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Paper Reference:	SECP_76_1701_17
Action:	For Decision

MP084 Modification Report

1. Purpose

[MP084 'Other User Panel Seating Amendment'](#) has undergone the Refinement Process. We have now completed the assessment of the areas requested by the Panel and prepared the Modification Report. We are recommending that this modification be progressed to the Report Phase and that the Panel approves the Modification Report, the implementation approach, and that MP084 is an Authority Determined Modification.

This paper provides a high-level summary of the key points. Full details can be found in the draft Modification Report in Appendix A.

2. Summary of the proposal

What is the issue?

Currently, the SEC Panel has two seats to be occupied by Other SEC Parties. However, because Other SEC Parties aren't always Other Users, this may lead to Other Users being underrepresented. It has been suggested that an Other User seat should be added to the Panel to ensure the Other Users are proportionately and fairly represented. If nothing is done, then it will result in potentially allowing Other Users to be underrepresented in Panel meetings.

What is the Proposed Solution?

The Proposed Solution is to split the two Other SEC Party seats so there will be one Other SEC Party seat for those who are not Other Users and one Other User seat on Panel.

Are there any Alternative Solutions?

One Alternative Solution has been put forward, which will add a new seat to the Panel for Other Users.

3. Proposed progression

We believe that this modification is now ready to progress to the Report Phase.

Determination approach

This Modification Proposal is to proceed under Authority Determination. This is due to material impacts on the arrangements set out in SEC Section C 'Governance', as detailed in Section D2.6(d).

Implementation approach

We recommend an implementation approach of:

- 25 June 2020 (June 2020 SEC Release) if a decision to approve is received by 11 June 2020; or
- 5 November (November 2020 SEC Release) if a decision to approve is received after 11 June 2020 but by 22 October 2020.

4. Recommendations

The Panel is requested to:

- **AGREE** that MP084 should be progressed to the Report Phase;
- **APPROVE** the Modification Report;
- **APPROVE** the implementation approach; and
- **AGREE** that MP084 should be progressed as an Authority Determined Modification.

Harry Jones

SECAS Team

10 January 2020

Attachments:

- **Appendix A:** MP084 Modification Report
 - **Annex A:** MP084 legal text – Proposed Solution
 - **Annex B:** MP084 legal text – Alternative Solution
 - **Annex C:** MP084 Refinement Consultation responses

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MP084 'Other User Panel Seating Amendment'

Modification Report Version 0.2

About this document

This document is the Modification Report for [MP084 'Other User Panel Seating Amendment'](#). It provides detailed information on the background, issue, solutions, costs, impacts and implementation approach. It also summarises the discussions that have been held and the conclusions reached with respect to this Modification Proposal.

Contents

1. Summary.....	3
2. Background.....	4
3. Solution	5
4. Impacts	6
5. Costs	7
6. Implementation approach	8
7. Discussions and development	9
8. Conclusions	11
Appendix 1: Glossary	12

This document also has three annexes:

- **Annex A** contains the redlined changes to the Smart Energy Code (SEC) required to deliver the Proposed Solution.
- **Annex B** contains the redlined changes to the SEC required to deliver the Alternative Solution.
- **Annex C** contains the full Refinement Consultation responses.

1. Summary

Currently, the SEC Panel has two seats to be occupied by Other SEC Parties. However, because Other SEC Parties aren't always Other Users, this may lead to Other Users being underrepresented. It has been suggested that an Other User seat should be added to the Panel to ensure the Other Users are proportionately and fairly represented. If nothing is done, then it will result in potentially allowing Other Users to be underrepresented in Panel meetings.

The Proposed Solution is to split the two Other SEC Party seats so there will be one Other SEC Party seat for those who are not Other Users and one Other User seat on the Panel. The Alternative Solution is to add a new seat specifically for Other Users.

