

What stage is this document in the process?

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

Stage 01: Initial Written Assessment

P290 'Enabling ELEXON to participate in roles in support of the Smart Energy Code (SEC) Panel'

P290 would amend the BSC to enable ELEXON to undertake roles that support the Smart Energy Code (SEC) Panel, in particular for the SEC Administrator and SEC Secretariat roles.

ELEXON:



- Recommends P290 is progressed to an Assessment Procedure by a Workgroup
- Recommends P290 undergoes an expedited timetable

High Impact:



- BSCCo (ELEXON)
- BSC Parties (of interest, but no direct operational impact)

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About this Document

This document is an Initial Written Assessment (IWA), which ELEXON will present to the Panel on 15 January 2013. The Panel will consider the recommendations and agree how to progress P290.



Any questions?

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1 Why Change?



Background

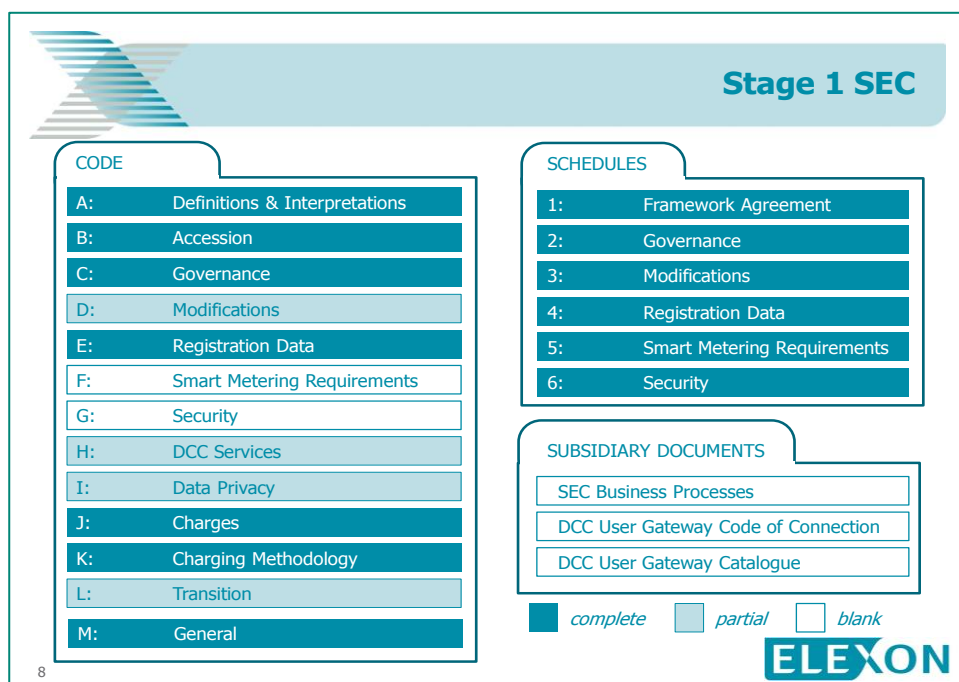
ELEXON administers the Balancing and Settlement Code (BSC) by fulfilling the role of BSC Administrator on a not-for-profit basis. Although ELEXON is a wholly owned subsidiary of National Grid (NGET), NGET does not have a place on ELEXON's Board and has no financial or other obligations or management control over ELEXON. ELEXON's costs are borne by industry and it has successfully reduced its overall running costs year on year¹. However, a restriction in the BSC prevents ELEXON from providing services to government or industry beyond the BSC.

Detailed discussions have been held over the last two years between the industry, the BSC Panel, Ofgem and ELEXON regarding the ability for ELEXON to provide other services within the energy industry. The full history and developments in this process can be found in the Draft Modification Report for [P289 'Enabling ELEXON to participate in tendering for the DCC Licensee role via a subsidiary'](#), the extract of which is included as Appendix 1 to this IWA.

