

Smart Energy Code

Guidance on the Dispute Process

Version Number: v2.0

Date Published: January 2020

This guidance is of interest to:

- SEC Parties
- DCC
- SEC Panel
- Sub-Committees

What does this guidance cover?

The document provides guidance on the dispute processes in the Smart Energy Code (SEC). This includes details on SECAS's critical friend role in supporting Parties or the DCC through the dispute, the stages of the Dispute process and the Panel's role in disputes.

What is a Dispute?

Under the SEC, a Dispute is defined as any dispute or difference (of whatever nature) arising under, out of, or in connection with this Code and/or any Bilateral Agreement. It is the responsibility that each Party to a Dispute seek to resolve it amicably within a reasonable timescale and through negotiation in good faith.

There are a range of Dispute and Appeals routes identified in the SEC, as the mechanisms for resolution depend on the source of dispute. The full list of Dispute and Appeal Routes can be found on the [SEC Website](#).

The overarching Dispute process is found in SEC Section M7: Dispute Resolution. This Section outlines the general principles for whether a Dispute is subject to a final determination by the SEC Panel or the Authority, and the arbitration process to be followed. Any matter that relates to an Energy License or the Smart Meter Communication Licence will be determined by the Authority.

Dispute process stages



Negotiation

Parties are expected to use reasonable attempts to resolve the matter before raising a formal Dispute.

The [Notification of Party Negotiation Request Form](#) should be completed by any SEC Party wishing to initiate the Negotiation stage of the Disputes process, with the aim of reaching an amicable resolution without invoking a formal Dispute as defined under the Smart Energy Code section (F3) Panel Dispute Resolution Role. This may involve bilateral discussions, possibly facilitated by SECAS, or bringing in one of the Panel Sub-Committees such as the Operations Group to help the Parties agree a resolution.

Parties are encouraged to raise these matters with the SECAS Party Support team if they require guidance at the early stages of identifying whether there is in fact a Dispute, and if a resolution can be found without escalating the matter to the Panel or Authority for final determination.

Contact information for the SECAS Party Support Team can be found [here](#).

Raise Dispute

If informal mechanisms have been exhausted, the Disputing Party must complete the [Dispute Notification Form](#) and submit it to SECAS@Gemserv.com.

Supporting evidence should be attached to the form and can include, for example, the impacts on SEC Parties, dates/timings of the issue in question, any advice (for example, legal) that the Party has sought, and evidence of previous attempts to resolve the matter.

Disclaimer

These guides are intended to provide a simple overview of the SEC and any supporting or related arrangements and do not replace or supersede the SEC or these related arrangements in any way. The author does not accept any liability for error, omission or inconsistency.

Pre-Dispute hearing (optional Sub-Committee involvement)

Once the Dispute has been raised, SECAS will notify the SEC Panel of the Dispute. Depending on its urgency, this may be via the next regularly scheduled SEC Panel meeting or raised ex-committee. If required, SECAS will request more information from the relevant Parties or other key stakeholders.

The Panel will determine if it requires additional evidence or advice to be provided to it prior to making determinations on the matter. It may request a Sub-Committee or other independent experts to provide advice before it is considered by the Panel.

The Parties to the Dispute will be invited to attend any relevant Sub-Committee meetings where the dispute is initially discussed.

Any recommendations will be provided to the Panel for consideration.

Conflicts of Interest

Any potential conflicts of interests will be dealt with under provisions in SEC Section C3.7 (a) and C6.8.

It shall be each Panel (or Sub-Committee) Member's responsibility to disclose to the respective Chair any interest a Member might have in a respective appeal, Dispute, referral or Event of Default that a Member (or Members) may perceive as a conflict of interest warranting an absence from voting on said issue.

The Panel Chair (or Sub-Committee Chairs) may:

- Decide, after considering the views of the Panel (or Sub-Committee), to ask the Member(s) in question to leave the room whilst the group discuss specific business; or
- Consider whether the Member(s) should be removed as Panel (or Sub-Committee) Member(s).

Arbitration

SEC Section M7.5- M7.7 outlines that formal arbitration may be requested by a Party to a Dispute in circumstances where the Authority or Panel are not expressly identified as the final and binding decision-maker.

Dispute hearing

Once all relevant information has been gathered, the Panel will consider the Dispute.

The Parties to the Dispute will be invited to attend the Panel meeting where the dispute hearing will take place. After discussing the matter, the Panel will determine actions that need to be taken as a result.

Actions will depend on the type of Dispute being considered, but Panel decisions must ensure that:

- the SEC is given full and prompt effect in accordance with its terms and conditions;
- that the SEC is given effect in such a manner as will facilitate achievement of the SEC Objectives;
- that this Code is given effect in a fair manner without undue discrimination between the Parties or any classes of Party; and
- that the Panel conducts its affairs in an open and transparent manner.

Dispute outcome & Final Steps

SECAS will notify the relevant Parties of the SEC Panel's decision and the remediation timetable (if applicable).

If a remediation plan applies, and the relevant Party fails to complete the remediation plan according to the timescale set by the Panel, an Event of Default will have occurred and SEC Section M8 will apply within SECAS notifying the SEC Panel that an Event of Default has occurred (as per Section M8.2).

Contact Us:

For queries and further advice please contact SECAS at:

W: smartenergycodecompany.co.uk

T: 020 7090 7755

E: secas@gemserv.com

Disclaimer

These guides are intended to provide a simple overview of the SEC and any supporting or related arrangements and do not replace or supersede the SEC or these related arrangements in any way. The author does not accept any liability for error, omission or inconsistency