










BSC Modification Proposal Form		At what stage is this document in the process?
<h1>P416</h1> <h2>Mod Title: Introducing a route of appeal for the Annual Budget</h2>		<div>01 Modification</div> <div>02 Workgroup Report</div> <div>03 Draft Modification Report</div> <div>04 Final Modification Report</div>
Purpose of Modification: To introduce a route of appeal for the BSC Annual Budget		
Is this Modification likely to impact any of the European Electricity Balancing Guideline (EBGL) Article 18 Terms and Conditions held within the BSC? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
	The Proposer recommends that this Modification should: <ul style="list-style-type: none"> not be a Self-Governance Modification Proposal be assessed by a Workgroup and submitted into the Assessment Procedure This Modification will be presented by the Proposer to the BSC Panel on 12 November 2020. The Panel will consider the Proposer's recommendation and determine how best to progress the Modification.	
	High Impact: None	
	Medium Impact: BSC Parties wishing to comment on/appeal the Annual BSCCo Business Plan, Elexon and Ofgem	
	Low Impact: None	

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Timetable		 <i>Chris.Arnold@Elexon.co.uk</i>  020 7380 4221 Proposer: <i>British Gas Ltd</i> Proposer's representative: <i>Kevin Woollard</i>  <i>Kevin.woollard@centrica.com</i>  07979 563580
The Proposer recommends the following timetable:		
Initial consideration by Workgroup	14 December 2020	
Assessment Procedure Consultation	15 February 2021 – 5 March 2021	
Workgroup Report presented to Panel	08 April 2020	
Report Phase Consultation	12 April 2021 – 26 April 2021	
Draft Modification Report presented to Panel	13 May 2021	
Final Modification Report submitted to Authority	17 May 2021	

1 Why Change?

What is the issue?

Suppliers expect the code bodies to be cost-efficient and actively manage their finances to minimise the burden on suppliers while also ensuring the organisation has sufficient resources to meet their operational requirements.

Each budget line item should have a clear rationale, supporting business case and directly contribute to furthering the code relevant objectives.

Appeals are an important tool to ensure plans are cost-efficient and fully justified.

There is currently no direct route of appeal for any BSC Parties not in agreement with any items in the Annual Budget, and who feel their comments have not been addressed during the drafting phase of the Business Strategy/Annual Budget.

There is also a lack of consistency across codes on the appeal route for code-related budgets. In particular, the current version of the proposed legal text¹ for V1.1 of the Retail Energy Code (REC) specifies a route to appeal the REC Budget to Ofgem.

Desired outcomes

A route to challenge items in the Annual Budget in a limited and specific way.

2 Solution

Proposed Solution

The relevant section of the BSC is Section C, Clauses 6.4 and 6.5.

The change will allow for an appeal to the Authority in the case that a BSC Party reasonably believes that an item in the Annual Budget:

- was not consulted upon as part of the draft Annual Budget process, or the Board failed to have reasonable regard to the comments submitted;
- is not a legitimate item of expenditure for the Board;
- is a manifestly inappropriate provision for the activity in question, and there are not insufficient safeguards in place to ensure that the actual costs incurred will be efficient; or
- will, or is likely to, prejudice unfairly the interests of one or more Parties, or cause them to be in breach of this Code, the Energy Licences and/or Law.

Parties would need to make representations to substantiate that their appeal meets one or more of the above criteria. It is expected that Ofgem would be able to efficiently reject any vexatious and frivolous appeal claims.

Where the Authority allows an appeal of the Annual Budget, the Authority may:

- refer the particular cost item back to the Board for further consideration and, if appropriate, to pursue a revision to the prevailing Annual Budget;

¹ https://www.ofgem.gov.uk/system/files/docs/2020/10/proposed_changes_to_rec_main_body_red_lined_text_0.pdf

- revise the provision for that budget item to a figure which it reasonably considers to be a better forecast of the cost likely to be incurred, whether that is higher or lower than the Board budgeted figure; or
- direct the Board to remove that cost item entirely, and make suitable revision to its Annual Budget and strategy.

Pending resolution of any appeal, BSCCo shall not be entitled to incur costs in respect of the cost item that is subject to appeal, except insofar as necessary in order to comply with legally binding obligations.

The appeal mechanism should also apply in the case of a budget overspend.

Benefits

The change will introduce a targeted and proportionate mechanism to challenge the Annual Budget, which will improve efficient operation of the BSC and better prevent non-essential costs being incurred.