The first draft of P289 included provision for ELEXON to bid for and undertake roles associated with the support of the Smart Energy Code (SEC) Panel. This was subsequently removed as the Panel expressed concerns that, should P289 be rejected, ELEXON may then be unable to progress with any SEC support roles due to the inability to progress a similar Modification within three months. The Panel also expressed a view that any Modification Proposal to allow ELEXON to pursue SEC Panel support roles should be brought forward by industry, rather than raised by the BSC Panel.

Roles in support of the Smart Energy Code Panel

The Smart Energy Code (SEC) is a new Industry Code, created as part of the Regulatory Framework to support the smart metering arrangements. At a high level, the SEC looks similar to other Industry Codes, including the BSC:



What is the issue?

ELEXON cannot participate in the award process or deliver roles in support of the SEC Panel due to the current BSC drafting. This means that there is no opportunity to utilise ELEXON's experience and share infrastructure for the benefit of industry and consumers.

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¹ In real terms, ELEXON's running costs have fallen year on year from £106.5m in 2001/02 to £33.9m (latest forecasted budget) for 2012/13.

The SEC is a critical document that sets out the rights and obligations of users (licensed and unlicensed) of the new smart services provided by the DCC. Like the BSC, the SEC will also set out further details relating to how licensees can meet their licence obligations, and will be supported by a suite of subsidiary documents, including technical specifications.

The SEC will be relatively unique as it is a cross-fuel Code, combing the communities of Gas and Electricity Suppliers, Network Operators and Transporters alongside other users.

A Panel will be established to oversee the SEC, comprised of gas and electricity industry representatives and other members. The Panel may establish committees, and it is suggested that there will be a separate Change Board.

The SEC Panel members will also comprise the Board of SECCo, which is a contracting vehicle for provision of SEC services. DECC has developed two support roles that will need to be in place to support the Panel from its inception, expected in July 2013. These are the SEC Administrator and SEC Secretariat roles, and DECC has noted that these roles could be performed by the same organisation. For ease of reference we refer to these roles as SECA within this document.

Version 1 of the SEC sets out some of the activities that SECA may undertake (including developing change reports, supporting Panel and committee meetings and managing accession). DECC has not published detailed information on the functions of SECA, but in ELEXON's response to the 2011 DECC consultation on the SEC we set out the types of activities that are likely to be involved:

Likely activities involved under the SEC	
Secretariat	Administrator
<ul style="list-style-type: none"> • Panel and Committee(s) Secretary • Develop and maintain ToRs for Committees • Meeting management and facilities • Minute taking, action management, correspondence and record keeping • Produce and publish reports • Maintain Committee membership and Indemnification • Manage election process • Facilitate liaison with Industry Panels and Regulator • Liaise with Code Administrator • Consultation response drafting 	<ul style="list-style-type: none"> • Accession • Entry process • Change management • Exit • Credit monitoring and Default management • Reporting • Manage Audit • Manage Assurance • Website management • Helpdesk response • Consultation response drafting • Configuration management • Manage change implementation • Budget preparation • Education and advice • Liaise with Secretariat and DCC • Compliance monitoring • Business plan • Facilitate liaison with Industry Panels, Regulator and Code bodies

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The activities required to support the SEC and SEC Panel parallel those services provided by ELEXON as the provider of Code Administration and Secretariat services under the BSC.

The Proposer believes that the BSC should be amended to ensure that ELEXON can bring its expertise to any competitive field for the SECA and have the opportunity to utilise the expertise and share infrastructure for the benefit of industry and consumers.

What is the issue?

ELEXON cannot participate in the award process or deliver roles in support of the SEC Panel due to the current BSC drafting. This means that there is no opportunity to utilise ELEXON's experience and share infrastructure for the benefit of industry and consumers.

