

# MINUTES

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<b>MEETING NAME</b>	BSC Panel
<b>Meeting number</b>	243
<b>Date of meeting</b>	13 August 2015
<b>Venue</b>	ELEXON Ltd, 350 Euston Road, NW1 3AW
<b>Classification</b>	Public

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## ATTENDEES AND APOLOGIES

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<b>Attendees</b>	Michael Gibbons	MG	BSC Panel Chairman	
	Andy Colley	AC	Industry Panel Member	
	Bob Brown	BB	Industry Panel Member	
	David Lane	DL	DSO Representative	
	Derek Bunn	DB	Independent Panel Member	
	Ian Pashley	IP	Transmission Company Panel Member	
	Lisa Waters	LW	Industry Panel Alternate for Barbara Vest & Peter Bolitho	
	Phil Baker	PB	Industry Panel Member	
	Phil Hare	PH	Independent Panel Member	
	Rory Edwards	RE	Ofgem Representative	
	Stuart Cotten	SC	Industry Panel Member	
	<b>Presenters</b>	Alex Thomason		National Grid
		Garth Graham		SSE
Lesley Nugent			Ofgem	
Adam Lattimore		AL	ELEXON (Part Meeting)	
Claire Kerr		CK	ELEXON (Part Meeting)	
David Jones		DJ	ELEXON	
David Osborne		DO	ELEXON	
Elliot Hall		EH	ELEXON (Part Meeting)	
Justin Andrews		JA	ELEXON (Part Meeting)	
Nicola Dempsey		ND	ELEXON	
Mark Bygraves		MB	ELEXON	
Oliver Xing		OX	ELEXON (Part Meeting)	
Victoria Moxham		VM	ELEXON	
<b>Apologies</b>		Barbara Vest	BV	Industry Panel Member
		Chris Alexander	CA	Consumer Panel Member
	Peter Bolitho	PBo	Industry Panel Member	

## 1. Apologies

- 1.1 The Chairman welcomed David Osborne, Director of BSC Operations, who will be attending Panel meetings in future.

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- 1.2 The Chairman confirmed the apologies of Peter Bolitho, Chris Alexander, Barbara Vest and Andrew Warden. He welcomed Lisa Waters, attending as alternate for Peter and Barbara.

## MODIFICATION BUSINESS (OPEN SESSION)

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### 2. Report on Progress of Modification Proposals - Verbal

- 2.1 The Modification Secretary, Adam Lattimore, updated the Panel on the current status of Modifications. Adam noted that there would be a new modification coming to Panel in September or October addressing the 'housekeeping' changes to resolve issues in the legal text caused by having multiple modifications with the same target date.

### 3. P324 'Review of BSCCo's governance: introducing improved accountability to BSC Parties – 243/04

- 3.1 Proposed Modification P324 seeks to amend the current BSCCo governance arrangements with the aim of addressing the weaknesses identified in the Knight Report 2013.
- 3.2 The Chairman noted that this Proposed Modification and the following Modification on the agenda (P325) concerned the composition and responsibilities of the ELEXON Board and Panel. However, he believed that he did not need to excuse himself from the discussions on these Modifications at the present time as they were both only entering the initial assessment stage. He asked the Panel to comment on this view.
- 3.3 A Panel Member felt there was no need for the Chairman to step down at this time, but noted that this may be required later in the process if the details of the proposed solution had a material impact on the Chairman's role.
- 3.4 A Panel Member felt that the decision to progress the Modification separately but with the same proposed timetable and the same Workgroup membership was a sensible approach, but expressed concern about the possibility of the Modification leading to a number of alternative solutions that subsequently could lead to a further Modification being raised.
- 3.5 A Panel Member noted that the Initial Written Assessment did not examine in depth the counter arguments to the Proposed Modification. For example, with regards to accountability for BSC Parties, the governance structure of ELEXON is set up on the assumption of Independent System and Market Operators to prevent larger Parties from dominating the BSCCo. The Panel Member felt that the Modification should not be seen to impact BSCCo's position of independence.
- 3.6 Another Panel Member felt that the Workgroup needed to be clear on the basis upon which it would assess the proposed solution and any potential alternatives and noted that the Workgroup may need a clear steer from the Panel.
- 3.7 A Panel Member commented that some of the details in the paper on voting mechanisms, the composition of the Board, the straw-man etc. had been discussed by the Panel in detail and suggested that the details of those discussions should be shared with the Workgroup. ELEXON and the Panel agreed this would be useful and that this information should be shared.
- 3.8 A Panel Member suggested that ELEXON may need to acquire additional expertise in the form of external support, particularly on the subject of corporate governance. The Panel agreed that there was justification for additional spend on this.
- 3.9 The BSC Panel:
- a) **AGREED** that P324 should progress to the Assessment Procedure;

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- b) **AGREED** the proposed Assessment Procedure timetable;
- c) **AGREED** the proposed membership for the P324 Workgroup; and
- d) **AGREED** the Workgroup's Terms of Reference.

