

Competition and Markets Authority
The Cabot
25 Cabot Square
London
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3 September 2024

Consultation on the Draft Rules of Procedure and Guidance for Energy Code Modification Appeals

EDF is the UK's largest producer of low carbon electricity. EDF operates low carbon nuclear power stations and is building the first of a new generation of nuclear plants. EDF also has a large and growing portfolio of renewables, including onshore and offshore wind and solar generation, as well as energy storage. With over five and a half million electricity and gas customer accounts, including residential and business users, EDF aims to help Britain achieve net zero by building a smarter energy future that will support delivery of net zero carbon emissions, including through digital innovations and new customer offerings that encourage the transition to low carbon electric transport and heating.

We welcome the opportunity to comment on this consultation on the Draft Rules of Procedure and Guidance for Energy Code Modification Appeals. Code modifications have the potential to have a significant impact on the parties to those codes, other parties within the energy industry, and ultimately on consumers. It is therefore vital that decisions taken on code modifications are properly considered by the Gas and Electricity Markets Authority (GEMA) and have a robust justification, and that parties have a right of appeal where they do not believe that has been the case.

Given that the right of appeal is a vital remedy for code parties and others impacted by code decisions taken by GEMA, we are concerned that the conditions under which an appeal can be raised are excessively onerous and may not enable parties to raise an appeal even where the decision taken is manifestly incorrect.

Specifically, we are concerned that the timescales for raising an appeal are too short, and that the grounds for appeal are unnecessarily restrictive. Parties are only given three weeks to consider their position, go through the process of appointing advisors, and decide to appeal, which must set out in full the grounds for the appeal and how the decision impacts them. This is a short amount of time to go through several complex steps and may prevent legitimate appeals from being raised. As a result, this avenue for redress risks becoming redundant, with the industry bearing the impacts of poor decisions as a result. We urge the CMA to consider these points when revising their rules and guidance.

We also note that the updated guidance document refers to the Master Registration Agreement (the MRA) and the Supply Point Administration Agreement (the SPAA). However,

these codes ceased to exist in 2021 when they were replaced by the Retail Energy Code (the REC) as part of Ofgem's Retail Code Consolidation Significant Code Review (SCR). The guidance needs to be updated to reflect this change as currently it would appear that there is no route to appeal a GEMA decision regarding a REC code modification, which is not acceptable.

Should you wish to discuss any of the issues raised in our response or have any queries, please contact Paul Saker or myself.

I confirm that this letter and its attachment may be published on Ofgem's website.

Yours sincerely

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