and further'*. The assumption being made is that the MVP will prove the case for the consent solution and that scope expansion will naturally follow. As noted elsewhere in this response we do not believe that there is a clear need for the consent solution; as a result such assumptions about future iterations should not be made, especially where they could result in unnecessary costs if the solution is over-engineered to account for use cases that never materialise.

Q2. Do you have a preference between the centralised, decentralised or hybrid models? Please elaborate.

We do not agree that a clear need for a solution has been demonstrated but in any event, insufficient information has been provided to enable us to express a preference between the different types of models listed. Further discussion is required with suppliers and other parties that will need to interact with the solution, either as consent seekers or data providers, to determine their needs and to agree on an appropriate architecture.

There is a lack of detailed information as to who the relevant actors are, what the process flow for the use of the consent solution is and how the solution would subsequently interact with the actual sources of the data for which consent is being sought. Without further clarity, we can't agree that any of the proposed models should be taken forward. This is especially the case for some of the future use cases that are proposed for the consent solution, such as Time of Use Tariff (ToUT) data, where suppliers are likely to be the source of the data and so would need to interact with the consent solution on that basis, rather than as a consent seeker.

The information that has been provided in the consultation regarding the technical aspects of the solution is too high level and conceptual. We note, for example, that the consultation is not clear on how the granular data from smart meters would be accessed, referring to the data potentially being obtained from the Data Communications Company (DCC) or the Data Integration Platform (DIP). As far as we are aware from our engagement with the Marketwide Half Hourly Settlement (MHHS) Programme there are no current proposals to extend access to the DIP beyond those parties involved in the settlement processes.

Q3. Do you consider the security measures referenced in this section, including the access control measures, will meet the requirements of a consent solution holding consumer data? Which additional protections would you recommend?

In line with our response to Question 2, insufficient information has been provided about the actors in the process flow to assure us that the proposed security and access control measures would be appropriate. For example, it is not clear exactly who will be classified as a consent seeker, or what personal information would be stored in the consent solution itself. This detail is important for any security and data privacy risk assessment which would then drive the requirements that the consent solution would need to meet.

Further discussion is required with suppliers and other parties that will need to interact with the consent solution to understand how that solution will work in practice, and then agree an appropriate approach to security and access control.

Q4. Do you consider these standards are sufficient parameters to ensure inclusivity, accessibility and interoperability for the consent solution? Which standards would you recommend?

We agree with the proposed approach and standards set out in this section of the consultation.

Q5. Do you agree with the options assessment conducted by Ofgem? If not, why?

No.

We disagree with the broad-brush approach that has been taken to assessing the suitability of the short-listed organisations to operate as the Delivery Body. The simplistic RAG (Red/Amber/Green) approach does not give any weighting to the criteria that have been used in the assessment, however some criteria are clearly more important than others. For example, the operational capability and technical expertise to deliver a solution is far more important than any governance consideration when you are considering system development. Had these criteria been weighted, it is more likely that Electralink would have been more highly rated given their experience in delivering similar technical solutions.

Additionally, the consideration of funding options for the consent solution should have been included as part of this assessment. As elaborated in our response to Question 7, we are concerned that funding for development and implementation of the consent solution will come from suppliers, which is not in line with the stated principle that the costs should be borne by those that stand to benefit from the solution.

Ofgem should also have considered the ability of the organisations being considered as the Delivery Body to fund the solution on a commercial basis, for example from their own reserves, rather than relying on traditional sources of funding such as suppliers and other code parties. Any analysis that does not take the critical question of funding into account is incomplete; again had this been considered it is likely that code bodies other than RECCo may have been more highly rated in the assessment.

Q6. Do you agree with Ofgem's minded-to position that RECCo should be selected as the Delivery Body for the consent solution? If not, which of the three proposed organisations should be selected as the Delivery Body for the consent solution, and why?

No.

In our view further discussion is required to understand the solution, the impacted actors and the process flow before any decisions are taken to appoint a Delivery Body. We are concerned that Ofgem is proceeding to delivery before the need for a consent solution has been validated and the end-to-end process of that solution fully understood.

The selection of a Delivery Body should be deferred until there is a consensus across industry on the role and value of a central consent solution and buy-in that this will deliver benefits to consumers, to those parties seeking consumer consent and to those data providers that need assurance that requests for access to the data they hold are being made with consumer consent.

As noted in our response to Question 5 we disagree with specific aspects of the options assessment that has been undertaken. Were this to be appropriately weighted to consider technical expertise and the funding model, it is highly possible that one of the other code bodies would have been more highly rated than they were.

Q7. Do you hold any views as to how the proposed solution should be funded? Please consider the points regarding fairness raised in paragraphs 4.12-4.14 and Ofgem's duty to consumers when providing your answer.

We note that the consultation states that Ofgem '*expect to see those who benefit most from the consumer consent solution to pay*'. As noted already in this response, we can't see any benefit to suppliers in implementing this consent solution, especially given that they will already have mechanisms in place to manage consent for their customers to meet their licence obligations. Other parties do not have similar obligations and so would benefit more from a consent solution.