## 4. P325 'Improving the accountability of BSCCo to stakeholders and better aligning BSCCo governance with best practice' – 243/05

- 4.1 Proposed Modification P325 seeks to amend the ownership structure of BSCCo by issuing shares in BSCCo to BSC Parties, Distribution Network Operators, new entrants, National Grid and the Authority. This is with the aim of allowing BSCCo to operate a governance model entirely consistent with the UK Corporate Governance Code.
- 4.2 Andy Colley highlighted that he was named as the Proposer Alternate for this Modification and offered to stand down for the discussion. The Chairman noted that as discussed previously, there was no need for Andy to remove himself from the discussions at this initial stage.
- 4.3 A Panel Member noted that the holder of the Class A share has the right to veto voting for changes to BSCCo's governing documents and appointment of the BSCCo Chairman. However, he noted that the holder of the Class C share also has these same rights. The Panel Member asked for clarification as to whether the right to veto the appointment of the BSCCo Chairman is held by both Class A and Class C shareholders or just the Class A shareholder. ELEXON clarified that the Class A shareholder would only be able to do this. However, if the Authority was not able to hold the Class A share, then that right would be transferred to the Class C shareholder. The Panel Member requested that this point be made clearer in the Workgroup's Terms of Reference.
- 4.4 A Panel Member asked ELEXON to outline examples for the Workgroup of how the solution would work in practice for BSC Parties, particularly in relation to new entrants and those exiting the market. ELEXON agreed to provide these examples to the Workgroup.
- 4.5 The Panel Member also asked if any there was any impact on National Grid's current position and asked that this be fully investigated by the Workgroup. The Panel Member also noted that the proposal's allocation of shares is based on 6 large companies having the largest block of shares. However, it was noted that the composition of market players could change and therefore suggested that the Workgroup look at an alternative methodology based on a percentage limit. ELEXON agreed that this could be considered by the Workgroup.
- 4.6 A Panel Member also requested that the Workgroup look at ensuring that the solution does not contravene any European Union (EU) directives for example on System Operator unbundling. The Proposer noted that the EU directives on bundling referred to Transmission System Operators but would be happy to look at it if the Panel agreed that this would be something that needed to be considered.
- 4.7 The Panel Member also asked the Proposer to expand further on how this Proposal would prevent larger Parties from dominating the BSCCo. The Proposer highlighted that the shares arrangement had been designed to ensure that the larger Parties would not hold more than 58% of the shares.
- 4.8 Mark Bygraves noted that the Terms of Reference should involve consideration of ELEXON as an organisation and asked that in addition the Workgroup considered the impact that any change of control would have on ELEXON's contracts, pension arrangements etc.
- 4.9 The Chairman asked the Proposer how important the existence of a physical share issuing system was compared to and distinct from arriving at the right answer on the proportions of voting arrangements. The Proposer asked to take the question away and think about it.

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- 4.10 A Panel Member suggested that the Workgroup consider how to deal with BSC Parties who are prevented from holding traded shares and suggested that the Workgroup may need to consider how Parties could opt-out of having shares but still have voting rights. In addition, the Panel Member wanted the Workgroup to consider how the trading of shares would take place to ensure equal access to shares.
- 4.11 Another Panel Member asked ELEXON to confirm that there would be external legal advice available to the Workgroup from the beginning of the Assessment Phase. Mark Bygraves agreed that ELEXON would investigate sourcing appropriate external legal advice and would come back to the Panel in relation to any costs if Panel approval was required.
- 4.12 The BSC Panel:
- a) **AGREED** that P325 should progress to the Assessment Procedure;
  - b) **AGREED** the proposed Assessment Procedure timetable;
  - c) **AGREED** the proposed membership for the P325 Workgroup; and
  - d) **AGREED** the Workgroup's Terms of Reference.

