

Modification proposal:	Smart Energy Code (SEC) Modification Proposal (MP) 076 – Pursuing Non-Payment in Events of Default		
Decision:	The Authority ¹ determines that this modification ² should made ³		
Target audience:	Data and Communications Company (DCC), SEC Panel, Parties to the SEC and other interested parties		
Date of publication:	23 October 2019	Implementation date:	24 November 2019

Background to the modification proposal

Section J⁴ of the SEC details the process of how the DCC and the SEC Panel address events of default. Specifically, J2.6 details the process which the DCC undertakes for the pursuit of non-payments. SEC J2.6b requires the DCC to take all reasonable steps and proceedings (in consultation with the Panel) to pursue and recover the unpaid amount unless and until the Panel (whether on the application of the DCC or otherwise) determines that it would not be worthwhile to do so in the circumstances (having regard to, amongst other things, the DCC’s duties under part D of Condition 11 of the DCC Licence).

There is a view from the SEC Panel, and industry, that the manner in which the pursuit of non-payments are handled by the DCC does not provide them with sufficient assurance that all reasonable steps are being taken to recover the debts. Specifically, the Panel considers that the obligation on the DCC to ‘consult’ with the Panel is insufficient, as it does not require the DCC to take into account its views and guidance. There is a general concern that the current process has the potential to adversely affect the outcome of future defaults, which could potentially lead to higher socialised costs for SEC Parties. The Panel are seeking to mitigate this possibility, by increasing the level of engagement between them and the DCC during events of default, by introducing more rigour into the existing process.

The modification proposal

SECMP 076 was raised by British Gas (the Proposer) and seeks to amend SEC Section J2.6(b) and oblige the DCC to take all reasonable steps to gain ‘agreement’ from the Panel for their approach to pursuing non-payment, as well as continuing the obligation to consult with the Panel on matters regarding pursuing non-payment. The modification does not obligate DCC to take the Panel’s advice but DCC would have to demonstrate to us during the price control process why they undertook the action they chose to pursue the debt, if the Panel escalated the issue to us for consideration.

The Proposer feels that this will provide clarity for the Panel, as well as the DCC, in how best to manage default scenarios in future. The Proposer also explains that this could potentially limit the risk of increased costs being socialised amongst SEC Parties in events

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 ‘Change’ and ‘modification’ are used interchangeably in this document.

³ 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.

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

of default by ensuring action is agreed and taken swiftly, which could reduce the likelihood of this outcome.

The Proposer considers SEC Objectives 2⁵, 4⁶ and 7⁷ are better facilitated by SECMP 076.

SEC Change Board⁸ recommendation

At the SEC Change Board meeting on 18 September 2019 a majority of the Change Board considered that SECMP 076 would better facilitate the SEC objectives and the Change Board therefore recommended its approval.

Our decision

We have considered the issues raised by the proposal and the Change Report received by us on 18 September 2019. 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 better facilitate the achievement of the SEC objectives;⁹ and
- directing that the change is approved is consistent with the Authority's principal objective and statutory duties.¹⁰

Reasons for our decision

We consider this modification proposal will better facilitate SEC Objective 7 and has a neutral impact on the remaining objectives.

The second General SEC Objective is to enable the Licensee to comply at all times with the General Objectives of the Licensee, and to efficiently discharge the other obligations imposed upon it by this Licence.

Three members of the Change Board believe that SECMP 076 will better facilitate the second SEC Objective, one member did not agree and the remaining members thought it was neutral to this Objective. They argued that this Objective would be better facilitated by ensuring that Parties are not exposed to bad debt from competitors as the process to

⁵ To enable the DCC to comply at all times with the General Objectives of the DCC (as defined in the DCC Licence), and to efficiently discharge the other obligations imposed upon it by the DCC Licence.

⁶ To facilitate effective competition between persons engaged in, or in Commercial Activities connected with, the Supply of Energy.

⁷ To facilitate the efficient and transparent administration and implementation of this Code.

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

¹⁰ The Authority's statutory duties are wider than matters that the Panel must take into consideration and are detailed mainly in the Electricity Act 1989 as amended and the Gas Act 1986 as amended.

collect bad debts would be more robust since the Panel and DCC would agree the best approach in pursuit of these monies.

We do not agree and feel that SECMP 076 would be neutral toward this objective. The DCC licence already contains provisions for the DCC to comply with regarding the pursuit of default monies. These provisions provide protection to SEC Parties as they are subject to the price control regime if we deem DCC's efforts to not be sufficiently robust. SECMP 076 would clarify the existing process and make clear the Panel's position on how best to engage in a default situation, and require DCC to take these views into account when planning how to address non-payments.

However, this modification does not alter the existing underlying obligations on DCC, and no evidence has been provided which demonstrates that this modification would definitively change the efficiency or outcomes for SEC parties.

The fourth General SEC Objective is to facilitate effective competition between persons engaged in, or in Commercial Activities connected with, the Supply of Energy under the Principal Energy Legislation.

The majority of the Change Board members felt that this modification would better facilitate this Objective as SECMP 076 would potentially reduce the exposure of bad debt to SEC Parties, which will support more effective competition. The remaining members believe this modification is neutral against this objective.

We do not agree with the Change Board and consider that SECMP 076 would be neutral against this objective. There is insufficient evidence to validate the view that this modification would materially improve outcomes, and therefore further facilitate competition.

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

The majority of the Change Board believes that SECMP 076 will better facilitate this Objective, one member did not agree and the remainder thought it was neutral. The members agreed that the modification would increase the robustness of the process and rigour of the pursuit of non-payment process.

We agree with the conclusions of the Change Board in respect of the seventh Objective. The process which DCC undertakes to collect default sums is of great interest to not only the SEC Panel, but to SEC Parties. The obligation for the DCC and SEC Panel to agree the best approach for these situations will provide a greater level of transparency and scrutiny by the Panel, who represents all SEC Parties.

The additional obligation in SECMP 076 will better facilitate monitoring of the DCC's activities in relation to SEC Section J2.6. This will provide SEC Parties and the SEC Panel additional assurance that all applicable actions are being taken to minimise the risks of socialised default sums. This will also provide an additional layer of evidence which we could call upon, if applicable, during our price control process.

Decision notice

In accordance with licence condition 23 of the Smart Meter Communication licence, the Authority hereby determines that modification proposal SECMP 076: '*Pursuing Non-Payment in Events of Default*' be made.

Jacqui Russell

Head of Metering & Market Operations

Signed on behalf of the Authority and authorised for that purpose