The key constraints currently imposed on ELEXON by the BSC include provisions which preclude ELEXON or its subsidiaries from undertaking work outside the BSC. This would prevent ELEXON or its subsidiaries from providing SEC services outside its core BSC activities, or holding interests in appropriate legal entities to deliver SEC services outside the BSC.



Proposed solution

The proposed solution is to amend the BSC such that ELEXON is permitted (subject to meeting Ofgem's four expansion conditions) to undertake activities outside of the BSC, specifically the SEC Administration and Secretariat roles.

The key features of this proposal are that:

- The BSC shall be amended to allow ELEXON to pursue and undertake opportunities that support the SEC Panel;
- If ELEXON is awarded any roles in support of the SEC Panel, ELEXON will use revenues from delivering such new services to offset ELEXON costs for the benefit of BSC Parties; and
- If ELEXON is awarded any roles in support of the SEC Panel, such activities will make a fair and reasonable contribution for use of any common or shared infrastructure and such contributions will be used to offset existing BSCCo costs for the benefit of BSC Parties.

Funding of SEC support tenders

Subject to the following conditions, ELEXON would be allowed to incur costs, expenses and other outgoings in connection with the planning, preparation and negotiation of a contract relating to the award of roles supporting the SEC ("SEC Tender Costs"). Costs would be treated as ELEXON costs and would be drawn from BSC Parties in accordance with the existing BSC cost recovery mechanism. These conditions are:

- i) Third party costs incurred in connection with the Tender exercise (e.g. professional advisor costs) will be limited to £50,000²;
- ii) Overheads (e.g. personnel costs) incurred in connection with the Tender exercise will be met by BSCCo;
- iii) SEC Tender Costs must be at arm's length and on normal commercial terms³;
- iv) SEC Tender Costs will be subject to ELEXON's statutory audit;
- v) If ELEXON is unsuccessful in tendering for roles in support of the SEC, the BSCCo Board will write off the SEC Tender Costs in respect of that unsuccessful bid; and
- vi) ELEXON will provide reports to the BSCCo Board at regular intervals on Tender Costs (excluding confidential and/or commercially sensitive information).

If ELEXON is awarded any role in support of the SEC, the BSCCo Board will agree procedures to ensure that any common or shared costs are allocated fairly and reasonably between BSC and SEC users.

Continuity of BSC services

ELEXON will have an obligation to ensure that at all times it has sufficient resources (including personnel) to fully discharge its BSC responsibilities.

What is the solution?

The BSC would be amended such that ELEXON is permitted (subject to meeting Ofgem's four expansion conditions) to undertake activities outside of the BSC, specifically the SEC Administration and Secretariat role.

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² There is sufficient underspend in the 2012/2013 Annual Budget to cover potential Tender Costs.

³ This provision reflects, in part, Standard Condition B9 of NGET's transmission licence.

Ofgem's Expansion Criteria

The Proposer believes that P290 would meet Ofgem's four criteria for the reasons set out below:

(a) BSC Parties should benefit from any diversification

Benefits specific to BSC Parties:

- Opportunity to defray BSC fixed overheads – in the BSCCo Business Plan 2011/12 ELEXON estimated that if it undertook new central smart metering roles alongside the BSC role, BSC Parties would benefit from an annual reduction in BSCCo costs arising from recharging a proportion of BSC fixed costs.
- Revenue paid for delivering the SEC service will be remitted to ELEXON and used to further offset BSC Parties' costs.
- Mitigates the adverse impact on Settlement that a failure of the SEC processes would have through disrupting the flow of metered data. ELEXON, through its BSCCo role, has a desire to ensure that the SEC arrangements function efficiently and effectively.

Wider benefits to the marketplace:

- Creating a new competitor/consolidator amongst the small field of players capable of delivering central market arrangements. The participation of the new entrant in competitive processes will deliver benefits to the market, even if that new entrant is not ultimately awarded the role.
- The ability to diversify will foster innovation and creativity in the delivery of all services and this will benefit both BSC Parties and the wider market.