## 5. P320 'Reporting on Profile Classes 5-8 Metering System after the implementation of P272' – 243/06

- 5.1 The implementation of P272 'Mandatory Half Hourly Settlement for Profile Classes 5-8' would require Profile Class 5-8 Metering Systems to be Half Hourly settled and require changes to PARMS and Supplier Charges to report any non-compliance. The Panel noted that Modification P320 proposed to remove these required changes to PARMS and Supplier Charges that would be introduced by P272, and instead create a Committee Report to monitor the implementation of P272.
- 5.2 ELEXON proposed a new cut-off date of 1 October 2015 for Authority decision, in response to respondents' views that an early decision would provide certainty for the industry.
- 5.3 The Chairman asked why the costs of the modification had risen. ELEXON replied that the initial quote from the service provider had been re-costed at a higher figure by MRASCo (owner of the ECOES data). ELEXON noted that it was currently negotiating this cost (so there was scope for reduction) and that the figure given in the report was still much less than the cost of changing PARMS.
- 5.4 A Panel Member felt that this was a pragmatic solution and the right thing to do in order to save IT costs across the industry.
- 5.5 The Panel Member also noted that a quick Ofgem decision on the Modification would be useful. The Ofgem Representative noted that Ofgem was committed to delivering efficient and timely decisions to meet industry timescales and lead times.
- 5.6 The Chairman asked if there was an appetite for reporting to begin sooner than the Implementation Date of April 2017. ELEXON replied that the PAB was keen to see the report before that date to aid its monitoring of the progress of migration under P272 and P322. The Chairman noted that this strengthened the call for an October 2015 decision cut-off date.
- 5.7 The BSC Panel:
- a) **AGREED** that P320 does better facilitate Applicable BSC Objective (d);
  - b) **APPROVED** an Implementation Date for P320 of 1 April 2017 of an Authority decision is received on or before 1 October 2015;
  - c) **APPROVED** the draft legal text for P320; and

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d) **APPROVED** the P320 Modification Report.

## 6. P315 'Publication of Gross Supplier Market Share Data' – 243/07

- 6.1 Proposed Modification P315 was designed to increase the transparency of Suppliers' Metered Volumes and MPAN counts to give industry participants more equal access to basic market share information. The P315 Workgroup consulted on multiple potential solutions and developed a P315 Proposed Modification solution and a P315 Alternative Modification solution. The Workgroup recommended that the P315 Alternative Modification be approved.
- 6.2 A Panel Member asked why the market share information would be published on the Portal and not on the ELEXON website and why a licensing agreement is needed to make this information available. ELEXON noted that the licensing is required to protect the IPR and therefore the Portal is the best place for it (as the Portal enables password protection).
- 6.3 A Panel Member commented that one of the main objectives of this Modification was to improve transparency in the embedded generation sector. The Assessment Report notes that there is greater visibility; however, the Member was concerned about how much invisibility was left and whether that was a concern.
- 6.4 The Panel Member also noted that threshold of 1% of market share for anonymising the data only revealed 15 Suppliers' data across the market. ELEXON noted that the 1% threshold is currently used in other existing market reports and is the standard approach. ELEXON noted that market participants had raised some concerns that this threshold might be too low and that Ofgem was currently reviewing the most appropriate market share threshold for such reports. Another Panel Member noted that 1% market share threshold roughly equates to 250,000 domestic customers which is the threshold used in other industry schemes.
- 6.5 A Panel Member expressed concerns that the Modification would not promote competition or benefit new entrants but would be beneficial to incumbents. The Panel Member noted that this sort of transparency was not evident or required in other industries in order to foster competition: uncertainty is a feature of a competitive market and is a driver of competition
- 6.6 The Panel Member was also concerned that while there was a growing need for demand forecasting for the System Operator, he did not think that this Modification was the best way to deal with it. Another Panel Member agreed and noted that demand forecasting could be more efficiently dealt with if Ofgem enforced the DNO's duty to provide embedded generation data to the System Operator.
- 6.7 A Panel Member acknowledged that the ability to view this information already existed, but that it was not openly available to all and that there was a cost associated with accessing it. He felt that the Modification would remove that barrier and ensure that all participants have access to the same basic market share information. The Panel Member also noted that the REMIT regulations required generators to publish their Half Hourly data and that this Modification would add some symmetry by making more Suppliers' data available.
- 6.8 Bob Brown declared an interest and abstained from voting. However, he observed that in other markets, the provision of such information was left to the market to develop services that provide this information. The Panel Member further noted that the Terms of Reference asked the Workgroup to examine the demand of market share data within the industry and asked ELEXON to expand on where the support for the Modification came from. ELEXON noted that the majority of the respondents were supportive of the Modification and that this would be made clearer in the Report Phase Consultation document.
- 6.9 The Panel Member was concerned about the legal advice which states that the Competition and Markets Authority (CMA)'s policy and approach on transparency was not relevant to the principle in this case. The Panel Member asked if that was the only legal advice that the Workgroup received. ELEXON noted that the

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legal advice stated that the principle of the CMA's policy is not applicable in the context of the information released under the proposed P315 solutions and that the Workgroup did not believe that the information was commercially sensitive or would damage competition. However, the Workgroup introduced the 1% threshold as a safeguard to avoid any perceived risk to smaller Suppliers and new entrants to the market.

