

Proposed variation:	CR029 – Section B – Code Governance Constituency Changes		
Decision:	The Authority ¹ has decided to withhold approval of CR029		
Target audience:	SMICoP Governance Board, SMICoP Members, all interested parties		
Date of publication:	14 January 2016	Implementation Date:	N/A

Notice of the Authority’s decision on proposed Change Request CR029, “Section B – Code Governance Constituency Changes”, produced under Section B2 of the Smart Meter Installation Code of Practice (“SMICoP”)

Background to the Change Request

The voting structure of the SMICoP Governance Board (“SGB”) currently allows for twelve representatives to vote on behalf of all members and Citizen’s Advice, with a set number of representatives for each constituency group. Six of those votes are allocated to the six largest suppliers, with two each for representatives of small suppliers, micro-business suppliers and Citizens Advice.

The current voting structure was developed to ensure consumer, small supplier and micro-business supplier representation in the SMICoP development and decision-making. In particular, the decision to restrict large suppliers to fifty percent of the total votes was designed so that the support of more than one constituency group is required to make decisions and approve changes.

Since the SMICoP was developed, customer churn has led to some independent suppliers to grow bigger than the definition of a small supplier. As a result, they are no longer eligible to represent and vote with small suppliers. They are also not currently included in the large supplier group, which is restricted to six votes and representatives. This has led to a gap, whereby larger independent suppliers have lost their eligibility to vote on changes and developments to the SMICoP.

The Change Request

Change Request 029 (“CR029”) was raised by SSE, for a decision by the SGB on 26 November 2015.

The Final Change Report (“FCR”) for CR029 was issued to us on 30 November 2015. Parties had two weeks to make representations to us about the request, after which we had until 14 January 2016 to make a decision.

CR029 seeks to allow for a greater number of Members and, as a result, representatives being categorised in the Large Supplier constituency². The Change Request also seeks to redistribute the vote weightings in order to ensure the large supplier constituency always maintains an aggregated 50% vote share, divided equally to each Member that casts a vote within that group.

¹ The terms ‘the Authority’, ‘Ofgem’ and ‘we’ are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

² “Member” means an organisation signed up to adhere to SMICoP, and “Large Supplier” means a Supplier with at least 250,000 electricity Customers, or at least 250,000 gas customers.

³ All SMICoP change report documentation is available at <http://www.smicop.co.uk/SitePages/Log.aspx>

By requiring seven votes to approve any decision, the current voting structure includes a safeguard to ensure that large supplier group does not dominate. This proposed change to the voting structure, which would allow seven or more large suppliers to vote, therefore includes a safeguard, amending the quorum requirements such that seven attendees and/or proxy votes must be drawn from a minimum of two constituencies for a decision to be made.

CR029 also seeks to amend the definitions of Large Suppliers and Small Suppliers in the "Definitions, Glossary of Terms" section, in order to remove any ambiguity between these categories.

This definition change also allows for further clarification of how and when the membership of the SGB is reviewed, ensuring a Member is categorised in the correct constituency group. It is proposed that this should be set on a defined date, annually, using published listings from the Department of Energy and Climate Change.

SSE's Rationale

In Appendix A of the FCR, SSE discussed their rationale for this change. They highlight that this code governs the activities being undertaken for the Smart Metering Implementation Programme (SMIP), and that this activity is predominantly being delivered by large suppliers. As such, they argue that having a membership structure which encourages all large suppliers to offer their experience from the rollout can only benefit the process.

Views of other SGB members

Three members raised concerns with the draft proposal to the Change Advisory Group ("CAG") that had not been addressed in the final proposal:

- One member noted that they believe a diverse range of opinions can help produce better outcomes from the smart meter rollout, but that there was a key risk of allowing some suppliers to capture the process by granting some members voting rights in SGB decisions without requiring that they have, themselves, demonstrated compliance with the code. This member highlighted that they saw no reason that many different elements of changes should be combined in one Change Request, potentially hindering the progression of uncontentious updates.
- Another felt that the changes were all in the correct direction but did not understand why the change had only focused on large suppliers. They would like to see the same reforms used across all constituency groups.
- A third member noted that they considered these changes were unnecessarily complex and took away from the simplification of the voting process. This member also noted the concerns around only limiting reform to one constituency group at a time.

The SGB recommendation

On 26 November 2015, the SGB voted to reject the FCR for CR029. There were five votes to accept, and three votes to reject the solution. The FCR did not receive an absolute majority vote from the SGB (seven votes), required to be approved.

Our decision

We have considered the issues raised by CR029, the details set out in the FCR, and the votes of the SGB to reject the FCR for CR029. We have considered the Change Advisory Group's response and comments, which have been outlined above but are detailed in Appendix B attached to the FCR.

