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Stage 02: Working Group Consultation Responses

What stage is this document in the process?

- 01 Initial Modification Report
- 02 Refinement Process
- 03 Report Phase
- ▶ 04 Final Modification Report

SECMP0043 'Modification to Services Force Majeure Provisions'

About this document

This document contains the collated responses to the SECMP0043 Working Group Consultation (WGC). The Working Group (WG) will review these responses and consider them as part of the solution development for this modification.

If you would like any further information, or to discuss any questions you may have, please do not hesitate to contact **Caroline Gundu** on 020 7090 1037 or email SEC.Change@gemserv.com.

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Question 1

Q1: Do you agree that the proposed solution better facilitates the SEC Objectives?

Party Name	Party Category	Yes/No	Comments
Npower	Large Supplier	No	No. It is not clear from the proposed redrafting or explanations provided how each of the amendments made will better facilitate the SEC Objectives. Further the changes proposed on the basis of clarification actual make changes to the SEC clauses, effectively giving a different meaning to the amended clauses in SEC Section M.
Electricity North West Limited	Electricity Network	No	It is not clear to us that the proposed change better facilitates either objective (b) or (g) as stated in the modification report.
Western Power Distribution	Electricity Network	Yes	We believe that this modification better facilitates SEC Objectives (b) and (g) as it provides additional clarity and therefore will help the DCC efficiently discharge the obligations imposed against it and aid efficient administration of the Code.
Centrica plc	Large Supplier	No	No. We do not believe that the proposed solution would better facilitate any of the relevant SEC objectives.
Scottish and Southern Electricity Networks	Electricity Network	Yes	YES
EDF Energy	Large Supplier	No	We do not believe that it has been demonstrated that the proposed solution better facilitates any of the SEC objectives, and would lead to better outcomes for DCC Users, or for consumers.

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SSE	Large Supplier	No	We consider the proposed changes currently drafted to be neutral or potentially impacting the SEC Objectives. Please refer to our responses to subsequent questions.
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Question 2

Q2: Is the definition of Services Force Majeure (FM) provided in the proposed legal text (Attachment B) appropriate?			
Party Name	Party Category	Yes/No	Comments
Npower	Large Supplier	No	No. The proposal cites the need to align with Force Majeure clauses given in other Codes, but our current view is that these definitions are currently either identical or very similar to existing industry codes. This also includes the FM clauses that are present within both the DSP and CSP Central DCC Service Provider contracts
Electricity North West Limited	Electricity Network	No	The text proposed appears to broaden significantly the definition of FM for no justifiable reason. In particular, the introduction of 'reasonableness' in the definition of Services FM does not seem appropriate.
Western Power Distribution	Electricity Network		The proposer states that this modification is to clarify what is considered a Services FM, however, the addition of the wording ' <u>event or circumstance which is beyond the reasonable control of the DCC, including but not limited to</u> ' actually broadens the definition and also opens it up for interpretation. Therefore we do not agree with this addition. With regards to (f) we agree with the Legal Text Review that this should state ' <u>a breach by another party of its obligations under this Code</u> ' for the reasons given.
Centrica plc	Large Supplier	No	The proposer has not articulated the issue with the current SEC text or why the proposed text is required. We agree with

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			the findings from the legal text review. We are also concerned that the proposed amendments do not reflect the FM definition being used by Ofgem for the proposed DCC incentive scheme (despite the modification proposal citing this as a reason for requiring the modification).
Scottish and Southern Electricity Networks	Electricity Network	Yes	SSEN believe the intention to remove ambiguity has been achieved.
EDF Energy	Large Supplier	No	We agree with the assessment made by the SECCo legal advisors that the revised definition changes (rather than clarifies) the meaning of the definition, and that his change in meaning would be contrary to the Government's approach at the time of designating the SEC.
SSE	Large Supplier	No	<p>The proposal is to make clarifications to the Services FM provisions by providing additional detail to the definition of Services FM in SEC Section A</p> <p>Having reviewed the proposed definition and the addition of the wording, <u>'event or circumstance which is beyond the reasonable control of the DCC, including but not limited to any'</u>, we view this as broadening and changing this definition rather than providing clarification. We do not support this proposed wording change.</p> <p>With regards to the addition of the new paragraph (f), we agree with the Legal Text Review that this drafting should be clarified before the proposal is progressed. If this is introducing an element within the Definition that is not within the concept of FM, or other Code legal text, we</p>

