



Modification proposal:	Smart Energy Code (SEC) Modification Proposal 0041: Amending the Change Board decision making rules for Modification Proposals		
Decision:	The Secretary of State ¹ has decided to reject the Modification Proposal ²		
Target audience:	Data Communications Company (DCC), SEC Parties, the SEC Panel, Ofgem and other interested parties		
Date of publication:	26 October 2018	Implementation date:	n/a

Background

1. The Change Board is a Sub-Committee of the Panel that makes decisions in respect of the Modification Report of each SEC Modification Proposal. Each User that falls into the Small Suppliers, Other Parties and Network Parties categories to the SEC do not have a vote at the Change Board, instead their votes are determined by Change Board members who are elected by the Users in the specific categories.
2. This modification proposes to amend the SEC modifications process to allow each SEC party the opportunity to vote on SEC modifications by adding an additional step to the voting system. This step would include SECAS notifying all SEC parties (other than DCC, who are not afforded a vote) that there is a modification which requires a vote. They will then provide a form that must be completed and returned to SECAS within a 15-day period in order for a vote to be counted in the voting system.
3. SECAS would collate these votes, with the vote being “valid” if there are a sufficient number of votes in each voting category, although the Citizen’s Advice category will not be represented in this vote. If there are insufficient votes for the vote to be “valid”, the decision would be referred to the Change Board to follow the voting procure that is currently set out in the SEC.

The Modification Proposal

4. The Modification Proposal was raised by Electricity North West Limited on 2 August 2017.
5. The proposer is of the view that within the SEC governance framework, there is a disconnect between the views of SEC Parties on Modification Proposals (and the potential new obligations and costs imposed) and the votes of the elected Change Board members, as the current arrangements only allow SEC Parties to express a view (only

¹ References to the “Secretary of State”, “BEIS”, “we” and “our” are used interchangeably in this document. This decision is made on behalf of the Secretary of State.

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.



the Change Board Members vote) on whether a Modification Proposal should be approved or rejected. In addition, SEC Change Board members are not bound by their SEC Party constituents' responses and can therefore vote in a different way to the views expressed in the Modification Report Consultation.

6. The proposer's opinion is that the actual votes of the Change Board Members do not necessarily represent the broad views of the categories they represent. The Proposer adds that the absence of voting rights for SEC Parties on SEC Modification Proposals is not consistent with other industry Codes, such as the Master Registration Agreement (MRA) and the Distribution Connection Use of System Agreement (DCUSA) where individual parties have voting rights on modifications to these agreements.

Change Board³ recommendation

7. On 19 September 2018, the Change Board voted to reject the modification proposal. The vote was unanimous except for one member of the Other User category who voted to accept the modification, but the outcome for the Other User category was still to reject the modification as the outcome of the vote was two votes to reject and one to accept.
8. The majority of the Change Board members were of the opinion that SECMP0041 would not better facilitate any of the SEC objectives but instead would have a negative impact on them.
9. SECAS submitted the Modification Proposal to BEIS for a decision in our temporary role as the Authority⁴ on 21 September 2018.

DCC Impact assessment

10. There was no DCC impact as the proposed solution of the modification will not impact DCC services and interfaces.

Our decision

11. We have considered the issues raised in the modification proposal that was raised on 2 August 2017 and the modification report dated 21 September 2018. We have

³ The Change Board is a sub-committee of the SEC Panel, established and constituted pursuant to and in accordance with Section D8 of the Smart Energy Code.

⁴ Section D8.3 of the SEC as varied by Section X2.3: <https://smartenergycodecompany.co.uk/the-smart-energy-code-2/>



considered and taken into account the responses to the industry consultations on the modification proposal and such other matters as we consider appropriate.

12. We have in accordance with Section D9.2, had regard to:
 - (a) the Secretary of State's objectives and statutory duties under the Electricity Act 1989 and the Gas Act 1986;
 - (b) whether or not the approval of the variation would better facilitate the achievement of the SEC Objectives than if the variation was rejected;
 - (c) the decision of the Change Board in respect of the Modification Proposal; and
 - (d) the modification report and consultation responses.

