

By e-mail to: electricitySOreform@ofgem.gov.uk

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16 March 2018

Dear David,

ELEXON's response to your consultation on the draft ESORI arrangements Guidance Document

We welcome the opportunity to respond to your consultation on the Electricity System Operator reporting and incentive (ESORI) arrangements Guidance Document.

As you are aware, ELEXON (as 'BSCCo') is the Code Manager for the Balancing and Settlement Code (BSC). We are responsible for managing and delivering the end-to-end services set out in the BSC and systems that support the BSC. ELEXON is also responsible for EMR settlement arrangements.

Our response (appended below this cover letter) is structured in two sections as follows:

- General comments on the ESO 'regulatory and incentive framework from April 2018' final decision document published on 23 February 2018 and the 'ESO Roles and Principles Guidance Document – Version 2.0', which were published alongside the consultation on 23 February 2018, but which are not strictly part of it.
- Comments on the 'Electricity System Operator reporting and incentive arrangements Guidance Document – draft version' (the consultation itself).

We also intend to respond separately to the statutory consultation on changes to NGET's special licence conditions to introduce a new reporting and incentives framework for the Electricity System Operator from April 2018.

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

If you would like to discuss any aspects of our response, please don't hesitate to contact me at steve.wilkin@elxon.co.uk.

Yours sincerely,



Steve Wilkin
European Coordination Manager

'THE ELECTRICITY SYSTEM OPERATOR INCENTIVE (ESORI) ARRANGEMENTS GUIDANCE DOCUMENT: ELEXON'S RESPONSE

1. General comments on the Ofgem final decision and roles and principles documents

1.1 In this Section 1, we have included comments and observations on the two ESO-related Ofgem documents published on 23 February 2018 that were decision documents, rather than for consultation:

- the ESO 'regulatory and incentive framework from April 2018' final decision document published on 23 February 2018 (the 'final decision')
- the 'ESO Roles and Principles Guidance Document – Version 2.0' (the 'roles and principles').

1.2 Our comments on the consultation document itself, the draft ESORI arrangements Guidance Document, are set out in Section 2 below.

Areas where we strongly agree

1.3 Where we believe it is appropriate for ELEXON to have a view, we agree with most of the Ofgem final decision; and the roles and principles document. We do have some remaining comments, however, on:

- ESO's publication of information
- The likely support needed by the Performance Panel – we believe this has been underestimated in the documents
- Whether paying the ESO to reach the 'best in class' standard of code administration ([Ofgem's 2017 performance survey of code administrators](#) suggested that ELEXON was the 'best in class') is the most cost effective and efficient way of improving the ESO service in this area of its work – a merger of the ESO's code administration services into ELEXON could achieve this at less cost to the end consumer and more quickly
- A minor comment on implementing EU Network Codes.

1.4 Our comments on the above areas are set out in the following sub-sections, but first we note the areas where we strongly agree with the Ofgem decisions:

- We believe that the scope of the incentives must cover all the ESO activities. [Our consultation response to National Grid](#) on its draft Forward Plan stated that: 'We are concerned to ensure that there are no gaps in the financial incentives on the ESO because we fear that the ESO will concentrate resource/effort in areas of work where there are financial rewards and risks at the expense of areas of work where there are none'. So we strongly agree with Ofgem's view set out in paragraph 2.4 on page 12 of the final decision document that we need '...an ESO that proactivelymaximises consumer benefits across the full spectrum of its roles' (underlining added).
- In the same consultation response (to National Grid on its draft Forward Plan) we stated that the ESO should be incentivised 'to devote sufficient effort to raising BSC Modifications where these are in the overall interests of the consumer. And to support the BSC Modification process through the timely provision by ESO of data and information; ESO attendance at BSC Modification Workgroups; and ESO support for the implementation of

approved BSC Modifications.’ So we strongly agree with your statements relating to this point in paragraphs 1.29 and 1.31 of the roles and principles document.

ESO’s publication of information

- 1.5 We strongly agree with your statement, paragraph 1.15 of the roles and principles document, that ‘the ESO should consider the most effective mechanism for publishing information and avoid duplication or fragmentation with established platforms (for example BMRS)’.
- 1.6 However, in the roles and principles document paragraphs 1.16, 1.26 and 1.27 the phrase ‘on its website’ is used which would, when interpreted literally, require the ESO to publish information only on its own website. We would not agree with this literal interpretation, so suggest that the phrase ‘on its website’ is deleted wherever it appears to remove the conflict between these paragraphs and paragraph 1.15.