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Question 3

Q3: Are the timescales for notification of a Service FM incidence and response appropriate?			
Party Name	Party Category	Yes/No	Comments
Npower	Large Supplier	No	<p>No.</p> <p>The proposed changes to SEC Section M3.4 to include reference to the DCC first becoming aware of a FM event rather than the original text that clearly states that the DCC shall notify of an event 'as soon as reasonably practicable' effectively weakens the obligation on the DCC and could potentially introduce perverse incentives for the DCC.</p> <p>Proposed changes to SEC Section M3.5 – It is not clear why the DCC would wish to ensure that every call for relief against FM would have to be consulted on and then to impose deadlines for the industry to accommodate this additional work, particularly as the proposed modifications effectively widen the definition of FM that may effectively mean that it would take longer to obtain all of the necessary information in order to appropriately review the actions and obligation of those parties concerned, some of whom may not be signatories to the SEC.</p>
Electricity North West Limited	Electricity Network	No	'Awareness' should not be referenced in the timescale. The timescale should be absolute.
Western Power Distribution	Electricity Network	No	We agree with the Legal Text Review that by adding the phrase 'becoming aware of' allows for a delay in the DCC notifying the Panel and Users of any issues. The current wording encourages the DCC to have processes in place to

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			<p>identify when a Services FM will prevent them from meeting their obligations.</p> <p>We are happy with the addition of M3.5A.</p>
Centrica plc	Large Supplier	No	We do not believe the current arrangements need to be amended. The proposer has not made a clear case for the proposed changes.
Scottish and Southern Electricity Networks	Electricity Network	Yes	SSEN consider the timescale appropriate and would expect DCC to contact all impacted Party (ies) as soon as the issue is evident to the DCC. This is only to state that the commercial behaviour from a regulated body is expected in all cases.
EDF Energy	Large Supplier	No	We agree with the assessment made by the SECCo legal advisors that the effect of the revised timescales would be to weaken the obligations of the DCC, and allow the DCC to seek to avoid or delay notifying Users on the basis that the DCC was not aware of the Services FM. As noted this could create a perverse incentive for the DCC to not seek to make its aware of issues that could give rise the Services FM.
SSE	Large Supplier	No	<p>We agree with the Legal Text Review that Section M3.3 should be clarified with consideration given to re-drafting the proposed legal text changes.</p> <p>We consider that by adding the phrase '<u>becoming aware of</u>' in Section M3.4, this weakens the existing obligations on DCC and allows for a delay in the DCC notifying the Panel, and Users, of the occurrence of the Services FM. The current legal text wording incentivises the DCC to have processes in place to identify when a Services FM will prevent or delay them from meeting their obligations.</p>

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			The introduction of the new Section M3.5A seems reasonable however there should be further information provided on how this better facilitates objectives.
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Question 4

Q4: Do you believe that the draft legal text changes deliver the intention of the modification?

Party Name	Party Category	Yes/No	Comments
Npower	Large Supplier	No	<p>No.</p> <p>Taking each proposed change in turn:</p> <ul style="list-style-type: none"> Change to the Services Definition SEC Section A – the additional text provided has the effect of widening the definition of FM considerably, making it much easier for the DCC to claim FM relief. DCC claim that the drafting is designed to clarify the definition, but the proposal actually changes the definition, which is not appropriate. This broader definition is not aligned to any other industry code or the Service Provider contracts that the DCC currently has in place; The introduction of an additional section f) is again not consistent with other codes and again changes the meaning of the clause rather than clarifies it. If the intention is to ensure that the DCC can request FM relief where another Party fails to meet its obligations (presumably the DCC’s Service Providers) then this should be covered via the contractual arrangements that they have in place with them; SEC Section M3.3 b) – Further clarification is required as to the need for the proposed changes to specify that this clause does not form a contract with the DCC. The only binding governance that SEC Parties currently have with the DCC is via the SEC and so to weaken these arrangements in any way would not better facilitate the SEC Objectives; SEC Section M3.4 – the original drafting that the DCC shall notify of a FM event as soon as reasonably practical is fit