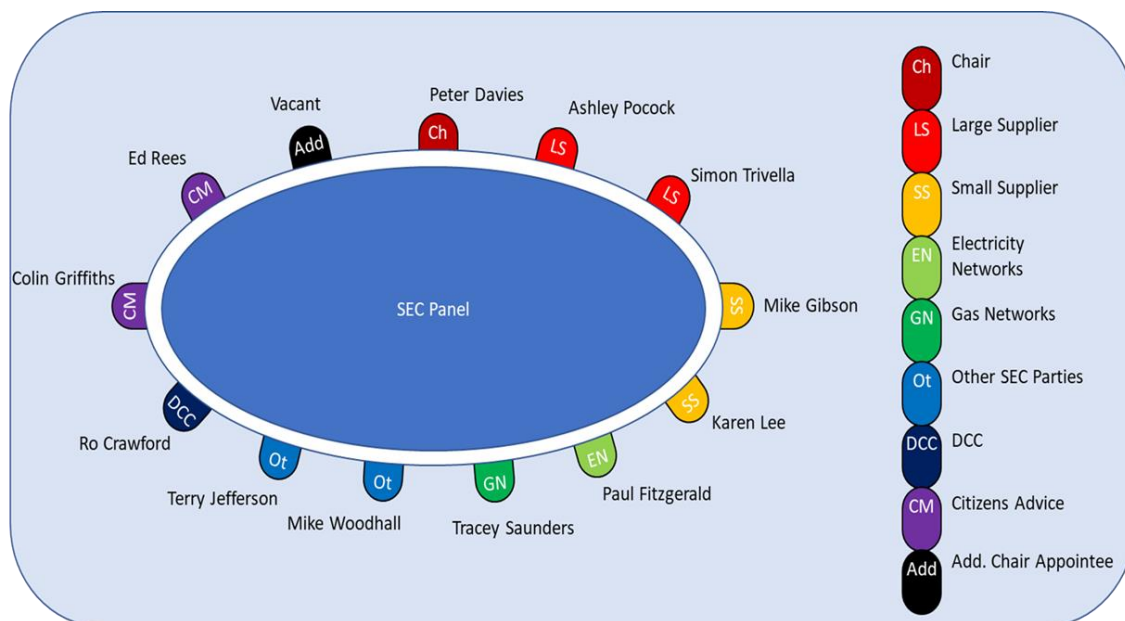
This modification will impact Other SEC Parties and Other Users. Costs will be limited to Smart Energy Code Administrator and Secretariat (SECAS) time and effort and implementation is recommended for the June 2020 SEC Release.

2. Background

How is Panel currently set up?

The Panel is currently comprised of a mix of elected and appointed representatives. The eight industry-elected seats on the Panel are allocated as follows in accordance with SEC Section C3.1:

- Two persons elected by Large Suppliers;
- Two persons elected by Small Suppliers;
- One person elected by the Electricity Network Parties;
- One person elected by the Gas Network Parties; and
- Two persons elected by Other SEC Parties.



There is a need to distinguish between 'Other Users' and 'Other SEC Parties' as the two have different roles in the SEC. Other Users are described as Users not currently acting in any of the other User Roles, even if they are a Supplier or Network Operator, and form a sub-set of the 'Other SEC Party' category. By contrast, an Other SEC Party is defined as a Party that isn't a Supplier, Network Operator or the Data Communications Company (DCC).

What is the issue?

Currently, the SEC Panel has two seats to be occupied by Other SEC Parties. However, because Other SEC Parties aren't always Other Users this may lead to Other Users being underrepresented.

A SEC Panel questionnaire was issued in April 2019 and the outcomes discussed at SEC Panel in June 2019 to gauge opinion. It was suggested that an Other User seat should be added to the Panel to ensure the Other Users are proportionately and fairly represented.