Support needed by the Performance Panel

- 1.7 We believe that the Performance Panel will need more meetings and more support than is described in the documents and that open questions regarding the Panel’s operation still remain.
- 1.8 On Panel meetings, Figure 4 of the final decision document might suggest only three Panel meetings are needed per year. However, as we noted in [our response to your consultation: ‘The Electricity System Operator Regulatory and Incentives Framework from April 2018’](#), the Panel would need confidential sessions when: it is planning what to ask the ESO; or considering the exact ratings to give to the ESO at the end of the year. Clearly the ESO would not be present at these sessions.
- 1.9 On support that the Panel needs, we believe that the Panel will need secretariat support for:
 - Arranging and hosting meetings
 - Preparing papers and taking minutes
 - Taking actions on behalf of the Panel
 - Arranging for research and analysis (see stakeholders’ comments set out in paragraph 2.89 of the final decision document)
 - Arranging for payment of Panel member expenses (to individual Panel members); and, if necessary and to the extent allowed within the Panel terms of reference, on their behalf collectively, e.g. for analysis they have commissioned; and production of their final recommendations to Ofgem.
- 1.10 These are roles that ELEXON could easily fulfil given our experience of supporting the BSC Panel. And we would be well placed to do so as [Ofgem’s 2017 performance survey of code administrators](#) suggested that ELEXON was the ‘best in class’. This is a point we come back to in a different context in the sub-section on code administration below.
- 1.11 The amount of time that individual Panel members may have to spend on reading and critically reviewing evidence from the ESO and stakeholders; and undertaking further research and analysis outside the Panel meetings should also not be underestimated. This is particularly when Ofgem is relying on the Panel to make robust recommendations that address the information asymmetry between Ofgem and the ESO as mentioned in paragraph 2.79 of the final decision document.
- 1.12 Finally on Performance Panel matters, we see some open questions remaining on:

- Which Panel members are considered to be 'independent' for expense purposes (as described in paragraph 3.59 of your earlier consultation)
- whether expenses should be paid to 'non-independents' to ensure that the pool of membership candidates is broad enough
- whether members are voted in by their constituents (to be defined) and how/who would operate and police any voting process.

Should we pay the ESO to come up to the ELEXON standard on code administration?

- 1.13 We recognise that our starting point is different code administrators have different business models and that the ability to change things in the short term may be limited. But we feel compelled to ask whether consumer value is best achieved by paying the ESO to come up to the ELEXON 'best in class'¹ standard of code administration?
- 1.14 In a normal competitive market, it would seem strange to use public money to reward those delivering a lower level of service. So we ask whether perhaps a better way to achieve the ELEXON standard from a value to consumer perspective might be simply to merge the ESO code administration function into ELEXON so that the ELEXON culture of excellence in code administration is assimilated more quickly and cheaply by the ESO code administration functions.

Choice in implementing EU Network Codes?

- 1.15 Paragraph 1.33 of roles and principles document can be read to suggest that the ESO may have a choice in implementing EU network codes, dependent on whether they are in the interests of GB consumers or not. While Brexit may change this of course, the ESO may not, in a legal sense, have this level of choice over the implementation of some elements of network codes.

2. Comments on the ESORI Guidance Document itself

General comments

- 2.1 As with the other documents above, where we believe it is appropriate for ELEXON to have a view, we agree with most of the draft ESORI Guidance Document. In particular:
- We agree that the duration of the public consultation on the draft ESO Forward Plan should be at least four weeks long (paragraph 2.17).
 - Although we also believe that this should be set out in special condition 4M.4 of the NGET transmission licence, rather than the Guidance Document, for the reasons given in our response to the related [Ofgem statutory consultation on licence changes](#).
- 2.2 However, we have comments in the following areas:
- Operation of the Performance Panel (several aspects)
 - Whether and how Ofgem should brief the Performance Panel before the Panel's final recommendation to Ofgem

¹ 'Best in class' as evidenced by the most recent (2017) [Ofgem performance survey of code administrators](#).

- Implementing the best solution for consumer value
- Use of stakeholder surveys.

2.3 Our comments on the above areas are set out in the following sub-sections.

Operation of the Performance Panel – review of the draft Forward Plan

2.4 If the draft Forward Plan is not published for consultation until the last permissible date (31 January) as suggested is possible by paragraph 2.15 and the Performance Panel meeting is planned for February (paragraph 2.18), this may limit the effectiveness of the public consultation on, and Panel consideration of, that Forward Plan.

2.5 This is because:

- Some stakeholders may rush to get their thoughts to the Panel before that Panel meeting
- Other, later, stakeholders' responses cannot be considered at the Panel meeting.

