Modifications to enable SECCo Subsidiary to bid for DCC2 Licence – Draft (track change from current provisions) for PLD – 24 Feb 2025

Changes to DCC Licence Condition 22 (The Smart Energy Code)

22.27 Without prejudice to such matters as are required to be included in the SEC by virtue of Part E above, the SEC must also include:

…

(c) provision for the establishment of a joint venture company, SECCo Ltd, (i) the shareholders of which are to be such SEC Parties as may be specified for that purpose in the SEC, (ii) the sole business of which is (subject to paragraph 22.32A) to act as a corporate vehicle to assist the SEC Panel in exercising its powers, duties, and functions (including by entering into contracts where necessary or desirable in order to implement any decision of the SEC Panel), and (iii) the affairs of which are to be conducted in accordance with good business practice;

…

22.32A The SEC must include and make appropriate provision for and in connection with the following matters:

(a) provision for SECCo Ltd, should it wish to do so, to:

(i) procure or establish a wholly owned subsidiary company, the sole business of which is to seek to become the Successor Licensee and (if it is granted the Successor Licence) to be the Successor Licensee;

(ii) participate in any process initiated by the Authority for the purposes of granting or facilitating the grant of the Successor Licence, whether prior to or following the procurement or establishment of the subsidiary company;

(b) arrangements for such subsidiary company to be closed and dissolved if it does not become the Successor Licensee;

(c) arrangements for the funding of such subsidiary company by SECCo Ltd (to be reimbursed by the Licensee);

(d) arrangements concerning the exercise of SECCo's rights as the shareholder in such subsidiary company while it exists; and

(e) supplementary and incidental provisions regarding such subsidiary company.

…

Changes to SEC Section A

DCC Licence	means the licences granted under section 6(1A) of the Electricity Act and section 7AB(2) of the Gas Act, or under section 6(1)(f) of the Electricity Act and section 7AB(1) of the Gas Act.

Changes to SEC Section C5 (Proceedings of the Panel)

Meetings of the Panel

C5.1 The Panel shall hold meetings with such frequency as it may determine or the Panel Chair may direct, but in any event shall meet when necessary to meet its responsibilities under Section D (Modification Process) and at least once every two months.

C5.2 The location and timing of each meeting shall be determined by the Panel. Panel Members shall endeavour to attend each meeting in person, but attendance by telephone conference or other technological means shall be permitted (provided that each of the Panel Members attending the meeting acknowledges that he or she can communicate with each other).

C5.3 Subject to the other provisions of this Code, the Panel may regulate the conduct of its meetings as it sees fit.

Quorum

C5.4 No business shall be transacted at any meeting of the Panel unless a quorum is present at that meeting. The quorum for each Panel meeting shall be one half of all Panel Members appointed at the relevant time, at least one of whom must be the Panel Chair (subject to Section C5.6A(e).

Meeting Notice and Papers

C5.5 Each meeting that the Panel determines, or the Panel Chair directs, is to be held shall be convened by the Secretariat. Such meeting shall be convened on at least 5 Working Days' advance notice (or such shorter period as the Panel may approve). Such notice must be given to (subject to Section C5.6A):

(a) the Panel Members (and any appointed Alternates);

(b) each of the persons referred to in Section C5.13;

(c) the Parties; and

(d) any other person that the Panel determines, or the Panel Chair directs, should be invited to the meeting

C5.6 The notice of each Panel meeting shall contain or be accompanied by the following (subject to Section C5.6A):

(a) the time, date and location of the meeting;

(b) the arrangements for those wishing to attend the meeting by telephone conference or other technological means; and

(c) an agenda and supporting papers.

Participation by the DCC Member

C5.6A For any and all matters in respect of, or otherwise concerning or relating to, the subject matters of Sections C7.12A to C7.12D:

(a) the DCC Member shall be excluded from participation in and visibility of all such matters;

(b) the DCC Member shall not be entitled to receive any papers relating to such matters, or any meeting notice or agenda or minutes relating to such matters;

(c) the DCC Member shall not be entitled to attend meetings (or the relevant part of meetings) at which such matters are considered;

(d) the DCC Member shall not be entitled to vote in respect of any such matters and will not therefore count towards meeting the quorum for decisions relating to such matters; and

(e) in respect of decisions referred to in Section C5.6A(d), the DCC Member shall not be considered to be a Panel Member for the purposes of the calculation under Section C5.4.

Attendance by other persons

C5.13 One representative from each of the following persons shall be entitled to attend and speak (but not vote) at any meeting of the Panel:

(a) the Secretary of State;

(b) the Authority; and

(c) any other person that the Panel determines, or the Panel Chair directs, should be invited to attend.

C5.14 Any Party shall be entitled to send a representative to attend a Panel meeting provided that Party gives the Secretariat at least 3 Working Days' notice in advance of such meeting (or such shorter period of notice as the Panel Chair may approve). Such a representative shall be entitled to attend and (at the Panel Chair's invitation) speak at (but in no circumstances vote at) the meeting.

