

What stage is this document in the process?

## Stage 01: Initial Written Assessment

# P281 'Change of BSCCo Board of Directors & Chairman'

P281 seeks to change the make-up of the Balancing and Settlement Code Company (BSCCo) Board of Directors, to:

- Allow BSC Parties a more active say in the management and oversight of BSCCo; and
- Ensure the appropriate separation of the BSCCo Board from the management of ELEXON Limited, should ELEXON be permitted to diversify its activities.

ELEXON recommends:



**Either a 3-month or a 4-month Assessment Procedure**, depending on whether the BSC Panel wishes to wait for the outcome of Ofgem's consultation on expanding ELEXON's role before commencing any P281 Workgroup meetings.



**High Impact:**  
BSCCo (ELEXON) and BSC Parties.

01 Initial Written Assessment

02 Definition Procedure

03 Assessment Procedure

04 Report Phase

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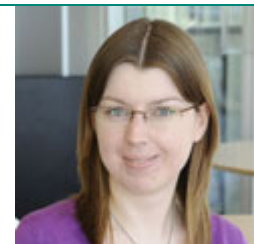
**Any questions?**

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## About this document:

This document is an Initial Written Assessment (IWA), which ELEXON will present to the BSC Panel on 12 January 2012. The Panel will consider the recommendations and will agree how to progress P281.

## Further information:

You can find the Proposer's full views in the P281 Modification Proposal form, which is **Attachment A** to this document.

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## What is the BSCCo?

ELEXON Limited fulfils the role of the Balancing and Settlement Code (BSC) Company ('BSCCo').<sup>1</sup>

BSC Section C sets out the powers, functions, responsibilities and constitution of BSCCo, whose principle role is to give proper, effective and efficient implementation of the BSC. BSC Section C1.2.2 currently precludes BSCCo from undertaking any business or activity which is not provided for in the BSC.

## What is the current constitution of the BSCCo Board?

BSC Section C4 sets out the existing constitution of the BSCCo Board of Directors ('the Board').

Under these provisions, the Board comprises five Directors as follows:

- **The Board Chairman**, who is the BSC Panel Chairman appointed by Ofgem. The Chairman holds office for three years, although they may be reappointed by Ofgem following the expiry of this term of office.
- **Two (non-executive) Industry Directors**, who are Industry Panel Members nominated to the Board by the BSC Panel. The Industry Directors hold office for the two-year term of their Panel Membership, although they may be reappointed by the Panel following the expiry of this term of office.
- **Two (non-executive, non-industry) Directors**, who are nominated by the Chairman after consultation with the Panel. These Directors hold office for two years, although they may be reappointed by the Chairman following the expiry of this term of office.

All five Directors are indemnified by BSCCo for all liabilities incurred in their role as Directors (C4.5), and are entitled to be reimbursed by BSCCo for their reasonable costs and expenses (C4.4). The two non-industry, non-executive Directors are also entitled to receive such additional remuneration and benefits as may be determined by the Chairman after consultation with the Panel (C4.4.2). None of the others are entitled to receive any additional remuneration or benefits in their capacity as Directors (C4.4.3).<sup>2</sup>

All of the five Directors are able to vote on Board business. BSC Section C4.7 requires that Board proceedings are conducted and governed in accordance with the Articles of Association of BSCCo, which include provisions relating to the appointment and removal of Directors. BSCCo's Articles of Association are based on the Companies Act 1985 Table A Articles,<sup>3</sup> and are publicly available through Companies House.

The Board delegates the day-to-day conduct of BSCCo to the Chief Executive (C4.6.4), supported by the BSCCo Executive team. The Chief Executive of BSCCo is not a member of the Board, although they are entitled to attend and speak (but not vote at) Board meetings in accordance with BSC Section C4.6.3. Members of the BSCCo Executive team may also attend Board meetings, but are not Board members and cannot vote. The Chairman is not a member of the Executive team.

**Where can I find more information on the BSCCo Board?**

[BSC Section C](#) sets out the current BSC rules regarding the Board's constitution.

You can find details of the current BSCCo Board members and BSCCo Executive team members [here](#).

<sup>1</sup> See the definition of 'BSCCo' in BSC Annex X-1.

<sup>2</sup> The Chairman is remunerated as the BSC Panel Chairman under BSC Section B2.1, rather than as the BSCCo Board Chairman. This remuneration is determined by Ofgem in consultation with the Panel (B2.11).

