

Modification proposal:	Smart Energy Code (SEC) Modification Proposal (MP) 186: Section D Review (2020): further enhancements		
Decision:	The Authority ¹ has determined to reject ² this modification ³		
Target audience:	Data and Communications Company (DCC), SEC Panel, Parties to the SEC and other interested parties		
Date of publication:	14 December 2022	Implementation date:	N/A

Background

In October 2020, the SEC Panel agreed to the Smart Energy Code Administrator and Secretariat (SECAS) carrying out an end-to-end review of SEC Section D (Modification Process) to identify any improvements that could be made. Following industry consultation and engagement, SECAS presented its final recommendations to the SEC Panel in April 2021. While a number of the recommendations from this review could be implemented within the current wording of SEC Section D, a few of its recommendations require code changes to deliver.

The modification proposal

SECMP186 was raised by the Data Communications Company (DCC) (the 'Proposer') on 22 June 2022 and seeks to deliver the set of recommendations made by SECAS that require changes to SEC Section D, including updating the drafting of SEC Section D with a view to it being clearer, and structured in a more effective manner. The modification, and its

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 by section 38A of the Gas Act 1986.

³ 'Change' and 'modification' are used interchangeably in this document.

accompanying draft legal text,⁴ also includes a number of more specific changes, including but not limited to:

- Amending the rules around who can raise an Alternative Solution, so that they align with the list of persons able to raise a Draft Proposal
- Introducing the power for the Panel to be able to refuse an Alternative Solution if it considers that the Proposer of the Alternative Solution is causing undue delay or frustration to the progression of the associated Modification Proposal
- Introducing the ability for the Proposer to refer a dispute to the Authority where the SEC Change Sub Committee (CSC) have determined that a draft proposal should not be progressed as a modification proposal
- Reducing the minimum requirements of what needs to be included in a Draft Proposal submission
- Moving responsibility for considering a DCC request to extend the deadline for an active DCC Assessment from the relevant Working Group to SECAS
- Extending the service level agreement (SLA) for the DCC to complete a Preliminary Assessment from 15 to 25 working days
- Moving the responsibility for approving the costs for an Impact Assessment carried out by the DCC from the Change Board to the Panel, and
- Extending the Change Board membership term from one to two years.

The Proposer considers that SECMP186 would better facilitate the seventh General SEC Objective⁵, arguing that the proposed changes will update the modification process to ensure that it aligns with current working practices and will increase transparency. They consider that this will enhance the efficiency of the SEC Modification Process.

SEC Change Board⁶ recommendation

At the SEC Change Board meeting on 27 July 2022, the Change Board unanimously considered that SECMP186 would better facilitate the SEC Objectives⁷, specifically the seventh General SEC Objective, and therefore recommended its approval.

⁴ SECMP186: <https://smartenergycodecompany.co.uk/modifications/section-d-review-2020-further-enhancements/>

⁵ The seventh General SEC Objective is to facilitate the efficient and transparent administration and implementation of this Code.

⁶ The SEC Panel and Change Board are established and constituted pursuant to and in accordance with DCC Licence 22.25(a).

⁷ The Objectives in accordance with DCC Licence 22.10-22.17

Our decision

We have considered the issues raised by SECMP186 and the Final Modification Report (FMR) received by us on 28 July 2022. We have considered and taken into account the votes of the SEC Change Board on the proposal, as well as the views of the Working Group and consultation respondents, all of which are set out in the Change Report. We have concluded that implementation of SECMP186 will not better facilitate the SEC Objectives.

Reasons for our decision

We consider that this modification will not better facilitate the seventh General SEC Objective and has a neutral impact on the other General SEC Objectives.

The seventh General SEC Objective is to facilitate the efficient and transparent administration and implementation of the SEC.

Paragraph D9.1 of the proposed draft legal text introduces the ability for the Proposer to refer a dispute to the Authority where the CSC have determined that a Draft Proposal should not be progressed as a Modification Proposal. We are concerned that this would allow a Party to escalate certain issues to the Authority, with no requirement to first refer the matter to the SEC Panel, and that bypassing the Panel in such scenarios may result in missed opportunities to resolve potential issues under SEC governance. Furthermore, in the absence of a full assessment of the change, it is unclear on what basis or evidence we would reach a decision on such a dispute. For these reasons, we are concerned that these proposed changes could lead to inefficiencies and potentially reduce transparency in the administration of the SEC.

SECMP186 also proposes to amend the rules around who can raise an Alternative Solution, so that they align with the list of persons able to raise a Draft Proposal. Currently, only the Working Group can raise Alternative Solutions, which are then assessed and progressed in parallel with the Proposed Solution. Alongside this change, SECMP186 also proposes to introduce an accompanying power for the Panel to refuse an Alternative Solution if it believes that the Proposer of that Alternative Solution is causing undue delay or frustration of the overall progression of the modification. We are concerned that the proposed scope of this power is ambiguous, and that the proposed change as drafted could allow the Panel to

withdraw an Alternative Solution that was already under development. We consider that this proposed change could therefore be seen to be at odds with the Code Administrator's Code of Practice (CACoP) Principle 6⁸, and risks reducing transparency in the administration of the SEC Modification Process.

Draft Legal text and other matters

We are disappointed at the quality of the draft legal text that has been submitted to us alongside the FMR for SECMP186. In particular, we are concerned that the legal text appears to contain a number of proposed changes to the SEC Modification Process that do not appear to have been clearly highlighted to SEC Parties in the FMR, nor was any assessment of the impacts of these changes provided. For example, the legal text seeks to reduce the minimum requirements for a Draft Proposal to be accepted into the change process. We consider there is a risk that this change could lead to inefficiencies in the administration of the SEC Modification Process, for example if the change results in a significant increase in the number of Draft Proposals entering the change process. We do not think that the FMR provides a clear assessment of the impacts of this change, including any possible risks and associated mitigations. In addition, Paragraph D9.1 of the draft legal text seeks to introduce the ability for the Proposer to refer a dispute to the Authority where the CSC have determined that a Draft Proposal should not be progressed as a Modification Proposal. We do not think that this new dispute referral route, nor any justification for its inclusion, have been clearly set out in the FMR.

Overall, we note that SECMP186 seeks to introduce a significant number of unrelated changes. We consider that these could have been delivered by targeted code modifications, some of which may have been suitable for Self-Governance. We would expect any FMR to clearly set out all of the changes proposed by a code modification, and clearly explain the anticipated benefits and impacts of those changes.

Decision notice

⁸ CACoP Principle 6: A proposer of a modification will retain ownership of the detail of their solution: [The CACoP - CACoP](#)

In accordance with standard licence condition 23 of the Smart Meter Communication licence, the Authority hereby determines that modification proposal SECMP186: '*Section D Review (2020): further enhancements*' not be made.

David O'Neill

Head of Industry Codes – Enforcement and Emerging Issues

Signed on behalf of the Authority and authorised for that purpose