3. Solution

Proposed Solution

Under the Proposed Solution, the two Other SEC Party seats will be split so there will be one Other SEC Party seat and one Other User seat on the Panel. The legal text for the solution has been designed so that the Other SEC Party seat elected isn't filled by an Other User to prevent both seats being held by Other Users. This is to ensure there remains representation for Other SEC Parties which aren't Other Users.

Alternative Solution

Under the Alternative Solution, the two Other SEC Party seats will be kept for non-Other Users, and one Other SEC Party seat created specifically for Other Users. This was suggested to ensure there remains no loss of representation for Other SEC Parties which aren't Other Users, whilst ensuring there was additional representation for Other Users.

Legal text

The changes to the SEC required to deliver the Proposed Solution can be found in Annex A.

The changes to the SEC required to deliver the Alternative Solution can be found in Annex B.

4. Impacts

This section summarises the impacts that would arise from the implementation of this modification.

SEC Parties

SEC Party Categories impacted			
	Large Suppliers		Small Suppliers
	Electricity Network Operators		Gas Network Operators
✓	Other SEC Parties		DCC

Other SEC Parties will be impacted. If the Proposed Solution is approved the Other SEC Parties who aren't Other Users will only be able to stand for one Other SEC Party seat, not both. Other Users will be allocated a Panel seat under both solutions

DCC System

There are no DCC System impacts.

SEC and subsidiary documents

The following parts of the SEC will be impacted:

- Section C 'Governance'

Other industry Codes

This modification will not have an impact on any other Industry Codes.

Greenhouse gas emissions

This modification will not have an impact on Greenhouse Gas Emissions.

5. Costs

DCC costs

There will be no DCC costs to implement this modification.

SECAS costs

The estimated SECAS implementation costs to implement this modification is two days of effort, amounting to approximately £1,200. The activities needed to be undertaken for this are:

- Updating the SEC and releasing the new version to the industry.

SEC Party costs

There will be no costs to SEC Parties to implement this modification.

6. Implementation approach

Recommended implementation approach

SECAS is recommending an implementation date of:

- **25 June 2020** (June 2020 SEC Release) if a decision to approve is received on or before 11 June 2020; or
- **5 November 2020** (November 2020 SEC Release) if a decision to approve is received after 11 June 2020 but on or before 22 October 2020.

The June 2020 SEC Release is the earliest SEC Release that this modification can be included in.

7. Discussions and development

How will splitting the Seats affect the Parties?

The Change Sub-Committee (CSC) was supportive of the issue. One member stated that they wanted to understand what potential solutions were available. Two solutions were discussed:

- The first was to split the two existing Other SEC Parties seats into one Other SEC Party seat and one Other User Seat.
- The other was to introduce a new Other User seat and to keep the two existing Other SEC Parties seats.

One other CSC member enquired into who could use the Other User seats, suggesting a Party who sits in another category could try using the seat to increase the weight of their votes in a Panel vote. However, the Working Group considered that SEC Section C2.2(c) clearly states that Panel shall ensure the 'Code is given effect in a fair manner without undue discrimination between the Parties or any classes of Party'.

One member of the Working Group who was an Other SEC Party was concerned that keeping the same number of seats and changing one of the Other SEC Party seats would mean that an Other SEC Party who wasn't an Other User could be de-seated. They were therefore in favour of adding an additional seat. The rest of the Working Group stated that they preferred to keep the number of seats constant and change one Other SEC Party Seat to an Other User seat.

One member asked about the original questionnaire sent to Panel Members and if there was any information available regarding why it was felt Other Users were underrepresented. The respondent felt that in the original set up of the SEC it was not envisaged that there would be as many Other Users as there are currently and thought they should be given the opportunity to be represented.

The Proposer elected to take forward the option to split the existing two seats as their Proposed Solution. The Working Group recognised the merits of taking the other option forward for consideration, and so agreed to raise it as an Alternative Solution. After the Refinement Consultation was issued, the responses received both favoured the Proposed Solution over the Alternative Solution. The Proposer has also expressed their preference for the Proposed Solution over the Alternative Solution.

