

Modification Proposal – BSCP40/03	MP No: P284
Title of Modification Proposal: Expansion of Elexon’s role via the ‘contract model’	
Submission Date: 17 May 2012	
Description of Proposed Modification	
<p>This Modification Proposal aims to facilitate implementation of the ‘contract model’ which is supported by a majority of respondents to Ofgem’s consultation¹ on Elexon’s future governance. The contract model can be characterised as separating the BSCCo entirely from New Elexon² via a robust contract between the BSCCo and New Elexon.</p> <p>In its latest letter³ on this issue, Ofgem has not ruled out alternatives but have stated that “... we remain of the view that a formal separation between the BSCCo and a ‘New Elexon’ is better able to protect the interests of BSC Parties”.</p> <p>This Modification Proposal considers areas of the BSC that may need to be changed in order to facilitate implementation of the contract model. The main areas include (but not limited to):</p> <ul style="list-style-type: none"> ▪ Section C: extension of BSCCo’s power to delegate its powers, functions and responsibilities; ▪ Section E: creation of a new BSC Agent (the BSC services manager), including provisions for its appointment and BSCCo role in relation to this appointment. <p>Our suggested changes to the BSC are attached to this Modification Proposal. However, we recognise that any changes to the BSC should be assessed by a suitable industry Workgroup. These changes may require timely development and implementation to align with government’s timeline for creation of the Data and Communications Company (DCC) which New Elexon would be aspiring to participate in.</p> <p>In considering the above changes to the BSC, it should be noted that the Modification Proposal aims to:</p> <ol style="list-style-type: none"> 1. Enable, but not require, BSCCo to outsource some or all of the BSC services currently undertaken in-house by Elexon to a new BSC Agent; 2. Ensure that the risks and costs arising from New Elexon pursuing or undertaking non-BSC activities are not borne by the BSC Parties, including NGET. <p>It is outside the scope of this Modification Proposal to consider the appropriate terms of any contract, although we note and support the key principles contained in Ofgem’s consultation. This Modification Proposal also will not amend the constitution of BSCCo or the obligations of NGET.</p>	

¹ www.ofgem.gov.uk/Licensing/IndCodes/Governance/Documents1/Elexon_Open_Letter.pdf

² In this Modification Proposal, the term New Elexon is used to represent the company which would carry out BSC activities under service contract with BSCCo.

³ <http://www.ofgem.gov.uk/Licensing/IndCodes/Governance/Documents1/elexon%20expansion%20way%20forward%20letter%20300412.pdf>

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<p>Description of Issue or Defect that Modification Proposal Seeks to Address</p> <p>The current BSC provisions do not allow BSCCo to perform non-BSC activities. Paragraph C1.2.2 of the Balancing and Settlement Code (‘the Code’) currently states that:</p> <p>“BSCCo shall have the powers, functions and responsibilities set out in or assigned to it in the Code, and shall not undertake any business or activity other than as provided for in the Code”.</p> <p>Changes to the BSC are required in order to allow New Elexon to undertake non-BSC activities via a contract model.</p>	
<p>Impact on Code</p> <p>The proposed changes will mainly impact Sections C and E of the BSC. We attach our suggested legal text.</p>	
<p>Impact on Core Industry Documents or System Operator-Transmission Owner Code</p> <p>No impact is envisaged on Core Industry Documents or SO-TO Code.</p>	
<p>Impact on BSC Systems and Other Relevant Systems and Processes Used by Parties</p> <p>No impact is envisaged on BSC Systems and Other Relevant Systems and Processes.</p>	
<p>Impact on other Configurable Items</p> <p>No impact is envisaged on Configurable Items.</p>	
<p>Justification for Proposed Modification with Reference to Applicable BSC Objectives</p> <p><i>(d) Promoting efficiency in the implementation and administration of the balancing and settlement arrangements</i></p> <p>The proposed changes will ensure clear BSCCo accountability for the BSC arrangements following diversification of New Elexon and will therefore promote efficiency in the implementation and administration of the BSC arrangements.</p> <p>If the contract arrangements are outsourced and the provisions of BSC services are exposed to periodic competitive tender, the proposed changes may deliver cost savings and benefits to the BSC Parties, thus improving the efficiency of BSC arrangements.</p>	

