

Modification proposal:	<b>Balancing and Settlement Code (BSC) proposal P365: Enabling ELEXON to tender for the Retail Energy Code (REC)</b>		
Decision:	The Authority <sup>1</sup> directs that this modification be made <sup>2</sup>		
Target audience:	National Grid Transmission Plc (NGET), Parties to the BSC, the BSC Panel and other interested parties		
Date of publication:	10 April 2018	Implementation date:	17 April 2018

## Background

Ofgem is undertaking a programme of work to enable consumers to switch their energy supplier reliably and quickly, including by the end of the next working day if they choose. This will be done by simplifying and harmonising the gas and electricity switching arrangements in a cost-effective manner. We will do this by overhauling the existing switching arrangements, introducing a package of reforms known as Reform Package 2a (RP2a). In particular, this will require the Data and Communications Company (DCC) to procure a new Centralised Switching Service (CSS) that will facilitate reliable and fast switching across gas and electricity markets.

Having previously consulted upon options for governing the CSS and associated industry processes, we concluded that developing a bespoke dual-fuel industry code would provide more effective and efficient governance than seeking to extend the scope of any of the existing industry codes. We therefore intend to introduce a dual-fuel Retail Energy Code (REC). These proposals are further detailed in our Outline Business Case.<sup>3</sup>

We consider that the early implementation of the REC, allowing for the procurement of a REC code administrator/manager ('REC manager') and other services, as well as providing a vehicle for formal codified governance of the transitional period leading up to the new arrangements taking effect, will help facilitate programme delivery. The REC manager will be selected through competitive procurement.

The Balancing and Settlement Code (BSC) sets out the powers, functions and constitution of the BSC Company (BSCCo); Elexon is the BSCCo. Elexon is a non-profit-making limited liability company established to facilitate the effective delivery, implementation and operation of the electricity balancing and settlement arrangements. Section C of the BSC currently precludes Elexon from undertaking any business or activity which is not provided for in the BSC itself. Although Elexon has taken on non-BSC roles in recent years, namely administration of the Warm Home Discount scheme and as Electricity Market Reform (EMR) Settlement Service Provider (EMRS), both of these resulted from modifications to the BSC directed by the Secretary of State.

## The modification proposal

P365 seeks to modify the BSC in order to enable Elexon to bid for the role of REC manager, should it choose to do so. This would be done through a separate not-for-profit subsidiary, which would initially be funded by Elexon, through BSC funding-parties contributions. The structure also seeks to ensure that Elexon and BSC Parties are ring-

<sup>1</sup> References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

<sup>2</sup> This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

<sup>3</sup> Ofgem, [Switching Programme: Outline Business Case](#), February 2018

fenced from any enduring operational costs and risks associated with performing the role of REC manager.

The final decision on whether or not to bid for the REC manager role would be a matter for the BSCCo Board.<sup>4</sup>

This proposal follows the approach adopted under P330.<sup>5</sup>

### **BSC Panel<sup>6</sup> recommendation**

At its meeting on 8 March 2018 the BSC Panel voted unanimously that P365 would better facilitate BSC objective d), and therefore recommended that it be accepted by the Authority. The Panel members also voted unanimously to agree that, should the proposal be approved, the implementation date will be 5 working days from receipt of that Authority decision.

### **Our decision**

We have considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 14 March 2018. We have considered and taken into account the responses to the industry consultation(s) which are attached to the FMR<sup>7</sup> and have concluded that:

- implementation of P365 will better facilitate the achievement of the applicable objectives of the BSC;<sup>8</sup> and
- directing that the modification be made is consistent with our principal objective and statutory duties.<sup>9</sup>

### **Reasons for our decision**

We agree with the BSC Panel and the majority of respondents that P365 will better facilitate BSC objective d) and have a neutral impact on the other applicable objectives.

#### ***(d) promoting efficiency in the implementation and administration of the balancing and settlement arrangements***

We note that eight of the nine respondents to consultation agreed with the Panel's initial recommendation that P365 should be approved. Generally, respondents agreed that the implementation of this modification may allow Elexon, if successful in its tender, to realise efficiencies. In particular, it would be able to apportion some of its fixed costs to the REC service, and as such reduce the burden on BSC funding parties.

One respondent extended this rationale, suggesting that the proposal did not go far enough. They argued that the Elexon Board should be allowed to investigate any opportunity which they feel would allow them to deliver BSC services in a more efficient

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<sup>4</sup> The role, powers, functions and responsibilities of the BSCCo Board are set out in Section C of the BSC.