<sup>3</sup> [http://www.companieshouse.gov.uk/about/tableA/comm1Aug85CoRegulations1985\\_P1.pdf](http://www.companieshouse.gov.uk/about/tableA/comm1Aug85CoRegulations1985_P1.pdf)

## What is the role of the BSCCo Board?

Under the BSC, the Board must fulfil the following requirements:

- Responsibility for the appointment of the BSCCo Chief Executive after consultation with the Panel (C4.6); and
- Responsibility for the approval of BSCCo's Annual Budget following consultation with BSC Parties and other interested parties (C6.4). Note that the Panel, not the Board, approves BSCCo's annual Business Strategy following consultation with BSC Parties and other interested parties (C6.3).

In addition to its specific BSC requirements, the Board has the wider role of directing BSCCo. This role includes responsibility for monitoring BSCCo's performance, scrutiny of BSCCo's finances and ensuring that BSCCo operations are subject to effective cost-control. The manner in which the Board fulfils its role is not prescribed in the BSC. Certain requirements (e.g. regarding quorum at meetings) are included in BSCCo's Articles of Association. However, in general terms the way the Board conducts its business is not prescribed.

## What was the rationale for the current Board constitution?

Page 174 of ['The New Electricity Trading Arrangements: Ofgem/DTI Conclusions Document'](#) (October 1999) summarises the conclusions of Ofgem and the Department of Trade and Industry (DTI) on the constitution of the BSCCo Board as follows:

### ***"BSC Board***

*The Chairman and the Panel will select four persons to become non-executive directors of the BSCCo and to form the BSCCo Board. Ofgem/DTI feel that the Board should be smaller in size than the Panel, as a smaller body is better able to exercise the required level of scrutiny and control of the BSCCo. Two of the directors will be drawn from the industry members of the Panel. The remaining two directors could be selected either from within the remaining Panel members or from outside, if particular skills were required on the Board that were not present among the Panel membership. For example, the Chairman might want to have accounting and IT advice available to him on the Board. The Board responsibilities will include the approval of the BSCCo business plan and budget and the monitoring of performance. The fact that the Board will be non-executive, and include representatives of those paying BSCCo fees, should reassure participants that there will be sufficient transparency, scrutiny and control of costs."*

## What is the issue?

The Proposer of P281 (E.ON Energy Solutions Ltd) believes that the current BSCCo Board arrangements can allow the non-industry, non-executive Directors and the Chairman to carry Board decisions against the will of the non-executive Industry Directors. The Proposer argues that this means ELEXON resources can be used, budgets set and expenditure incurred even though such decisions may not be supported by BSC Parties and other affected stakeholders.

ELEXON has expressed its desire to diversify and extend its activities outside the administration of the BSC, to take advantage of its skills and expertise in the development of market arrangements. The Proposer supports ELEXON's aspirations in this regard and has confidence that ELEXON is well placed to make a valuable contribution to these market developments.

The Proposer considers that, should ELEXON be permitted to diversify its activities beyond the BSC, it will become even more important to establish a BSCCo Board that is able to safeguard the interests of BSC Parties (who fund the BSC arrangements) from any potential risk or conflict of interest arising from these other non-BSC commercial activities. The Proposer believes that the reform of the BSCCo Board is thus an essential component of the changes required to enable ELEXON to diversify its activities. The Proposer argues that such reform will help ensure the appropriate separation of the BSCCo Board from the management of ELEXON.

## Related changes

E.ON UK raised BSC Standing Issue 40<sup>4</sup> in March 2011 to explore how ELEXON might 'unlock' its vires to pursue new business development opportunities outside the BSC. The Issue 40 Group identified two workable governance models, but recognised that either of these will require changes to documents outside the BSC. It therefore looked to Ofgem and the Department of Energy and Climate Change (DECC) to provide a clear direction that could deliver a way forward. The Group submitted its report to the BSC Panel in September 2011, and you can download a copy from ELEXON's website [here](#).

Separately to Issue 40, Ofgem commissioned its own report from an independent advisor (Richard Morse) concerning ELEXON's diversification and governance. This report was published in July 2011, and you can download a copy from Ofgem's website [here](#).

