

Ofgem guidance – self-governance modification appeals process

Introduction

This guidance document sets out our approach to discharging appeals brought to Ofgem¹ against self-governance modification decisions.² It provides an overview of the procedure that such appeals will follow, however, appeals will be dealt with on a case by case basis.

What is a self-governance modification decision?

The industry codes are the contractual arrangements that underpin the electricity and gas wholesale and retail markets. The codes set out the processes for making modifications, including the circumstances in which modification proposals can be progressed under a 'self-governance' procedure. Code modification proposals can only be determined by self-governance where they have met the self-governance criteria set out in respect of that particular code. In most cases this involves a test of materiality whereby the modification proposal, if implemented, is unlikely to have a material effect on specified matters, including competition and consumers, and is unlikely to discriminate between different classes of code party.³

¹ The terms '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 Self-governance modification 'decisions' for the purpose of this document refer to self-governance determinations as described in the relevant codes and licence conditions.

³ Self-governance criteria for each code is set out in the relevant licence and/or code.

When a modification proposal is determined under a code's self-governance process, the relevant code panel (or in some cases, code parties) will take the final decision on whether or not that modification is made. The Authority's approval is not required.

Who is eligible to appeal a self-governance decision?

Code parties (and, where specified in the licence or code, third parties that would be allowed to raise a code modification proposal under the relevant code) are eligible to appeal a self-governance modification decision.

On what grounds can an appeal be made?

The grounds for appeal are set out in the relevant code and/or licence.

The following are, in most cases, the eligible grounds for an appeal against a self-governance modification decision:

- The appellant is, or is likely to be, unfairly prejudiced by the implementation or non-implementation of the self-governance modification proposal or
- The appeal is raised because the appealing party reasonably believes that:
 - a self-governance modification proposal which is to be implemented may not better facilitate achievement of at least one of the applicable code objectives or
 - a self-governance modification proposal which is not to be implemented may better facilitate achievement of at least one of the applicable code objectives and
- the appeal is not raised for reasons which are trivial or vexatious, and the appeal has a reasonable prospect of success.

How does an eligible party make an appeal?

The existing code rules may provide that the panel (or in some case, parties) can review and re-take the decision, eg through an interim forum which suspends the original decision and hears an appeal. The appellant should always exhaust any alternative appeal, complaint or dispute resolution processes within the relevant code before appealing the self-governance decision to the Authority.⁴

⁴ For the Retail Energy Code (REC), if the decision in respect of a Self-Governance Change differs from the recommendation of the Code Manager, then the decision may automatically be appealed to the Authority.

To make an appeal to the Authority the appellant should complete the 'Self-Governance Decision Appeal Form'⁵ providing as much detail as possible and submitting all relevant documentary evidence with the form in support of its case.

The appellant **must** provide the following details on the form:

- the name of the appellant, including the contact details of a designated representative of the appellant for the purpose of the appeal. An alternate representative's details are also required
- the name/reference of the self-governance modification decision against which the appellant is appealing and a copy of that decision
- the ground(s) on which the appeal is being made, by reference to the eligible grounds for appeal
- the reasons for the appeal in as much detail as possible along with any supporting evidence. This is important because it will inform the Authority in deciding whether the appeal should proceed
- an explanation of the impact on the appellant of the self-governance decision and how a successful appeal would resolve the matter
- the date on which the form is submitted.

In signing the form, the appellant verifies that it believes that the facts stated in the form are true.

When can an eligible party make an appeal?

The appeal form and relevant documentary evidence must be submitted to us by email to industrycodes@ofgem.gov.uk within the appeal window. The appellant should inform the relevant code administrator⁶ that they have submitted an appeal to us. The appeal window is set out in the applicable code.

What is the process after an appeal is made?

⁵ The form is attached to this guidance.

⁶ This may be alternatively described as a Code Manager function within a given code.

We aim to acknowledge the appeal and confirm whether we consider it to be valid within 10 working days of the appeal window closing. If the appeal is to proceed, we may request further information from the appellant, code panel, or any other party.

