

Angela Love
Smart Energy Code Panel Chair
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Date: 29 November 2024

Dear Angela,

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

Background

Smart Energy Code (SEC) Parties can gain Appropriate Permission to access a consumer's Consumption Data if they are the Import Supplier, Export Supplier, Gas Supplier, Electricity Distributor or Gas Transporter for a particular Smart Metering System.^{2,3,4,5,6} These SEC Parties may employ a third-party Other User to act on their behalf to obtain Consumption Data from the consumers those SEC Parties serve.⁷ SEC Parties have provided many reasons why they would choose to use this sub-contracting approach, including undergoing internal system changes, a lack of internal system integration, or to relieve internal pressure. The SEC currently states that these third-party Other Users require Unambiguous Consent from each energy consumer in order to obtain their Consumption Data.⁸

¹ References to the "Authority", "Ofgem", "we", "us" 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 All capitalised terms are, unless otherwise stated, definitions taken directly from, and therefore have the same meaning given to such terms within, the Smart Energy Code.

³ [Current SEC Parties - Smart Energy Code](#)

⁴ [Appropriate Permission - Smart Energy Code](#)

⁵ [Consumption Data - Smart Energy Code](#)

⁶ [Smart Metering System - Smart Energy Code](#)

⁷ [Other User - Smart Energy Code](#)

⁸ [Unambiguous Consent - Smart Energy Code](#)

The modification proposal

On 10 October 2022, n3rgy Data Ltd (the Proposer) raised SECMP219 – ‘Accessing Consumption Data on behalf of SEC Parties’.⁹ SECMP219 is intended to change SEC Section I (‘Data Privacy’) and amend the definition of ‘Appropriate Permission’ to allow contracted Other Users, on behalf of SEC Parties, to collect and pass back to such SEC Parties the Consumption Data of consumers without obtaining Unambiguous Consent. Changes are proposed to both the definition of ‘Appropriate Permission’ and SEC Section I1.2 of the SEC – ‘Data Privacy’ – to enable Other Users to collect Consumption Data without first gaining the Unambiguous Consent of the consumer. Additional safeguards have been proposed for the Privacy Controls Framework (PCF) to ensure that the consumer’s privacy remains protected.¹⁰

On 6 October 2023, the initial proposal for this modification was sent back by the Authority.¹¹ We decided to send back the proposal because we deemed that we had not been provided the following:

- a sufficient level of evidence regarding the issues that the modification was trying to resolve;
- the impacts on the Data Communication Company (DCC)’s network traffic;
- an understanding of how the current processes are insufficient; and
- an explanation of how the safeguards for consumers provided by the current process would be protected if the modification were to be implemented.

On 29 May 2024, the proposal was resubmitted to the Authority with the above information provided; this included evidence regarding the issues that the modification was aiming to resolve, including one Large Supplier noting that after employing an Other User to collect Consumption Data for them,¹² approximately 50% of consumers did not complete the process due to issues relating to consent provision. The updated report also contained more information on the impact that the modification’s approval would have on the DCC’s network traffic, which was estimated to be 1% by the Proposer and a maximum of 2% by the Smart Energy Code Administrator and Secretariat (SECAS) based upon a 70% increase in household

⁹ [Accessing Consumption Data on behalf of SEC Parties - Smart Energy Code](#)

¹⁰ [Privacy Controls Framework - Smart Energy Code](#)

¹¹ [Authority Send back - SEC MP219 'Accessing Consumption Data on behalf of SEC Parties' | Ofgem](#)

¹² [Large Supplier Party - Smart Energy Code](#)

participation in the Demand Flexibility Service (DFS).¹³ Lastly, the updated report included an explanation of the insufficiency of current processes and protections for consumers via wording within the SEC itself and amendments to the auditory processes and safeguards within the PCF.

