Stage 01: Initial Written Assessment

What stage is this document in the process?

- 01 Initial Written Assessment
- 02 Definition Procedure
- 03 Assessment Procedure
- 04 Report Phase

P263: Code Governance Review: Send Back Process and Environmental Assessment

The Ofgem Code Governance Review has recently amended the Transmission Licence to introduce a Send Back Process and Environmental Assessment requirements into the BSC.

P263 introduces the Send Back Process into the BSC, which provides the Panel the ability revise and reconsider a Final Modification Report where requested by Ofgem.

It also introduces new requirements for the Panel and Modification Groups to assess the impact of Modification Proposals on green house gas emissions where those impacts are likely to be material.

ELEXON recommends
submit Modification P263 to the **Report Phase with a recommendation to approve**

Medium Impact:
Panel, industry consultation respondents, Modification Groups, BSCCo

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About this document:

This document is an Initial Written Assessment (IWA), which ELEXON will present to the Panel on 12 August 2010. The Panel will consider the recommendations and agree how to progress P263.

Further information is available in the P263 Modification Proposal which is an appendix to this document.

Any questions?

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1 Why Change?

Code Governance Review

The industry codes contain the contractual arrangements for participating in the Electricity and Gas markets. In November 2007 Ofgem launched the Code Governance Review. The aim of the review was to reduce the complexity and fragmentation, and to increase the transparency and accessibility, of these arrangements. In July 2010 Ofgem directed that the licence modifications be made to implement the Code Governance Review Final Proposals. They also noted that the industry codes would need to be updated by 31 December 2010. In order to comply with the modified Transmission Licence the BSC will need to be amended to reflect the new processes and policies coming into effect.

The supporting BSC changes fall into 5 distinct areas:

- Significant Code Reviews
- Self Governance
- Code Administration Code of Practice, assisting Parties, ensuring consistency with other codes
- Send Back Process
- Environmental Assessment

We have split the relevant Transmission Licence changes into 2 Modification Proposals. This Modification Proposal covers:

- Send Back Process
- Environmental Assessment

Send Back Process

One of the changes introduced by the Code Governance Review is the ability for Ofgem to 'Send Back' a Final Modification Report for revision and reconsideration by the BSC Panel. Ofgem has introduced this new provision as they are concerned that, under the current arrangements, the Authority may be put in the position where:

> "it is unable to accept a proposal, not on its merits, but owing to deficiencies in the report such as an insufficient assessment, incorrect legal text or other technical flaws."
>
> - (*Code Governance Review, Ofgem, 31 March 2010)*

Hence, the Transmission Licence has been amended so that Ofgem can send back a Final Modification Report for revision and reconsideration by the Panel. When it sends back a Final Modification Report it can specify the additional steps it requires to form an opinion. These include:

- Drafting additional legal text or amending existing legal text;
- Revisions to the Final Modification Report, including revision to the Implementation timetable
- Revised or additional analysis and/or information.

Ofgem would also be able to specify when it wants the additional steps completed. For more details on the proposed process see Section 2.

The BSC must be aligned to the updated Transmission Licence (see Appendix 1) to introduce the Send Back Process.

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Environmental Assessment

Ofgem has noted that:

> "In June 2008, we issued guidance to industry participants specifying that the costs of greenhouse gas (GHG) emissions should be taken into account by industry in evaluating and assessing code modification proposals. However, while the industry has taken steps to incorporate the guidance into procedures, we considered that there was a continuing perception of this being desirable rather than essential. There was also some uncertainty on whether this guidance was limited only to emissions or other environmental impacts, such as upon flora and fauna."
>
> - *(Code Governance Review, Ofgem, 31 March 2010)*

In order to clarify the uncertainty Ofgem has updated the Transmission Licence so that the BSC Panel and Modification Groups should assess the quantifiable impacts of a Modification Proposal (including any alternatives), where likely to be material, on greenhouse gas emissions. This would be conducted in accordance with guidance issued by the Authority.

The BSC must be aligned to the updated Transmission Licence (see Appendix 1) to clarify the requirements for Panel and Modification Groups assessing green house gas emissions.

Applicable BSC Objectives

The Proposer believes that P263 will better facilitate the achievement of **Applicable BSC Objectives (a)** - The efficient discharge by the licensee [i.e. the Transmission Company] of the obligations imposed upon it by this licence [i.e. the Transmission Licence].