We have also considered these factors in light of whether CR029 would better facilitate the achievement of the objectives set out in Standard Conditions 41.2 and 42.1 of the Electricity Supply Licence and Standard Licence Conditions 35.2 and 36.1 of the Gas Supply Licence ("SMICoP Objectives"). We have concluded that implementation of CR029 would have a broadly neutral, but potentially positive, impact on the achievement of the SMICoP Objectives.

However, CR029 proposes to use 'DECC Published Large Supplier listings, published on 1st January annually, used for Green Deal' as a proxy to check whether suppliers fall into the large (>250,000 customers) or small (<250,000 customers) category. Unfortunately, this proposal falls short on two accounts:

- The proposal referred to the wrong list – the SGB and the proposer had intended CR029 to refer to the Warm Home Discount Scheme list of suppliers.
- Participation in the Warm Home Discount Scheme is mandatory for all suppliers who have 250,000 customers or more, However, suppliers below this threshold may participate if they choose to. Participation in the Warm Home Discount Scheme is therefore not a reliable indicator of suppliers' customer numbers.

In view of this erroneous proposal, we have therefore decided to withhold our approval of Change Request 029.

In coming to our decision we have also considered our wider statutory duties, in particular our principal objective to protect the interests of existing and future energy consumers.

Reasons for our decision

Consideration against the SMICoP objectives

We have considered the impact of CR029 against the SMICoP objectives, which are listed below.

Objective (a): the licensee and any Representative provides and maintains a standard of service which helps to ensure that Domestic Customers' experience of the installation of Smart Metering Systems at their premises meets their reasonable expectations

Objective (b): all activities undertaken by the licensee and any Representative in relation to the installation of Smart Metering Systems are conducted in a fair, transparent, appropriate and professional manner

Objective (c): Domestic Customers are given information about, and during, the installation of Smart Metering Systems which:

(i) is complete and accurate;

(ii) does not mislead them; and

(iii) informs them about the benefits of Smart Metering Systems and about what to expect in relation to the installation process;

Objective (d): Domestic Customers are not subject to unwelcome Marketing during any visit to their premises for the purposes of installing Smart Metering Systems.

We have considered CR029 against each of the objectives listed above. CR029 is a change to the governance arrangements of the SMICoP, relating to the efficiency and effectiveness of code administration and development. It may have a slight positive impact on the governance structure of the SGB, which may, in turn, lead to better outcomes for consumers. It is most likely that these governance changes will not create any direct changes to customers' installation experiences. It is, therefore, difficult to determine whether CR029 would have more than a neutral impact on each objective.

However, we feel that all suppliers should be able to input their experience and knowledge into the SMICoP governance discussions and voting. Enabling all suppliers to participate fully in debates relating to the SMICoP should lead to more informed decision-making, and allow all relevant parties to represent their interests, and those of their customers.

One member suggested that this change request was unnecessary because larger suppliers who currently fall outside of the large suppliers group can already voice their opinions without full voting rights. However, we do not think that the status quo is just, because it excludes some suppliers from voting. The current governance arrangements were not designed to exclude certain suppliers from the SMICoP representation and voting rights – this has been an unintended consequence of the growth of some larger independent suppliers.

By enfranchising all suppliers in the SMICoP governance arrangements, each supplier can influence the FCRs sent to the Authority to inform our decisions. Taking all suppliers' views into consideration could help the SGB to make better decisions to improve the outcomes of each of the SMICoP objectives.

However, in view of the error highlighted in the 'Our Decision' section, we are unable to approve this change request.

Consideration against our principal objective

We also considered the impact of CR029 against our principal objective to protect the interests of existing and future energy consumers. We do not have any concerns with the intention of this Change Request, though we note that the impact on energy consumers is uncertain, and likely neutral. As discussed in reference to the SMICoP objectives, we feel improved participation in the SMICoP decision making processes may lead to better outcomes for consumers.

The only risk we saw as a potential concern from this change was the ability for large suppliers to dominate the voting process. However, we think that the changes to quorum rules to address these concerns.

Conclusion

This Change Request may have a slight positive impact on the governance structure of the SGB, which may, in turn, lead to better outcomes for consumers.

However, as mentioned previously, in view of the error set out in 'Our Decision', we are unable to approve this change request. This is unfortunate, as it delays a change proposal that could benefit suppliers and consumers.

We strongly recommend that the SGB and proposers of future change requests carefully scrutinise their submissions in future, to avoid the risk of having otherwise acceptable change requests rejected on a technicality.

Decision notice

In accordance with the Section 2.7.5.2 of Section B to the SMICoP, we hereby withhold our approval of Change Request 029.

Rob Church

Partner, Consumers and Competition

Signed on behalf of the Authority and authorised for that purpose