- 6.10 The Panel Member also noted that the responses from larger Suppliers were in favour of the Modification and that smaller Suppliers were not. The Chairman commented that he was struck by the almost unanimous agreement within the Workgroup discussion and the even division of views in the consultation responses and asked ELEXON to comment on this. ELEXON noted the market participants have different views on P315 but could not explain why they responded that way. A Panel Member commented that they had also observed this and noted that the members of the Workgroup were from larger Suppliers.
- 6.11 Another Panel member noted that small Suppliers that responded to the consultation did have the opportunity to join the Workgroup but chose not to do so. The Panel Member also noted that many members of the Workgroup were more positive about the benefits under Applicable Objective (b) of making the P0276 data available for forecasting. However the benefits under Applicable Objective (c) were perceived to have been reduced after a number of amendments to the Modification solution.
- 6.12 The Chairman asked the Ofgem and Transmission Company Representatives if they had any comments about the points raised by the Panel.
- 6.13 The Transmission Company Representative noted that focus of the Modification was on increasing competition and that the benefits on demand forecasting were a side effect. While noting that all sources of additional information were useful and welcomed by the Transmission Company, there should be other ways of accessing this information and it would be useful if those avenues could be strengthened.
- 6.14 Lesley Nugent (LN) noted the points made by the Panel and that the Transmission Company was in dialogue with Ofgem about the other ways it could access the required demand forecasting information but they would provide feedback to colleagues within Ofgem.
- 6.15 LN noted that Ofgem had been actively involved in the P315 Workgroup and had raised questions and concerns during Workgroup meetings and would have to carefully consider whether they had been addressed by the Workgroup when considering its decision. The Representative also noted the comment made by one Panel member that that the information provided under the Modification could have benefits to the wider industry and that this would also be considered in Ofgem's final decision..
- 6.16 A Panel Member noted that, as the proposed solution currently stands, the threshold would be written into the Code; changing that threshold would require a Modification. He queried whether it would feed into Ofgem's view on the Modification or whether Ofgem would direct ELEXON to raise a Modification to change the threshold if Ofgem had a preferred (different) threshold? LN noted that Ofgem was concerned about the threshold and the impact that such granularity of data and frequency of publication could have on competition, and that it had requested that the P315 Assessment Report provide full evidence and justification about this. The Ofgem Representative was also concerned that the Workgroup had received no external legal advice and that the advice that it had received did not view the CMA's policies and the EU directive as relevant to this Modification. ELEXON noted that responses to the latest consultation had not raised any concerns around legal views on the CMA and EU guidance.
- 6.17 A Panel Member asked if, given the comments from Ofgem, the Modification needed to be sent back to the Workgroup. The Modifications Secretary noted that if the Panel felt that it could not make a recommendation because it required more information then it could send the Modification back to the Workgroup, however the Panel would need to be clear about what it would be asking the Workgroup to assess or identify. ELEXON noted the request to explain the legal advice in more depth in the Report Phase Consultation. It also

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noted that the review of the threshold currently being carried out by Ofgem had no end date and it would not recommend holding the Modification back on this basis.