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<p>Is there a likely material environmental impact?</p> <p>No.</p>	
<p>Urgency Recommended: No (see below)</p>	
<p>Justification for Urgency Recommendation:</p> <p>Although this Modification Proposal is not considered urgent, it is noted that the BSC Panel may wish to consider the timescales for progressing this Modification with reference to the timeline for the DCC bid process.</p>	
<p>Self-Governance Recommended: No</p>	
<p>Justification for Self-Governance Recommendation: Not applicable</p>	
<p>Should this Modification Proposal be considered exempt from any ongoing Significant Code Reviews?</p> <p>Yes. This Modification Proposal has no interaction with any ongoing SCRs.</p>	
<p>Details of Proposer:</p> <p><i>Name:</i> Shaf Ali</p> <p><i>Organisation:</i> National Grid</p> <p><i>Telephone Number:</i> 01926 655980</p> <p><i>Email Address:</i> shafqat.ali@nationalgrid.com</p>	
<p>Details of Proposer’s Representative:</p> <p><i>Name:</i> Shaf Ali</p> <p><i>Organisation:</i> National Grid</p> <p><i>Telephone Number:</i> 01926 655980</p> <p><i>Email Address:</i> shafqat.ali@nationalgrid.com</p>	

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Details of Representative’s Alternate: <i>Name:</i> Ian Pashley <i>Organisation:</i> National Grid <i>Telephone Number:</i> 01926 653446 <i>Email Address:</i> ian.pashley@nationalgrid.com	
Attachments: Yes If Yes, Title and No. of Pages of Each Attachment: Suggested BSC legal text (7 pages)	

SECTION C: BSCCO AND ITS SUBSIDIARIES (version 14.0)

Amend paragraph 3.1.1 to read as follows:

3. POWERS AND FUNCTIONS OF BSCCO

3.1 General

3.1.1 Without prejudice to paragraph 1.2.2, BSCCo shall have the following powers, functions and responsibilities:

- (a) to enter into, manage and enforce contracts with service providers (as BSC Agents) for the supply of the services required by BSC Service Descriptions, and negotiate and agree amendments to such contracts, as further provided in Section E;
- (b) to advise the Panel and keep it advised as to and in respect of the matters which it is necessary or appropriate that the Panel should consider in order to discharge the Panel's functions and responsibilities in accordance with the Code;
- (c) to provide or arrange the provision of such facilities, resources and other support as may be required by the Panel to enable the Panel or any Panel Committee or Workgroup to discharge its functions and responsibilities under the Code;
- (d) to provide secretarial and administrative services in connection with meetings of the Panel and Panel Committees and Workgroups, including the convening and holding of such meetings and taking and circulation of minutes;
- (e) to provide and make available to Parties such facilities, services and information in connection with the implementation of the Code as the Code may provide or the Panel may require;
- (f) to provide or arrange the provision of facilities, resources and other support in connection with the procedures for modification of the Code in accordance with Section F;
- (g) to enter into contracts (in terms complying with any applicable provisions of Section B) of employment or other engagement with persons from time to time to be appointed as Panel Chairman or Panel Members under Section B2.5;
- (h) to indemnify against liability, and, if relevant, to reimburse the expenses of, Panel Members, members of Panel Committees, members of Workgroups and others as provided in the Code or as otherwise required in BSCCo's discretion in connection with any BSC Agent Contract;

- (i) to enter on behalf of all Parties into Accession Agreements with new Parties in accordance with Section A2.2;
- (j) to act as BSC Agent for the purposes of the Master Registration Agreement in accordance with Annex K-1;
- (k) to act as shareholder of the BSC Clearer in accordance with paragraph 7;
- (l) to receive, collect and hold such data and information, and to prepare and maintain such books and records, as may be required under the Code or reasonably necessary to enable BSCCo to comply with its functions and responsibilities under the Code; and to provide data and information held by it to the Panel upon request and to other persons in accordance with any express provision of the Code;
- (m) without prejudice to the generality of paragraph (l), where it is not the function of a BSC Agent to do so, to maintain records of the extent to which Parties have satisfied requirements of the kind referred to in Section A4.5.3, and to provide details thereof to BSC Agents and other persons as required for the purposes of the Code;
- (n) to monitor whether any Party is, or with the lapse of time or giving of notice would be, in Default (in accordance with Section H3), and to give to any Party any notice the giving of which will result in that Party being in Default (but not for the avoidance of doubt to give any notice consequent upon a Party's being in Default unless expressly authorised to do so by the Panel or by a provision of the Code);
- (o) to act as the Performance Assurance Administrator;
- (p) to prepare and/or (as the Panel may require) assist the Panel to prepare the Annual BSC Report for each BSC Year in accordance with Section B6.1;
- (q) to make recommendations to the Panel as to possible Modification Proposals in the circumstances mentioned in paragraph 3.8.8 and Section F2.1.1(d)(ii) and (iii);
- (r) to the extent provided in and in accordance with the policy from time to time established by the Panel, to act as a point of contact for persons from other countries interested in, and to explain to such persons, the arrangements for and developments in wholesale trading of electricity in Great Britain and/or Offshore, and to participate in institutional comparative discussions of such arrangements and developments in other countries;
- (s) to provide Profile Administration Services (with the consent of the Panel) and to enter into, manage and (subject to the Code) enforce contracts with service providers for the supply of Profile Administration Services in accordance with Section C9; ~~and~~