Requiring suppliers to fund the consent solution would not be in line with the stated principle and could result in higher bills for consumers unless there is another mechanism for suppliers to recover their costs, for example from other parties that use the solution. However, as the use of the consent solution is proposed to be optional for organisations other than suppliers, it is highly uncertain that suppliers would recover any investment from later adopters.

We must avoid the current DCC cost mechanism where suppliers provide the majority of the funding and other users of the service don't pay any share of the fixed costs, essentially using the service for free. We are strongly supportive of the work being done as part of SEC Modification DP218 ('Review of the SEC Charging Methodology') to address this situation and ensure that DCC charges are allocated on a fair and equitable basis.

In our view the consent solution should be funded on a purely commercial basis, with the party responsible for delivering the solution providing the funding for development and implementation and recovering it from the users of the service once it is up and running. We understand that at least one of the code bodies would be able to fund delivery of a solution on this basis. This model not only creates an incentive for that party to deliver a commercially viable solution at an optimum cost but motivates them to attract users to the service to ensure their set-up costs are recovered. This commercially driven approach is likely to be far more efficient and focussed on delivering a high-quality service than one that has suppliers as the backstop option for any funding.

Q8. Do you agree with our position to make sharing consent data with consumers (via the consent solution) an obligation for licensees?

No.

It is not fair to place an obligation on suppliers to use the consent solution, and not on any other party. The expectation noted in the consultation is that third party consent seekers will be sufficiently motivated to voluntarily apply to become accredited users of the solution. There is no evidence to support this expectation, especially if there is to be a charge to them for using this service as the consultation notes that Ofgem '*expect to see those who benefit most from the consumer consent solution to pay*'. There is a significant risk that a solution will

be created that is not used by anyone other than suppliers, placing an unnecessary cost burden on them which will ultimately need to be recovered from consumers.

This approach means that there is not a level playing field between suppliers and third parties that they might be competing with to provide consumers with energy services, as suppliers will incur a cost burden that their competitors do not. We see this situation today where third parties can offer services based on access to a customer's consumption data via DCC in competition with suppliers, as they are not liable for a share of DCC's fixed charges.

As noted in the consultation, suppliers already have effective mechanisms in place to manage consumer consent to meet their supply licence obligations, including those relating to the collection of data from smart and advanced meters. Using the consent solution to see the data that a supplier is accessing and what this data is used for would seem to be the least likely use of the solution. Customers will already be familiar with existing processes for accessing this information directly from suppliers, for example via their online account.

Any consumer risk is more likely to arise from parties who are not licensed suppliers and who do not already have robust regulatory requirements around data security. Third parties who are not licenced suppliers are not mandated to use this solution, and do not have the same level of consumer protection requirements, therefore these pose the greatest level of risk.

There are clear opportunities to widen the pool of parties that are mandated to use a consent solution and level the playing field. For example, the SEC requires that third parties ('Other Users') that seek to gain access to data from smart meters have consumer consent before they do so. The SEC is not currently prescriptive about how this consent is managed, it only requires that consent is gained, and that the consumer is notified '*at such intervals as are reasonably determined appropriate by the User for the purposes of ensuring that the Energy Consumer is regularly updated of such matters*'. A change could be made to the SEC to require that Other Users become accredited users of the consent solution before they can access data via the DCC.

Also, under the REC, non-licensed parties can access REC services (mainly the Enquiry Services) in the role of Non-Party REC Service User. To operate in this role parties need to demonstrate they have met specified requirements, for example related to Information Security and Data Protection (ISDP). In most cases access to the data held by these services needs to be made at the request of the consumer i.e. with their consent. This then presents an opportunity to require Non-Party REC Service Users, where they require consumer consent on an enduring basis (rather than as a one-off request as part of a switch), to use the consent solution as a pre-condition of accessing the REC Enquiry Services.

We note the Government is proposing through its work on delivering a Smart and Secure Electricity System (SSES) that Demand Side Response Service Providers (DSRSPs) be licensed to operate in the market. This licence, which will be regulated by Ofgem, presents an additional route to mandate the sharing of consent data with consumers via the consent solution, however this is not mentioned at all in the consultation.

Unless a wider pool of industry parties is required to use the consent solution, mandating suppliers to do so through a licence obligation is unfair and unnecessary.

Q9. Do you consider SLC 0 an appropriate route for implementing these changes, or should Ofgem create a bespoke licence condition?

We do not agree with either approach. As noted in our response to Question 8, it is not fair to place an obligation on suppliers to use the consent solution, and not on any other party.

Also, as Ofgem has noted in its Licence Guide, the Standards of Conduct set out in SLC0 are intended to be broad principle-based rules that apply across a range of supplier-customer activities. It is not clear how a specific obligation for suppliers to report where consent has been obtained in the consumer solution would align with the rest of this licence condition. Should Ofgem decide to proceed with a licence obligation which, as noted previously, we think is unnecessary, potentially unfair and aimed at the wrong parties, a bespoke licence condition would seem to be a more appropriate approach.

We also note that only SLC0 is referenced in the consultation, however given that the consultation states that the scope of consent solution will be domestic consumers, microbusinesses, and small businesses, we assume that SLC0A would also need to be amended. A separate, bespoke licence condition would provide more clarity and be targeted at the appropriate consumers, especially as SLC0A now applies to all non-domestic customers.

EDF
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