3 Relevant Objectives

Impact of the Modification on the Relevant Objectives:	
Relevant Objective	Identified impact
a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence	Neutral
(b) The efficient, economic and co-ordinated operation of the National Electricity Transmission System	Neutral
(c) Promoting effective competition in the generation and supply of electricity and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity	Neutral
(d) Promoting efficiency in the implementation of the balancing and settlement arrangements	Positive
(e) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency [for the Co-operation of Energy Regulators]	Neutral
(f) Implementing and administrating the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation	Neutral
(g) Compliance with the Transmission Losses Principle	Neutral

There is currently no direct route of appeal for any BSC Parties not in agreement with any items in the Annual Budget, and who feel their comments have not been addressed during the drafting phase of the Business Strategy/Annual Budget. A Party who is sufficiently motivated could lobby other BSC Parties to support the removal of Elexon Board members, which would be both disproportionate and inefficient in most cases. Introducing a route to challenge items in the Annual Budget in a limited and specific way is therefore an improvement in efficiency in the implementation of the balancing and Settlement arrangements.

4 Potential Impacts

Impacts on Core Industry Documents

Impacted Core Industry Documents			
<input type="checkbox"/> Ancillary Services Document	<input type="checkbox"/> Connection and Use of System Code	<input type="checkbox"/> Data Transfer Services Agreement	<input type="checkbox"/> Use of Interconnector Agreement
<input type="checkbox"/> Master Registration Agreement	<input type="checkbox"/> Distribution Connection and Use of System Agreement	<input type="checkbox"/> System Operator Transmission Owner Code	<input type="checkbox"/> Supplemental Agreements
<input type="checkbox"/> Distribution Code	<input type="checkbox"/> Grid Code	<input type="checkbox"/> Transmission License	<input type="checkbox"/> Other (please specify)

This modification will introduce an appeal mechanism into the BSC equivalent to those that currently exist in other codes and agreements such as the Retail Energy Code and the CDSP Contract. This change will not require any changes to be made to these agreements.

Impacts on BSC Systems

Impacted Systems				
<input type="checkbox"/> CRA	<input type="checkbox"/> CDCA	<input type="checkbox"/> PARMS	<input type="checkbox"/> SAA	<input type="checkbox"/> BMRS
<input type="checkbox"/> EAC/AA	<input type="checkbox"/> FAA	<input type="checkbox"/> TAAMT	<input type="checkbox"/> NHHDA	<input type="checkbox"/> SVAA
<input type="checkbox"/> ECVAA	<input type="checkbox"/> ECVAA Web Service	<input type="checkbox"/> ELEXON Portal	<input type="checkbox"/> Other (Please specify)	

No impact on BSC systems are expected as this is a document only change.

Impacts on BSC Parties

Impacted Parties			
<input checked="" type="checkbox"/> Supplier	<input checked="" type="checkbox"/> Interconnector User	<input checked="" type="checkbox"/> Non Physical Trader	<input checked="" type="checkbox"/> Generator
<input checked="" type="checkbox"/> Licensed Distribution System Operator	<input checked="" type="checkbox"/> National Electricity Transmission System Operator	<input checked="" type="checkbox"/> Virtual Lead Party	<input checked="" type="checkbox"/> Other (Please specify) All other BSC parties

Any Party may appeal the budget.

Legal Text Changes

The relevant section of the BSC is Section C, Clauses 6.4 and 6.5. Items in []'s have been adjusted from the proposed REC legal text to conform to the BSC.

6.4 Annual Budget

6.4.1 At the same time as preparing each draft of the Business Strategy under paragraph 6.3, BSCCo shall prepare or revise, and submit to the persons to whom each draft Business Strategy is submitted, a draft Annual Budget for the Plan Year.

6.4.2 Following finalisation of the Business Strategy, BSCCo shall finalise and adopt the Annual Budget.

6.4.3 Following any revision of the Business Strategy, BSCCo shall review and if appropriate revise the Annual Budget.

6.4.4 The Annual Budget for each BSC Year and any revision (including under paragraph 6.5) of such Annual Budget shall be approved by the Board.

6.4.5 Any Party may appeal the decision of the [Board] to approve the [Annual Budget] to the Authority within 10 Working Days of that decision being notified to Parties. Any appeal brought under this [Clause 6.4.5] shall be specific to one or more individual cost items, not to the [Annual Budget] as a whole.

6.4.6 The Authority may allow an appeal where the Authority is satisfied that the cost item in question:

(a) was not consulted upon as part of the draft [Annual Budget] in accordance with [Clause 6.4.1] or the [Board] failed to have reasonable regard to the consultation responses submitted;

(b) is not a legitimate item of expenditure for the [Board];

(c) is a manifestly inappropriate provision for the activity in question, and there are not insufficient safeguards in place to ensure that the actual costs incurred will be efficient; or

(d) will, or is likely to, prejudice unfairly the interests of one or more Parties, or cause them to be in breach of this Code, the Energy Licences and/or Law.

6.4.7 Where the Authority allows an appeal of the [Annual Budget], the Authority may:

(a) refer the particular cost item back to the [Board] for further consideration and, if appropriate, to pursue a revision to the prevailing [Annual Budget];

(b) revise the provision for that budget item to a figure which it reasonably considers to be a better forecast of the cost likely to be incurred, whether that is higher or lower than the [Board] budgeted figure; or

(c) direct the [Board] to remove that cost item entirely, and make suitable revision to its [Annual Budget] and strategy.