Both Issue 40 and the Richard Morse report concluded that, in order to facilitate ELEXON's aspiration, it will be necessary to allow ELEXON to operate independently of the BSC under any of the proposed models. In November 2011, Ofgem therefore issued an open letter consultation seeking views on the potential expansion of ELEXON's role and the organisational options to facilitate this. Ofgem's consultation closes on 6 January 2012, and you can download a copy from its website [here](#). Following its consideration of the consultation responses, Ofgem intends to publish its decision in early 2012.

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<sup>4</sup> 'Review of ELEXON Governance and Funding Arrangements for New Business Opportunities'.

**Where can I find more information on the Proposer's views?**

You can find the Proposer's full views in the P281 Modification Proposal, which is Attachment A to this IWA.

**What solution does P281 propose?**

P281 seeks to change the make-up of the BSCCo Board of Directors, such that the Board comprises:

- **An independent Chairman**, whose appointment will be undertaken by the BSCCo Board and ratified by Ofgem. The Chairman would only be permitted to vote where their casting vote is required for a decision on which the Board is otherwise deadlocked. The BSCCo Board Chairman would continue to fulfil the role of BSC Panel Chairman. The Proposer does not envisage that the current Chairman would be removed before the end of his appointment, and notes that the current Chairman would still be eligible for consideration as a candidate for any future appointment.
- **Four BSC Party representatives**. The Proposer suggests that these voting representatives could comprise two generators (one large, one small) and two Suppliers (one large, one small). The Proposer has clarified that these representatives would be elected by BSC Parties on a constituency basis. For example, all small generators would be eligible to vote in the election for the small generator seat. Vertically-integrated Parties with both generation and supply businesses could vote in more than one constituency (e.g. one of the 'Big 6' Parties would be eligible to vote in the elections for both the large generator and large Supplier seats). Voting within constituencies would be by market share. Existing BSC Panel Members would be eligible to be elected to one of the constituent seats, and would be able to fulfil both (Panel Member and Board member) roles. No BSC trading party group<sup>5</sup> would be able to hold more than one constituency seat (for example, a Big 6 Party would not be eligible to hold both the large generator and large Supplier seat). Once elected, the Board members would vote in the normal way (i.e. one voting member, one vote) with decisions being carried by majority.
- **Up to three independent and appropriately-qualified experts**, who would be appointed by the BSCCo Board. These experts would offer support to the Board – for example on technical, procurement and financial matters. They would not be able to vote. The Proposer has clarified that these would be non-industry (i.e. non-Party) Board members.

The Proposer notes that a Workgroup may wish to consider any other changes to the proposal that address the issue/defect identified by P281.

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<sup>5</sup> 'Trading party groups' are currently determined once every two years for the purposes of electing the five Industry Panel Members to the BSC Panel. Only one Trading Party in a trading party group is permitted to submit voting papers for Industry Panel Member candidates. Section 3.1 of BSC Annex B-2 defines a 'trading party group' as meaning 'a Trading Party and every Affiliate of that Trading Party'. BSC Section A1.3 defines a Trading Party as 'being a Party, other than the Transmission Company, which holds Energy Accounts'. The definition of a Trading Party therefore includes generators, Suppliers, non-physical traders, Interconnector Users and Interconnector Error Administrators. It excludes the Transmission Company and Distribution System Operators who (along with consumers) have separate, non-elected representatives on the BSC Panel. BSC Annex X-1 defines an Affiliate as meaning 'any holding company of that Party, any subsidiary of that Party or any subsidiary of the holding company of that Party'.

The Proposer believes that P281 will better facilitate the achievement of **Applicable BSC Objective (d)** by:

- Enhancing the corporate governance arrangements for BSCCo by allowing BSC Parties to have a more active say in its management and oversight;
- Ensuring that the Board is better able to reflect the views of BSC Parties in its decisions, thereby making ELEXON more accountable for the services it provides to BSC Parties;
- Better aligning the balancing and settlement processes with those of BSC Parties;
- Removing the risk that inefficiencies arise as ELEXON seeks to pursue new business opportunities within an unsatisfactory governance framework; and
- Providing appropriate safeguards (particularly in relation to the management of BSCCo resources, budget-setting and business-planning), and thereby greater confidence to BSC Parties that the diversification of ELEXON's activities can be progressed without adversely affecting the existing BSC arrangements.



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### What are the Applicable BSC Objectives?

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- (a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence;
- (b) The efficient, economic and co-ordinated operation of the National Electricity Transmission System;
- (c) Promoting effective competition in the generation and supply of electricity and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity;
- (d) Promoting efficiency in the implementation of the balancing and settlement arrangements;
- (e) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency for the Co-operation of Energy Regulators.