(t) in conjunction with the other code administrators identified in the Code Administration Code of Practice, to maintain, publish, review and where appropriate (but subject always to the approval of the Authority) amend the Code Administration Code of Practice; and

(u) to delegate responsibility for performance of the powers, functions and responsibilities specified in this paragraph 3.1.1 and otherwise provided for in the Code, to the BSC Services Manager (save in respect of paragraph (k) and its obligations and responsibilities under Section E, paragraph 4).

Amend paragraph 3.5.1 to read as follows:

3.5 BSCCo resources

3.5.1 If at any time the resources (which in this paragraph 3.5 does not mean financial resources) of BSCCo are inadequate to enable it to perform any particular requirement of the Code (including a requirement specified by the Panel or a Panel Committee or Workgroup pursuant to paragraph 3.1.1), BSCCo shall promptly so notify the Panel and discuss the matter with the Panel, and following such discussion shall take such steps and procure such resources as are necessary to enable BSCCo to meet such requirement (as it may have been modified following such discussion) as soon as is reasonably practicable, provided that in circumstances where BSCCo has appointed a BSC Services Manager in accordance with Section E, paragraph 4, the resources of the BSC Services Manager shall be treated as the resources of BSCCo for the purposes of this paragraph 3.5.1.

Amend paragraph 4.6 as follows:

4.6 — Chief Executive

~~4.6.1—After consultation with the Panel, the Board shall appoint, and may from time to time remove, reappoint or replace, a person, not being a Director, to be the Chief Executive of BSCCo.~~

~~4.6.2—The person appointed as Chief Executive shall be employed or otherwise engaged by BSCCo on such terms as the Board shall decide.~~

~~4.6.3—The Chief Executive shall not be a Director but shall be entitled to receive notices of and to attend and speak (but not to vote) at all meetings of the Board, and (if requested by the Chairman of the Board) shall be required to attend such meetings, provided that the Board may require him to be absent from any part of a meeting at which any matter concerned with his employment or engagement by BSCCo is to be considered.~~

~~4.6.4—The Board shall delegate to the Chief Executive authority to conduct the day-to-day business of BSCCo~~Not used.

Insert new paragraph 7.1.5 to read as follows:

7. BSC COMPANIES

7.1 General

7.1.5 Without prejudice to the generality of paragraph 7.1.1, a Subsidiary in which BSCCo is permitted to hold shares in accordance with paragraph 3.4.5(b)(ii) may discharge any of its powers, functions and responsibilities under the Code through (and by delegation to) the BSC Services Manager.

Amend paragraph 7.5.3 as follows:

7.5 Directors and secretary

~~7.5.3 The person who is for the time being Chief Executive of BSCCo shall act as chief executive of each Subsidiary of BSCCo, under such terms of reference as the board of directors of such Subsidiary may determine. Not used.~~

SECTION E: BSC AGENTS (version 5.0)

Amend paragraph 1.1.1 as follows:

GENERAL

1.1 Introduction

1.1.1 This Section E sets out:

- (a) requirements that certain services be provided by BSC Agents;
- (b) the role of BSCCo in contracting with BSC Agents; ~~and~~
- (c) provisions relating to the relationship between BSCCo, Parties, and BSC Agents; ~~and~~
- (d) provisions relating to the BSC Services Manager.

Insert new paragraph 4 to reads as follows:

4. BSC SERVICES MANAGER

4.1 General

4.1.1 Except as expressly stated in this paragraph 4, the preceding provisions of Section E shall not apply to the BSC Services Manager or the BSC Services Manager Contract.

4.1.2 In this paragraph 4 references to Parties do not include BSCCo or BSC Clearer.

4.2 Appointment

4.2.1 BSCCo may, from time to time, appoint a person to act as its agent for the purposes of discharging some or all of BSCCo's powers, functions and responsibilities in accordance with Section C1.2 and as otherwise specified in the Code (the "BSC Services Manager"), provided that (notwithstanding the provisions of Section F) any amendments to the Code which seek to amend this paragraph 4.2.1 or paragraph 4.2.2 shall require the prior approval of the Board.

