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DCC Review Phase 2: Governance and Centralised Registration Service arrangements

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 Phase 2 of the DCC Review. EDF is committed to supporting all its customers to save cash and save carbon. It is why we are shortly due to complete 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 4.4. out of 5.

DCC Governance

EDF urges Ofgem to reconsider its decision to implement a 'not-for-profit' model for core services of the new Data Communications Company (DCC) licence, a decision which directly shapes many of the proposals set out in this consultation. As a result, we have not directly answered a number of the consultation questions as they relate to the proposed governance model that must be reconsidered.

In the past there has been a view from the majority of suppliers, including EDF, that a not-for-profit model for the new DCC licence (DCC2) would help to address some of the issues with the current for-profit DCC arrangements. However, as Ofgem has developed their thinking and has begun to articulate the changes to governance and other controls required for DCC to operate under such arrangements, our view has evolved. We no longer agree that a not-for-profit model is necessarily the right approach and urge Ofgem to reconsider proceeding

with a for-profit arrangement, or at least considering allowing both approaches as part of the bidding process.

Our concern is not with the DCC licensee making a profit from operating the core services; rather it is that they should only do so when they are delivering high performance at a reasonable cost. Neither of these things are currently true, however, DCC continues to earn a substantial margin. Improving DCC's operational performance and accountability are critical to addressing the current issues that users of DCC services experience. DCC does not provide value for money today – energy suppliers pay significant amounts to receive a substandard service over which they have little control. These are the key issues the new DCC licence must address.

It is extremely important to have a number of bidders in any tender to ensure a truly competitive process that will deliver the right outcomes for DCC users. We do not consider that a not-for-profit arrangement will necessarily yield multiple bidders for the new DCC licence who will compete to deliver a high-quality service at an optimum cost, especially as they have no profit motive driving them to do so. Instead, there is a material risk that the outcome is likely to be a small pool of bidders, or worse, none at all, which could result in the current licensee being reappointed in the absence of a viable alternative. This is the worst possible outcome as the party that currently operates under the for-profit model will have to retain the responsibility for delivering DCC services, but will receive no financial incentive to do so. We question how motivated they will be to deliver the levels of service industry requires.

Our view is that allowing for-profit arrangement, with adequate controls such as a regulated rate of return and a robust incentive regime, is likely to yield more potential bidders to the process overall and drive better outcomes for DCC users and their customers. Together with the additional controls that Ofgem is creating, such as ex-ante price control, an enhanced for-profit model is more likely to deliver the reforms needed. We urge Ofgem to progress this option as quickly as possible, before too much time and resource is wasted on developing a not-for-profit option that is not viable.

We disagree that DCC should have a majority independent board and advocate for a majority stakeholder board to be implemented as part of a for profit model. DCC is not currently meeting the needs of its users, with performance lower than it needs to be while costs continue to escalate. It is vital that stakeholders like energy suppliers, who provide the funding for DCC and are reliant on its services, have a direct say in decision making. While it is important to have a diversity of views on the DCC board, and especially for there to be more consumer advocacy experience, DCC's users are best placed to make decisions and ensure that DCC is delivering high quality services at optimum cost.

Centralised Registration Service Arrangements

EDF supports the proposal to remove the provision of Centralised Registration Service (CRS) from the DCC Licence and transfer the obligation to the Retail Energy Code (REC) to be

delivered by RECCo. The REC is the natural home for switching arrangements, and RECCo is a much more consumer-oriented organisation than DCC. This was clearly demonstrated by the Priority 1 incident that occurred in Summer 2023, where DCC failed to understand the impacts the incident was having on suppliers and consumers, and were slow to resolve the incident as a result. The resulting action plan to address the root causes of the incident has largely been driven by RECCo and the REC Performance Assurance Board (PAB), not DCC.

The transition to the REC will enable better alignment with the other services that RECCo delivers, provide better accountability to the users of the CRS, and support a positive switching experience for consumers. While DCC has done a good job in getting the CRS arrangements up and running, the REC is evidently the right place for them to be managed on an enduring basis.

Our detailed responses are set out in the attachment to this letter. 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", written in a cursive style.

Denise Willis
Senior Manager of Industry Change

Attachment

DCC Review Phase 2: Governance and Centralised Registration Service arrangements

EDF's response to your questions

Q1. What are your views on the presented options for the future DCC board composition? Do you agree with our analysis that Option 4 (majority independent model) is the most appropriate to take forward? Please state your reasoning.

No, we do not agree that a majority independent board should be implemented.

The key logic for favouring a majority independent board is driven by the not-for-profit model, which we no longer support. As noted in our covering letter, we urge Ofgem to reconsider allowing bids for the DCC licence on a for-profit basis.