<sup>5</sup> P330: '[Allowing ELEXON to tender for the Uniform Network Code Gas Performance Assurance Administrator \(PAFA\) role](#)'.

<sup>6</sup> The BSC Panel is established and constituted pursuant to and in accordance with Section B of the BSC and Standard Special Licence Condition C3 of the Electricity Transmission Licence available at: [www.epr.ofgem.gov.uk](http://www.epr.ofgem.gov.uk)

<sup>7</sup> BSC modification proposals, modification reports and representations can be viewed on the Elexon website at [www.elexon.co.uk](http://www.elexon.co.uk)

<sup>8</sup> As set out in Standard Condition C3(3) of NGET's Transmission Licence: <https://epr.ofgem.gov.uk>

<sup>9</sup> The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989.

way. Another respondent noted the potential synergies that could be realised if there was a single point of contact for both the BSC and the REC.

The respondent that was opposed to P365, which the FMR notes is not a BSC Party, did not consider that the proposal would further any of the BSC objectives. They noted that there is nothing in the proposal itself that would ensure Elexon realises and/or shares any efficiency gains. They also note that in the event that Elexon submit a tender for the REC role and is not successful, cost will be incurred that cannot be recovered. The same respondent expressed concerns that the bidding process could have a detrimental and distracting effect on Elexon's performance of existing responsibilities under the BSC.

Given that P365 is merely an enabling modification and does not impose any additional obligations upon Elexon, the BSC Board will retain discretion both on whether to submit a tender for the REC manager role, and on how much should be spent on such a bid. We see no reason why participating in such a tender would have any adverse impact on the standards of service Elexon provides to BSC Parties. Indeed, in our previous decisions to accept BSC modifications P284 and P330 we were clear that certain criteria would have to be met as follows:

- BSC Parties should benefit from any diversification;
- the arrangements should not place disproportionate risk on BSC Parties;
- standards of service under the BSC should be maintained; and
- Elexon's BSC role should not give it any undue competitive advantage in a contestable activity.

Whilst P284 sought to ensure these criteria were met through a 'contract model', whereby Elexon would become distinct from, and provide services under contract to, the BSCCo we acknowledged that there may be other means of achieving this. We would expect that as part of its decision making the BSC Board must be satisfied that the criteria are met. The last criterion is more appropriately a matter for the Authority and the approach taken to the REC manager procurement.

As set out in the FMR, any subsidiary created to bid for the REC manager role would be financially ring-fenced from other Elexon operations. Whilst we agree with the respondent who noted that the proposal is not explicit in how the benefit of any revenues and efficiencies will be shared with BSC Parties, we note that the BSCCo will be the sole shareholder of the subsidiary company. The BSCCo Board itself has duties that are both fiduciary and set out in the BSC; we therefore consider that cost apportionment and disbursements are appropriately a matter for the BSCCo Board and need not be prescribed further within the BSC.

We also agree with the assertions in the FMR that there may be other synergies arising from Elexon undertaking a REC manager role, for instance shared knowledge of best practice and lessons learnt, which we would expect to be reciprocal. This would of course be true of any existing code body or company with relevant experience in the energy industry or elsewhere, and in assessing this modification proposal we are in no way providing a view on the relative merits of Elexon to undertake this role in comparison with any other bidder.

We also note that one respondent suggested that this proposal could perhaps have been wider in scope, enabling Elexon to tender for any suitable opportunity that arises, rather than being specific to the REC manager role. This is perhaps something that could be considered in future, irrespective of whether Elexon is successful in any bid it may make for the REC manager role.

We consider that the experience of going through the tender process, and even the evaluation of existing organisational strengths and weaknesses that may be undertaken in preparing for such a process, should provide valuable learning. As such, Elexon and BSC Parties should gain value from the relatively small expenditure on such a process, irrespective of its outcome. We therefore consider that P365 will promote efficiency in the implementation and administration of the balancing and settlement arrangements.

### **Decision notice**

In accordance with Standard Condition C3 of NGET's Transmission Licence, the Authority hereby directs that modification proposal P365: '*Enabling ELEXON to tender for the Retail Energy Code (REC)*' be made.

**Rachel Clark**  
**Switching Programme Director**

Signed on behalf of the Authority and authorised for that purpose