(b) The arrangements should not place disproportionate risk on BSC Parties

- The SEC roles are low risk activities, and are of limited financial value when compared to other smart opportunities.
- The SEC roles directly reflect the types of services currently provided by ELEXON and that ELEXON has provided these for over ten years. There is significant benefit in having an experienced Code Administrator to oversee new Code arrangements.

(c) Standards of Service under the BSC should be maintained

- The BSC already includes clearly defined services and BSC Agent contracts require them to meet a range of comprehensive service levels. Furthermore, service credits are invoked for non-performance.
- An expanded ELEXON should improve staff retention and morale, ensuring expertise is available to industry for longer, thus ensuring there is no degradation in service standards due to a failure to retain key staff.
- Existing governance provides mechanisms to ensure that service standards are maintained.



What are Ofgem's Expansion Criteria?

(a) BSC Parties should benefit from any diversification

(b) The arrangements should not place disproportionate risk on BSC Parties

(c) Standards of Service under the BSC should be maintained

(d) ELEXON's BSC role should not give it any undue competitive advantage in a contestable activity

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- Continued delivery of the core BSC service to BSC requirements and Parties' expectations is the bedrock upon which ELEXON's reputation is built. It would therefore not be in ELEXON's interests to jeopardise the continued delivery of the core BSC service.

(d) ELEXON's BSC role should not give it any undue competitive advantage in a contestable activity

- ELEXON's BSC role gives it no more advantage than any other central body which provides Code Administration services.

Applicable BSC Objectives

The Proposer believes that this Modification would better facilitate **Applicable BSC Objective (d)**. They have put forward the following arguments to support its belief that the Modification would better facilitate Objective (d):

- They partly interpret this objective more widely to refer to the efficiencies to be benefited by BSC Parties. ELEXON's participation in any bid process for services in support of the SEC will result in a better, more robust service due to both the competitive pressure its participation in the bid would add to the process (irrespective of whether it is awarded any role) and the benefit its expertise would have if it were to be awarded any role. This assertion is based on the knowledge and experience that ELEXON has in running similar services to the SEC. Since the SEC will be vital to the success of the new smart arrangements, it is extremely important that the services that support the SEC be delivered efficiently, effectively and to the highest quality as possible.
- However, the main reason that this objective is met is that BSC Parties and ELEXON clearly have an interest in ensuring that the processes and arrangements that support the new smart arrangements (through which Settlement data will be provided) are maintained to the highest standard and that Settlement be safeguarded. Therefore this Modification would promote efficiency in the implementation and administration of the Settlement arrangements by ensuring that the SEC is delivered to the best quality and Settlement protected.
- If ELEXON were to win the roles for services that support the SEC, BSC Parties' costs would be defrayed. In addition, any revenue provided to ELEXON from this work would help offset the costs of running the BSC and ultimately increasing the efficiency in the administration of the Settlement arrangements.



What are the Applicable BSC Objectives?

(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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Next steps

We believe that P290 should go into the Assessment Procedure so that a Workgroup can be established in order to consider the merits of the proposal.

The Proposer is not requesting that P290 is progressed as a Self-Governance Modification Proposal due to the material change to the existing arrangements, and believes that P290 has no interaction with any on-going Significant Code Reviews (SCRs); we concur with these views.

Terms of Reference

We recommend that membership of the P290 Workgroup should comprise of members from the P284 & P289 Workgroups (due to their familiarity with areas related to this governance issue) and the Governance Standing Modification Group (GSMG), along with any other relevant experts and interested parties.

Section 1 of this document outlines the background to this change, the history of which can also be found in the P289 Draft Modification Report. Significant discussions have been held with industry over the last two years with regards to the ability of ELEXON to provide similar services to the energy industry.

