Modification proposal:	**Balancing and Settlement Code (BSC) P416: Introducing a route of appeal for the Annual Budget in line with the proposals for the Retail Energy Code (P416)**		
Decision:	The Authority[1] has decided to reject this modification proposal[2]		
Target audience:	National Grid Electricity System Operator (NGESO), Parties to the BSC, the BSC Panel and other interested parties		
Date of publication:	10 November 2021	Implementation date:	N/A

Background

Section C ('BSCCo and its subsidiaries') of the Balancing and Settlement Code (BSC) requires ELEXON as the BSC Company (BSCCo) each year to have in place an Annual Budget (the Budget) setting out the expenditure that it considers reasonably necessary to carry out the activities listed in its Business Strategy.[3] In preparing the Budget, ELEXON is required to invite and consider comments from the BSC Panel and BSC Parties, and the ELEXON Board is ultimately responsible for approving the Budget each year.

Under the governance arrangements in the BSC, the ELEXON Board is accountable to BSC Parties and therefore has a duty to consider any issue raised by any BSC Party at any time, including any concerns raised in relation to the Budget. Following our approval of BSC modification P324[4], formal processes (the Resolution processes) were introduced allowing BSC Parties to escalate issues to the Board by raising a Non-Binding Resolution requiring the matter to be discussed and voted on at a General Meeting. BSC Parties can also propose a vote on a Binding Resolution to remove one or more Directors from the Board.

[1] 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.
[2] This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.
[3] BSCCo is required each year to prepare a Business Strategy setting out, amongst other requirements, the principal activities which it expects to undertake in the upcoming year and the following two years.
[4] Authority decision on P324 'Review of BSCCo's governance: introducing improved accountability to BSC Parties': https://www.ofgem.gov.uk/publications-and-updates/balancing-and-settlement-code-bsc-p324-review-bsccos-governance-introducing-improved-accountability-bsc-parties.

The modification proposal

P416 was raised by British Gas (the Proposer) on 5 November 2020, and seeks to amend Section C of the BSC to include a route of appeal to the Authority where a BSC Party or Parties wish to contest items included in the approved Budget. The modification would allow a BSC Party or Parties, within 10 working days of being notified of the ELEXON Board's approval of the Budget, to raise an appeal to the Authority where it is reasonably believed that an item in the Budget:

- Was not submitted to Parties for comment as part of the draft Annual Budget, or the Board failed to have reasonable regard to the comments submitted
- Is not a legitimate item of expenditure for ELEXON
- Is a manifestly inappropriate provision for the activity in question, and there are insufficient safeguards in place to ensure that the actual costs incurred will be efficient
- Will, or is likely to, prejudice unfairly the interests of one of more BSC Parties, or cause them to be in breach of the BSC, their Licence(s) and/or Legal Requirements[5].

The modification also allows other BSC Parties to support appeals raised. Where an appeal is supported by ten or more Party Groups with an aggregate Actual Voting Share of greater or equal to 5%, and all of those Party Groups support the suspension of the cost item in question, ELEXON will be unable to incur costs in relation to that item in the Budget whilst the appeal is being considered, except insofar as necessary to comply with legally binding obligations which it has previously incurred in accordance with the code. Where these requirements are not met, the approved Budget will remain in place pending the outcome of the appeal.

The Proposer considers P416 would better facilitate BSC Objective (d)[6], contending that the current routes for Parties to challenge the budget (the Resolutions processes) are inefficient and, in the case of Binding Resolutions to remove a Director, disproportionate. The Proposer argues that introducing a new route of appeal to the Authority is an improvement in efficiency in the implementation of the Balancing and Settlement arrangements.

[5] For the purposes of the BSC, "Legal Requirement" means any Act of Parliament, regulation, licence or Directive.
[6] Promoting efficiency in the implementation and administration of the balancing and settlement arrangements.