2.6 We suggest that the Panel meeting be held after the consultation has closed and that the Panel is given access to those responses so it can take account of them. If this requires the ESO to start the consultation earlier than the formal 31 January deadline, or the Panel to be held later than February, then these timing options should not be rejected.

2.7 Ofgem's current statutory consultation on changes to NGET's special licence conditions relating to the Electricity System Operator (ESO) reporting and incentive framework, to which we are responding separately, seems to address this point and contradict paragraph 2.15 of the draft Guidance Document. Draft special licence condition 4M.4 states that the licensee shall consult on the contents of the Forward Plan prior to 31 January; whereas paragraph 2.15 states that the ESO must produce the draft Forward Plan for consultation by 31 January. For the reasons given above, we prefer the draft special licence 4M.4 wording on this point.

Operation of the Performance Panel – Mid-Year Review

2.8 The Performance Panel is given a period of 'at least two weeks' to review the Mid-Year Report (paragraph 2.34). We suggest that this minimum period will be too short for the Panel to review and consider questions to ask, or for it to take account of any stakeholder views. The Panel may also require a closed meeting without the ESO, and prior to the Panel meeting with the ESO, to plan for the questions the Panel may wish to ask.

Operation of the Performance Panel – End of Year Review

2.9 Paragraph 2.38 suggests that the ESO will present its End of Year Report to both the Panel and stakeholders. It is not clear whether this will be run as an open Panel meeting or a stakeholder event? Paragraph 2.40 makes reference to a Panel meeting.

2.10 Paragraph 2.40 states that following that Panel meeting, the Panel will then score the ESO performance and write a report, but this will likely require further face to face closed Panel meetings and administrative support.

2.11 Paragraph 2.41 seems to make the performance review less robust. We ask: should ESO or any other stakeholder have the right to present new information at this late stage after the Panel has made its recommendation?

2.12 For a robust process, all information should have been available to the Panel prior to making its recommendation; otherwise the Panel's role and recommendations will be downgraded and not reliable if stakeholders/ESO know they have another 'bite at the cherry'.

Operation of the Performance Panel – can it see confidential evidence?

- 2.13 Paragraph 5.3 notes that where the ESO is required to publish reports containing confidential or commercially-sensitive information then this should be redacted.
- 2.14 However, this leaves it unclear as to whether the Panel should see all such evidence or not. Without it may be that they cannot properly make a robust recommendation. But this also has implications: for those who are Panel members to be bound to confidentiality; the need for closed as well as open Panel sessions (as the BSC Panel meetings do); and the need to redact parts of the Panel recommendation to Ofgem when published more widely.

Should Ofgem be able to influence the Panel's recommendation before it is made?

- 2.15 We question whether Ofgem should be able to influence the Panel's recommendations (by briefing the Panel as stated in paragraph 2.39) or, alternatively, whether the Panel should be fully independent.
- 2.16 We can see an argument that Ofgem should be able to provide factual evidence to the Panel that only Ofgem has; and be able to note where evidence is, in Ofgem's view, missing or insufficient. Early evidence/identification of evidence gaps such as this will help the Panel and Ofgem operate a more robust End of Year Review process.
- 2.17 However, we can also see arguments that Ofgem should not influence the Panel in other ways:
- Ofgem has already noted the information asymmetry between it and the ESO, in paragraph 2.79 of the final decision document for example. One way of addressing this asymmetry is to let the Panel come to its own independent view.
 - Ofgem does not usually take this approach with other industry Panels, e.g. the BSC Panel, on the grounds that it would fetter Ofgem's discretion when it comes to the final decision Ofgem must eventually make, and on which it expects to receive a BSC Panel recommendation. We see no compelling reason why Ofgem should take a different approach with the ESO Performance Panel.

Implementing the 'best solution' for consumer value

- 2.18 We strongly agree with Ofgem's position set out in paragraph 3.15 and in Box 3 on page 21 ensuring that the ESO actively supports initiatives that deliver the best solutions for customers, whether or not those initiatives are their own or those of others.
- 2.19 So, where this position is less clear, as it is in paragraph 3.11, we suggest amending to make it more clear. For paragraph 3.11, we suggest amending it to read: '...at the expense of other initiatives with industry parties, including other ways of delivering the same initiative, that would save industry/consumer costs or deliver a better outcome overall for the consumer.'

Use of stakeholder surveys

- 2.20 In its [recent letter \(dated 5 March 2018\) responding to the ESO consultation on the Forward Plan 2018-19](#), Ofgem suggested that it would like to see the Forward Plans specify the detailed questions that will be asked in the stakeholder surveys. We agree with this and suggest it be added to paragraph 3.18 of the ESORI arrangements document.

END.