We therefore recommend that the Terms of Reference for this Workgroup should focus on the following areas:

P290 Terms of Reference
Would there be benefit in ELEXON participating in the SEC bid process?
If successful, would there be benefit in ELEXON undertaking the SEC role?
Does the Modification meet the four Ofgem expansion criteria? In particular: <ul style="list-style-type: none">Do you understand the monies at risk?Are the funding arrangements appropriate?
What changes are needed to BSC documents, systems and processes to support P290 and what are the related costs and lead times?
Are there any Alternative Modifications?
Does P290 better facilitate the Applicable BSC Objectives than the current baseline?

Request for an expedited timetable

The Proposer has requested that P290 be progressed with an expedited timetable, as the award process for SEC Panel support roles is likely to commence in the near future.

DECC has yet to announce the full timetable for award of the SEC Panel support roles. However they have indicated that this is likely to commence by the end of January 2013. DECC has previously stated that they intend for the SEC Panel and SEC support roles to be established in time for the SEC (Version 1) to Go-Live in July 2013.

In addition, the Proposer notes that Ofgem has recently consulted upon the ability for another central body to participate in smart roles (including those that support the SEC

What is the proposed progression?

P290 should be progressed to the Assessment Procedure.

P290 should be progressed with an expedited timetable.

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Panel) and sought views by early January to enable them to take a decision in time to allow that central body to participate.

A proposed timetable for an expedited process would be:

Expedited Progression Timetable for P290	
Event	Date
Present IWA to Panel (ad-hoc meeting)	15 Jan 13
Workgroup Meeting	16 Jan 13
Present Assessment Report to Panel (ad-hoc meeting)	22 Jan 13
Report Phase Consultation	23 Jan 13 – 08 Feb 13
Present Draft Modification Report to Panel	14 Feb 13
Issue Final Modification Report to Ofgem	15 Feb 13

Standard timetable

If the Panel does not agree to an expedited timetable, the Modification would follow a 'normal' progression timetable as indicated below. However, this timetable would delay a final decision by two months, which would impact on ELEXON's ability to participate in the award process.

'Normal' Progression Timetable for P290	
Event	Date
Present IWA to Panel (ad-hoc meeting)	15 Jan 13
Workgroup Meeting	16 Jan 13
Assessment Procedure Consultation	25 Jan 13 – 15 Feb 13
Workgroup Meeting	W/B 18 Feb 13
Present Assessment Report to Panel	14 Mar 13
Report Phase Consultation	15 Mar 13 – 05 Apr 13
Present Draft Modification Report to Panel	11 Apr 13
Issue Final Modification Report to Ofgem	12 Apr 13

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Estimated progression costs

The following tables contain our estimates of the costs involved in progressing P290 through the Modification Procedures under the expedited timetable:

Estimated Progression Costs based on Expedited Progression Timetable	
Meeting costs (including Workgroup member expenses)	£500 (based on one meeting)
Non-ELEXON legal and expert costs	£0
ELEXON resource	20 man days, equating to approx. £5k

Estimate of Total Industry Assessment Costs based on Expedited Progression Timetable					
Workgroup support	Est #mtgs	Est #att	Est effort	Est rate	Sub-total
	1	8	1.5	£605	£7,260
Consultation response support	Est #cons	Est #resp	Est effort	Est rate	Sub-total
	1	8	2.5	£605	£12,100
Total Costs					£19,360

These costs would be approximately doubled for the 'normal' progression timetable.

Industry Assessment Costs

Industry Workgroup support and consultation response costs represent an approximation of industry time and effort in attending Workgroup meetings and responding to consultations.

The calculation is based upon an estimate of how many attendees we expect to attend each meeting and how many responses we expect to receive to each consultation.

The calculations assume that each attendee will require 1.5 man days of effort per meeting and each response will take 2.5 man days of effort, multiplied by a standard rate of £605 per man day.

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4 Likely Impacts

Impact on BSC Parties and Party Agents

No direct operational impact, but would be of interest to BSC Parties as P290 would change the scope of ELEXON's permitted activities and have implications for the funding of BSC services (in that costs may be defrayed).