We will decide on a case by case basis if we require further information in order to progress an appeal and will aim to seek this information in a timely manner. When requesting further information, we will take into account the urgency of the appeal and the information initially submitted on the appeal form and, where appropriate, we will set out specific questions.

The timetable for the appeal process may vary depending upon the individual circumstances of the appeal. If we confirm that an appeal is to proceed, next steps and an indicative timeframe will be outlined in the acknowledgement letter.

If an appeal is refused, ie we consider that the appeal does not meet the grounds for appeal, we will explain why.

In the case that more than one appeal is made against the same decision, these appeals will initially be assessed on their own merits. If allowed to proceed, these appeals may be dealt with together as one matter.

Will the appeal form and information submitted in relation to an appeal be published?

All documents submitted in relation to an appeal will be published on the Ofgem website (unless clearly marked as confidential). The documents submitted should be relevant to the appeal and, where appropriate, respond to the specific questions raised by the Authority.

Any confidential material submitted in relation to an appeal must be clearly marked as such and a non-confidential summary also provided for publication.

When would the Authority be able to make a decision?

We will aim to issue our decision in a timely manner. The timetable will be dependent upon the circumstances of the appeal and whether further information is required. Typically we will aim to publish our decision within 25 working days of either:

- a) the date of our confirmation that the appeal is considered valid, in cases where we consider that no further information is required; or
- b) the date at which our final request for further information closes.

When a decision is made it will be issued as an open letter and will state the reasons why the Authority has reached its decision and, where appropriate, direct further action to be taken.

What are the appeal outcomes?

The following outcomes may⁷ result from an Authority decision of a valid appeal:

1. The Authority rejects the appeal and upholds the self-governance decision:

- a) if the decision was that the proposed modification be made, the modification will proceed to implementation
- b) if the decision was that the proposed modification should not be made, the modification proposal lapses immediately.

As the Authority agrees with the original decision, there will be no further appeal of the Authority's decision.

2. The Authority upholds the appeal and quashes the self-governance decision

In this case the Authority may:

- a) send back the modification proposal for reconsideration and redetermination
- b) remove self-governance and determine that the proposed modification should be made
- c) remove self-governance and determine that the proposed modification should not be made.

Where the Authority quashes the self-governance decision and takes the decision itself, the Authority's decision on the proposal may be appealable to the Competition and Markets Authority⁸ where it is contrary to the original decision (as that decision is treated as a recommendation under the code modification rules) or the recommendation in any revised report.

Self-Governance Decision Appeal Form

⁷ The possible outcomes resulting from a self-governance appeal are outlined in the relevant licence and/or code.

Name and reference of the decision which you are appealing (please provide a copy of the decision with this form):

REC Change Proposal [R0093 'Uplift to CSS Maximum Demand Volumes during MHHS Migration Period'](#) decision to approve under Self-Governance.

Date on which the decision was taken/published: 25

January 2024

On which ground(s) are you appealing the self-governance decision? (The grounds on which an appeal can be raised are set out in the individual codes):

DCC, as the CSS Provider, wish to appeal the decision of the REC Technical Expert Panel in accordance with our rights under Paragraph 22 of the REC Change Management Schedule. The CSS Provider is the most materially impacted party as a result of the implementation of R0093. We consider we have valid grounds to appeal the decision made by the REC Technical Expert Panel on 25 January 2024 in so far as the implementation will not better facilitate the REC objective to drive continuous improvements and efficiencies in the operation of the REC and the central systems and communication infrastructure it governs.

Please provide detailed facts and reason(s) in support of your appeal:

DCC has worked with its Service Providers to further investigate forecasted maximum daily message volumes for the Market-wide Half Hourly Settlement MHHS migration and BAU activities scheduled to take place from April 2025. Please note that these calculations are subject to numerous assumptions due to the MHHS Go-Live date, and as a result, are subject to change.

These investigations have been carried out in line with the approved REC Change Proposal R0093 solution '*...This will stipulate that the Central Switching Service (CSS) Provider shall be capable of processing, within existing service levels, the volume of messages associated with changes to electricity Supplier Agents and Smart Meter Data Retrievers, in accordance with the maximum daily migration volumes published in the MHHS Migration Plan...*'

For context, the current volumes of Switch Requests and changes to Supplier Agents captured in the Retail Energy Code (REC) are as follows:

- average daily volume of 42,300;
- peak daily volume of 281,600;

- average hourly volume of 3,500; • peak hourly volume of 25,300; and
- annual volume of 15,450,000.