4.2.2 Without prejudice to paragraph 4.2.1, BSC Clearer may discharge any of its powers, functions and responsibilities under the Code through (and by delegation to) the BSC Services Manager.

4.2.3 Subject to the provisions of this paragraph 4, BSCCo may do anything necessary for, or reasonably incidental to, the performance by the BSC Services Manager of the services under the relevant BSC Agent Contract ("BSC Services Manager Contract"), including the provision of such guarantees, indemnities or other assurances to or for the benefit of the BSC Services Manager or others under or in connection with any BSC Services Manager Contract as BSCCo considers appropriate.

4.2.4 Subject always to paragraphs 4.1.1 and 4.2.1, for the purposes of the Code:

- (a) the BSC Services Manager shall be regarded as a BSC Agent;
- (b) the BSC Services Manager Contract shall be regarded as a BSC Agent Contract;
- (c) no person (or any Relevant Affiliate of such person) may perform the roles of BSC Services Manager and any other BSC Agent at the same time; and
- (d) a Party (and any Affiliate thereof) or a BSC Company shall not be appointed as BSC Services Manager.

4.2.5 Subject to any contrary provision in the Code, BSCCo or relevant BSC Company (as the case may be) may in its absolute discretion grant or transfer such rights or interests held by BSCCo or relevant BSC Company (in their capacity as BSCCo or relevant BSC Company) on such terms as those entities deem appropriate to the BSC Services Manager (or otherwise make available the benefit of such rights or interests) to enable the BSC Services Manager to discharge its powers, functions and responsibilities under the Code.

4.2.6 For the purposes of the Code, each Party, the Panel and Panel Committees acknowledge and agree that the discharge of BSCCo's functions and responsibilities or the exercise of BSCCo's rights in accordance with the Code by the BSC Services Manager shall be treated as if such functions and responsibilities or rights had been discharged or exercised by BSCCo.

4.2.7 BSCCo shall, in its absolute discretion, be entitled to authorise the BSC Services Manager to act as agent, make any commitment and incur liabilities on behalf of BSCCo (including without limitation entering into contracts or other arrangements) to enable the BSC Services Manager to perform its obligations and duties under the Code and in accordance with the BSC Services Manager Contract.

4.3 Role of BSCCo

4.3.1 General

- (a) BSCCo may, subject to and in accordance with this paragraph 4, at the expiry or termination of any BSC Services Manager Contract, extend or renew the contract or conduct a procurement to select and appoint a successor BSC Services Manager;
- (b) Subject to paragraphs 4.2.1 and 4.3.2(a), the provisions of paragraphs 1.3, 1.5, 1.6 and 2 shall apply to the BSC Services Manager and the BSC Services Manager Contract.

4.3.2 Initial BSC Services Manager Contract

- (a) It is acknowledged that in respect of any initial contract between BSCCo and the BSC Services Manager (“**Initial BSC Services Manager Contract**”) the provisions of paragraphs 1.3, 1.5 and 2 (except paragraphs 2.4 and 2.6) shall not apply, provided that BSCCo shall procure that such contract specifies a process for a new BSC Service Description to come into effect as soon as reasonably practicable (following execution of the Initial BSC Services Manager Contract) and in respect of which paragraphs 1.3 and 1.5 shall apply (in so far as possible) once such BSC Service Description has come into effect.

4.4 Relationship between Parties and BSC Services Manager

4.4.1 The provisions of paragraphs 3.1.1, 3.2.1 and 3.3 shall apply to the BSC Services Manager and the BSC Services Manager Contract, subject to, and in accordance with, the BSC Services Manager Contract.

Section X-1 Definitions (version 52.0)

Amend Annex X-1 to read as follows:

“Affiliate”

means, in relation to any Party, any holding company of that Party, any subsidiary of that Party or any subsidiary of a holding company of that Party, in each case within the meaning of sections ~~736, 736A and 736B~~1159 of the Companies Act ~~1985~~2006, but subject to Section X2.2.5 in relation to the Transmission Company;

“BSC Agent” means the person or persons for the time being appointed for the purposes of providing the services specified (or as may be specified) in a BSC Service Description, ~~as~~ and as otherwise described in Section E;

“BSC Services Manager” means any person for the time being appointed by BSCCo for the purposes of providing the services specified in Section E, paragraph 4;

"BSCCo": [means ~~ELEXON-BSCCo~~ Limited (or any successor to that company acting in the capacity as BSCCo)];

“Relevant Affiliate” means, in relation to any person, any holding company of that person, any subsidiary of that person or any subsidiary of a holding company of that person, in each case within the meaning of section 1159 of the Companies Act 2006;