Impact on Transmission Company

None anticipated.

Impact on ELEXON

Area of ELEXON	Potential impact
ELEXON's Vires	ELEXON would be permitted to undertake roles for services that support the SEC.
Release Management	ELEXON will manage the implementation project.

Impact on Code

Code Section	Potential impact
Section C	Changes will be required to implement the solution.
Section X – Annex X-1	

5 Recommendations



On the basis of this Initial Written Assessment, ELEXON invites the Panel to:

- **DETERMINE** that Modification Proposal P290 progresses to the Assessment Procedure;
- **AGREE** the expedited Assessment Procedure timetable such that an Assessment Report should be completed and submitted to the Panel at an ad-hoc meeting on 22 January 2013;
- **DETERMINE** that the P290 Workgroup should be formed from members of the P284 & P289 Workgroups and the Governance Standing Modification Group and any other interested parties; and
- **AGREE** the Workgroup's Terms of Reference.

Recommended Progression

ELEXON recommends P290 is submitted to an Assessment Procedure and is progressed with an expedited timetable.

6 Further Information

More information is available in:

Attachment **A**: Modification Proposal Form

You can also find further information on the [P290](#) page of the ELEXON website.

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Appendix 1: History of the developments and discussions relating to ELEXON's ability to provide other services

In 2010 ELEXON first communicated its belief that its expertise and experience should be applied more widely for the benefit of industry, government and, ultimately, the consumer as part of its 2011/12 Business Plan.

Issue 40

As a result of responses received to the Business Strategy consultation in February 2011, and an industry workshop in March 2011, [Issue 40 'Review of ELEXON Governance and Funding Arrangements for New Business Opportunities'](#) was raised by E.ON in March 2011. Issue 40 considered options for an appropriate governance framework to allow BSCCo to pursue business development opportunities which it was precluded from under the Code. The Issue 40 Group was tasked with considering and developing a number of viable governance proposals which could form the basis for one or more future Modifications.

The Issue 40 Group also considered:

- The extent to which ELEXON should be permitted to pursue new business development opportunities;
- The process for setting budgets, authorising expenditure and ensuring effective accountability to BSC Parties;
- Funding arrangements and the extent to which costs and risks should be allocated to BSC Parties that benefit from new business developments;
- How surplus income generated from new business development opportunities are used, including:
 - consideration of repayments to Parties required/choosing to fund such activities; and/or
 - reductions to BSCCo Charges;
- The separate accounting and ring fencing of new business activities from existing BSC activities, and whether new organisation or ownership structures are required;
- The respective roles of the Board and BSC Panel, the Transmission Company and Trading Parties (for the above); and
- An appropriate regulatory regime.

The Issue 40 Group discussed three potential models, which in summary are:

- **Model A:** the creation of a new umbrella holding company to be the parent of an ELEXON Group. BSCCo would become a wholly owned subsidiary of this new holding company (rather than National Grid), but is otherwise unchanged in structure, funding, role or governance and remains cost pass through/non-profit making. New business ventures would be competed for and delivered as ring-fenced subsidiaries of the new holding company.
- **Model B:** the creation of a new company to procure and manage a BSC services company which would provide all the services that BSCCo does today, but under a contestable commercial services contract. The ownership, governance, funding and profit status of ELEXON Limited would be changed. The BSC ServeCo contract would include a profit margin and appropriate incentives to reduce charges.

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- **Model C:** the existing governance and funding of BSCCo as a wholly owned subsidiary of National Grid remains. All future roles would be undertaken by ELEXON under this structure via incremental modification of the BSC.

The Issue 40 Group concluded that Model C should not be progressed. However, Models A and B could potentially be used to enable ELEXON to undertake a wider set of business activities. The Group preferred Model B.

