

Modification proposal:	Smart Energy Code (SEC) SECMP079 – Provisions for withdrawing modifications		
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:	02 March 2020	Implementation date:	n/a

Background to the modification proposal

SEC Section D (Modification Process)⁴ details the process to be followed when a change to the SEC is proposed. Among other things, the modification process allows the SEC Panel to determine whether or not a modification should follow the Refinement Process as set out in the SEC.⁵ One of the functions of the Refinement Process is to decide if one or more DCC Assessments are needed to fully consider a modification.

DCC Assessments show, among other things, the impact and cost of implementing a Modification Proposal. They are needed for some modifications to help the Change Board or the Authority make a decision on whether or not it should be implemented. This can involve one or more DCC Assessments being carried out for a modification. The DCC can provide two different types of assessments; a DCC Preliminary Assessment⁶ or a DCC Impact Assessment.⁷ Without the information provided by the DCC, the Authority may be unable to make a decision on the modification as submitted to it and may use its send back powers to request further information.

The Smart Energy Code Administrator and Secretariat (SECAS) has received feedback from some SEC Parties that they are frustrated that only a Proposer can withdraw a modification. This is because they believe that time, resource and cost may be being spent unnecessarily on some modifications which they consider are detrimental against the SEC Objectives or are not going to progress for valid reasons. There are also modifications where the Proposer has become disengaged from the modification process but has not withdrawn their modification.

The modification proposal

SECMP079 was raised by British Gas (the Proposer) on 10 July 2019 and seeks to amend SEC Section D. This modification proposes to grant the SEC Panel the ability to “withdraw” a Modification Proposal, for instance when it is not progressing. The Final Modification Report (FMR) identifies a number of causes for modifications not progressing.

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.

⁴ <https://smartenergycodecompany.co.uk/the-smart-energy-code-2/>

⁵ As set out at Section D6 of SEC.

⁶ As defined in Section A of SEC means, in respect of analysis pursuant to Section D6.9 (Analysis by the DCC): (a) a preliminary assessment by the DCC of the determined area for analysis; and (b) the costs and expenses that the DCC will incur in undertaking a DCC Impact Assessment in respect of the determined area for analysis.

⁷ As defined in Section A of SEC means, in respect of analysis pursuant to Section D6.9 (Analysis by the DCC), a full and formal assessment by the DCC of the determined area for analysis.

SECMP079 outlines a process by which these modifications may be withdrawn, including appeal arrangements to the Authority. It would allow the Panel to consider if both current and future Modification Proposals should be withdrawn.

The Proposer considers that the Proposal better facilitates the seventh SEC Objective (g), and has a neutral effect on the other Objectives.

SEC Change Board⁸ recommendation

At the SEC Change Board meeting on 22 January 2020, the Change Board considered unanimously that SECMP079 would better facilitate SEC Objective (g) and the Change Board therefore recommended its approval.

Our decision

We have considered the issues raised by SECMP079 and the FMR received by us on 27 January 2020. We have considered and taken into account the votes of the SEC Change Board on the proposal which is attached to the Change Report. We have concluded that implementation of the Modification Proposal will not better facilitate the SEC Objectives.⁹

Reasons for our decision

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

We do not agree with the Change Board and consider that this modification would not better facilitate the seventh General SEC Objective. We agree with the assertion in the FMR that modifications submitted to the Change Board for decision or recommendation to us must include a fully developed solution and assessment, which may include a DCC Impact Assessment. We also recognise that withdrawing modifications may reduce the total number of DCC Impact Assessments thereby reducing the overall cost in administering the SEC.

However, we do not consider that SECMP079 provides a proportionate solution to the issues identified in the FMR. In reaching our decision, we have considered the potential impact of the proposed solution, and the examples given for why a modification may be withdrawn.

The proposed solution and rationale for withdrawal

While we understand that the intent of this proposal is primarily to withdraw modifications that are not progressing, the solution proposed would give broader powers for the Panel to withdraw modifications. This was raised in both the Working Group and in response to consultations, where respondents were concerned that there was a lack of clarity on the rationale the Panel would use to withdraw modifications. The proposal was amended in response to these comments. However, the amended legal text does not clarify how the Panel will identify the modifications that it will consider for withdrawal.

⁸ The SEC Panel and Change Board are established and constituted pursuant to and in accordance with DCC Licence 22.25(a).

⁹ The Objectives in accordance with DCC Licence 22.10-22.17

Should the Panel be granted this power and subsequently move to withdraw a Modification Proposal before it has been fully developed, the Proposer would retain the right to appeal the Panel's decision to the Authority. In the absence of a full assessment of the modification, including any required DCC Assessment, it is unclear on what basis or evidence we would reach a decision on whether the rationale provided by the Panel was sufficient to withdraw the modification. We therefore have concerns that, if implemented, this modification could potentially reduce transparency in the administration of the SEC.

Proposer Engagement

The FMR cites lack of Proposer engagement as a reason for modifications not progressing, and therefore as a rationale for this change. However, following recent changes to the SEC, we expect that draft modifications should be well developed and defined before they are raised as formal modifications. SECMP0049¹⁰ introduced a 'pre-modification process' which means that proposals entering the Modification Process will be reviewed prior to their submission to the Panel. This should also mean that Proposers are aware at an early stage of the commitment needed by them for a modification to progress, and give an early opportunity for industry to express views on these potential proposals.

Further, we expect Proposers to have due regard to this commitment assisted by SECAS in their role as a Critical Friend¹¹ (particularly to smaller industry parties). This should ensure that parties understand the minimum requirements for modifications to be progressed and encourage participation in the code modification process, while reminding them of the commitment needed to take forward a modification.

Modification Proposal Costs

The FMR also sets out the estimated cost of progressing a modification, including the cost associated with DCC Assessments. We are aware that the DCC is working to improve the delivery of DCC Assessments. If the DCC can deliver improvements on this front, we consider that these will reduce any potential barrier that the delivery of these assessments currently poses to the modification process.

We therefore consider that improvements in the delivery of DCC Assessments may better address some of the issues that SECMP079 has highlighted. Further, the SEC already provides a mechanism for Proposers to withdraw modifications. We encourage SECAS to work with Proposers and the DCC to ensure that the costs of the change process are proportionate and efficient.

On the basis of our reasoning set out above, we consider that the SECMP079 does not better facilitate the efficient and transparent administration and implementation of the SEC, and therefore does not better facilitate the SEC Objectives.

Decision notice

¹⁰ SECMP0049 'Section D Review: Amendments to the Modification Process': <https://www.ofgem.gov.uk/publications-and-updates/secmp0049-section-d-review-amendments-modification-process>

In accordance with standard licence condition 23 of the Smart Meter Communication licence, the Authority hereby determines that modification proposal SECMP079 'Provisions for withdrawing modifications' should not be made.

David Hall

Head of Code Governance

Signed on behalf of the Authority and authorised for that purpose