It is worth noting that under REC Change Proposal R0092, it was agreed between the Retail Energy Code Company (RECCo) and DCC that the peak daily volume would be 1.088m +5%. This is the figure that DCC would use as a baseline in further performance testing.

For context, the proposed 'Daily Planned Migration Threshold' and 'Upper Migration Threshold' are set out in the MHHS Migration Thresholds Document are 200,000 and 300,000 Meter Point Administration numbers (MPANs) respectively.

The proposed upper limit of MHHS migration message volumes set out within the MHHS – Migration Thresholds Document⁸ (MHHS-DEL1648 - as published on 20/11/2023) is a total of **1.5 million** messages across CSS, this is described within Section 9 (Migration Messages) of the MHHS-DEL1648 document.

REC Change Proposal R0044 has resulted in two changes within the UpdateSAA process:

1. The creation of the Meter Data Retriever (MDR) role and its ability to be appointed through the UpdateSAA Api call.
2. Introduction of the optional ConfirmationRequired field

If the option field is populated with "true" this means that the Distribution Network Operator (DNO)⁹ wants to receive, via the CSS, confirmation that Data Service Provider (DSP) have also appointed the MDR in their system post notification from CSS through the RegistrationEventSynchronisation.

DCC does not currently have a clear understanding of whether the intention is that all DNOs will use this message if they are appointing an MDR rather than another agent or if some DNOs may choose to not require DSP confirmation and therefore don't intend to use it. Without us knowing the plans of the DNOs the additional processing of the optional process is impossible to quantify from a capacity point of view. Therefore DCC has assumed based on current documentation that all MDR appointments will utilise the optional ConfirmationRequired field.

If a DNO does want to receive a confirmation from DSP and is therefore utilising the process in its entirety, then the overall process consists of 5 inbound messages and 5 outbound messages so 10 in total. 10*300k as the max daily migration prediction would be **3 million** messages per 300k MDR appointments.

⁸ [Programme Collaboration Base - MHHS-DEL1648 - Migration Thresholds Document v1.0.pdf](#).

⁹ ERDA / ERDS is a service that "is delivered by the individual DNOs" (this is quoted in the ERDS Service Schedule 12.1 b). Although the Supplier will decide what MDR they are going to use whether that be a third party or they become one themselves, the process of appointing the MDR within CSS is done by ERDA and CSS consequently sends the update to DSP and ECoS. – *please note that this footnote was added for clarity on 18 March 2024.*

If a DNO does not want to receive a confirmation from DSP and is therefore utilisation the standard UpdateSAA process to appoint the MDR then there are 3 outbound messages and 3 inbound messages so 6 in total. 6*300k as the max daily migration prediction would be **1.8 million** messages per 300k MDR appointments.

Combined with the agreed peak daily volume (as a result of R0092 discussions), this means that there is the potential for a substantial increase in the currently proposed message volumes anticipated under MHHS migration.

Please explain the impact on you of this decision and how a successful appeal would resolve this matter. Please indicate if you consider there to be any other persons affected by this decision.

DCC note that there are numerous assumptions that are yet to be firmed up ahead of MHHS Go-Live that have the potential to significantly impact message volumes during migration. For example, there is uncertainty as to how many MDRs will be operating at this time as there has not been confirmation from each Supplier regarding whether they will act as an MDR or appoint an MDR.