- 6.18 The Chairman noted that Ofgem wished to see more explanation in the report as to what legal advice was given to the Workgroup. The Ofgem Representative also asked for a more detailed explanation as to how the Workgroup justified the claim that the Modification would aid new entrants to industry.
- 6.19 A Panel Member also wished the Report to note that although P315 provides industry with information on embedded generation, the Panel did not think that this was the best approach to obtaining the information and it would like Ofgem to look at the issue. ELEXON noted that this would be part of the minutes of the Panel meeting not the Report.
- 6.20 The Chairman asked the Panel if it wished to defer the decision; the Panel did not.
- 6.21 The BSC Panel:
- a) **AGREED** that the P315 Proposed Modification:
    - o **DID** better facilitate Applicable BSC Objective (b);  
(Better facilitates (b): AC, DB, LW, PB, SC)  
(Neutral in respect of (b): PH)  
(Detrimental to (b): None)
    - o **DID** better facilitate Applicable BSC Objective (c); and  
(Better facilitates (c): AC, DB, LW, PB, SC)  
(Neutral in respect of (c): None)  
(Detrimental to (c): PH)
  - b) **AGREED** that the P315 Alternative Modification:
    - o **DID** better facilitate Applicable BSC Objective (b);  
(Better facilitates (b): AC, DB, LW, PB, SC)  
(Neutral in respect of (b): PH)  
(Detrimental to (b): None)
    - o **DID** better facilitate Applicable BSC Objective (c); and  
(Better facilitates (c): AC, DB, LW, PB, SC)  
(Neutral in respect of (c): PH)  
(Detrimental to (c): None)
  - c) **AGREED** that the P315 Alternative Modification is better than the P315 Proposed Modification;
  - d) **AGREED** an initial recommendation that the P315 Alternative Modification should be APPROVED;
  - e) **AGREED** an initial Implementation Date for the Proposed Modification of:
    - o 30 June 2016 if the Authority's decision is received on or before 22 October 2015; or
    - o 3 November 2016 if the Authority's decision is received after 22 October 2015 but on or before 25 February 2016.
  - f) **AGREED** an initial Implementation Date for the Alternative Modification of:

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- 30 June 2016 if the Authority's decision is received on or before 22 October 2015; or
  - 3 November 2016 if the Authority's decision is received after 22 October 2015 but on or before 25 February 2016.
- g) **AGREED** the draft legal text for the Proposed Modification;
  - h) **AGREED** the draft legal text for the Alternative Modification;
  - i) **AGREED** that P315 is submitted to the Report Phase; and
  - j) **NOTED** that ELEXON will issue the P315 draft Modification Report (including the draft BSC legal text) for a 12 Working Day consultation and will present the results to the Panel at its meeting on 10 September 2015.

## NON-MODIFICATION BUSINESS (OPEN SESSION)

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### 7. Minutes of Meeting 242 & Actions arising

- 7.1 The minutes of the previous meeting were agreed.
- 7.2 Actions 242/01, 242/02, 242/03, 242/04, 242/05, 241/01, 241/04, 241/09 and 234/05 were closed.
- 7.3 The following actions remain open and an update on progress provided: 241/08, 234/03 and 228/02.
- 7.4 A Panel Member noted that Energy UK had received a letter from the Energy Networks Association (ENA) on behalf of the DNO's requesting assistance with details of the migration plans for P272. The Panel Member noted that this is clearly an issue for DNO's and suggested that the PAB contact the ENA to offer assistance. ELEXON noted that the migration plans would not be provided at GSP Group level and because of confidentiality issues the information they would be able to share would not be useful to DNO's. However, ELEXON did hold a P272 event recently with attendance from distribution businesses and Suppliers. It was agreed that DNO's should be requesting the information from Suppliers and that Data Migration and MPAN was the best approach. It was agreed that the PAB would contact the ENA to discuss a way forward.

#### **ACTION 243/01**

- 7.5 A Panel Member commented that the implementation of P272 needs clear project management and that this is not within the authority or remit of the PAB. Ofgem and the CMA are clear that half hourly settlement is required and Ofgem needs to take a lead on implementation within industry.
- 7.6 The Chairman noted that ELEXON is doing all it can to encourage industry outside of the BSC to engage and communicate with each other. The Ofgem Representative noted that it was aware of the issues.

### 8. Chairman's Report

- 8.1 The Chairman noted that the Annual Meeting had taken place in July 2015 and was well attended and received.
- 8.2 The Chairman also noted that the recruitment process for Nigel Cornwall's replacement on the Board was underway (although there had been fewer applications than expected).

### 9. ELEXON Report – 243/01

- 9.1 Mark Bygraves provided an overview of ELEXON's consultation responses.

#### European Developments

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9.2 MB noted the publication by the Agency for the Co-operation of Energy Regulators (ACER) of the re-draft of the Network Code on Electricity Balancing; the key issues are the requirement for harmonisation of Imbalance Settlement and the Imbalance Settlement time period to 15 minutes across the EU by 1 July 2019. The European Network of Transmission System Operators for Electricity (ENTSO-E) will conduct a European cost benefit analysis; National Grid will be responsible for the UK section of this work.