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			<p>for purpose as it stands. The introduction of the proposed redrafting to a notification when the DCC first becomes aware of an FM event weakens the FM clause and does not support SEC objective (g) - to facilitate the efficient and transparent administration and implementation of this Code. Further, this proposed amendment potentially introduces perverse incentives where the DCC could benefit from a delayed notification. This proposed drafting also again does not align with other codes;</p> <ul style="list-style-type: none"> • SEC Section 3.5 – The proposed drafting has the effect of ensuring that every call for FM relief that the DCC calls for must be consulted on. This may not always be either the preferred or appropriate approach that the SEC Panel would wish to adopt; and • SEC Section 3.5A – The introduction of this additional clause together with the other changes proposed to the SEC obliges the Panel to consider FM relief for a much wider set of circumstances that would potentially include accessing supporting information from other industry bodies, potentially not signatories to the SEC in order to assess the FM, to then consult and imposes a 10WD time-scale. Given the potential range of events this may not always be possible. Further, no justification has been given for this imbalanced approach whereby time-scales for the DCC are potentially relaxed whilst those for the SEC Panel are tightened.
Electricity North West Limited	Electricity Network	No	-
Western Power Distribution	Electricity Network	No	We do not agree that the draft legal text changes deliver the intention of the modification due to the points raised in Q2 and Q3.

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Centrica plc	Large Supplier	No	No. We do not see why additional clarity is required and the proposed text introduces ambiguity / uncertainty into what could be a FM event. It would appear that the proposed text could lead to far more occurrences of FM being claimed by the DCC,
Scottish and Southern Electricity Networks	Electricity Network	Yes	With the caveat expressed at Q8, SSEN believe the draft legal text delivers the intent as set out in this modification.
EDF Energy	Large Supplier	No	The stated intent of this Modification is to make clarifications to the Service FM provisions by providing additional detail to the definition of Services FM in SEC Section A, and clarity to the procedure which the DCC and the Panel are to follow if the DCC wishes to claim Services FM outlined in SEC Section M3. We not believe that the legal text changes make the definition any clearer than it is now, or would mean that Services FM would necessarily be managed in a better as a result of the changes being made.
SSE	Large Supplier	No	The intent set out within the IMR seeks to remove ambiguity and refine the processes, given our responses to Questions 2) and 3) we do not believe that this has been delivered with the draft legal text changes.

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Question 5

Q5: Will your organisation incur any costs due to the implementation of this modification?			
Party Name	Party Category	Yes/No	Comments
Npower	Large Supplier	No	No. We will not incur any costs as a result of the implementation of this proposal. However, as a SEC Party we could incur unjustified costs for services not provided as a consequence of the proposed SEC modifications.
Electricity North West Limited	Electricity Network	No	-
Western Power Distribution	Electricity Network	No	-
Centrica plc	Large Supplier	No	There would be no costs to BG from the implementation of the modification proposal (i.e. it is a SEC text change only). However, the implications of implementation could be that we see the DCC claiming more instances of FM than they currently could do (due to the proposed text widening the scope of the FM definition). Any FM event is likely to lead to consequences for Users due to the DCC then receiving relief from fulfilling their obligations under the SEC. As DCC is a service provider to Users, the result of this would be a

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			reduction or loss of User services. This could have consequential impacts to BG operations and to BG consumers.
Scottish and Southern Electricity Networks	Electricity Network	No	-
EDF Energy	Large Supplier	No	We would not incur any direct costs as a result of the implementation of this modification.
SSE	Large Supplier	Yes / No	We are unable to comment on specific costs, however, we note that any weakening of existing obligations, that could lead to increase in delays to resolution, may have implications such as reputational damage to the Industry and Smart Programme.

