

## EMR – Panel Update

<b>Meeting Name</b>	BSC Panel
<b>Meeting Date</b>	12 September 2013
<b>Purpose of paper</b>	For Information
<b>Summary</b>	This paper is the Panel's monthly update on ELEXON's appointment as the Settlement Agent for both Contracts for Difference (CfDs) and for the Capacity Market (CM) for the period from 8 August to 6 September.

### 1. CfD Grant

- 1.1 Having finalised the CfD Grant, the routine monthly invoicing processes have been established and invoices are being presented and paid promptly by DECC.
- 1.2 DECC's agreement to publish a redacted copy of the Grant letter has been requested. The Grant includes a number of attachments including the Grant's funding profile which, if published could compromise the integrity of the CfD system procurement so these attachments are proposed to be excluded from the materials that will be published.

### 2. Engagement

- 2.1 At the operational level, engagement with DECC, the Counterparty, National Grid and industry continues. ELEXON is (or will soon be) participating in a number of forums including:
  - The Collaborative Development Process (CDP) including the Collaborative Development Implementation Steering Group (established to support the CDP);
  - Institutional Framework Expert Group;
  - Expert Groups including: the Metering sub-group; Capacity Market Expert Group and Capacity Market Project Board; and
  - Secondary Legislation Working Group.
- 2.2 A noticeable increase in activity has been evidenced as a result of DECC's stated desire to consult on secondary legislation in October 2013 and this is having a positive impact in progressing policy decisions in areas where there has, at least until now, been uncertainty.
- 2.3 We continue to engage directly with the BSC Panel Committees and to share information where we can particularly on the expected scope of the changes to the BSC and the BSC Systems and processes.

### 3. Governance

- 3.1 As reported at the last Panel meeting and following discussions with Kenneth MacRitchie of the Counterparty, it seems certain that the CfD Settlement Agent will undertake its role under contract to the Counterparty rather than directly with DECC. The governance and contractual relationship for the CfD arrangements will be with the Counterparty and for the Capacity Market, with the "Settlement Body"

3.2 There is nothing further to report in this area.

#### **4. CfD System Procurement**

- 4.1 Drafting of the Invitation to Tender (ITT) documentation completed during August and following Grant signature (we declined to release the ITT documentation until the Grant had been signed) the ITT documentation has now been shared with DECC and their legal advisors.
- 4.2 The delay in the release of the documentation and the inclusion of DECC's review has introduced a delay to the issue of the ITT. However, until their review comments have been evaluated it is not currently possible to state when the ITT will now be issued. However, it will not be on 4 September 2013 as previously planned.
- 4.3 DECC has been informed of the risk to the implementation timetable. The risk is partially mitigated by DECC's decision not to start collecting payments from Suppliers until December 2014<sup>1</sup> (our planning assumption had been that payments by Suppliers and payments to CfD Generators would begin in October 2014). DECC's decision to start collecting payments from Suppliers in December 2014 is not attributed to our ITT process.

#### **5. Requirements' certainty**

- 5.1 As mentioned in section 2 above, the desire to consult on secondary legislation in October 2013 is having a positive impact in progressing policy decisions in areas where there has been uncertainty

#### **6. Changes to the BSC and BSC Systems and processes**

- 6.1 Changes to the BSC and to BSC Systems and processes are necessary to enable the CfD Settlement Agent (SA) to fulfil its role, e.g. through the use of metered data from the BSC, and to put in place the appropriate governance structure.
- 6.2 At high-level, the scope of the changes have been shared with the Panel Committees and we have asked Cognizant and CGI (formerly Logica) to undertake an impact assessment. Their responses will provide some certainty on implementation costs and timescales and inform our BSC System release planning. Ideally, we would like to implement the changes in the June 2014 release.

#### **7. Financial Regulations**

- 7.1 As mentioned previously ELEXON has analysed whether the EMR role(s) are likely to be within the scope of European or UK financial regulations and so require authorisation. Analysis and taking account of DECC's legal view and our own independent legal advice, suggests that both the Capacity Market and CfD SA roles will be outside the scope of EU financial legislation. However, the CfD SA role (alone) will be within the scope of the UK Financial Services and Markets Act (FSMA) and we (and our service provider) would need Financial Conduct Authority (FCA) authorisation to perform the CfD SA role or be granted an exemption for which we would expect DECC to liaise with HM Treasury.
- 7.2 Following a meeting to discuss our findings and in anticipation of a meeting with HM Treasury, DECC requested that we seek counsel's opinion on the applicability of FSMA. Counsel's opinion has now been

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<sup>1</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/226897/CfD\\_Supplier\\_Obligation\\_-\\_policy\\_update\\_and\\_response\\_to\\_the\\_call\\_for\\_evidence\\_-\\_7\\_August\\_2013\\_-\\_FINAL.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226897/CfD_Supplier_Obligation_-_policy_update_and_response_to_the_call_for_evidence_-_7_August_2013_-_FINAL.pdf)

received and this confirms that the CfD Settlement Agent will need Financial Conduct Authority (FCA) authorisation to perform the role or be granted an exemption.

- 7.3 We have shared counsel's view with DECC and are awaiting confirmation of the date of a meeting with DECC and HM Treasury to consider and progress the necessary exemption.

## 8. Resource effort and expenditure

### CfD

	Current Month (July) (£k)	Year to Date (£k)
Internal Costs	119	251
External Cost	104	191
Total Costs	222	442

- 8.1 In July 2013 we utilised 194 man-days supporting DECC on CfD related matters.
- 8.2 This is high relative to prior months but is also a reflection of the increased levels of activity and in particular the effort that's been expended in completing the ITT documentation. In addition, we have also utilised external contractor support and sought professional advice.
- 8.3 Invoices have been raised and submitted to DECC covering actual costs incurred together with an estimate of the following month's costs in accordance with the signed Grant. Invoices are being paid in advance of the agreed payment terms.

### Capacity Market

	Current Month (July) (£k)	Year to Date (£k)
Internal Costs	14	43
External Cost	0	0
Total Costs	14	43

- 8.4 Man-days in July were 29 and year to date 83. The resource run-rate on the CM is much lower than under CfD largely because the CM SA's role will not become fully<sup>2</sup> operational until the winter of 2016. Capacity

<sup>2</sup> Some earlier activities may be required e.g. to hold and monitor collateral from October 2014 onwards.

Market costs are not included within the scope of the CfD Grant; a separate CM Grant is being discussed with DECC and we hope to complete the Grant by the end of October 2013.

## Vires Risk

- 8.5 At the request of the Panel (June meeting), the Chairman was requested to write to Ofgem seeking assurance that it supports ELEXON undertaking this preparatory work in anticipation of a future statutory role so that Panel and Board members can be assured that there is no risk of criticism or challenge from the regulator (a copy of the letter has been sent separately to Panel members and can be viewed on the ELEXON website at: <http://www.elexon.co.uk/reference/electricity-market-reform/>)
- 8.6 A response to the letter from Ofgem is awaited. At the Panel meeting on 8 August Ofgem confirmed receipt and that they were still considering a response.

## 9. Recommendation

9.1 We invite you to:

- a) **NOTE** the EMR update.

### **For more information, please contact:**

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