Instead, we favour Option 1 and a stakeholder majority DCC board as part of a for-profit model. It is critical that the DCC is meeting the needs of its users, who provide the funding for DCC and who have customers that are reliant on the smart services that DCC enables. As noted in the consultation document, having the majority of the board drawn from DCC customers would assist with directly aligning decision-making to customer needs, it would also improve transparency in decision-making, which is clearly lacking in the current arrangements. It is vital that there is a direct line of accountability from DCC to its customers.

While we recognise the potential for conflicts of interest to arise from board members' legal obligations to act in the interests of DCC, our view is that such risks are minimal; indeed there are numerous examples of this working effectively already, such as the Smart Energy Code (SEC) panel and board, and the Elexon board.

We also disagree that Option 1 creates an imbalance in incentives to manage costs. Our aim is not to see costs reduced as far as possible, potentially at the expense of a high-quality services, nor is it to obtain high performance no matter what the cost to the consumer. We are seeking to ensure that DCC is delivering value for money, achieving high performance at an optimum cost; something that is not currently being achieved.

Q2. What are your views on the current and proposed Licence requirements on Sufficiently Independent Directors? Do you agree that one or more of the current Licence-imposed Independence Requirements may be relaxed in favour of more discretion afforded to the Board?

As noted in our response to Question 1, we disagree that that the DCC Board should be comprised of a majority of Sufficiently Independent Directors.

It appears that the perceived need to change the Licence requirements on Sufficiently Independent Directors is largely driven by the need to increase the number of such Directors as part of a majority independent board. It is not clear that such changes to the requirements would be required as part of the stakeholder majority board that, in our view, should be implemented. We do, however recognise the benefits of independent representation on the board and the insight and expertise they can provide.

As a result we favour Option 1 as detailed in the consultation, with no changes being made to the current independence requirements for Sufficiently Independent Directors. There is no evidence that the current requirements have resulted in negative outcomes, and we are concerned that extending the timescales as proposed in Option 2 could prevent people with relevant expertise from being appointed to the board.

Q3. Do you agree with our proposal that the Chair of the future DCC board should meet the requirements on ‘Sufficiently Independent Directors’ without exception?

No, we do not agree.

This proposal is largely being made based on there being a majority independent board operating under a not-for-profit model. As we urge Ofgem to reconsider their decision to implement such a model, we also recommend that they reconsider whether it is necessary to have an independent Chair as part of a stakeholder majority board.

Q4. What are your views on our analysis and proposal not to introduce additional requirements or restrictions on the size of the future Board and on the number of executive members and shareholder representatives?

As noted in the consultation, should a model with direct customer representation be selected, a Licence requirement to ensure that different stakeholders are accommodated on the Board may be required.

As we advocate for a governance model with direct DCC customer representation as part of a stakeholder majority board, we recognise that that Licence requirements regarding the size and composition of the board may be necessary to ensure fair stakeholder representation.

Q5. Do you agree with a possible requirement on the Board to possess expertise in certain core areas? Do you agree with the areas we have identified? What are your views on the implementation options?

Yes, we agree.

Irrespective of the option taken forward for composition of the board, those that are on the board and have a key role in DCC decision making should have relevant expertise in the core areas listed.

DCC and the services it provides are integral to the current and future energy system, as well as enabling supplier to provide innovative propositions that could help consumers save cash and save carbon. The board should have the relevant expertise to ensure that DCC is meeting these objectives.

Q6. Do you agree with our proposal to represent consumer voice via a requirement on the appointment of a Sufficiently Independent Director with consumer advocacy experience?

Yes, we agree.

Irrespective of the option taken forward for composition of the board, it is important that the voice of the consumer is represented. Energy suppliers already advocate on behalf of consumers and would continue to do so as part of the stakeholder majority board we support. However, appointment of Sufficiently Independent Directors with consumer advocacy experience would provide additional assistance to the board and help it to consider the impact of its decisions on end-consumers, without the appearance of a conflict of interest.

Q7. What are your views on Ofgem's role in the Board appointment process? Do you agree with our proposal that the Authority could have a role in the appointment process of non-executive directors? Which option would provide the most appropriate and effective accountability framework, and why?

Q8. What are your views on the role of DCC customers and other stakeholders in the Board appointment process? Do you agree with our proposal to provide representation for DCC customers on the Nomination Committee? What should be the role of an industry representative in such an arrangement?

Q9. What are your views on our proposals for an additional requirement on the Chair's experience and Ofgem's role in the initial appointment of the Chair? In what other way should the appointment process for the Chair be different to that of other DCC Board members?