Who will the Other User represent?

One Working Group member asked if there was an association of Other Users. They queried if the Other User representative on the Panel would be able to represent the views of Other Users or if the Other User group were so disparate that the representative would only be representing themselves. The view of the Working Group was that although there are no such associations that the Working Group was aware of, they believed this would lead to better representation of Other SEC Parties by explicitly splitting the Panel seats so that Other Users could represent their interests. This way, the Other Users and non-Other Users could be better defined within the wider category of Other SEC Parties.

Will this have other implications for the Sub-Committees?

A Working Group member pointed out that this under-representation is replicated through all the Sub-Committees not just at the Panel, and that this might prompt further discussions in the Sub-Committees around appropriate representation as happened with [SECMP0021 'Increase the representation of the "Other SEC Party" category on the SSC and TABASC'](#). However, the Working Group felt this was for the individual Sub-Committees to determine for themselves. SECMP0021 proposed to add two 'Other SEC Party' voting members to the SSC membership and increase the 'Other SEC Party' voting members on the TABASC from two to four; however this was rejected by the Change Board as it felt it was too early in the evolution of the SEC for those changes.

8. Conclusions

Benefits and drawbacks

The Proposer and the Working Group have identified the following benefits and drawbacks in implementing this modification:

Benefits

- Other Users will be better represented on the SEC Panel and will be able to better input into the Panel governance of the SEC.

Drawbacks

- Under the Proposed Solution, Other SEC Parties who are not Other Users will lose a seat at the Panel. This would mean one member who currently sits on Panel would have to give up their seat and that there would be less representation for Other SEC Parties who are not Other Users.

Proposer's rationale against the General SEC Objectives

Objective (g)¹

The Proposer believes that MP084 will better facilitate SEC Objective (g) as all Parties will be adequately represented on the Panel. It is essential that all Parties to the SEC have input on the arrangements to ensure the SEC objectives are met.

Working Group members' views

The Working Group was supportive and believed that this Modification Proposal would address the concerns raised from the original questionnaire.

Refinement Consultation respondents' views

There were two respondents to the Refinement Consultation, one Large Supplier and one Network Party, both who were in favour of the Modification Proposal. Both respondents expressed a preference for the Proposed Solution over the Alternative Solution. Their reasoning was that the Alternative Solution would in their view provide unfair additional weighting to Other SEC Parties over Supplier and Network Parties for Panel decisions.

Both respondents believe the Proposed Solution better facilitates SEC Objective (g) by ensuring appropriate representation on Panel. One respondent felt the Alternative Solution could be beneficial against this objective, while the other felt it could be detrimental due to providing disproportionate representation on the Panel.

The full Refinement Consultation responses can be found in Annex C.

¹ Facilitate the efficient and transparent administration and implementation of the SEC

Appendix 1: Glossary

This table lists all the acronyms used in this document and the full term they are an abbreviation for.

Glossary	
Acronym	Full term
CSC	Change Sub-Committee
DCC	Data Communications Company
SEC	Smart Energy Code
SECAS	Smart Energy Code Administrator and Secretariat



Smart Energy Code

If you have any questions on this modification, please contact:

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MP084 ‘Other User Panel Seating Amendment’

Annex A

Legal text (Proposed Solution) – version 1.0

About this document

This document contains the redlined changes to the SEC that would be required to deliver this Modification Proposal.

These changes have been drafted against SEC Version 6.22.

This document contains the changes required to deliver the Proposed Solution.

