

Competition and Markets Authority

22 November 2024

Dear Madam or Sir

Further updated rules of procedure and guidance for energy code modification appeals (2nd consultation)

We welcome the opportunity to make this submission to the above-named consultation. This is a non-confidential response on behalf of Centrica Group and follows our reply to the first consultation, outlined in our letter dated 3 September 2024, attached for convenience.

We support your proposals to update the Rules and Guide to take into account the changes to the Energy Act 2004, introduced by Section 201 and Schedule 14 of the Energy Act 2023 (the Act).

We note in paragraph 1.13 of the consultation, the Secretary of State intends to introduce a statutory instrument, which may replace or amend the Electricity and Gas Appeals (Designation and Exclusion) Order 2014 (the Order), on conclusion of the energy code governance reforms provided for in the Act.

As highlighted in our previous response, the Order, as reflected in the Guide, lists the energy codes that may be subject to an appeal. Two of the energy codes designated under the Order, the Master Registration Agreement (the MRA) and the Supply Point Administration Agreement (the SPAA) have been consolidated to form the Retail Energy Code (REC). The REC is not designated under the Order and to reiterate it is uncertain currently whether GEMA decisions to modify the REC are appealable to the CMA.

We previously stated that GEMA's delivery of energy code reform under the Act increases the likelihood of further code consolidation or the creation of new energy codes. In fact, the decision has already been taken that further codes will be consolidated to create a single gas network code, a single electricity commercial code and a single electricity technical code.¹ This will affect the CUSC, DCUSA and UNC, which are designated in the Order.

We are concerned that delaying the replacement or amendment of the Order until the reforms have been completed will further exacerbate current uncertainty regarding applicable routes of appeal. The reform process is expected to run over several years, with special powers conferred to Ofgem for seven years. Only two of the eight codes designated in the Order will remain as listed at the completion of the reforms. While we do not believe this is within the

¹ Implementation of energy code reform: decision, 22 August 2024, ¶ 6.19.
Page 1 of 3

scope of the previous or current consultation, this issue has the potential to undermine the CMA's efforts to clarify and streamline the appeals process. We would therefore request that the CMA seeks to address this uncertainty with GEMA and Government as soon as practicable. We also suggest an amendment to the Guide to address this issue.

Questions for consideration

To assist the consultation, we offer a reply to the feedback questions, outlined below.

- 1. Overall, is the way in which the Rules and Guide have been amended to take account of changes to provisions relating to the statutory timetable and appeals of GEMA decisions to modify codes sufficiently clear and helpful?**

No, please see our reply to question 2 below.

- 2. What aspects of the Rules and Guide, if any, do you consider need further clarification or explanation, in the light of these changes? In responding, please specify which Rule and/or part of the Guide each of your comments relates to.**

- Paragraph 3.23, Draft Revised Energy Code Modification Appeal: Competition and Markets Authority Guide dated 8 November 2024.

This amendment removes set hearing dates by virtue of the relevant period having now been extended from 30 days to four months. We submit that it would be most useful to all parties to have the certainty of set hearing dates, as before, which will allow sufficient preparatory time and assist all parties in satisfying the overriding objective to ensure appeals are dealt with efficiently and at a proportionate cost. We respectfully ask the CMA to include *amended* set hearing dates, which factor in the extended relevant period. For example, previously an appeal management conference was set on day 8 of the 30-day period; we suggest perhaps that an appeal management conference is now set on day 32 of the 4-month period (being extended proportionately given the new extension of the relevant period).

- Paragraph 4.12, Draft Revised Energy Code Modification Appeal: Competition and Markets Authority Guide dated 8 November 2024.

This amendment gives the CMA discretion to extend the time period for GEMA to make representations or observations (previously 15 working days only) if such an extension is consistent with furthering the overriding objective.

Firstly, the maximum length of the extension period does not appear to be defined in Paragraph 4(1A)(b) of the Schedule, which reads “[the relevant period means]... *such longer period following that day as an authorised member of the CMA may allow.*” We invite the CMA to clarify the maximum period that an authorised member of the CMA may allow for an extension and submit such clarity is very important, to lessen ambiguity in the process, and ensure fairness and efficiency in the disposal of the appeal.

Secondly, the overriding objective is broad and wide-ranging in application, and it follows that making an extension request may also be broad and wide-ranging, when clearly a narrower application is intended by the CMA. To that end, we invite the CMA to include an exhaustive list within its guidance of circumstances that must apply in order for GEMA to succeed in making an extension request. In the alternative, we invite the CMA to outline the circumstances and/or factors it will consider for GEMA to succeed in passing the threshold extension. This will allow parity of dealing between parties and

ensure an appellant is not unduly disadvantaged, in term of having less time to comply with deadlines, compared to GEMA, which satisfies the fairness principle as required by the overriding objective.

3. Is there anything else which you consider should be included in the Rules and/or Guide to reflect these changes?

We reiterate the point made above, and in our letter dated 3 September 2024, and respectfully request that the Guide is amended to reflect consequential changes from the Act to the regulatory framework for industry codes and code governance reforms. The Guide should clarify in Section 2 that the CMA shall have jurisdiction to hear appeals to all successor codes which result from consolidation of those designated in the Order.

We would be happy to discuss any of the above with you if that would be helpful.

Yours faithfully

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