Modification proposal:	**Retail Energy Code (REC) R0046A: Governance of Data under the REC (Alternative)**		
Decision:	The Authority[1] has decided to approve[2] this modification[3]		
Target audience:	REC Board, REC Parties, REC Service Providers, REC Service Users and other interested parties		
Date of publication:	01 August 2022	Implementation date:	03 August 2022

Background

The current data protection and personal data governance provisions in the REC have the potential for ambiguity. Changes have been identified with a view to providing more clarity for REC Parties, REC Service Providers and REC Service Users who are controllers or processors in respect of personal data processed in connection with the REC, and to enable the Retail Energy Code Company (RECCo) to maintain a comprehensive approach to the governance of personal data processed in connection with the REC.

The modification proposal

REC Change Proposal (CP) R0046A was raised by RECCo (the Proposer) on 26 May 2022 and seeks to introduce changes to the REC to clarify and update the requirements in the REC which govern the use of personal data processed in connection with the REC. The effect of the modification proposal is to implement changes, specifically to clauses 19 and 20, to ensure that REC Parties, REC Service Providers and REC Service Users are clearer on their obligations in respect of personal data processed in connection with the REC, to improve the ability of RECCo to maintain a comprehensive approach to governance of personal data under the REC, and aiming to better reflect developments under the UK General Data Protection Regulation

[1] References to the "Authority", "Ofgem", "we" 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. This decision is made by or on behalf of GEMA.
[2] This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989 and section 38A of the Gas Act 1986.
[3] 'Change' and 'modification' are used interchangeably in this document.

(UK GDPR) and in respect of Information Commissioner's Office (ICO) guidance. In the course of discussions regarding this modification proposal, Ofgem advised RECCo and the Data Communications Company (DCC) that neither Ofgem nor the Authority is the regulator responsible for upholding information rights in the UK, which is the ICO; all REC Parties, REC Service Providers and REC Service Users ultimately remain responsible for ensuring that they are compliant with UK GDPR and any other relevant data protection rules, irrespective of whether they are compliant with REC provisions on personal data.

R0046A was raised by the Proposer as an alternative to CP R0046. As well as the proposed changes to clauses 19 and 20, R0046 had also proposed changes to clause 18 around restrictions on the use of information by the Central Registration Service (CRS) Provider. R0046 was subsequently withdrawn on 19 July 2022, allowing R0046A to progress. R0046A does not propose any changes to clause 18.

REC Change Panel[4] recommendation

At the REC Change Panel meeting on 26 July 2022, the REC Change Panel unanimously considered that R0046A would better facilitate three REC Objectives, and the REC Change Panel therefore recommended its approval.

Our decision

We have considered the issues raised by the change proposal and the Final Change Report dated 26 July 2022. We have concluded that:

- implementation of the modification proposal will better facilitate the three REC Objectives (a), (b) and (c); and
- approving the modification is consistent with our principal objective and statutory duties.[5]

[4] The REC Change Panel is established and constituted pursuant to and in accordance with Standard Condition 11B.8(a) of the Electricity Supply Licence and Standard Condition 11.8(a) of the Gas Supply Licence.
[5] The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989 and the Gas Act 1986.

Reasons for our decision

We consider this modification proposal will better facilitate REC Objectives (a), (b) and (c).

(a) to ensure the REC operates and evolves in a manner that facilitates the achievement of its mission statement

The implementation of this modification proposal will ensure that REC Parties, REC Service Providers and REC Service Users, in their roles as controllers or processors of personal data processed in connection with the REC, are clearer on how they could meet their obligations in terms of data protection, which in turn will support the effective functioning of the retail energy market.

(b) to ensure customers interests and data is protected in the operation of the REC

As noted above, the Authority is not the regulator responsible for upholding information rights in the UK, which is the ICO, and all parties remain responsible for ensuring that they are compliant with UK GDPR and other data protection rules irrespective of whether they are compliant with the REC. However, we consider that implementing R0046A will help REC parties, REC Service Providers and REC Service Users to be clearer on how they could meet their obligations (including expectations set out in Ofgem's Data Best Practice Guidance[6]) when processing personal data in connection with the REC. This will help to protect customer personal data used in the operation of the REC.

(c) to drive continuous improvements and efficiencies in the operation of the REC and the central systems and communication infrastructure it governs

We agree with the Code Manager's assessment, as set out in the Final Change Report, that the implementation of this change proposal will enable RECCo to maintain a comprehensive approach to the governance of personal data under the REC. We agree with the Code Manager's assessment that the benefits of this modification are unquantifiable, but would bring about intangible benefits including:

[6] Ofgem Data Best Practice Guidance: https://www.ofgem.gov.uk/sites/default/files/2021-11/Data_Best_Practice_Guidance_v1.pdf

- Clarification on relevant obligations and expectations in the context of REC Services
- Clear reporting obligations following a Personal Data Breach, to ensure that RECCo Board is made aware
- Providing clarity on how parties could meet their obligations in terms of data protection.

Decision notice

In accordance with Standard Condition 11B of the Electricity Supply Licence and Standard Condition 11 of the Gas Supply Licence, the Authority hereby approves REC Change Proposal R0046A *Governance of Data under the REC (Alternative)*



Nicola Garland
Head of Switching Programme
Signed on behalf of the Authority and authorised for that purpose