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Question 6

Q6: Having considered the potential impacts and costs to your organisation, as well as the cost to deliver the modification, do you agree that SECMP0043 should be approved?

Party Name	Party Category	Yes/No	Comments
Npower	Large Supplier	No	No – for the reasons provided in response to the other questions raised in this consultation.
Electricity North West Limited	Electricity Network	No	For reasons stated above.
Western Power Distribution	Electricity Network	Yes / No	Unfortunately the Initial Modification Report does not detail estimated implementation costs, and as this has not progressed to a Working Group this has not been defined so we are unable to provide a direct response. However, based on similar modifications that have only had SEC Administration time to implement, it is likely that the costs to implement this modification would be minimal and therefore we would be minded to approve this modification.
Centrica plc	Large Supplier	No	-
Scottish and Southern Electricity Networks	Electricity Network	Yes	-
EDF Energy	Large Supplier	No	We do not believe that it has been demonstrated that the proposed solution better facilitates any of the SEC objectives

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			or improves on the current Services FM provisions, and would lead to better outcomes for DCC Users, or for consumers.
SSE	Large Supplier	No	Given our responses to the previous questions, and in its current form regarding legal drafting, we would not agree that SECMP0043 should be approved.

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Question 7

Q7: Do you agree with the recommended implementation date?			
Party Name	Party Category	Yes/No	Comments
Npower	Large Supplier	No	We do not currently support the modification.
Electricity North West Limited	Electricity Network	No	-
Western Power Distribution	Electricity Network	Yes / No	Unfortunately the Initial Modification Report does not detail an implementation Date so we are unable to comment. However, due to this modification being a documentation change with no impact on Users or systems we are minded to agree an implementation date in the release following approval, subject to meeting the required timescales.
Centrica plc	Large Supplier	No	No as we do not believe the proposal should be implemented.
Scottish and Southern Electricity Networks	Electricity Network	Yes	-
EDF Energy	Large Supplier	Yes	Although no specific implementation date is provided we assume that this would be as soon as possible after Modification Decision by the Authority – in which case the implementation date would be reasonable.

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SSE	Large Supplier	Yes / No	The IMR does not set out a recommended implementation date, however we would be minded to agree given its proposed progression through the Refinement Process, this being a documentation change and the likely timescales.
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Question 8

Q8: Do you have any further comments on SECMP0043?			
Party Name	Party Category	Yes/No	Comments
Npower	Large Supplier	Yes	We believe that the DCC needs to provide additional supporting information in order to justify the changes that it is proposing.
Electricity North West Limited	Electricity Network	No	-
Western Power Distribution	Electricity Network	No	-
Centrica plc	Large Supplier	No	-
Scottish and Southern Electricity Networks	Electricity Network	Yes	SSEN did not employ a lawyer while reviewing the proposed legal text. It is always possible that a lawyer would have a different interpretation.
EDF Energy	Large Supplier	Yes	It is not clear what refinement process this modification proposal has been through before being issued for an industry consultation response. It was noted in the covering e-mail that this industry consultation is seeking views from industry participants on SECMP0043 prior to convening a Working Group – but the questions being asked do not align with that intent and are those that would usually be asked as part of a Working Group Consultation or Final Modification Report. It is

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			<p>not clear how the questions posed will elicit responses that will be useful to a Working Group.</p> <p>The SECCo legal advisors have obviously been instructed by SECCo to comment on the changes and we have found their comments extremely useful in putting together our response. It is not clear what sight the proposer has had of these comments and whether these have been taken into account in the draft legal text we have been asked to comment on – it would appear not.</p>
SSE	Large Supplier	No	-

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