9.3 This prompted Lisa Waters to raise the following questions with Ian Pashley on the progression of a cost benefit analysis (CBA) on a harmonised Imbalance Settlement Period (ISP) of 15 minutes:

*Has CBA work been started yet by ENTSOe?*

9.4 No, although Frontier Economics had been approached in May. The work was delayed due to the uncertainty around the wording in the Network Code on Electricity Balancing (NC EB), however at the last ENTSO-E Working Group Ancillary Services (WGAS) meeting (prior to ACER's Qualified Recommendation (QR)) it was agreed to proceed with the CBA as an 'early implementation' deliverable, rather than a requirement in the code. Indeed, as per the QR, it is likely that the final text will make no mention to a CBA.

9.5 Although work has not yet started on the CBA, the CBA Sub Group of WGAS has begun to define the data requirements and how to assess the costs and benefits in the meantime.

9.6 IP stated that National Grid had concerns over the timelines for the CBA, with a result expected in Q1 2016.

*What role will National Grid have in this CBA work?*

9.7 National Grid is participating as a member of the CBA Sub Group team; however, the group is led by a German TSO. Other Member States represented in the Sub Group include Hungary and Sweden. The subgroup sits under WGAS and, consequently, ENTSO-E's Market Committee. The sub group is also open to non-ENTSO-E TSOs and has its own terms of reference. It is important to note that National Grid is just one voice in each of these forums.

*When will all GB stakeholders be consulted about their costs (and benefits) by National Grid and / or ENTSOe?*

9.8 As soon as possible. Work has begun to understand what data will be required and how costs and benefits could be assessed. The CBA Sub Group team expects the data to be collated via questionnaires and each TSO will be responsible for collating data/responses within its responsibility area.

*Will stakeholders be consulted on a draft of the CBA prior to its finalisation / submission by ENTSOe?*

9.9 Yes. It will also be featured regularly on the agenda of the Balancing Stakeholder Group, which includes European institutions such as Europex, ACER and the EC (etc.) - we will also seek to provide updated where possible through the Balancing Stakeholder Focus Group.

## BMRS Phase 2

9.10 Phase 2 was implemented on 23 July 2015 and there have been no significant issues. Users will now be able to access additional data and will also be able to access data feeds via the new Data Push Service. The Data Push Service offers a new capability for publishing near real time data to industry participants

## EMR Update

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- 9.11 ELEXON continues to maintain a positive cash flow, with the grant and Service Agreement payments being received in accordance with the agreed payment schedule.
- 9.12 There have been two EMR education events for new suppliers held on 22 July and 12 August which were well received.

## P269 lessons learnt exercise

- 9.13 MB noted that the lessons learned exercise would begin in September and that he would update Panel in due course.

**ACTION 243/02**

- 9.14 A Panel Member noted the rise of the Imbalance Settlement Charts and asked ELEXON for information about this.

**ACTION 243/03**

- 9.15 For further details on ELEXON's work over the past month, please see the [ELEXON Report](#).

## 10. Distribution Report - Verbal

- 10.1 There was no Distribution Report.

## 11. National Grid Report – Verbal

- 11.1 There was no report from National Grid.

## 12. Ofgem Report – Verbal

- 12.1 The Ofgem Representative, Rory Edwards noted that Ofgem would be working closely with ELEXON and National Grid on the harmonisation of Imbalance Settlement through the Balancing Implementation Group meetings and with stakeholders through the Balancing Stakeholder Focus Group.

## 13. Report from the ISG – 243/01a

- 13.1 The Panel noted the report from the ISG.

## 14. Report from the SVG – 242/01b

- 14.1 The Panel noted the report from the SVG.

## 15. Report from the PAB – 243/01c

- 15.1 The Panel noted the report from the PAB.

## 16. Report from the TDC – 243/01d

- 16.1 The Panel noted the report from the TDC.

## 17. Report from the SRAG – 243/01e

- 17.1 The Panel noted the report from the SRAG.

## 18. Trading Operations: BSC Operations Headline Report – 243/02

- 18.1 The Panel noted the BSC Operations Headline Report.

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## 19. Change Report – 243/03

19.1 The Panel noted the Change Report.

## NON MODIFICATION BUSINESS (OPEN SESSION)

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## 20. CMA Energy market Investigation: Summary of provisional Findings and Recommendations – 243/08

20.1 ELEXON provided the Panel with an overview of the provisional findings of the CMA in respect of its Energy Market investigation, focussing on those possible remedies that are particularly relevant to the BSC. ELEXON also highlighted Ofgem's proposed third review of industry code governance which considered incremental changes in related areas. The Panel was invited to consider the CMA's provisional findings and remedies and comment as appropriate.