BSC Panel[7] recommendation

At the BSC Panel meeting on 10 June 2021, a majority of the BSC Panel considered that P416 would not better facilitate the BSC Objectives and the Panel therefore did not recommend its approval.

Our decision

We have considered the issues raised by the modification proposal and the Final Modification Report (FMR)[8] received by us on 14 June 2021. We have considered and taken into account the responses to the industry consultations on the modification proposal which are attached to the FMR. We have concluded that implementation of P416 will not better facilitate the achievement of the applicable Objectives of the BSC.[9]

Reasons for our decision

We consider this modification proposal will not better facilitate BSC Objective (d) and has a neutral impact on the other applicable Objectives.

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

We do not agree with the Proposer's view that P416 would better facilitate Objective (d). The current routes of objection to Board decisions (the Resolutions processes) were introduced by P324 to improve the accountability of the ELEXON Board to BSC Parties. The ability for BSC Parties to vote on Non-Binding Resolutions provides a direct route for Parties to raise BSC-related matters with the Board. In approving P324, we set out an expectation that, while the outcome of such a vote is not binding, the ability for BSC Parties to seek the removal of Directors from the Board via a Binding Resolution would ensure that non-binding resolutions would carry appropriate weight with the Board. We do not consider that sufficient evidence

[7] 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.
[8] BSC modification proposals, modification reports and representations can be viewed on the ELEXON website at www.elexon.co.uk
[9] As set out in Standard Condition C3(3) of the Electricity Transmission Licence, available at: https://epr.ofgem.gov.uk/Document

has been presented to demonstrate that these mechanisms are either inefficient or disproportionate for challenging the budget as, since being introduced, we are unaware of any instance in which they have been used for this purpose.

The proposed solution would allow BSC Parties to raise an appeal to the Authority against the Budget, with no requirement to first raise any such concerns through existing mechanisms such as directly with ELEXON or the Board during the development of the Budget. We are concerned that this may result in missed opportunities to resolve potential issues earlier in the Budget process, leading to inefficiencies. In principle, we would encourage stakeholders to use mechanisms that facilitate the resolution of disagreements in a timely and efficient manner.

The proposed solution has been partly based on the budget appeal mechanism that has been introduced under the new Retail Energy Code (REC). Under the REC, any Party can appeal to the Authority the decision of the REC Board to approve the annual budget. However the appeal mechanism in the REC is part of a wider budget setting process, which has been designed from its inception to accommodate a route of appeal to the Authority. We consider that there continue to be a number of differences between the budget setting processes in the REC and the BSC, which we do not think have been fully considered in the development of the proposed solution for this modification. We therefore do not agree with the Proposer's view that P416 facilitates improved cross-code alignment.

We note the concerns raised by a respondent to the Report Phase Consultation regarding increasing industry costs across the code landscape. We remain supportive of appropriate mechanisms being in place to ensure that code bodies incur costs efficiently. We encourage ELEXON, and all other code bodies, to fully engage with code parties to ensure that any concerns with costs are appropriately considered and addressed. Similarly, we encourage code parties to fully engage with budget setting processes.

Future of Code Governance

Alongside BEIS we are currently considering fundamental reforms to the code governance landscape, including proposals on the roles and responsibilities of code managers.[10] A future

[10] Consultation on the Design and Delivery of the Energy Code Reform: https://www.gov.uk/government/consultations/energy-code-reform-governance-framework

consultation will consider the detailed arrangements for code manager funding under any proposed reforms.

In the recent consultation we also asked for initial views on the regulation of central system delivery bodies. We would expect to engage further with stakeholders on these detailed considerations ahead of any changes in this area.

Decision Notice

In accordance with Standard Condition C3 of the Transmission Licence, the Authority has decided that modification proposal BSC P416: *Introducing a route of appeal for the Annual Budget in line with the proposals for the Retail Energy Code* should not be made.

David Hall
Head of Industry Codes and Licensing
Signed on behalf of the Authority and authorised for that purpose