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In this section we highlight areas which we believe the Panel may wish to consider when making its decision on how to progress this Modification Proposal.

If P281 goes into the Assessment Procedure, then we recommend that the specific areas below should be added to the standard Workgroup Terms of Reference.<sup>6</sup>

### Suggested areas for further consideration by the Panel and any Workgroup

#### What principles should guide the constitution of the BSCCo Board?

The Panel and any Workgroup may wish to consider:

- What is the role of the BSCCo Board? (the Panel and any Workgroup may wish to refer to the public [Board headline reports](#) for an indication of the Board's areas of business);
- The original Ofgem/DTI conclusions on the role and constitution of the BSCCo Board;
- Any relevant conclusions of the Issue 40 Group and the Morse report;
- Any interaction with Ofgem's separate consultation on expanding the role of ELEXON;
- Any published guidance on the role of non-executive company Directors (for example, the [guidance](#) published by the Institute of Directors) and on good corporate governance (e.g. the [UK Corporate Governance Code](#)<sup>7</sup>);
- Any relevant requirements of the [Companies Act 2006](#);
- How best to ensure that BSCCo meets its obligation in BSC Section C1.3.1 to exercise its powers and discharge its functions and responsibilities with a view to achieving the objectives set out in BSC Section B1.2.1; and
- How best to ensure that BSCCo is accountable to BSC Parties and any other third parties who may have a legitimate interest in the BSC.<sup>8</sup>

#### Does the current BSCCo Board structure allow the non-industry, non-executive Directors and Chairman to carry Board decisions against the will of the non-executive Industry Directors?

The Panel and any Workgroup may wish to ask ELEXON for analysis of how many Board decisions in the last 12 months (or other period) have been unanimous or carried by majority.

#### What are the B1.2.1 objectives?

BSC Sections B1.2.1 and C1.3.1 (by reference to B1.2.1) require the Panel and BSCCo respectively to conduct their business under the Code with a view to achieving the following objectives:

(a) that the Code is given effect fully and promptly and in accordance with its terms;

(b) that the Code is given effect in such a manner as will facilitate the achievement of Applicable BSC Objectives (a), (b) and (c);

(c) that the Code is given effect without undue discrimination between Parties or classes of Party;

(d) consistent with the full and proper discharge of the functions and responsibilities of the Panel and BSCCo, that the Code is given effect as economically and efficiently as is reasonably practicable; and

(e) subject to the express provisions of the Code [...] and to any other duties of confidence owed to third parties, that there is transparency and openness in the conduct of the business of the Panel and BSCCo.

<sup>6</sup> The standard areas in any Workgroup's Terms of Reference include: Assessing whether the Proposer's Proposed Modification (and any Alternative Modification developed by the Workgroup) better facilitates the achievement of the Applicable BSC Objectives compared with the current BSC arrangements; developing any Alternative Modification which (in the majority view of the Group) would better facilitate the achievement of the Applicable BSC Objectives when compared with the Proposed Modification; consulting BSC Parties and other interested parties on these views; developing the BSC legal text; establishing the impacts and costs of the Proposed Modification and any Alternative Modification; and recommending an Implementation Date. See BSC Section F, Annex F-1 for a full list of the areas a Workgroup's assessment must include.

<sup>7</sup> Listed companies are required to comply with the UK Corporate Governance Code on a 'comply or explain' basis. ELEXON also does so on a voluntary basis, except where it is non-compliant due to its specific BSC obligations.

<sup>8</sup> BSC Parties include the Transmission Company, Distribution System Operators, Trading Parties (generators, Suppliers, Interconnector Error Administrators, Interconnector Users and non-physical traders) and Interconnector Administrators.



