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Dear Jakub,

Statutory Consultation on interim modifications to the SMCL (May 2025) Statutory Consultation on interim modifications to the SMCL (May 2025)

Thank you for the opportunity to respond to this consultation.

[redacted]

We have engaged with Ofgem's review of DCC's regulatory model because we share Ofgem's concerns about the performance of the existing DCC under the existing model; and because DCC's role is critical to the success of MHHS delivering consumer benefits and progress towards Net Zero.

We agree that modifications to the Smart Meter Communication Licence will be required to give effect to Ofgem's conclusions on the process for the determination of the Successor Licensee's Allowed Revenue. However we note that this consultation document also contains both policy proposals and proposed licence modifications for modifications to the Price Control period, regulatory reporting dates and margin/gain share mechanisms. [Redacted] do not generally support a combined consultation approach such as this and believe this may have contributed to some elements of the legal drafting that only work as intended if certain plan timelines are met, and with unintended consequences if not met, such as:

- if the Handover Period is not in place by 1 April 2026 then the definition of Regulatory Year 26/27 does not work as intended, instead reverting to a default 12-month period under LC1.4(a))
- If Handover Plan is in force by 1 April 2026 but the Transfer Date is after 31 March 2027 then Regulatory Year 26/27 would be defined under 1.4(b) as a period longer than 12 months.

I'd also like to bring your attention to our comments below on the proposed disapplication by direction under LC43.24, to be made after 31 July 2026, of LC25.7 and LC24.14(b). These provisions currently mitigate risks which do not disappear simply because the licence is in its last months, a period during which it's conceivable that these risks to costs and service delivery could otherwise increase.

Finally [redacted] also note that the Notice of statutory consultation makes no reference in section 1. to the housekeeping changes which, although immaterial, are nevertheless the subject of this consultation and should therefore strictly be included in the Notice.

We have responded at Appendix 1 to your detailed analysis.

I hope these comments are helpful. Please do not hesitate to contact me [redacted] if you would like to follow up on any particular aspect of our response.

Yours sincerely,

[Redacted]

Appendix 1 – [Redacted] detailed responses to each of the consultation questions

The following table includes our views on the consultation:

Question 1	Do you agree with our proposals to modify Licence deadlines for regulatory submissions in the Licence after 31st July 2026?
	<p>[Redacted] agree that the deadlines in the Licence for regulatory submissions require modifying to account for the final Regulatory Year not ending on a fixed 31 March date.</p> <p>[Redacted] agrees with the rationale for the “Transfer Date +3 months” proposals for the regulatory submission deadlines.</p> <p>We also understand and agree with the rationale for disapplying LC 14.2.</p> <p>We note that Ofgem proposes to disapply by direction under LC43.24 the requirement for DCC to report Availability of Resources (LC24.14(b)) and Undertaking by Ultimate Controller (LC25.7). We believe that it’s vital that these certificates and undertakings remain fully effective and enforceable until the Transfer Date at least, and preferably until the end of the Licence Term.</p> <p>The risks mitigated by these two conditions do not disappear simply because the licence is in its last few months. If anything, it is conceivable they will increase in the last few months of the licensee’s activity:</p> <ul style="list-style-type: none"> • as management attention is diverted by handover activities, withdrawal from contracts, closing financial positions and potentially a focus on securing alternative employment. • if a new Ultimate Controller was to appear in the last months of the licence, potentially as a result of some consequent corporate restructuring. <p>[Redacted] suggest that it might be more useful to modify the SMCL as follows in respect of LC24:</p> <ul style="list-style-type: none"> • by adding in 24.14 (b) after “each subsequent Regulatory Year” the words “, except in the final Regulatory Year of the Licence Term, in which case, the Transfer Date +3 months”; and • by adding to the certificates in Appendices 1 and 2 after “for a period of 12 months from the date of this certificate” the words “or until the Transfer Date, whichever is the sooner” <p>And in respect of LC25.7, this policy proposal does not include drafting of the proposed direction but [redacted] infers from the policy proposal that disapplying the requirement to provide Ofgem a schedule of undertakings at LC25.7 does not remove the requirement on the licensee under LC25.2 to obtain such an undertaking from any new Ultimate Controller who might take effect after 31 July 2026. [Redacted] would support the continued requirement under LC25.2 beyond 31 July 2026 and up to the Transfer Date to ensure risks to costs and service delivery continue to be mitigated.</p> <p>If however Ofgem proceed with disapplication then [redacted] suggest that:</p> <ul style="list-style-type: none"> • additional modifications are made, as noted above, to the SMCL to revise LC24 to ensure that certificates obtained prior to disapplication provide the required coverage until Transfer Date at least and preferably to the end of the Licence Term • LC25.4(b) is retained and continues to apply to those undertakings already obtained from any existing Ultimate Controller • LC25.2 is retained so that in the event of a change in the Ultimate Controller the requirement to provide the undertakings continues to apply • Concomitant changes are made to 25.1 (which currently states “and provide the Authority with”) • Ofgem obtain, and provide industry with, further assurance of what actions will be taken to mitigate any impact of the disapplication on service delivery and costs. • in addition, the Certificates of Licence Compliance required under LC24 and indicated at Appendix 3 should be provided by the licensee on 31 July 2027 since the licence runs to 22 Sep 2027, even if at present it is not expected that the licensee will be carrying out the Authorised Business of DCC.