Our decision

We require the Panel to take additional steps in order for us to form an opinion on SECMP219. In particular, we require amendments to the proposed legal text so that it better reflects the scope of the proposal as detailed in the Final Modification Report (FMR).¹⁴ We therefore direct that further work is required and the revised legal text and FMR should be resubmitted to us once this is completed.¹⁵

Reasons for our decision

SEC Section I1.2 - Data Privacy

SECAS has drafted an addition to SEC Section I1.2. The additional item is sub-section (c) which details that the Other User can obtain Consumption Data for reasons “by which the User is contracted”. We consider this wording does not reflect the more limited scope that the FMR proposes and could be interpreted to allow the Other User to collect and process Consumption Data for reasons beyond such scope. Namely, it could permit an Other User to obtain and use Consumption Data for purposes other than solely to transfer it to the employing Party. Whereas the FMR contemplates a more limited purpose for this modification, as demonstrated in the examples below:

1. *“When SEC Parties seek to outsource the collection of Consumption Data, the Proposer believes the requirements of SEC Section I1.2 make it difficult for Other Users to collect the data on their behalf. In particular, the Proposer has worked on behalf of SEC Parties who would like the Other User to collect Consumption Data to take part in the National Grid’s DFS, but this has been severely limited due to the current arrangements.”*¹⁶

¹³ [Demand Flexibility Service \(DFS\) | National Energy System Operator](#)

¹⁴ [MP219 Modification Report v2.1](#)

¹⁵ [SEC Section D – Modification Process](#) (page 26, paragraph D9.3)

¹⁶ [MP219 Modification Report v2.1](#) (p.6)

2. *"If this modification is approved and a Supplier or Network Party wishes for an Other User to collect Consumption Data, this is the new process they will follow:*
 1. *The Supplier or Network Party contracts the Other User to collect Consumption Data on their behalf as they already have the Appropriate Permission of the Energy Consumer. The employing Party will remain as the Data Controller, whilst the Other User will act as the Data Processor. This step is the similar to the existing current first step, other than the Other User would be able to collect data if the employing Party has any other legal basis permitted by their Energy Licence.*
 2. *The Other User collects the Consumption Data on behalf of the employing Party using the employing Party's Appropriate Permission. This information is passed back to the employing Party, with the Other User only keeping a record of this for their SEC audit purposes."*¹⁷
3. *"They [the Proposer] also believe that although existing data privacy arrangements will be altered, strict controls on Other Users still exist both in the modification and through the changes to the PCF. As such, the Other User will remain as the Data Processor and is only able to collect the data and pass it back to the employing Party."*¹⁸

These excerpts express that the issue which needs resolving is within the collection of Consumption Data on behalf of employing Parties. They also state that the Other Users will only be able to collect Consumption Data for the purpose of transferring it to the employing Party.

We consider that this proposal was raised to allow Other Users to collect and transfer Consumption Data without Unambiguous Consent. It was not raised for Other Users to collect and process Consumption Data for any purposes, more generally, for which they are contracted, without first retrieving Unambiguous Consent.

In order for the Authority to form an opinion on this modification proposal, we need the legal text changes in the SEC, alongside the controls proposed in the PCF, to reflect the solution and scope proposed in the FMR. The parameters outlined in the legal text must ensure that Other

¹⁷ [MP219 Modification Report v2.1](#) (p.7)

¹⁸ [MP219 Modification Report v2.1](#) (p.11)

Users can only collect the Consumption Data for the purposes of transferring to the employing Party.

Draft Privacy Controls Framework Error – Missing Changes

In addition to the above, we identified a small error in the PCF's proposed changes. Although Section I1.2 has been amended in the draft SEC changes, the PCF's respective section describing 'SEC Obligation I1.2' (at page 26 of the draft PCF), has not been updated to reflect the changes. We expect this error to be rectified when the FMR is resubmitted.

Lastly, during this modification proposal's review, the Authority engaged the Information Commissioner's Office (the ICO) due to the proposal's connections to UK GDPR. We are aware that the ICO and SECAS have a Memorandum of Understanding (MoU) detailing a framework for cooperation and information sharing. We encourage this MoU be used to its fullest prior to the submission of modification reports. We may nonetheless still engage with the ICO to clarify their views from time to time, however we'd encourage their involvement early in the process, ideally during the development of the modification report and drafting of the legal text.

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,



Liam Bennett

Head of Energy System Digitalisation

Signed on behalf of the Authority and authorised for that purpose