

By e-mail to rory.p.edwards@ofgem.gov.uk

Rory Edwards
Industry Codes and Licensing
Ofgem
9 Millbank
London
SW1P 3GE

21 November 2014

Dear Rory,

Consultation on a potential licence modification to enable future expansion of the role of ELEXON Limited

We welcome the opportunity to provide ELEXON Limited's views on the above consultation. We are supportive of the proposed amendments and believe it is right to consider these licence changes now, when they are not being driven by any particular future service or related deadline.

The views expressed in this response are those of ELEXON Limited alone, and do not seek to represent those of the Parties to the BSC.

We note that subsequent BSC Modifications would be needed to enable ELEXON to deliver additional services. Subject to the progression of the proposed licence changes, we welcome the opportunity to discuss potential Modifications with BSC Parties and firmly believe that BSC Parties must be fully engaged in the development and assessment of any such Modifications.

We confirm that this letter and its attachment may be published on Ofgem's website.

We would be happy to discuss our response with you.

If you or your colleagues need anything further from ELEXON, please contact me on 020 7380 4117 or by email: adam.richardson@elexon.co.uk.

Yours sincerely,

Adam Richardson
BSC Advisor and Panel Secretary

List of enclosures: Consultation Response

ELEXON LTD'S RESPONSE TO OFGEM'S CONSULTATION ON A POTENTIAL LICENCE MODIFICATION TO ENABLE FUTURE EXPANSION OF THE ROLE OF ELEXON LTD

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

ELEXON agrees with the intent of the consultation. While we remain focussed on delivering our core services permitted by the BSC, the industry around us continues to change at an unprecedented pace. Our unique position as a source of independent expertise at the centre of the energy market means we can help develop solutions to common industry problems and provide appropriate code governance, administration and other market support services.

We recognise that Ofgem has previously indicated that if ELEXON were to undertake other activities, there should be a benefit to consumers not only through a potential reduction in the currently fixed costs of operating the BSC, but also through adding to the strength of competition for market roles¹.

We believe that competition in the provision of services will be facilitated by the proposed changes and that this would be beneficial for industry parties and, ultimately, the consumer. We note that this also aligns with Ofgem's conclusions regarding the benefits of the potential expansion of Electralink's activities².

We therefore support the proposed amendments and note that they constitute enabling changes which, while not necessitating a change to the BSC, would allow the industry to explore options for the delivery of new services by ELEXON if, or when, it was felt appropriate.

We believe it is right to consider such licence changes now, when they are not being driven by any particular future service or related deadline.

We note that subsequent BSC Modifications would be needed to enable ELEXON to deliver additional services. Subject to the progression of the proposed licence changes, we welcome the opportunity to discuss potential Modifications with BSC Parties and firmly believe that BSC Parties must be fully engaged in the development and assessment of any such Modifications.

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

Yes.

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

We consider it essential for BSC Parties to be engaged in the development and assessment of any Modifications seeking to amend ELEXON's services. However, we feel that the Authority's decision-making process may be complicated by the existing provisions relating to the assessment of Modifications.

¹ <https://www.ofgem.gov.uk/publications-and-updates/potential-expansion-role-elexon>

² <https://www.ofgem.gov.uk/publications-and-updates/decision-electralink%E2%80%99s-proposed-expansion-its-electricity-related-activities>

The BSC Panel must make its recommendation to the Authority based on the extent to which it believes a Modification better facilitates the Applicable BSC Objectives set out in paragraph 3 of standard condition C3 of the electricity transmission licence. However, it is not clear that the current Applicable BSC Objectives would support a Modification relating to the delivery of non-BSC services, since, by definition, the benefits of such a change would arise outside the existing BSC. Even if BSC Panel Members believed the change was sensible and appropriate, the BSC Panel may be compelled to recommend that the Modification be rejected. However, the Authority has wider statutory duties. When considering the Modification in this wider context, and having regard to the pre-requisite conditions associated with any expansion of ELEXON's role, the Authority may decide to approve the change. In this scenario, where the BSC Panel has recommended rejection, the decision of the Authority can be appealed. Such appeals complicate and extend the Authority's decision-making process and create additional uncertainty.

It may be felt that this risk is remote; however, we are happy to discuss this matter further if it is felt that further consideration is needed.

Separately, we have suggested a minor amendment to proposed paragraph 1B which is included in the comments we have made in our response to Question 5.

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

We note the aim is to clarify that BSCCo performs (and may perform) roles other than those of a code administrator³ and that these roles are separate and distinct from its role as the BSC code administrator.

Paragraph 1(e) of standard condition C3 of the electricity transmission licence establishes code administration in relation to the BSC and requires that the BSC sets out the code administrator's powers, duties and functions. Further, the proposed new paragraph 1B of the transmission licence emphasises that the BSCCo is established to provide and procure services required for the implementation of the BSC⁴. These services extend beyond those powers, duties and functions which comprise code administration. They are detailed throughout the BSC and its subsidiary documents.

We therefore agree that the transmission licence provisions, including the proposed drafting for paragraphs 1(e), 1A, 1B, 1C and 1D, make it clear that the code administration role is a sub-set of the services provided by BSCCo.

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

Proposed new paragraph 1B of the transmission licence requires that the Transmission Company "establish a Balancing and Settlement Code Company (BSCCo)". Section C2.2.3 of the BSC currently provides for the Authority to direct the Transmission Company to transfer ownership of BSCCo. It

³ Including, but not limited to, those of the WHD scheme administrator and the EMR settlement service provider referenced in paragraphs 1A and 1C of the proposed transmission licence drafting.

⁴ Paragraph 1B replicates drafting that already exists in BSC Section C1.2.1. The BSC describes the powers and functions of BSCCo in Section C3. These include, but are not limited to, management and enforcement of contracts with BSC Agents, entering into Accession Agreements with new Parties, monitoring compliance with the BSC, dealing with Defaults and Defaulting Parties, acting as the Performance Assurance Administrator and provision of other defined functions such as Profile Administration Services.

could be argued that the proposed drafting in paragraph 1B of the transmission licence implies that a licence change would be needed before such a transfer of ownership could be effected. We believe this risk is small and overall, since there is no proposal or intent to amend or transfer the current ownership of BSCCo, this drafting remains in line with the status quo (which we support).

We do not see the above impact as a major concern. However, should it be felt that amendment is needed, one option might be to echo the wording of paragraph 1(e) in paragraph 1B to make it clear that "*the BSC shall include provisions that establish a Balancing and Settlement Code Company (BSCCo) to provide and procure facilities, resources and services required for the proper, effective and efficient implementation of the BSC*". We believe that this is consistent with the approach taken in the recently created DCC licence which uses similar language to the current transmission licence drafting whereby it is the Smart Energy Code that must make provision for the creation of a SECCo, not the licensee.

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

ELEXON wholly agrees with the intent of this new paragraph. It would be inappropriate for the Self Governance provisions to apply to Modification Proposals that seek to amend the BSC to expand the range of activities that can be undertaken by the BSCCo.

However, we note that this is clearly precluded by existing transmission licence and BSC rules. The Self Governance Criteria defined in the licence, and mirrored in the BSC, state that a Self-Governance proposal must be unlikely to have a material effect on the BSC's governance procedures. Further, the Authority can require that a proposed Self-Governance Modification Proposal is, instead, subject to the standard Modification Procedures. These requirements can only be modified with the consent of the Authority. As such, the Authority remains in control of the BSC provisions which explicitly limit the use of the Self-Governance process.

While ELEXON appreciates the desire for a belt and braces approach, we suggest that it is not good practice to create duplication between the licence and the BSC where it is not required.