20.2 The Transmission Company Representative noted that while the Panel had decided to respond to the CMA on its provisional Findings and Recommendations, the CUSC Panel had decided not to do so.

20.3 A Panel Member welcomed ELEXON's letter to CMA which they felt was well balanced and well-reasoned.

**Remedy 1: Introduce a standard licence condition requiring locational prices for transmission losses in order to achieve technical efficiency**

20.4 There were no comments from the Panel on Remedy 1.

**Remedy 13: Require industry to agree a binding plan of the introduction of a cost-effective HH Settlement of domestic electricity meters.**

20.5 The Panel noted the interaction with the work of its newly established advisory group (the Settlement Reform Advisory Group SRAG). This strategic group is investigating how half hourly (HH) settlement could be enabled for customers with smart meters. This work could feed into the development of the plan and the Panel would wish ELEXON to support this.

20.6 The Panel noted that strong programme management would be key to the success of this work. Additionally, the Panel noted that any decision on moving to HH settlement should be based on a rigorous cost-benefit analysis. This issue is highlighted by the difficulty of the implementation of P272.

**Remedy 18a: Make code administration a licensable activity**

20.7 MB noted that there was no clear rationale for what this would achieve.

20.8 A Panel Member felt that this remedy is designed to solve an issue that is not relevant to the BSC and BSCCo and that there was no real need for a response on this point. The Panel Member also noted that this would introduce additional costs of regulation, which are reasonable as long as there is benefit in this approach - but that benefit does need to be proved.

20.9 A Panel Member noted that whether code administration should be a licensable activity is a question that is always worth asking as industry and ELEXON's relationship with the Transmission Company changes. However, these issues could also be addressed in other ways, so a rigorous cost benefit analysis would be needed to determine which route was best.

20.10 The Chairman noted that this change would make code administration a regulated business; he queried what problem this change would resolve and whether the problem is instead resolvable through the BSC.

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- 20.11 ELEXON commented that there would need to be clear view on what is defined by code administration. ELEXON's work in managing the BSC central systems is not currently classed as code administration and would not be licensable.
- 20.12 MB observed that licenses are useful when it is not clear what the licensee should be doing. However, the BSC is a very clear, detailed multi-party contract and it would be necessary to understand what a licence would add within those confines.
- 20.13 The Chairman asked Ofgem and the Transmission Company Representative for their views. LN noted that the CMA was still undertaking its work and that Ofgem was working closely with it. Ofgem was supportive of the work and agreed that code governance had an adverse effect on competition where there were limited incentives on incumbent players to issue beneficial change for consumers.
- 20.14 Ofgem's view was that there are beneficial aspects to all of the proposed CMA remedies, particularly concerning oversight. The Ofgem Representative noted that the CMA is still questioning what constitutes licensable activity and recognises that code administration works differently across the different Codes.
- 20.15 The Transmission Company Representative felt that the issues identified by the CMA did need to be resolved but questioned whether a licensing arrangement would resolve them or just add another layer of complexity to current arrangements.
- 20.16 A Panel Member commented that it did not think that larger Parties had any undue influence or were blocking change. However, they noted that non-BSC Parties who were impacted by BSC changes had no ability to query or raise modifications. This and the participation of smaller parties who do not have the resources to attend workgroups and meeting is a problem which is not resolvable through a licence.
- 20.17 The Chairman asked the Ofgem Representative to give some examples of how regulatory oversight of code administration would be useful. The Ofgem Representative noted that the market and the industry is in a period of significant change. There are a lot of changes in progress and a lot more to deliver; Ofgem's concern is that there is not enough focus on oversight and delivery of that change. Currently, Ofgem does not have a specific remedy to this issue but would like to see a solution that has oversight across the industry as it does not believe that industry has sufficient incentive to drive the change that is required.
- 20.18 A Panel Member noted that Ofgem has that power available to it through SCR and queried what the industry is not achieving that Ofgem would like it to.
- 20.19 A Panel Member asked if the licensing proposal implies the need for a single code administration body to achieve more effective cross industry co-ordination and how Ofgem would get to that. The Ofgem Representative stated that Ofgem does not have a view of a solution to this issue and that it was continuing to work with the CMA.
- 20.20 A Panel Member queried whether Ofgem saw more of a need for a licence if ELEXON's ownership arrangements were to change (through P324/P325) and whether different ownership arrangements would affect the CMA remedies. The Ofgem Representative felt that it was too early in the Modification process to comment on this but noted that it was something for the CMA to consider.
- 20.21 A Panel Member queried whether the issue was that the current system has the wrong checks and balances in place, or that Ofgem is reluctant to use the powers that it has? As an example, many industry participants had expressed the view that the P272 changes should have been delivered through Significant Code Review (SCR) rather than a BSC Modification. The Panel Member believed that if Ofgem had used its powers more effectively, that many of the issues identified by the CMA would be capable of resolution.
- 20.22 A Panel Member noted that industry code panels and Ofgem have a different set of criteria for judging change which is not efficient and perhaps they should use the same criteria.