Section C ‘Governance’

Amend Section C3.1 as follows:

C3 PANEL MEMBERS

Panel Composition

C3.1 The Panel shall be composed of the following categories of persons (each a **Panel Member**, and the Panel Members referred to in Sections C3.1(a) to (ef) being the **Elected Members**):

- (a) two persons elected by the Large Supplier Parties;
- (b) two persons elected by the Small Supplier Parties;
- (c) one person elected by the Electricity Network Parties;
- (d) one person elected by the Gas Network Parties;
- (e) ~~two-one~~ persons elected by the Other SEC Parties who are not Other Users;
- (f) one person elected by the Other Users;
- (g) one person nominated by the DCC in accordance with Section C3.3 (the **DCC Member**);
- (h) two persons nominated in accordance with Section C3.4 (the **Consumer Members**);
- (i) one person appointed in accordance with Section C3.5 (the **Panel Chair**); and
- (j) any additional person appointed by the Panel Chair in accordance with Section C3.6.

C3.2 Each Panel Member must be an individual (and cannot be a body corporate, association or partnership). No one person can hold more than one office as a Panel Member.

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MP084 ‘Other User Panel Seating Amendment’

Annex B

Legal text (Alternative Solution) – version 1.0

About this document

This document contains the redlined changes to the SEC that would be required to deliver this Modification Proposal.

These changes have been drafted against SEC Version 6.21.

This document contains the changes required to deliver the Alternative Solution.

Section C ‘Governance’

Amend Section 3 as follows:

C3 PANEL MEMBERS

Panel Composition

C3.1 The Panel shall be composed of the following categories of persons (each a **Panel Member**, and the Panel Members referred to in Sections C3.1(a) to ~~(fe)~~ being the **Elected Members**):

- (a) two persons elected by the Large Supplier Parties;
- (b) two persons elected by the Small Supplier Parties;
- (c) one person elected by the Electricity Network Parties;
- (d) one person elected by the Gas Network Parties;
- (e) two persons elected by the Other SEC Parties who are not Other Users;
- (f) one person elected by the Other Users;
- (g) one person nominated by the DCC in accordance with Section C3.3 (the **DCC Member**);
- (h) two persons nominated in accordance with Section C3.4 (the **Consumer Members**);
- (i) one person appointed in accordance with Section C3.5 (the **Panel Chair**); and
- (j) any additional person appointed by the Panel Chair in accordance with Section C3.6.

C3.2 Each Panel Member must be an individual (and cannot be a body corporate, association or partnership). No one person can hold more than one office as a Panel Member.

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MP084 ‘Other User Panel Seating Amendment’ Annex C Refinement Consultation responses

About this document

This document contains the full non-confidential collated responses received to the MP084 Refinement Consultation.

Question 1: Do you agree with the solutions put forward?

Question 1			
Respondent	Category	Response	Rationale
EDF Energy	Large Supplier	No	<p>We broadly agree with the Proposed Solution but believe that additional clarity is required in the legal text given the way that the terms Other User and Other SEC Parties are defined in the SEC.</p> <p>We do not agree with the Alternative Solution.</p> <p>There is no clear differentiation made in the SEC between Other Users and Other SEC Parties. According to the definitions within the SEC Other Users are a subset of Other SEC Parties, they are not a distinct or separate category of SEC Party:</p> <p>Other SEC Party means a Party that is not the DCC, is not a Network Party, and is not a Supplier Party.</p> <p>This definition means that all Other Users are also Other SEC Parties.</p> <p>The Alternative Solution, as proposed, could actually lead to three Other Users being elected to the Panel, as both Other SEC Party seats could also be taken up by Other Users.</p> <p>This would clearly not be proportionate, or result in fair and balanced representation of constituencies on the Panel. In order for the Alternative Solution to work the definitions of Other SEC Party and Other User would also need to be amended to make them distinct constituencies.</p> <p>We agree that one of the current Other User seats could be designated specifically to Other Users; we do not agree that an additional Panel seat should be created. Given that the main remit of the SEC is to govern the relationship between the DCC and its Users there is no clear rationale for Other SEC Parties who are not also DCC Users to have two seats on the Panel.</p>

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Question 1			
Respondent	Category	Response	Rationale
SSEN	Electricity Network Party	Yes	SSEN agree that either solution will reduce the risk of Other Users being underrepresented.