6.4.8 Pending resolution of any appeal, [BSCCo] shall not be entitled to incur costs in respect of the cost item that is subject to appeal, except insofar as necessary in order to comply with legally binding obligations which it has previously incurred in accordance with this Code.

6.5 Budget overspend

6.5.1 If the aggregate amount of BSCCo's expenditure in any BSC Year exceeds, or BSCCo anticipates that it may exceed, the amount contained in the Annual Budget, BSCCo shall promptly:

- (a) notify the Panel and all Parties, giving details of the excess expenditure and an explanation of the reasons therefor; and
- (b) submit to the Panel and all Parties a draft revision of the Annual Budget, together with its proposal for modifying the Business Strategy if BSCCo considers it appropriate to modify the Business Strategy so as to reduce or limit its expenditure in the relevant BSC Year.

6.5.2 After seeking such further comments from the Panel and Parties as the Board considers necessary, but taking account of any consequent revision of the Business Strategy BSCCo shall revise the Annual Budget, and the appeal process set out in [Clauses 6.4.5 to 6.4.8] shall apply.

5 Governance

Self-Governance

<input checked="" type="checkbox"/> Not Self-Governance – A Modification that, if implemented:	
<input checked="" type="checkbox"/> materially impacts the Code's governance or modification procedures	<input type="checkbox"/> materially impacts sustainable development, safety or security of supply, or management of market or network emergencies
<input type="checkbox"/> materially impacts competition	<input type="checkbox"/> materially impacts existing or future electricity consumers
<input type="checkbox"/> materially impacts the operation of national electricity Transmission System	<input type="checkbox"/> is likely to discriminate between different classes of Parties
<input type="checkbox"/> involves any amendments to the EBGL Article 18 Terms and Conditions related to Balancing; except to the extent required to correct an error or as a result of a factual change	
<input type="checkbox"/> Self-Governance – A Modification that, if implemented:	
Does not materially impact on any of the Self-Governance criteria provided above	

If approved, this Modification will materially impact the Code's governance procedures as it will introduce an appeals mechanism to Ofgem. As the solution will place new requirements on Ofgem, it is therefore appropriate that Ofgem determine whether to approve this Modification or not.

Progression route

<input checked="" type="checkbox"/> Submit to assessment by a Workgroup – A Modification Proposal which:	
does not meet any criteria to progress via any other route.	
<input type="checkbox"/> Direct to Report Phase – A Modification Proposal whose solution is typically:	
<input type="checkbox"/> of a minor or inconsequential nature	<input type="checkbox"/> deemed self-evident
<input type="checkbox"/> Fast Track Self-Governance – A Modification Proposal which meets the Self-Governance Criteria and:	
is required to correct an error in the Code as a result of a factual change including but not limited to:	
<input type="checkbox"/> updating names or addresses listed in the Code	<input type="checkbox"/> correcting minor typographical errors
<input type="checkbox"/> correcting formatting and consistency errors, such as paragraph numbering	<input type="checkbox"/> updating out of date references to other documents or paragraphs
<input type="checkbox"/> Urgent – A Modification Proposal which is linked to an imminent issue or current issue that if not urgently addressed may cause:	
<input type="checkbox"/> a significant commercial impact on Parties, Consumers or stakeholder(s)	<input type="checkbox"/> a Party to be in breach of any relevant legal requirements.
<input type="checkbox"/> a significant impact on the safety and security of the electricity and/or gas systems	

Whilst this Modification could be argued to be self-evident (and we have provided suggested legal text), there are a number of areas that would benefit from Workgroup consideration. For example, what

process, if any, is needed to resolve the disagreement before an appeal is raised? What checks and balances are needed to mitigate vexatious and frivolous appeal claims? For example, it could be argued, that since any budget item inevitably affects a wide range of Parties, it is unreasonable for any appeal by a single Party to be considered without the views of other affected Parties being taken into account. Options could include requiring the appealing Party to have responded to the consultation, a senior level meeting or a Panel discussion.

The Workgroup may also want to consider if the [P324](#) 'Review of BSCCo's governance: introducing improved accountability to BSC Parties' arrangements, would handle such an appeal.

Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

No and we would ask that Ofgem treat this as a SCR Exempt Modification Proposal.

Does this Modification impact any of the EBGL Article 18 Terms and Conditions held within the BSC?

Not expected to impact EBGL provisions.

Does this modification impact on end consumers or the environment?

No direct impacts identified.

Impact on the Environment

This Modification is neutral with the net zero target.

Implementation approach

We intend this to be in place in time for the 2022/23 Annual Budget process and believe this Modification is a good candidate to be implemented +5WD from Ofgem approval.