Ofgem consultation

Parallel and separate to Issue 40, Ofgem commissioned an independent advisor (Richard Morse) to deliver a report on any issues that might arise from ELEXON diversification and how such issues could be addressed. The Morse Report was published on 29 July 2011, six weeks before the Issue 40 report was published (in September 2011).

Following the Morse Report, Ofgem issued a consultation in November 2011 on the potential expansion of ELEXON's scope and vires to allow it to take on additional work beyond that set out in the BSC. Ofgem acknowledged that the main driver for ELEXON's diversification was the role of the DCC and considered that "there may be some synergies between the processes currently run by ELEXON and the anticipated role of the DCC, as well as the potential for cost savings from the more efficient use of its fixed assets and other resources. Consumers may therefore benefit from Elexon's participation in the competition to undertake the DCC role."

The November consultation set out four expansion conditions that would need to be satisfied before any expansion could occur, with the aim of protecting BSC Parties and ultimately consumers. These expansion criteria were:

- (a) BSC Parties should benefit from any diversification;
- (b) The arrangements should not place disproportionate risk on BSC Parties;
- (c) Standards of service under the BSC should be maintained; and
- (d) ELEXON's BSC role should not give it any undue competitive advantage in a contestable activity.

The consultation also identified two possible restructuring models (the 'contract model' and the 'subsidiary model') that could satisfy the expansion conditions. Ofgem's preliminary view was that while either of the two models would be viable, the 'contract model' would most effectively meet the expansion conditions.

On 30 April 2012 Ofgem concluded that ELEXON should be allowed to do more if the expansion criteria are satisfied, and reaffirmed their view that a contract model appeared most likely to effectively mitigate the size and nature of risks associated with ELEXON undertaking an activity such as the DCC.

As part of their conclusions Ofgem also acknowledged the concerns raised by several consultation respondents that a contract model may be more expensive to implement and therefore suggested that there may be more proportionate means of allowing a limited expansion of ELEXON's activities without requiring its separation from the BSCCo in the form of the BSC Board.

P284

As a result of the Ofgem conclusions letter National Grid raised [P284 'Expansion of Elexon's role via the 'contract model''](#) in May 2012. P284 sought to amend the BSC to enable the BSCCo Board to outsource its activities to a new entity ('New ELEXON') under a for-profit contract, if it chose to do so. P284 was approved by Ofgem in September 2012.

Decision of the ELEXON Board

On 27 November, ELEXON's Board concluded that, whilst ELEXON diversification will undoubtedly bring longer term benefits to consumers, the industry, government and to staff, the proposed contract model could not meet one of Ofgem's four expansion conditions and therefore the contract model could not be pursued at this time.

The condition that the Board could not resolve was "BSC Parties should benefit from diversification". This proved impossible when considering a shift from a not-for-profit to a for-profit service, which would be coupled with increased overheads arising from the need for two companies (customer and provider) where there had been only one in the past. The arising costs could not be outweighed by profit share and overhead reduction arising from new work that, by its nature, could not at this time be quantified or guaranteed.

The Board, recognising the benefits of diversification and the specific opportunity of the DCC Licence Award, requested that ELEXON explore how to enable participation in the Licence Award. How to resolve matters was discussed at a subsequent meeting of the Board on 5 December 2012.

Following its meeting on 5 December 2012 a paper was circulated to the Board asking that they:

- **RECOMMEND** to the BSC Panel that a BSC Modification is raised, on the grounds of efficiency, to enable ELEXON to bid for the DCC; and
- **RECOMMEND** to the BSC Panel that in light of the pressing timescales, the Modification is progressed as Urgent.

On the grounds that a Modification was limited solely to the DCC and SEC roles, and did not compromise delivery of the BSC services, the recommendations were supported by three of the four non-executive directors. The BSCCo Board subsequently requested that the BSC Panel raise [P289 'Enabling ELEXON to participate in tendering for the DCC Licensee role via a subsidiary'](#).