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## P416 Workgroup Meeting 2 Note

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### Summary

#### 1. Welcome and Meeting Objectives

1.1. The Chair welcomed Workgroup Members and informed attendees of the required meeting outcomes.

#### 2. Summary of the first Workgroup Meeting

2.1. The Elexon Representative reminded Workgroup Members of the key questions raised at the previous Workgroup meeting, the specific question areas that require resolution and the live actions. Elexon presented the Workgroup timeline and highlighted to members that to meet the expected timeline for Assessment Phase Consultation circulation, the Workgroup would need to resolve the key question areas, agree whether or not the Proposed Modification better facilitates the Applicable BSC Objectives and agree the Assessment Phase Consultation questions in this meeting. Elexon informed Workgroup Members that the draft legal text could be developed outside of the meeting and circulated to Workgroup Members prior to the 15 February 2021 if required to meet the tight deadline.

#### 3. Annual Budget approval process

3.1. Elexon's Finance Representative talked Workgroup Members through the current Annual Budget approval process. The following key points were discussed:

- A Workgroup Member asked how the Annual Budget process deals with multi-year cost commitments. Elexon informed Workgroup Members that behind the budget there is a roadmap which considers multi-year expenditures. The budget also includes Elexon cost projections for the next two years although it was noted that these are indicative and subject to change.
- Elexon informed members that in addition to the high level timeline discussed at the previous meeting, Elexon hosts a webinar to invite comments from industry.
- Workgroup Members discussed the suitability of the timescales in relation to the introduction of an appeals process. Elexon expressed the view that there was a balance when considering timescales in the process. On the one hand, starting the Annual Budget process as early as possible in the year would allow for increased stakeholder input and time to increase the overall transparency of the plan. On the other hand, the earlier the Annual Budget process starts the less certainty there is around budget assumptions and so the accuracy of key elements of the Annual Budget could be compromised.

Elexon agreed to further consider different ways of presenting the Annual Budget.

#### 4. Consideration of Annual Budget line items

4.1. Elexon gave an overview on how line items are captured in the Annual Budget. Elexon informed members that the current presentation of the Annual Budget is a result of concerted efforts by Elexon to reduce the size and detail within the plan to ensure all stakeholders can easily access and digest the key features of the budget. Elexon also highlighted that there were a range of different approaches used by wider industry of similar budgets some of which had less detail than the Elexon budget.

4.2. Workgroup Members considered the role of the BSC Panel in the Annual Budget process. A Workgroup Member highlighted that whilst the Panel has the right to comment on the Annual Budget, this should not be seen as a proxy for relevant parties to give feedback on the Annual Budget themselves. It was clarified that the BSC Panel **does not** approve the Annual Budget.

## 5. Consider P416 Proposed Solution and any Potential Alternative Solutions

- 5.1. The Proposer presented his views on whether a pre-appeals process should form part of the Proposed Modification. It was suggested that the current Annual Budget approval process contains a significant number of opportunities for potential appealing parties to highlight issues prior to BSCCo Board decision such as the formal consultation process and the Elexon webinar. The Proposer expressed the view that the onus should be on Elexon to ensure good governance to prevent appeals rather than including a prescriptive and possibly cumbersome BSC mandated process. The Proposer concluded that a 'duty to consult' provision should not be included in the Modification and also that a pre-appeals process should not be included. The Workgroup also agreed that a pre-appeals process would not be suitable to include in the Modification.
- 5.2. The Workgroup discussed the valid appeal criteria and whether the current drafting is sufficient to prevent vexatious and/or frivolous appeals. The Workgroup considered the scenario where:
- A single BSC Party raises an appeal without wider industry support; and
  - The Authority did not provide a response to the appeal prior to the start of the financial year to which the budget line item relates.

Workgroup Members noted that in this scenario, under the current drafting Elexon would not be able to spend money with respect to that line item unless the spend was required to meet Elexon's obligations under the BSC. The Proposer believed that it was important for individual parties to be able to access any appeals process as some line items may disproportionately impact individual organisations. The Workgroup acknowledged that the Authority could not reasonably commit to any timescale for reviewing appeals due to the variety of different possible reasons for appeal and varying complexity. Elexon agreed to reach out to Ofgem for specific comment on the appeal determination step of the process. To avoid the potential of the provisions to be misused in the aforementioned scenario whilst giving individual organisations the ability to use the process the Workgroup suggested the following approach:

- A single party can raise an appeal
  - If a de-minims support threshold is met then spending against an appealed line item would be paused until the Authority determines the outcome of an appeal;
  - If the de-minims support threshold is not met then spending against an appealed line item could be undertaken whilst the Authority determines the outcome of an appeal.

The Proposer agreed to consider the above approach and feedback views at the next Workgroup meeting.

- 5.3. The Workgroup discussed the current appeal criteria. The following key points were discussed:

- Workgroup Members highlighted the drafting "not insufficient" should read "insufficient" in the redlining;
- Members raised concerns that the appeals process should not be used as a means to frustrate the BSC change processes and agreed to alter the legal text so it was clear that the process could not be used for this purpose.
- Workgroup Members discussed interpretations of the text "reasonable regard" in the first criterion. It was agreed by members that this should be interpreted as that the minimum BSC required Annual Budget process steps had been conducted and that the relevant bodies had considered the appeal. Workgroup Members agreed that this should not be interpreted as being in any way contingent on the quality of response given by the BSCCo Board.

Elexon agreed to update the legal text to capture the above points.

## 6. Summary and Next Steps

- 6.1. The Workgroup agreed that another Workgroup meeting would be required prior to finalising the Modification for Assessment Phase Consultation. Elexon agreed to update the progression timeline and to circulate this to Workgroup Members.

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## Actions

The Proposer to:

- Consider whether the Workgroup's suggested amendment should be incorporated into the Proposed Modification

Elexon to:

- Consider different ways of presenting the Annual Budget;
- Update proposed draft legal text to capture the points in 5.3;
- Contact Ofgem for feedback on appeal determination process step; and
- Update Modification timeline and circulate to Workgroup Members for comment.