### **What would be the impact (if any) of P281 on the Transmission Company?**

The Panel and any Workgroup may wish to consider what legitimate interest the Transmission Company may have in the governance of BSCCo. Currently:

- BSCCo fulfils the Transmission Company's obligations in Condition C3 of its [Transmission Licence](#) regarding the BSC;
- BSCCo is a wholly-owned subsidiary of the Transmission Company, who is therefore the BSCCo Shareholder (C2.2); and
- BSC Section C2.3 allows the Transmission Company, as BSCCo Shareholder, to appoint, re-appoint or remove Directors from the BSCCo Board where necessary to give effect to the provisions of the BSC (or to give effect to any direction of the Panel consistent with the provisions of the BSC).<sup>9</sup>

### **What detailed Board member appointment processes are necessary/ appropriate to support the P281 solution?**

The Panel and any Workgroup may wish to consider:

- The detailed election process for the proposed Party representatives;
- How to define a 'small' or 'large' generator or Supplier, and establish market share, for the purposes of P281;
- The appropriate term of office for Board members under P281;
- What remuneration (if any) and expenses should be paid to Board members under P281; and
- The necessary implementation lead time for P281 (e.g. to allow for the appointment/election of the new Board members prior to the Implementation Date).

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<sup>9</sup> BSCCo's Articles of Association prohibit directors of the Transmission Company (or any of its subsidiaries) from being Directors of BSCCo.



## What are the recommended next steps?

**ELEXON recommends that a Workgroup carries out further assessment of P281, in order to consider the areas highlighted in Section 3.**

The Proposer is not requesting that P281 is progressed as a Self-Governance Modification Proposal. We agree that it does not meet the Self-Governance Criteria (as defined in BSC Annex X-1), because it would have a material effect on the BSC's governance procedures.

We agree with the Proposer that P281 has no interaction with any ongoing Significant Code Review.

## Workgroup Terms of Reference and membership

We recommend that the Workgroup's Terms of Reference comprises the standard Terms of Reference for the [Governance Standing Modification Group](#) (GSMG), supplemented with the areas highlighted in Section 3. We invite the Panel to agree the addition of these areas to the Workgroup's Terms of Reference, subject to any amendments the Panel wishes to make.

Although we propose to base the P281 Workgroup's Terms of Reference on those for the GSMG (as the most relevant existing Standing Workgroup), we recommend that the invitation for P281 Workgroup members should be open to all BSC Parties and other interested parties.

## Assessment Procedure timetable

The Proposer is not requesting urgency for P281.

We recommend that the P281 Assessment Procedure timetable should therefore be either:

- **3 months** (such that the Workgroup submits its Assessment Report to the Panel by its meeting on 12 April 2012), if the Panel wishes to commence P281 Workgroup meetings without waiting for the outcome of Ofgem's consultation on the expansion of ELEXON's role; or
- **4 months** (such that the Workgroup submits its Assessment Report to the Panel by its meeting on 10 May 2012), if the Panel wishes to wait for the outcome of Ofgem's consultation before commencing any P281 Workgroup meetings. This timetable may need to be extended if the outcome of Ofgem's consultation is delayed.

Either Assessment Procedure timetable would allow for three Workgroup meetings and a 15 Working Day industry consultation. The only difference is that, under the four-month timetable, the first Workgroup meeting would not be held until after Ofgem publishes the outcome of its consultation. The estimated progression costs of either timetable are therefore identical (see below).

The Proposer does not believe that it is necessary or beneficial to wait for the outcome of Ofgem's consultation. The Proposer notes that their proposed P281 solution is intended to support either of the ELEXON governance models being considered by Ofgem.

## What are the Self-Governance Criteria?

A Modification Proposal that, if implemented:

a) is unlikely to have a material effect on:

i) existing or future electricity consumers; and

ii) competition in the generation, distribution or supply of electricity or any commercial activities connected with the generation, distribution, or supply of electricity; and

iii) the operation of the national electricity transmission system; and

iv) matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies; and

v) the Code's governance procedures or modification procedures, and

b) is unlikely to discriminate between different classes of Parties.

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BSC Section F2.2.9 allows the Panel to set an Assessment Procedure timetable which is longer than three months where the Panel believes this is justified by 'the particular circumstances of the Modification Proposal (taking due account of its complexity, importance and urgency)', and provided Ofgem does not issue a contrary direction.

## Estimated P281 progression costs

Estimated ELEXON progression costs	
Meeting costs (including Workgroup member expenses)	£1.5k (based on three Workgroup meetings)
Non-ELEXON legal and expert costs	£0
Service Provider impact assessment costs	£0
ELEXON resource	40 man days of effort, equating to approximately £9.5k.