In order to efficiently discharge the Transmission Licence the licensee must ensure that the BSC is consistent with the Licence. Hence P263 will better facilitate Applicable Objective (a) by aligning the BSC with the Transmission Licence.

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2 Solution – Send Back Process

Send Back Process

It is proposed that a new Send Back Process is introduced into the BSC to reflect the Transmission Licence drafting.

Pre-requisites of the Send Back Process

1. The Send Back Process only applies to Modification Proposals where the Final Modification Report has been submitted to the Authority.
2. The Send Back Process must be completed before the last 'decision by' date in the Final Modification Report, otherwise the Modification Proposal will 'timeout'. In practice this means the Authority must direct the Send Back Process with enough time for the Panel, BSCCo and industry to complete the process before the last 'decision by' date in the Final Modification Report. The Authority can request additional Implementation Dates as part of the Send Back Process (as with the Approved P250 Alternative solution) to extend its decision time.

Send Back Process

1. If the Authority cannot make a decision based on a Final Modification Report then it can initiate the Send Back Process by sending a direction to the BSC Panel specifying:
   - 1.1. the additional steps (including drafting or amending existing drafting of the modification to the BSC), revision (including revision to the timetable), analysis and/or information that it requires in order to form such an opinion; and
   - 1.2. the report to be revised and be re-submitted at an appropriate time.
2. BSCCo shall prepare a Send Back procedure and timetable. This shall take into account the additional steps required by the Authority. The Send Back procedure and timetable will be a bespoke and flexible process. The BSC Panel shall approve the procedure and timetable.
3. Each Send Back Process procedure and timetable must include provision for the following:
   - 3.1. Panel reconsidering its recommendations
   - 3.2. Send Back Process completed before the last 'decision by' date in the Final Modification Report otherwise the Modification Proposal would 'time out'
4. Each Send Back Process may include the following:
   - 4.1. Industry consultation(s)
   - 4.2. Additional or revised analysis or information required in Final Modification Report (this may require the convening of a Workgroup)
   - 4.3. Redrafting of legal text
   - 4.4. Revising Implementation Dates, or other revisions specified by the Authority
   - 4.5. Any other stages as agreed by the Panel which are required in order to complete the additional steps outlined by the Authority;
5. The Panel shall consider and approve the Send Back procedure and timetable. At this stage the Authority, in the form of the Ofgem Panel Representative, is able to request changes to the recommended procedure and timetable.
6. Once the timetable is approved BSCCo shall ensure that all Authority directed additional steps are completed.

What is 'Timing Out'?

In 2007/08 the Authority was unable to make a decision on Modification Proposals P198, P200, P203 and P204 by the final 'decision by' date provided in the Final Modification Report.

A subsequent Judicial Review ruled that if the Authority did not make a decision by the final date in the report then it lost its ability to make a decision on the Modification Proposals (such that they were effectively 'timed out').

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7. Once all additional steps are completed BSCCo shall present the updated Final Modification Report to the Panel. The Panel shall revisit its recommendations based on the updated Final Modification Report.
8. When the Panel has made its Final recommendation, BSCCo will issue the updated Final Modification Report to the Authority for decision. The updated Final Modification Report replaces the previously issued Final Modification Report.
9. The Authority can repeat the Send Back Process as they see fit (although pre-requisite 2 still applies).

Examples of how the Send Back Process would work

When a Modification Proposal is sent back by the Authority, the Panel will approve a Send Back timetable. Each Send Back timetable will be bespoke and the only mandatory requirement is that the Panel reconsider their recommendation each time. Therefore each Send Back Process will only encompass the activities that are required to address Ofgem's additional steps. To give you an idea of how this might work in practice we have prepared some examples below:

Example 1 - Self evident change to the legal text

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Example 2 - Significant change to the legal text

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Example 3 - Revised or additional analysis required

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3 Solution – Environmental Assessment

Environmental Assessment

The BSC would be amended to include a specific requirement for Modification Groups and the Panel to assess, where the impact is likely to be material, the quantifiable impact of a Modification Proposal on greenhouse gas emissions. This would be conducted in accordance with guidance issued by the Authority. This assessment would be included in all the relevant Modification reports, including the Assessment Consultation, Assessment Report and Final Modification Report.

The Modification Proposal form would be updated to allow the Proposer to comment as to whether they believe their Modification Proposal was likely to have a quantifiable impact on greenhouse gas emissions.

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4 Proposed Progression

Why directly to Report Phase?