Question 2: Will there be any impact on your organisation to implement MP084?

Question 2			
Respondent	Category	Response	Rationale
EDF Energy	Large Supplier	No	MP084 will have no direct impact on EDF Energy. We would be concerned that the addition of Panel seats, as proposed in the Alternative Solution, might change the make-up of the Panel in a way that is not reflective of the constituencies that make up SEC Parties and that use the DCC systems.
SSEN	Electricity Network Party	No	

Question 3: Will your organisation incur any costs in implementing MP084?

Question 3			
Respondent	Category	Response	Rationale
EDF Energy	Large Supplier	No	We will not incur any costs as a result of the implementation of MP084.
SSEN	Electricity Network Party	No	

Question 4: Do you believe that MP084 would better facilitate the General SEC Objectives?

Question 4			
Respondent	Category	Response	Rationale
EDF Energy	Large Supplier	Yes	<p>The Proposed Solution would better facilitate Objective (g) as it would ensure that Other Users are appropriately represented on the SEC Panel.</p> <p>We do not agree that the Alternative Solution would better facilitate any of the General SEC Objectives; in fact it could negatively impact Objective (g) as it would result in the constituency representation on the Panel no longer being or proportionate.</p>
SSEN	Electricity Network Party	Yes	SSEN believes that MP084 will better facilitate SEC Objective (g)

Question 5: Noting the costs and benefits of this modification, do you believe MP084 should be approved?

Question 5			
Respondent	Category	Response	Rationale
EDF Energy	Large Supplier	Yes	We agree that the Proposed Solution should be approved, but only if changes are made to the legal text in line with our response to Question 9. We do not agree that the Alternative Solution should be approved.
SSEN	Electricity Network Party	Yes	SSEN agree with the costs as these are administration costs only.

Question 6: If MP084 is approved, which solution do you believe should be implemented?

Question 6			
Respondent	Category	Response	Rationale
EDF Energy	Large Supplier	Proposed Solution	We agree that the Proposed Solution should be approved, but only if changes are made to the legal text in line with our response to Question 9.
SSEN	Electricity Network Party	Proposed Solution	SSEN agree with the proposed solution of keeping the number of Seats constant and change one Other Sec Party Seat to an Other User seat.

Question 7: How long from the point of approval would your organisation need to implement MP084?

Question 7			
Respondent	Category	Response	Rationale
EDF Energy	Large Supplier	N/A	No lead time would be required to implement MP084
SSEN	Electricity Network Party	0	SSEN will not require any time to implement

Question 8: Do you agree with the proposed implementation approach?

Question 8			
Respondent	Category	Response	Rationale
EDF Energy	Large Supplier	Yes	We agree that, if approved, this change should be made in the next available SEC Release.
SSEN	Electricity Network Party	Yes	SSEN agree with the dates suggested within the modification report.

Question 9: Do you agree that the legal text will deliver MP084?

Question 9			
Respondent	Category	Response	Rationale
EDF Energy	Large Supplier	No	<p>As noted in our response to question 1 there is no clear differentiation in the SEC between Other SEC Parties and Other Users; Other Users are a subset of Other SEC Parties.</p> <p>For the Proposed Solution the amended legal text should be updated to something along the lines of the following:</p> <p>two persons elected by the Other SEC Parties, at least one of whom must be an Other User.</p> <p>For the Alternative Solution the legal text should be updated to something along the lines of the following:</p> <p>(e) two persons elected by the Other SEC Parties, who are not also Other Users; (f) one person elected by the Other Users;</p>
SSEN	Electricity Network Party	Yes	SSEN agree that the legal text changes within section C3 will assist in delivering SECMP084.

Question 10: Please provide any further comments you may have

Question 10		
Respondent	Category	Comments
EDF Energy	Large Supplier	N/A
SSEN	Electricity Network Party	N/A