Estimate of industry assessment costs					
Workgroup support	Est #mtgs	Est # att	Est effort	Est rate	total
	3	15	1.5	605	<b>£40,838</b>
Consultation response support	Est #con	Est # resp	Est effort	Est rate	total
	2	20	2.5	605	<b>£60,500</b>
<b>Total</b>					<b>£101,338</b>

The estimated industry assessment costs are based on:

- The estimated number of Workgroup meetings and industry attendees per meeting, plus the estimated number of industry consultations and responses (including both the Assessment Procedure and subsequent Report Phase consultations);
- The assumption that each industry attendee puts in 1.5 man days of effort per meeting, and that each respondent spends 2.5 man days in effort per consultation response; and
- A standard rate of £605 per man day of effort.

## 5 Likely impacts

### Impact on the BSC

BSC section	Potential impact
Section B 'The Panel'	May require changes regarding the appointment of the Panel Chairman.
Section C 'BSCCo and its subsidiaries'	Would require changes to reflect the new BSCCo Board structure and appointment processes under P281.
Memorandum and Articles of Association of BSCCo	

### Impact on ELEXON

The governance of ELEXON (as BSCCo) would be amended by P281.

### Impact on BSC Parties

BSC Parties would be able to stand as, and participate in the constituency elections for, candidates for the Party representative Board members.

### Impact on the Transmission Company

The Transmission Company may have an interest in the governance of BSCCo for the reasons given in Section 3.



On the basis of this IWA, ELEXON invites the Panel to:

- **DETERMINE** that Modification Proposal P281 progresses to the Assessment Procedure for further consideration by a Workgroup;
- **AGREE** that the Workgroup should complete and submit its Assessment Report to the Panel by its meeting on:
  - 12 April 2012, if the Panel wishes to commence P281 Workgroup meetings without waiting for the outcome of Ofgem's consultation on the expansion of ELEXON's role; or
  - 10 May 2012, if the Panel wishes to wait for the outcome of Ofgem's consultation before commencing any P281 Workgroup meetings (this timetable may need to be extended if the outcome of Ofgem's consultation is delayed);
- **AGREE** that the invitation for P281 Workgroup membership should be open to all BSC Parties and other interested parties;
- **AGREE** that P281 has no interaction with any ongoing Significant Code Review;
- **AGREE** that P281 does not meet the Self-Governance Criteria; and
- **AGREE** the Workgroup's Terms of Reference.

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### Recommended next phase

ELEXON recommends that P281 undergoes an Assessment Procedure by a Workgroup.

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**Modification Proposal – BSCP40/03**

MP No: 281

**Title of Modification Proposal:**

Change of BSC Co Board of Directors &amp; Chairman.

**Submission Date:**

30 December 2011

**Description of Proposed Modification:**

Elexon have expressed their desire to diversify and extend their activities outside the administration of the Balancing & Settlement Code to take advantage of their skills and expertise in the development of market arrangements to support amongst other things, smart metering and likely changes arising from Electricity Market Reform (EMR). We support Elexon's aspirations in this regard and have confidence that they are well placed to make a valuable contribution to these market developments.

Ofgem commissioned a report from Richard Morse to look at how Elexon might unlock the vires within the BSC to allow them to do this and to consider what the future governance requirements might be. BSC Issue 40 was also raised to look at Elexon's proposal and the alternatives put forward by BSC Parties on the necessary governance and funding arrangements to support new business opportunities. Both Richard Morse and Issue 40 concluded that in order to facilitate Elexon's aspiration it will be necessary to allow Elexon to operate independently of the Balancing & Settlement Code, under any of the proposed models. On 21 November 2011 Ofgem sought views on the potential expansion of the role of Elexon, including the organisational options (the subsidiary or contractual models) to facilitate this.

In order to shield the Balancing & Settlement Code and BSC Parties from any potential risk or conflicts of interest (under either model), it would be sensible to fully separate the management of the BSCCo from any other commercial activities which Elexon may seek to establish. The proposal therefore seeks to change the make-up of the BSCCo Board of Directors and to require the Board to be made up of BSC Party representatives, relevant and appropriately qualified independent experts and an Independent Chair – whose appointment will be undertaken by the BSC Board and ratified by Ofgem.

It is suggested that the new BSC Co Board could be made up of 4 BSC Parties:

2 electricity suppliers – 1 large and 1 small;

2 generators – 1 large and 1 small; and

An independently appointed Chairman, whose appointment will be ratified by Ofgem

The BSC Board could also appoint up to a maximum of 3 independent and appropriately qualified experts to offer support to the Board on for example, technical, procurement and financial matters (for clarity these will be non-voting roles. The BSC Board chairman will also continue to fulfil the role of the Panel Chairman. (It is not envisaged that the current Chairman will be removed by this modification before his appointment period ends and of course he would be eligible for consideration as a candidate for any future appointment.)