The Panel has the ability to progress a Modification straight to the Report Phase, usually where it considers the Modification Proposal to be self-evident (BSC paragraph F2.2.4). In this case we believe the changes are self evident and require no further industry development.

The Transmission Licence changes (Appendix 1) clearly set out the need for a new Send Back Process and additional requirements for Environmental Assessment under the BSC. On 23 June 2010 we held a joint workshop with the Connection Use of System Code (CUSC) to discuss the Code Governance Review changes with the industry. Minor improvements were suggested and we have incorporated these into the Modification Proposal. We have also taken into account discussions at subsequent CUSC workshops and our engagement with industry members. We believe we have taken into account all relevant suggestions and that no further solution development is required.

We also note that the CUSC Amendment Panel directed their versions of P263 (CAP186 and CAP187) directly to their equivalent of the Report Phase. We propose to follow a similar approach.

We therefore recommend that the Panel determines that this Modification Proposal should proceed directly to the Report Phase, pursuant to paragraph F2.2.3(b)(iii) of the Code.

Timetable and Costs

If the Panel agrees to send P263 directly to the Report Phase, ELEXON will present the draft Modification Report, together with Report Phase Consultation responses, to the Panel at their meeting on 14 October 2010.

We propose to issue P263 for the maximum Report Phase Consultation period allowed under the BSC – 15 Working Days. This would mean a 2 month Report Phase.

We will also publish the draft Modification Report on our website as soon as possible and in advance of formally issuing the Report Phase Consultation. We hope this will give Parties sufficient time to consider their responses.

The following table highlights the estimated cost of progressing this Modification.

Estimated central progression costs	
ELEXON resource	5 man days, equating to £1,200
Meeting costs	£0
Total	£1,200

The ELEXON resource cost is an estimation of how much time and effort it will take to progress a Modification through the Report Phase. This includes time analysing consultation responses, drafting documentation and producing legal text.

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Below is estimate of cost incurred by the industry in assessing this Modification:

Estimate of total industry assessment costs					
Modification Group support	Est #mtgs	Est # att	Est effort	Est rate	Total
	0	5	1.5	605	**£0**
Consultation response support	Est #con	Est # resp	Est effort	Est rate	Total
	1	6	2.5	605	**£9,075**
Total					**£9,075**

Meeting costs reflect an estimate of how many Modification group meetings will be held and the industry effort of supporting these meetings. The calculation is based upon an average number of members (5) each putting in 1.5 man days effort per meeting. This effort is multiplied by a standard rate of £605 per day. The result is:

0 working group meetings x 5 attendees x 1.5 WDs effort x £605 = ***£0***

Consultation costs represent an approximation of industry time and effort in responding to consultations. The calculation is based upon an estimate of how many responses we will receive and assumes each response will take 2.5 man days of effort, again multiplied by a standard rate of £605 per day. The result is:

6 responses x 2.5 WDs effort x £605 x 1 consultation = ***£9,075***

Other related Code Governance Review changes

P262 'Code Governance Review: Significant Code Reviews, Self Governance and Code Administration Code of Practice' has been raised alongside P263 and supports the Code Governance Review changes in the areas of:

- Significant Code Reviews
- Self Governance
- Code Administration Code of Practice, assisting Parties, ensuring consistency with other codes

As P262 requires further assessment and development we are proposing it should be sent to a 2 month Assessment Procedure. As there is no direct interaction between P263 and P262 there is no issue with their different timetables.

In addition, National Grid has raised similar changes under the CUSC and the Uniform Network Code (UNC). Once again, although we need to be mindful these changes exist, they do not directly interact with P263.

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5 Likely Impacts

Impact on BSC Systems and process
None identified

Impact on BSC Agent/service provider contractual arrangements
None identified

Impact on BSC Parties and Party Agents
Where necessary, Parties and Party Agents will be consulted during the Send Back Process. They may also provide Workgroup members if required.

Impact on Transmission Company
Where necessary, the Transmission Company will be consulted during the Send Back Process. They may also provide a Workgroup member if required.

Impact on ELEXON	
Area of ELEXON's business	Potential impact
Change Management	ELEXON will assist the Panel with any send back directions. This may involve redrafting legal text and Modification Reports, supporting Modification Group work and preparing new implementation timetables. ELEXON will also assist the Panel and Modification Groups will environmental assessment of Modification Proposals, where the impact of the Modification Proposals on greenhouse gas emissions is likely to be material. This may include procuring external consultants.

