



Smart Metering Implementation Programme  
Regulatory Design Team  
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*Promoting choice and value for  
all gas and electricity customers*

Your ref: URN 12D/030  
Email: colin.down@ofgem.gov.uk

Date: 15 May 2012

Dear Colleague,

### **Ofgem's response to DECC's consultation on the Licence Application Regulations<sup>1</sup>**

We welcome the opportunity to respond to your consultation on the Licence Application Regulations (the "Regulations"). As the gas and electricity markets regulator, we have an important role in ensuring the interests of consumers remain protected both during the transition to smart metering and in the enduring framework.

We recognise the importance of the Regulations in ensuring a robust competition for the selection of DCC. Given the significance of DCC in facilitating the delivery of the potential benefits of smart metering for consumers, it is important that the Regulations provide for an appropriate party to be granted the DCC licence. Further, the tender process should drive competitive pressure, ensuring the bids that applicants put forward offer value for money.

We welcome the progress made in developing the Regulations and DECC's constructive engagement with us to date. We set out some key issues below.

#### **Key issues**

##### *Cost recovery*

In your consultation you note that for future DCC licence applications, which may be conducted by Ofgem, there could be merit in having a discretionary power in the Regulations that would enable the Authority to recover its costs of administering the licence application process. You state that no such cost recovery provision is included in the draft Regulations but that you will explore this issue with Ofgem, and as appropriate bring forward any amendments to the Regulations to allow for such a scenario.

We consider that, consistent with the arrangements for Ofgem running the tender process to appoint Offshore Transmission Owners, we should have the power to recover from tender participants the costs of running the tender process. This will ensure that costs are recovered from parties that are causing those costs rather than from the general customer base. We welcome your commitment to explore this issue with us and to bring forward amendments to the Regulations to allow for such a scenario.

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<sup>1</sup> Part of a wider consultation document titled: Consultation on the Draft DCC Licence and Licence Application Regulations

### *Intervention regime*

In your consultation you note that you had previously proposed that the Regulations should include the provision for the Authority to appoint competitively a "temporary" DCC licence holder through a fast track process in the event that the incumbent has its licence revoked. However, you note that after due consideration, you believe that a special administration regime (delivered through primary legislation) or an intervention regime (as provided for in the draft DCC licence) to address failings in an incumbent DCC would offer advantages in comparison to a fast track application process. We agree that a special administration regime would be preferable to a fast track tender process. However, we have some concerns regarding the proposed intervention regime which we have raised with DECC previously and DECC have highlighted in the consultation. We intend to reply in more detail on this point when responding more broadly to the consultation on DCC.

We look forward to further constructive engagement with you in the coming months. If you would like to discuss this response in the meantime, please contact Philippa Pickford, [philippa.pickford@ofgem.gov.uk](mailto:philippa.pickford@ofgem.gov.uk) or Colin Down, [colin.down@ofgem.gov.uk](mailto:colin.down@ofgem.gov.uk).

Yours sincerely,

**Colin Sausman**  
**Partner, Smarter Markets**