

Angela Love
Smart Energy Code Panel Chair
Smart Energy Code Company Ltd
8 Fenchurch Place
London, EC3M 4AJ

Date: 6 October 2023

Dear Angela,

Authority¹ decision to send back Smart Energy Code (SEC) Modification Proposal (MP) 219 'Accessing Consumption Data on behalf of SEC Parties'

On 23 August 2023, the SEC Panel submitted a Final Modification Report (FMR) for SECMP 219² to the Authority, following the SEC Change Board's recommendation that SECMP 219 should be accepted. We have decided that we are unable to form an opinion on SECMP 219 based on the evidence submitted within the FMR. We therefore direct that further work on the FMR is required and it should be resubmitted to us once this is completed.³

Background

On 10 October 2022, n3rgy raised SECMP 219 'Accessing Consumption Data on behalf of SEC Parties'. SECMP219 is intended to allow Other Users⁴, on behalf of SEC Parties such as Suppliers and Network Parties⁵, to collect the consumption data of energy consumers without obtaining the Unambiguous Consent⁶ of the consumer.

Reasons for our decision

¹ References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work.

² ['Accessing Consumption Data on behalf of SEC Parties. SECAS. 2023.](#)

³ [Modification Process. Section D. Smart Energy Code.](#)

⁴ Other Users is defined in SEC Section A – Definitions and Interpretations.

⁵ Network Parties is defined in SEC Section A – Definitions and Interpretations.

⁶ Unambiguous Consent is defined in SEC Section A – Definitions and Interpretations.

The reason we have decided to send back the FMR is that we consider that we have not been provided with:

- a sufficient level of evidence regarding the issues that the modification is trying to resolve,
- the impacts on Data Communications Company (DCC) network traffic,
- an understanding of how the current processes are insufficient, and
- how the safeguards for consumers provided by the current process will be protected if this modification is implemented.

Therefore, we are currently unable to form an opinion on it.

Direction

We therefore direct that additional steps are undertaken to address these concerns, and a revised FMR should include further information on the following areas:

1. Further detail on the current impact of the issue that this Proposal is attempting to resolve.

We note that page 3 of the FMR outlines the current arrangements and on page 5 of the FMR, the impact of the issue is discussed which states that it is 'difficult' for Other Users to collect data on behalf of a SEC Party. It is also noted within the FMR that there are a 'variety of ways in which consumers can provide consent for their data to be collected', this Proposal suggests that these arrangements are insufficient. However, the FMR does not provide any detail on why these arrangements are being labelled as 'difficult' or explain why the usual timeline for obtaining Unambiguous Consent is unreasonable, but rather states that it takes 'time and effort'. We would require further information on all these points to fully understand the drivers behind this modification and how this modification will better facilitate the SEC Objectives identified within the FMR.

2. Insight on the current arrangements

Suppliers⁷ and other Network Parties already have a variety of existing arrangements and processes in place for obtaining Unambiguous Consent from a consumer when they wish to utilise Other Users to collect consumption data. This is evidenced within the 'current arrangements' section of the FMR. However, the FMR does not clearly articulate why the

⁷ Suppliers is defined in SEC Section A – Definitions and Interpretations.

current process is insufficient and the challenges that arise as a result of these. We would also have expected the timelines for obtaining this type of consent to be evidenced within the FMR.

On page 7 of the FMR, it notes that there may be 'instances where Suppliers or Network Parties are unable to retrieve consumption data' and may employ Other Users to collect this data on their behalf. The FMR should highlight example scenarios where a 'Supplier or Network Party' would be unable to retrieve this data, what the cause of this would be, and how this modification would impact that process or bring about an additional benefit.

This information should be fully articulated within the FMR so that we are able to understand the solution, the full extent of the problem the Proposal is attempting to resolve, all existing processes and how this modification will benefit consumers and the industry.

3. We would require some sort of estimation of the impact of this type of modification on the DCC system's network traffic.

It is explained in the FMR that this is not possible to estimate; however, without some type of view on the potential impact of this modification, we are unsure how SEC Parties or Ofgem will be able to make an informed decision. If there are expected impacts, we would also have expected to see evidenced mitigations included within the report.

4. We require further information about how the Proposal intends to consider the issues raised by Citizens Advice regarding the collection of consumption data without gathering Unambiguous Consent, and its impacts on consumers.

Ofgem's decision on directing whether a modification is made is judged on whether it is consistent with our principal objective and statutory duties.⁸ The Authority's principal objective is to protect the interests of existing and future consumers which includes considering the concerns of consumers in relation to data privacy.

We note that changes will be made to the SEC Privacy Controls Framework⁹ (PCF) which will require the employing SEC Party to notify the consumer, potentially through marketing emails or Terms and Conditions, that the Other User is accessing the consumer's consumption data on the Party's behalf. Given the significance to the consumer protections these changes are affecting, we would expect to see them in a more developed manner in

⁸ The Authority's statutory duties are wider than matters which the SEC Panel must take into consideration and are detailed in the Electricity Act 1989 and Gas Act 1986 as amended.

⁹ Privacy Controls Framework is defined in SEC Section A – Definitions and Interpretations.

an updated FMR to ensure that there is a specific obligation on employing Parties to notify energy consumers prior to the Other User accessing their consumption data. However, within the FMR, the changes to the PCF are noted in draft form, on page 6. We do not believe they have been sufficiently developed to inform our decision-making.

In addition to this, we would also like to see detailed explanations of how any type of unauthorised access to this data is handled and how ultimately this will be reported on. An example would be where an energy consumer has switched suppliers and is no longer covered under the agreement. We would like to fully understand how this type of scenario would be handled and when it would be reported to the energy consumer, Information Commissioner's Officer (ICO), SEC Panel and the Authority. We need to fully understand how the consumer is protected in this modification from start to finish.

After addressing the issues highlighted above, and after revising the FMR accordingly, the SEC Panel should resubmit it to us for decision as soon as practicable.

Yours sincerely,

Michael Walls

Head of Retail Market Operations

Signed on behalf of the Authority and authorised for that purpose.