We have not answered questions 7 to 9 as the issues arise as a direct consequence of a majority independent board operating under a not for profit arrangement, neither of which we support.

Q10. What are your views on changes to the term of appointment of non-executive directors? Do you agree with our proposals to limit the initial term of appointment for non-executive directors to 3 years, and to allow for up to two reappointments with the total term limited to a maximum of 9 years?

Q11. What are your views on the identified reputational incentives and associated enhanced regulatory requirements? How effective do you believe these incentives can be?

Q12. What are your views on direct financial incentivisation of executive leadership and key staff? What would make those incentives effective? Please consider their interlink with the reputational incentives.

Q13. What are your views on the proposal to grant stakeholders the power to issue a (non-binding) motion of “no confidence”, its objective and requirements? If implemented, what should be the methodology for determining a qualified majority and distribution of votes among stakeholders?

We have answered questions 10 to 13 collectively rather than individually.

As noted in the consultation, the need to consider alternative mechanisms for incentivisation of the DCC board arises as a direct consequence of the decision to proceed with a not-for-profit arrangement. In a for-profit model, poor performance against financial, reputational or regulatory incentives would be expected to result in an intervention from shareholders in the management to uplift performance. In a majority stakeholder board model, those stakeholders are incentivised to achieve performance targets as they are the direct recipients of that service.

Therefore, we advocate for a for-profit model, as it enables a direct financial incentive to be placed on the DCC licence holder to achieve its targets. This is the most effective mechanism for driving the DCC board to achieve the right outcomes and avoids the need for the more complicated arrangements proposed in the consultation which seek to replicate the same effect.

Our concern is not with DCC making a profit from operating the core services, but rather they should only do so if they are delivering high performance at a reasonable cost. Neither of these things are currently true, however the DCC continues to earn a substantial margin which is ultimately funded by consumers. The current licence is not delivering value for money.

Q14. Do you agree with the identified priority areas of interim changes? Are there other governance changes that should be implemented in the Licence extension period?

Yes, we agree with the identified priority areas and especially the proposal for enhanced stakeholder engagement with the DCC board. As previously noted, we support a majority stakeholder board for the new DCC licence, as it is critical that the users and funders of DCC services have a direct say in how those services are delivered.

We agree that enhanced stakeholder engagement is likely to improve transparency and benefit the DCC board's understanding of its customers' views and priorities. We disagree that direct stakeholder representation on the board would be an issue, as detailed in our response to Question 1, and would like to see this option considered for the interim period before the new licence comes into effect.

Q15. What are your views on the possible retention of current Sufficiently Independent Directors on the Board of DCC? What provisions may need to apply to facilitate this?

We agree that retention of current Sufficiently Independent Directors would provide a degree of continuity of expertise at the board level, which is likely to be beneficial. However this support is in the context of a transition to a majority stakeholder board, which has a minority of Sufficiently Independent Directors.

Q16. Do you agree with our proposal that it would be appropriate to remove provision of Centralised Registration Service (CRS) from the DCC Licence and transfer the obligation to the Retail Energy Code (REC) to be delivered by RECCo?

Yes, we agree that it would be appropriate to remove the CRS from the DCC Licence and transfer the obligation to RECCo.

While the DCC licence was a reasonable mechanism for enabling delivery of the CRS at the time, there are no ongoing synergies between CRS activities and communication with smart meters, which must be the focus for the DCC licensee. Transferring the CRS will enable DCC to focus on smart metering, and transfers responsibility to an organisation whose primary focus is ensuring a positive experience for consumers, especially when they choose to switch supplier.

In our view, RECCo is a more consumer-oriented organisation than DCC. This was clearly demonstrated by the Priority 1 incident that occurred in Summer 2023, where DCC failed to understand the impacts the incident was having on suppliers and consumers, and were slow to resolve the incident as a result. The resulting action plan to address the root causes of the

incident has largely been driven by RECCo and the REC Performance Assurance Board (PAB), not DCC.

The transition to the REC will enable better alignment with the other services that RECCo delivers, provide better accountability to the users of the CRS, and support a positive switching experience for consumers.

Q17. What are your views on the considerations we have identified under option 1?

We agree with the benefits noted in the consultation for option 1, and especially the potential for industry to have more direct influence over the operation of the service, and for more efficient delivery of operational improvements to switching.

While we agree that potential savings may arise from the fact that RECCo is a not-for-profit organisation and no margin will be recovered, this is not because we are opposed in principle to these services being operated on a for profit basis. Rather where providers of core services do make a profit; it should be because they are delivering a high-quality service at a reasonable cost. The evidence to date, where DCC has failed to retain its margin as a result of missing its performance targets, would indicate that this is not currently the case.

EDF
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