C5.15 The Panel Chair may (at his or her discretion including on grounds of confidentiality) exclude from all or any part of a Panel meeting:

(a) the DCC Member where an item of business to be considered, discussed or voted upon at the meeting (or relevant part of the meeting) is in respect of, or otherwise concerns or relates to, the subject matter of Sections C7.12A to C7.12D; or

(b) persons admitted pursuant to Section C5.13(c) or C5.14.

C5.15A A person excluded under Section C5.15 shall be similarly excluded from receiving the minutes and other papers relating to the meeting (or relevant part of the meeting).

…

Changes to SEC Section C7 (Code Administrator, Secretariat and SECCo)

…

SECCo

C7.11 SECCo shall be established in accordance with Schedule 4.

C7.12 SECCo shall act as a corporate vehicle in relation to the business of the Panel, including:

(a) entering into any contractual or other legal arrangements in order to give effect to any resolution of the Panel (or any Sub-Committee) where ~~which~~ it is necessary or desirable to do so ~~implement by means of a binding contract~~; and

(b) becoming a Subscriber for IKI Certificates as directed by the Panel for the purpose of exercising any function of the Panel under this Code.

C7.12A In addition to Section C7.12, SECCo shall:

(a) where it considers it appropriate to procure or establish a wholly owned subsidiary company which would seek to become the holder of the DCC Licence consult with SEC Parties on its proposal to procure or establish such a subsidiary company;

(b) if following such consultation it continues to consider it appropriate to proceed with its proposal:

(i) notify the Secretary of State of, and its reasons for considering it appropriate to proceed with, the proposal and of the views of the SEC Parties that responded to the consultation; and

(ii) subject to it not having received any objection from the Secretary of State to its proposal, procure or establish a wholly owned subsidiary company, the sole business of which is to:

(A) to seek to become the holder of the DCC Licence; and

(B) if it is granted the DCC Licence, to be the holder of the DCC Licence;

(c) arrange for such subsidiary company to be closed and dissolved if it does not become the holder of the DCC Licence;

(d) provide reasonable funding (by way of equity, loans or otherwise) to such subsidiary company until such time as either (i) it is closed and dissolved or (ii) becomes the holder of the DCC Licence (as applicable);

(e) exercise its rights as a shareholder of such a subsidiary company in a manner which is consistent with this Section C7.12A; and

(f) if such subsidiary company becomes the holder of the DCC Licence, enter into and comply with any shareholder undertakings required under the DCC Licence.

C7.12B The funding referred to in Section C7.12A(d) shall constitute Recoverable Costs for the purposes of Section C8.2 (SEC Costs and Expenses).

C7.12C For clarity, no funding will be provided by SECCo to such subsidiary company where it becomes the holder of the DCC Licence; except that SECCo may provide such subsidiary with a short-term working capital loan to be repaid within a reasonable time after grant of the DCC Licence.

C7.12D Any surplus funds returned to SECCo from such subsidiary company shall be used by SECCo to meet SECCo's future expenditure.

…

Changes to SEC Schedule 4 (SECCO), Paragraph 2 (Additional Definitions and Interpretation)

…

Objective means (a) acting as a corporate vehicle in relation to the business of ~~to assist~~ the Panel as described in Section C7.12 (SECCo); (b) considering and determining whether to procure or establish the subsidiary company referred to in Section C7.12A (SECCo), and (c) where such a subsidiary company is procured or established acting as the shareholder of it~~in exercising its powers, duties and functions (including entering into contracts where necessary or desirable in order to implement any Panel Decision)~~.

~~**Panel Decision** means a resolution of the Panel (or a resolution made by any Sub-Committee to which the Panel has delegated decision-making authority in accordance with Section C7 (Sub-Committees)), and cognate terms shall be construed accordingly.~~

Changes to SEC Schedule 4 (SECCO), Paragraph 8 (Composition and Proceedings of the Board)

8.1 SECCo and the Shareholders acknowledge that this Code contains detailed provisions regarding the composition of the Panel, and that it is the intention of SECCo and the Shareholders that the composition of the Board is identical to the composition of the Panel. The Shareholders shall, accordingly, procure that:

(a) each of the Panel Members from time to time shall be appointed as a Director; and

(b) the Panel Chair from time to time shall be appointed as the SECCo Chair.

8.2 SECCo and the Shareholders acknowledge that this Code contains detailed provisions regarding the procedural rules of the Panel, and that it is the intention of SECCo and the Shareholders that the procedural rules of the Board are identical to the procedural rules of the Panel. The remaining provisions of this Paragraph 8 shall therefore have effect subject to the procedural rules of the Board set out in Section C (Governance), including Section C5.6A (Participation by the DCC Member); save only to the extent that such procedural rules applicable to the Panel are incompatible with Laws and Directives stipulating procedural rules for company boards of directors.

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