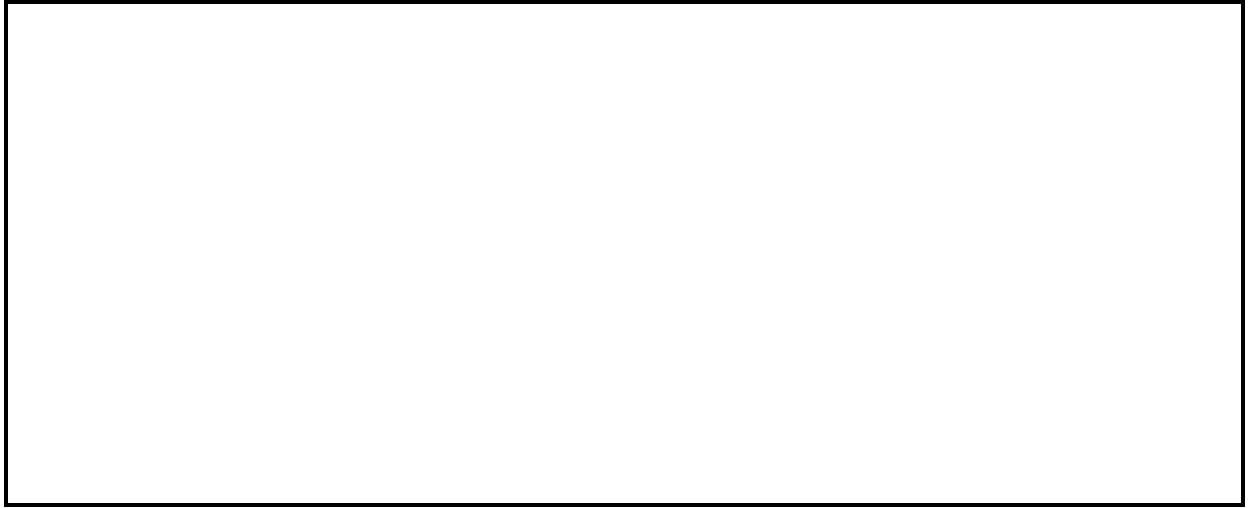
Despite DCC's best efforts in ratifying the figures stated in the MHHS Migration Thresholds Document, we are still working with these underlying assumptions. As a result, DCC requests that the final decision and implementation of R0093 is postponed until July 2024 to allow assurance to be sought from relevant Parties that enable us to more accurately forecast MHHS Migration-relevant message volumes, along with BAU activities.

Noting the above developments, DCC advises that we are currently unable to confirm whether the capacity of CSS is able to cope with the requirements of these newly DCC-calculated MHHS migration volumes that differ significantly to what is currently captured in the MHHS Migrations Thresholds Document, and therefore we are unable to accept the introduction of this as an obligation (and liability) until the appropriate discussions with industry and testing has taken place.

DCC would also like assurance that if R0093 is implemented, and if, as a result of additional capacity testing the DCC advises that technical changes are required to meet the forecasted volumes, that all costs will be approved by RECCo. Without this assurance, DCC are unable to progress testing as we have no available funds to cover this activity. If funding is not agreed, then DCC cannot accept the obligation and liability and any impact to the CSS or delays to the MHHS roll out.

⁸ Under the Energy Act 2004

Details of Appellant: Organisation's Name:	Data Communications Company (DCC)
Capacity in which the Appeal is raised: (eg code party, non-code party with right to raise an appeal)	Code Party – CSS Provider
Details of the Appellant's Representative: Name: Organisation: Address: Telephone Number: Email Address:	Bradley Baker 65 Gresham Street, London, England, EC2V 7NQ Bradley.baker@smartdcc.co.uk
Details of the Representative's Alternate: Name: Organisation: Telephone Number: Email Address:	
Are you supplying attachments to this form? (see Notes) No *delete as appropriate If 'Yes' Please provide the title and number of pages of each attachment and whether it is confidential or not:	
Statement of truth The appellant believes that the facts stated in this form are true. Name: ...Bradley Baker..... Position: ...Regulatory Business Partner..... Signature: ...Bradley Baker.....	



Date: ...08/02/2024.....

Notes:

You should attach relevant detailed documentary evidence only for appeal purposes. If you wish to submit evidence which is confidential, please mark this accordingly and provide a non-confidential summary with it. Confidentiality is subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. If the information you give us contains personal data under the Data Protection Act 1998, the Gas and Electricity Markets Authority will be the data controller. We use the information in performing our statutory functions and in accordance with section 105 of the Utilities Act 2000.

Completed appeal forms should be submitted to industrycodes@ofgem.gov.uk.