Impact on Code	
Code section	Potential impact
Section F	Include a new Send Back Process and the requirement for Panel and Modification Groups to assess the environmental impact of Modification Proposals.
Section X Annex X-1	Include new definitions for Send Back Direction, Send Back Process and Workgroup.

Impact on Code Subsidiary Documents	
CSD	Potential impact
BSCP40	The Modification Proposal form in BSCP40 would need to be updated to allow the Proposer to comment as to whether they believe their Modification Proposal was likely to have a quantifiable impact on greenhouse gas emissions.

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Impact on Core Industry Documents and other documents	
Document	Potential impact
Connection and Use of System Code	The CUSC is introducing similar provisions though CAP186 and CAP187.
Uniform Network Code	The UNC is introducing similar provisions though UNC0319 and UNC0321.

Impact on other Configurable Items
None identified

6 Recommendations

On the basis of the initial written assessment, ELEXON invites the Panel to:

- DETERMINE that Modification Proposal P263 should be submitted directly to the Report Phase;
- AGREE a provisional recommendation that Proposed Modification P263 should be made;
- AGREE a provisional Implementation Date for Proposed Modification P263 of:
  - 31 December 2010 if an Authority decision is received on or before 10 December 2010;
- AGREE the draft legal text for Proposed Modification P263; and
- AGREE that the P263 draft Modification Report should be issued for consultation and submitted to the Panel at its meeting on 14 October 2010.

Recommendation

ELEXON recommends that the P263 be sent directly to the Report Phase with a provisional Panel recommendation to approve.

7 Further Information

More information is included in:

Attachment **A**: P263 Modification Proposal form

Attachment **B**: Draft legal text

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8 Appendix 1 – Transmission Licence changes

The Transmission Licence Condition C3 changes are as follows:

Send Back Process

"*4. The BSC shall include procedures for its own modification (including procedures for the modification of the modification procedures themselves), which procedures shall provide:…*

b. where ~~such~~ a proposal is made in accordance with paragraphs 4(a), 4(aa) and, unless otherwise directed by the Authority, 4(ab),…

(vii) for the revision and re-submission of the panel report provided under sub-paragraphs (v) and (vi), such re-submission to be made, if required by a direction issued by the Authority under paragraph 5(aa), as soon after the Authority's direction as is appropriate (taking into account the complexity, importance and urgency of the modification),"

"5. *a. Without prejudice to paragraph 13A, ~~i~~If a report has been submitted to the Authority pursuant to the procedures described in paragraph 4(b)(vi), and the Authority is of the opinion that a modification set out in such report would, as compared with the then existing provisions of the BSC and any other modifications set out in such report, better facilitate achieving the applicable BSC objective(s), the Authority may direct the licensee to make that modification.*

aa. If a report has been submitted to the Authority pursuant to the procedures described in paragraph 4(b)(vi) and if the Authority determines that the report prepared in accordance with paragraph 4(b)(v) is such that the Authority cannot properly form an opinion in accordance with paragraph 5(a), the Authority may issue a direction to the panel:

(i) specifying the additional steps (including drafting or amending existing drafting of the modification to the BSC), revision (including revision to the timetable), analysis and/or information that it requires in order to form such an opinion; and

(ii) requiring the report to be revised and be re-submitted in accordance with paragraph 4(b)(vii)."

Environmental Assessment

"*4. The BSC shall include procedures for its own modification (including procedures for the modification of the modification procedures themselves), which procedures shall provide:…*

b. where ~~such~~ a proposal is made in accordance with paragraphs 4(a), 4(aa) and, unless otherwise directed by the Authority, 4(ab),…

(ivA) for the evaluation required under paragraph 4(b)(iii) (and, if applicable paragraph 4(b)(iv)) in respect of the applicable BSC objective(s) to include, where the impact is likely to be material, an assessment of the quantifiable impact of the proposal on greenhouse gas emissions, to be conducted in accordance with such guidance (on the treatment of carbon costs and evaluation of the greenhouse gas emissions) as may be issued by the Authority from time to time,

(v) for the preparation of a panel report:…

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– *assessing the extent to which the proposed modification or any alternative would better facilitate achieving the applicable BSC objective(s) and providing a detailed explanation of the panel's reasons for that assessment (such assessment to include, where applicable, an assessment of the quantifiable impact of the proposal on greenhouse gas emissions in accordance with 4(b)(ivA))*,"

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