13. We have concluded that:
 - making the modification would not be consistent with the Secretary of State's principal objective and general duties under the Electricity and Gas Acts; and
 - the modification, if made, would not better facilitate the achievement of the SEC Objectives, in particular the seventh SEC Objective⁵ which is SEC Objective (g).

14. The Secretary of State has therefore determined that the Modification Proposal should be rejected, which is in line with the recommendation from the Change Board.

Reasons for our decision

15. Section 173 of the Energy Act 2004 (the Act) sets out the basis on which decisions of the Authority can be appealed to the Competition and Markets Authority (CMA). The Electricity and Gas Appeals (Designation and Exclusion) Order 2014 (the 2014 Order) is an Order that sets out an exclusion to the general right of appeal contained in Section 173 of the Act.

16. The 2014 Order provides for an exclusion relating to Change Board decisions. The proposed changes would circumvent the intention of the 2014 Order in that the exclusions envisaged by the 2014 Order relating to the SEC would no longer be applicable. This would result in the CMA appeal route becoming available in instances where the policy intention was clearly that it should be unavailable.

17. Further, industry does not appear to support this modification as is evidenced by the Change Board vote and the consultation responses. In terms of Section D9.2 of the SEC, the Change Board vote should be considered as a recommendation.

18. This modification has been identified by the Proposer as facilitating SEC objective (g) which is the following:

⁵ The SEC Objectives are set out in Section C1.1 of the SEC



to facilitate the efficient and transparent administration and implementation of the SEC

19. The majority of the Working Group (three out of five members) believe that the modification facilitates SEC Objective (g).
20. This view was based on the consideration that the modification would allow for a more inclusive, accessible and effective consultation giving all parties equal rights to those elected representatives that currently hold the right to vote on modifications.
21. We note the references made by the Proposer to voting procedures in certain other industry Codes. The rationale for establishing voting arrangements in the SEC as they stand today was provided in the Government response to the Stage 1 SEC consultation of 8 November 2012,⁶ in which the arrangements in other industry Codes were considered.
22. The majority of Change Board Members (one exception) believed that the modification would not better facilitate SEC objective (g). They were of the opinion that it added unnecessary time and complication to the process as the proposed modification added an additional consultation which would not necessarily eliminate the need for the Change Board vote.
23. Concerns were also raised over the administrative burdens that would be added to parties who wished to vote as reading the modification and completing the form could add a significant amount of time and effort for parties.
24. Our view is that the modification proposes to add an additional set of correspondence which has the form of a consultation. Parties would be required to vote during a period of 15 working days. This does not include the amount of time taken by SECAS to prepare the voting form or to collate the answers, which would probably result in a delay that would be added to the modification procedure of at least a month.
25. The consultation responses and Change Board referred to the modification not benefitting the SEC objectives. There is merit in the concerns raised about the length of time that this process would add to the modification process and that the additional consultation would create a further burden on parties.
26. There is little evidence provided in the Final Modification Report that there is a material issue with the current voting arrangements or that SEC parties are generally dissatisfied with the current arrangements. If a SEC Party has an issue with their party

⁶ <https://www.gov.uk/government/consultations/smart-energy-code>



category representative at the Change Board, then they have the option to vote for another representative at the next election.

27. There is accordingly limited evidence that there is an issue that needs to be addressed and there does not appear to be a benefit in approving this modification, but instead the additional administrative effort would probably have a negative effect on SEC Objective (g).
28. Taking into consideration the factors set out in Section D9.2 of the SEC, the modification is therefore rejected.

Decision Notice

In accordance with Condition 23.15 of the DCC Licence, and Section D of the SEC as varied by Section X2.3, the Secretary of State has decided that this modification should not be made.

Duncan Stone
Head of Delivery
Smart Metering Implementation Programme

(an official of the Department for Business, Energy & Industrial Strategy authorised to act on behalf of the Secretary of State)