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for energy consumers

BSC Parties, National Grid  
Electricity Transmission Plc,  
Elexon Limited and other  
interested parties

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Date: 15 January 2015

Dear Colleagues,

### **Statutory consultation on a proposed licence modification to enable future expansion of the role of Elexon Limited**

We propose to modify standard condition C3, 'The Balancing and Settlement Code' (SLC C3), of National Grid Electricity Plc's (NGET's) electricity transmission licence.<sup>1</sup> The proposed modification aims to allow the industry to explore options for potential expansion of Elexon Limited's (Elexon's) role, if appropriate. Statutory Notice of this modification is published alongside this letter.

### **Background**

Elexon<sup>2</sup> is the Balancing and Settlement Code Company (BSCCo). The BSCCo's constitution, powers and functions are set out in Section C of the Balancing and Settlement Code (BSC).<sup>3</sup> BSC Section C 1.2.2 prevents the BSCCo from undertaking any activity not set out in the BSC.

An independent review of Elexon's governance was published in July 2013.<sup>4</sup> One of its recommendations was that Ofgem should consider a change to NGET's licence to allow BSC parties to consider other activities that Elexon could potentially undertake. We responded in our October 2013 open letter<sup>5</sup> by saying that we would engage in discussions regarding a potential change to the transmission licence. Currently, the transmission licence does not envisage the BSC including provisions beyond the scope of balancing and settlement, except as explicitly provided for in the licence.<sup>6</sup>

We published an initial consultation on a proposed licence modification in September 2014.<sup>7</sup> Please refer to this initial consultation for further background.

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<sup>1</sup> <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>

<sup>2</sup> Or any successor to that company acting in the capacity as the BSCCo. Annex X-1 of the BSC.

<sup>3</sup> The BSC and related documents are here: <http://www.elexon.co.uk/bsc-related-documents/balancing-settlement-code/consolidated-bsc/>

<sup>4</sup> 'The Governance of Elexon': <http://www.elexon.co.uk/wp-content/uploads/2013/07/The-Governance-of-ELEXON-Final-Report.pdf>

<sup>5</sup> <https://www.ofgem.gov.uk/publications-and-updates/review-elexon-governance>.

<sup>6</sup> The transmission licence gives Elexon the roles of administrators of the government's Warm Home Discount scheme, and Electricity Market Reform settlement provider.

<sup>7</sup> <https://www.ofgem.gov.uk/publications-and-updates/consultation-potential-licence-modification-enable-future-expansion-role-elexon-limited>

The proposed licence changes do not necessitate a change to the BSC and are not driven by any particular future role that Elexon may take on. Rather, this would be an enabling change to ensure that the industry is better able to explore options for expansion, if and when appropriate. Any such expansion would be subject to Authority consent and the prerequisite conditions set out in our April 2012 letter.<sup>8</sup>

## **Consultation responses**

We received four non-confidential responses to our initial consultation.<sup>9</sup> We asked six questions and we outline below our views on the comments received.

### *Question 1: Do you agree with the intent of this consultation?*

Respondents generally supported the intent of this proposed modification. One respondent was keen to ensure that any potential future activities that Elexon may undertake should be broadly consistent with its current role. The respondent said they should not expose BSC parties to inappropriate levels of commercial risk, or bring the BSCCo into conflict with the interests of any BSC party.

We consider that any expansion of Elexon's role must benefit BSC parties. Furthermore, any code modification leading to an expansion of Elexon's role will need to show it will better facilitate the BSC objectives.<sup>10</sup> This should provide sufficient assurance to BSC parties.

Two respondents considered the timing of this consultation appropriate as it was not being driven by any particular future role or deadline. The time involved in the licence modification process<sup>11</sup> would make it difficult for the industry to react effectively to opportunities if the licence is not amended in advance.

### *Question 2: Does the licence drafting in Appendix 1 fulfil the intent of the modification?*

One respondent suggested that the licence drafting should restrict new BSCCo activities to central market functions in the electricity wholesale, and electricity and gas retail markets. Two respondents suggested that a modification to the BSC to expand Elexon's role would not be able to show that it better facilitates the BSC objectives.

It should be noted that we consider that any permitted expansion of Elexon's role should benefit BSC parties, and any code modification should better facilitate the BSC objectives. We think the proposed licence drafting is therefore adequate, and these matters can be further considered under the code modification process if such a proposal is brought forward.

### *Question 3: Do you have any other suggestions for the drafting?*

One respondent suggested a change to our proposed new paragraph 1B. They suggested that instead of "The licensee...", it should read "The BSC shall establish the Balancing and Settlement Code Company..." as this would be consistent with the approach taken in the Data Communications Company Licence.<sup>12</sup> They also suggested the proposed drafting could

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<sup>8</sup> <https://www.ofgem.gov.uk/ofgem-publications/61697/elexon-expansion-way-forward-letter-300412.pdf>

<sup>9</sup> These have been published on our website: <https://www.ofgem.gov.uk/publications-and-updates/consultation-potential-licence-modification-enable-future-expansion-role-elexon-limited>

<sup>10</sup> As set out in Standard Condition C3 (3) of NGET's Transmission Licence: <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>.

<sup>11</sup> Section 11A of the Electricity Act 1989 sets out the minimum timings for a statutory consultation on a licence modification (28 days) and the time between the publication of the decision and the date the modification can have effect (56 days).

<sup>12</sup> Condition 22.26 of the Smart Meter Communication Licence: <https://epr.ofgem.gov.uk/Content/Documents/Smart%20DCC%20Limited%20>

mean that a licence modification may be required if the Authority was to direct the licensee (NGET) to transfer ownership of the BSCCo.<sup>13</sup>

As NGET has already established the BSCCo, we consider that the current wording reflects the status quo and does not need to be changed.

Question 4: Does the licence drafting distinguish clearly between the BSCCo (Elexon) and the code administrator (a role that is fulfilled by Elexon)?

In general, respondents considered that the proposed drafting is adequate.

Question 5: Do you think there would be any unintended consequences of inserting a reference to the BSCCo into the transmission licence?

Other than the points raised above, there were no unintended consequences identified.

Question 6: Do you agree that paragraph 13AA is helpful/needed?

Most respondents considered that the proposed paragraph 13AA was useful. Some considered that it was not necessary to include it as the current BSC controls mean any such change would require Authority consent anyway. Its inclusion, they suggested, is therefore effectively duplicating existing provisions. We consider that this paragraph is helpful in making absolutely clear within the licence that a proposed code modification of this type requires Authority consent.

## **Next steps**

Alongside this letter we have published statutory Notice of the proposed licence modification. The proposed licence drafting has not changed since our initial consultation and can be found in Appendix 1 of the Notice. Representations to the proposed modification should be made in writing on or before 12 February 2015.

If you have any queries regarding the information contained within this letter or the Notice please contact Rory P Edwards on 0207 901 3168 or by email [rory.p.edwards@ofgem.gov.uk](mailto:rory.p.edwards@ofgem.gov.uk).

Yours faithfully,

Lesley Nugent  
**Head of Industry Codes and Licensing**

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[%20Smart%20Meter%20Communication%20Consolidated%20Licence%20Conditions%20-%20Current%20Version.pdf](#)

<sup>13</sup> Section C 2.2.3 of the BSC.