New arrangements to appoint both the Board of Directors and a new independent Chairman will need to be agreed, however they should include the following requirements:

- Existing Panel members would be eligible to be elected to one of the constituent seats on the Board and would be able to fulfil both roles.

<b>Modification Proposal – BSCP40/03</b>	MP No: 281
<ul style="list-style-type: none"> <li>• Voting for constituency candidates would be based on constituency market shares.</li> <li>• No BSC Trading Group would be able to be represented in more than one constituency.</li> <li>• Chairman to hold only a casting vote for circumstances where the Board are deadlocked.</li> </ul> <p>The Modification Group may wish to consider any other changes to the proposal that address the issue/defect outlined below.</p>	
<p><b>Description of Issue or Defect that Modification Proposal Seeks to Address:</b></p> <p>The current BSCCo Board arrangements can allow the non industry Non- Executive Directors and the Chairman and to carry Board decisions against the will of industry Non-Executive Directors members. This means Elexon resources can be used, budgets set and expenditure incurred even though such decisions may not be widely supported by BSC Parties and other affected stakeholders. Should Elexon be permitted to diversify its activities, it will become even more important to establish a BSCCo Board that is able to safeguard the interests of BSC Parties that fund the BSC arrangements.</p> <p>The reform of the BSCCo Board is thus an essential component of the changes required to enable Elexon to diversify its activities. It will help ensure the appropriate separation of the BSCCo Board from the management of Elexon who currently perform the administration of the Balancing &amp; Settlement Code.</p>	
<p><b>Impact on Code:</b></p> <p>Section C</p>	
<p><b>Impact on Core Industry Documents or System Operator-Transmission Owner Code:</b></p> <p>None</p>	
<p><b>Impact on BSC Systems and Other Relevant Systems and Processes Used by Parties:</b></p> <p>None</p>	
<p><b>Impact on other Configurable Items:</b></p> <p>None</p>	
<p><b>Justification for Proposed Modification with Reference to Applicable BSC Objectives:</b></p> <p><i>(d) promoting efficiency in the implementation and administration of the balancing and settlement arrangements described in paragraph 2;</i></p> <p>The proposal will enhance the corporate governance arrangements for BSCCo allowing parties to have a more active say in management and oversight of BSCCo. By ensuring the Board are better able to reflect the views of BSC Parties in their decisions, Elexon will become more accountable for the services that they provide to BSC Parties. Efficiency in the implementation and of the balancing and settlement arrangements will be promoted through the better alignment of the balancing and settlement processes with those of BSC Parties.</p> <p>Without this change there is a risk that inefficiencies will arise as Elexon seeks to pursue new business opportunities within an unsatisfactory governance framework. By providing appropriate safeguards particularly in relation to the management of BSCCo resources, budget, setting and business planning this proposal will provide greater confidence to BSC Parties that the changes that are necessary to allow Elexon to diversify its activities can be progressed without adversely affecting the existing BSC</p>	

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arrangements.	
<b>Is there a likely material environmental impact?</b>	
None	
<b>Urgency Recommended:</b>	
No	
<b>Justification for Urgency Recommendation:</b>	
N/A	
<b>Self-Governance Recommended:</b>	
No	
<b>Justification for Self-Governance Recommendation</b>	
N/A	
<b>Should this Modification Proposal be considered exempt from any ongoing Significant Code Reviews?</b>	
N/A	
<b>Details of Proposer:</b>	
Name:	<i>Colette Baldwin</i>
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Email Address:	<a href="mailto:Colette.baldwin@eonenergy.com"><u>Colette.baldwin@eonenergy.com</u></a>
<b>Details of Proposer's Representative:</b>	
Name:	<i>Colette Baldwin</i>
Organisation:	<i>E.ON Energy Solutions Ltd</i>
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<b>Details of Representative's Alternate:</b>	
Name:	<i>Esther Sutton</i>
Organisation:	<i>E.ON Energy Solutions Ltd</i>
Telephone Number:	<i>02476 183440</i>
Email address:	<a href="mailto:esther.sutton@eon-uk.com"><u>esther.sutton@eon-uk.com</u></a>
<b>Attachments:</b>	
No	