Question 2	What are your views on our proposals to amend the Baseline Margin Adjustment and External Contract Gain Share mechanisms in the remainder of the Licence Term?
[Redacted] agree that changes will be required to facilitate the two points made at 3.12 in the Consultation Document, namely to facilitate DCC to propose Relevant Adjustment to the Baseline Margin term for the final RY 2026/27 and for the Authority to determine all Relevant Adjustments before expiry of the Licence.	
Question 3	What are your views on the proposed Licence modifications? How well do they support our policy intent across the consulted areas? Do you have any views on the proposed housekeeping changes?
<p>There some areas that [redacted] believe could be better drafted. These are outlined below:</p> <p>In LC1.4 Ofgem proposes an alternative definition for the final Regulatory Year “(b) where a Handover Period is in force on 1 April, the period beginning with that 1 April and ending with the Transfer Date.”</p> <p>[Redacted] believe that in LC1.4, Regulatory Year 26/27 should end on the day <u>before</u> the Transfer Date. This would be consistent with LC34A.15 which defines the start of the “1st SL Price Control Period” as “the period beginning with the Transfer Date and ending with 31 March 2028.”</p> <p>Under LC43.7 (a) The Transfer Date could be for any date up to 22 September 2027 (the end of the current licence term). As a consequence, the proposed revision to submission dates noted in the Consultation Document at Table 2.1 (i.e. Transfer Date + 3 months) could run out as late as December 2027 which [redacted] do not believe is Ofgem’s intention. This could be avoided by adding to LC43.7 something like “and in either case, (c) no later than 31 March 2027”</p> <p>At LC34A.12(a) there is a typographical error, replace “our” with “or”.</p> <p>There is a risk from use of the same backstop date “on or before 29 August 2025” in LC34A9 (the Authority must provide Business Plan Guidance) and LC34A12 (the Licensee must submit the Business Plan Report to the Authority). [Redacted] suggest that the Authority issues the Guidance informally as soon as it is available and in any case prior to 29 August 2025.</p> <p>At LC34.11 ‘the Business Plan Guidance <u>may</u> also contain’ and at LC34.11(a) ‘the format in which the Business Plan Report <u>must</u> be presented’ presents a logical conflict. To avoid this, [redacted] suggest that LC34.11(a) is moved to LC34.10.</p> <p>[Redacted] believe that references in LC34B.7 (b) and (g) to “provision” and “form” respectively could be insufficient to provide certainty on interpretation of Price Control Information submission. [Redacted] suggest that the submission should be on a prescribed template and that LC34B.4 states explicitly that the Authority will provide a template for submission.</p> <p>[Redacted] also believe that the drafting is informed by an assumption that certain events take place at the latest by certain dates, despite there being no guardrail to prevent them running on later. These could result in unintended consequences. [Redacted] suggest that Ofgem consider whether some drafting improvements could avoid the need, under certain circumstances, for future changes. These areas include:</p> <ul style="list-style-type: none"> ○ If Handover Plan is not in force by 1 April 2026 then the definition of Regulatory Year 26/27, which [redacted] believe is intended to be captured by definition LC1.4 (b), reverts to LC1.4 (a) i.e. 12 	

months from 1 April 2026, instead of ending on the Transfer Date. And this even if the Handover Plan is in force on (purely for illustration) say 2 April 2026.

- If Handover Plan is in force by 1 April 2026 but the Transfer Date is after 31 March 2027 then Regulatory Year 26/27 would be defined under 1.4(b) as a period longer than 12 months.
- If the Transfer Date does not occur before 30 April 2027 then the modified dates in Table 2.1 of the Consultation Document (namely, Transfer Date + 3 months) will result in the Price Control Information being submitted after 31st July 2027. This will reduce the time available to Ofgem to conclude the price control for Regulatory Year 26/27.
- If the Handover Plan is not in force by 1 April 2026 then Regulatory Year 26/27 is defined under LC1.4(a) as 12 months from 1 April 2026. In this case the definition of LC36.20A(a) “where the Regulatory Year t-1 begins with: (a) 1 April 2026, within the period of three months beginning with the Transfer Date;” could mean that the “written explanation” is delivered to the Authority before the end of the Regulatory Year 26/27. [Redacted] believe this is not intended and would not work.