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20.23 A Panel Member queried if ELEXON's activities weren't already licenced through the Transmission licence with the BSC simply being the instrument of fulfilling the licence requirement. If that was the case, then making code administration licensable would materially affect the conditions of the Transmission licence.

**Remedy 18b: Give Ofgem more powers to project-manage and control the process of developing and/or implementing code changes.**

20.24 A Panel Member felt that Ofgem already had sufficient powers in this area.

20.25 A Panel Member believed that Ofgem should be required to attend modification workgroups and contribute to the development of modification solutions. They noted that Ofgem used to take a more active role in the change process and felt that a return to that would be useful.

20.26 A Panel Member stated that the SCR process should be amended to consider implementation. In response, the Ofgem Representative noted that industry had protested when it was suggested that Ofgem should be able to raise Modifications as part of the SCR process, but noted this issue is being considered again in the context of Ofgem's latest code governance consultation which is considering, amongst other things, potential enhancements to the SCR process.

**Remedy 18c: An independent code adjudicator to determine which code changes should be adopted in the case of dispute**

20.27 A Panel Member stated that they thought that Ofgem had the right powers. They noted that giving Ofgem the power to raise Modifications as well as being involved in the workgroups and making the final decision on approval could create a conflict of interest. Thought would need to be given to how industry could appeal decisions.

20.28 Another Panel Member echoed this point and stated that it would be useful if Parties could appeal decisions for reasons outside of the current criteria for appeal. They noted that the cost of appealing decisions was often a barrier for smaller parties.

**Remedy 16: A Revision of Ofgem's statutory objectives and duties in order to increase its ability to promote effective competition**

20.29 A Panel Member noted that it would be of value to flag that the Panel's criteria for a decision are different from other codes and Ofgem.

20.30 A Panel Member felt that there was a need for all code administrators and Ofgem to open a dialogue about how everyone concerned could improve. Another Panel Member noted this but felt it was important that Ofgem was subject to performance targets on decisions.

20.31 A Panel Member noted that the CMA's summary did not really touch upon the governance changes that it was recommending.

20.32 The BSC Panel:

- a) **NOTED** the CMA's provisional findings and its notice of possible remedies of its energy market investigation; and
- b) **AGREED** that a letter summarising its current views on issues relevant to the BSC would be sent to the CMA.

## 21. Panel Meeting Dates for 2016 – 243/09

21.1 The Panel was invited to approve the proposed dates for Panel meetings in 2016.

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21.2 The BSC Panel:

- a) **APPROVED** the proposed dates for 2016 as set out in table 1; and
- b) **APPROVED** their publication on the ELEXON website.

## 22. Any other Business

22.1 There was no other business.

## NON MODIFICATION BUSINESS (CLOSED SESSION)

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### 23. TDC Membership Application – 243/10

The Panel was invited to consider a new member to the Trading Disputes Committee (TDC), the Q8 and Warm Homes Reconciliation Disputes Committees.

The BSC Panel:

- a) **APPOINTED** Andrew Marsh as a member of the Trading Disputes Committee (TDC), the Q8 and Warm Homes Reconciliation Disputes Committees with immediate effect.

### 24. SVG Membership Application – 243/11

The Panel was invited to consider a new member to the Supplier Volume Allocation Group (SVG).

The BSC Panel:

- a) **APPOINTED** Jonathan Priestley as an SVG Industry Member with immediate effect.

### 25. Update on Section H Default– 243/12

ELEXON provided the Panel with an update on a Section H Default and invited the Panel to consider the Section H Default Resolutions.

The BSC Panel:

- a) **NOTED** the contents of this paper; and  
**AGREED** that the Section H Default resolutions enacted under BSC Section H3.2.1 remain suitable.

## 26. Any other Business

26.1 There was no other business in the Closed Session.

## 27. Next meeting

27.1 The next meeting of the BSC Panel will be held at the offices of ELEXON Ltd, 350 Euston Road, London NW1 3AW on Thursday 10 September 2015.