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Dear Marion,

Code Governance Review (Phase 3) Final Proposals – consultation on licence modifications – ELEXON Response

We welcome the opportunity to comment on the draft licence changes arising from Ofgem’s third review of industry code governance.

As you are aware, ELEXON is the code administrator for the Balancing and Settlement Code (BSC). We are responsible for managing and delivering the end to end services set out in the BSC. This includes responsibility for the delivery of settlement systems and processes. We also manage the development, assessment and implementation of changes to BSC Agent (central) systems and processes. The views expressed in this response are those of ELEXON Ltd, and do not seek to represent those of the BSC Panel or Parties to the BSC.

As we noted in our December 2015 response to Ofgem’s initial proposals, we believe it is important for industry parties and code administrators to be closely involved in the development of any modifications arising under a Significant Code Review (SCR). We welcome Ofgem’s continued commitment to this in the updated draft SCR guidance (published as appendix 1 to the Code Governance Review (Phase 3): Final Proposals document).

We strongly agree that industry code panels must continue to have a role in voting on recommendations associated with Modifications arising from SCRs. This is an important check and balance in the existing industry code governance¹ and we are pleased that this has been retained under all three SCR routes.

We set out our responses to your specific consultation questions below.

1. Do you consider that the licence drafting would achieve the policy proposals set out in the CGR3 Final Proposals?

Broadly, yes. We agree that the proposed amendments to Electricity Transmission Licence SLC C3 (relating to the BSC) would achieve the policy proposals set out in the CGR3 Final Proposals.

¹ For example, the provisions of the Electricity Act offer the opportunity for Authority decisions to be appealed to the CMA in the event that the Authority approves a Modification which was recommended for rejection by the BSC Panel.

However, in relation to the drafting for the BSC, we query whether the definition of 'significant code review phase' is correct. We expand on this technical drafting element below.

Definition of the 'significant code review phase'

The 'significant code review phase' is defined, in part, as the period commencing "(a)(ii) on the date the Authority makes a direction under paragraph 4G".

Paragraph 4G provides that: "The procedures for the modification of the BSC shall provide, where a proposal has been made in accordance with paragraph 4C(a) or 4(ae)(i), or by the Authority under paragraph 4C(ba) and it falls within the scope of paragraph 4H(b), for the proposal and any alternatives to be withdrawn where the Authority so directs."

Para 4G is mentioned again in the context of the end of a 'significant code review phase'. This is defined by (b)(iv) to be: "if a statement is made under paragraph 4C(bb) or a direction is made under paragraph 4G, on the date specified in accordance with paragraph 4D."

This current drafting suggests Para 4G can be the agent of both the start and the end of a SCR phase. Given the subject of Para 4G is for the Authority to withdraw a proposal this makes sense in the context of the end of a SCR phase, but not its start.

We therefore believe the cross-reference to paragraph 4G in relation to the commencement of a 'significant code review phase' is erroneous.

2. Do you consider that the licence drafting in Electricity Transmission Licence SLC C14 would also facilitate the implementation of GC0086?

We have not reviewed the proposed drafting of Electricity Transmission Licence SLC C14 in relation to GC0086.

3. Do you agree that, where licence drafting differs between licence conditions, the substantive effect is materially the same?

We have not conducted a detailed review of the proposed changes across every set of licence amendments. However, on initial inspection, the changes proposed in relation to the CUSC, MRA and Grid Code appear to have substantively similar effects to those proposed in relation to the BSC.

However, we note that the various definitions of the 'significant code review phase' contain equivalent drafting to that which we highlight in our response to question 1. These may therefore need to be updated in the event that the proposed drafting in relation to the BSC needs amending.

If you would like further information, please contact Adam Richardson, Design Authority, on 020 7380 4117, or by e-mail at adam.richardson@elexon.co.uk

Yours sincerely,

Mark Bygraves
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