

## EMR: Panel Update

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<b>Meeting Name</b>	BSC Panel
<b>Meeting Date</b>	8 August 2013
<b>Purpose of paper</b>	For Information
<b>Summary</b>	This paper provides an update on EMR related activities in the period from 12 July to 2 August 2013

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### 1. Grant Funding

- 1.1 The Grant, by which DECC funds ELEXON's FiT CfD activity, has been finalised with DECC officials. The key provisions are:
- Grant covers the period 1 April 2013 to 31 March 2014 – so costs since the VEAT notice are covered. The intention is for a second grant for 2014/15;
  - Grant covers costs of changes to BSC Systems and processes as well as the procurement of a FiT CfD settlement system;
  - No sub caps relating to internal/external costs, just an overall cap which can be increased by agreement, if the scope of the Project or estimated costs have materially increased;
  - No obligation to incur costs beyond the cap and if we forecast it is reasonably likely we will exceed the cap, we can stop activities until further funding is agreed;
  - DECC also agrees that we are a not for profit organisation with no balance sheet "and must be adequately funded in order to fulfil [its] role in respect of the project";
  - Payments made monthly in advance, not arrears, for costs that are reasonably and exclusively incurred on the project; and
  - Recovery of our exit charges including those of our service providers if the grant is withdrawn.
- 1.2 Reaching a conclusion on the Grant has taken longer than desired due to the unusual status of ELEXON and DECC needing to escalate some decisions internally to the Permanent Secretary.
- 1.3 Subject to DECC's confirmation and in order to promote transparency, a redacted copy of the Grant letter will be published on the ELEXON website. The Grant letter includes a number of attachments including the Grant's funding profile which, if published would compromise the integrity of the procurement.

### 2. Engagement

- 2.1 At the operational level, engagement with DECC, the Central Counterparty Body (CCB) National Grid and industry continues. ELEXON is (or will soon be) participating in a number of forums including:
- The Collaborative Development Process (CDP);

- 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 In order to provide industry with greater visibility of ELEXON's likely role in EMR and to share our thoughts on where the BSC arrangements (BSC, Code Subsidiary Documents and BSC System and Processes) may need to change we have undertaken a round of presentations to a number of Panel sub-committees – Imbalance Settlement Group (ISG), Supplier Volume Allocation Group (SVG), Performance Assurance Board (PAB) and Trading Disputes Committee (TDC).
- 2.3 On the whole, the presentations have been welcomed and we will continue to provide these updates as Government policy becomes firmer and as our understanding of the impact of EMR on the BSC arrangements develops.
- 2.4 We have also launched a new page on the ELEXON website where we will publish materials and other information that we believe will be of interest to our customers.

### 3. Governance

- 3.1 As reported at the last Panel meeting and following discussions with Kenneth MacRitchie of the Central Counterparty Body (CCB), it seems certain that the FiT CFD Settlement Agent will undertake its role under contract to the Central Counterparty rather than directly with DECC.
- 3.2 We continue to seek clarification of the governance around ELEXON's appointment and how the legislation, BSC and contract will interact. However, the CCB has indicated that he would expect the contract to be in place by March 2014. The contract cannot take effect until after the necessary legislative changes have been given effect and the Secretary of State (SoS) has directed the changes to the BSC; this is likely to happen in early July 2014.
- 3.3 One of the Governments recent publications<sup>1</sup> includes a section on the proposed legal structure of the Capacity Market. Amongst other things, the document states that "*The overall responsibility for the efficient settlement of the Capacity Market will rest with a **settlement body**. Payment flows between suppliers and capacity providers will be the responsibility of a settlement body and some of its operational functions may be designated to a settlement agent (e.g. calculation of all amounts that are owed under the Capacity Market arrangements). The Secretary of State will appoint the settlement body; it has yet to be determined whether this will be an existing body or a new government-owned company. DECC has already announced its intention to designate Elexon Ltd as the settlement agent*".
- 3.4 The governance and contractual relationship for the FiT CfD arrangements will be with the Central Counterparty Body and for the Capacity Market, with the "Settlement Body".

<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/212299/dprc\\_supplementary\\_memorandum.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212299/dprc_supplementary_memorandum.pdf)

#### 4. FiT CfD System Procurement

- 4.1 As reported in last month's report to the Panel, whilst some areas of the FiT CfD system requirements are yet to be decided and subject to DECC's policy considerations, the procurement of the FiT CfD system is proceeding in order to meet the Government's legislative timetable. Prequalification completed in June and six organisations have been invited through to the Invitation to Tender (ITT) phase.
- 4.2 Development of the ITT documentation has continued and it had been planned to issue the ITT at the end of July. However, DECC has introduced an additional "gate" into the process, requiring a review of the contract terms to be conducted by DECC and its external legal advisors.
- 4.3 Recognising that FiT CfD risks and liabilities will rest with either the CCB or the service provider it is perhaps inevitable that the CCB will seek its own independent opinion that the risk and liabilities are appropriately balanced between the two bodies.
- 4.4 It is not yet clear how involved their review will be or indeed, the impact on the overall procurement and implementation timetable. However, DECC has been informed of the risks arising from a delay to the process and a Programme Risk has been raised.
- 4.5 In addition, there has been delay to the start of this review because we declined to provide DECC and its advisers with the ITT documentation until the Grant's execution.

#### 5. Requirements certainty

- 5.1 There are a number of areas potentially impacting the FiT CfD System and the BSC Systems where requirements are uncertain, including:
  - the mechanism to recover generator payments from Suppliers and whether this is based on a Fixed or Variable Rate Levy; and
  - treatment of Energy Intensive Industries (EIIs).
- 5.2 On the Capacity Market the areas of uncertainty (from the BSC and CM Settlement Agent perspective) are:
  - penalty regime;
  - timing and impact of Demand Side Response (DSR); and
  - who has responsibility for the administration of the CM Rule Book.
- 5.3 DECC appear committed to its stated timetable for the consultation on the secondary legislation (October 2013) and this is having a positive impact in progressing the areas where there is uncertainty. In order for DECC to deliver on its consultation commitment policy decisions will need to be made in the coming weeks in order that the policy can be given effect through the legal regulations.

#### 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 FiT CfD Settlement Agent to fulfil its role, e.g. through use of metered data from the BSC, and to put in place the appropriate governance structure to address the vires issue.

- 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 release planning. Ideally, we would like to implement the changes in June 2014 release.

## 7. Financial Regulations

- 7.1 As mentioned in the June Panel update 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 FIT CfD SA roles will be outside the scope of EU financial legislation. However, the FIT 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 FIT 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 has requested that we seek counsel's opinion on the applicability of FSMA. As with submitting the ITT to DECC for review, we concluded we would not instruct counsel whilst the Grant wasn't executed so this has not progressed as swiftly as desired.

## 8. Resource effort and expenditure

### Fit CfD

	Current Month (June) (£k)	Year to Date (£k)
Internal Costs	62	119
External Cost	65	87
Total Costs	127	206

- 8.1 In June 2013 we utilised 96 man-days supporting DECC on FIT CfD related matters. Resource utilisation doubled, compared with April and May. However, this is a reflection of increased activity levels and in particular, the development of the ITT documentation.
- 8.2 In addition, we have also utilised external contractor support and sought professional advice. As previously stated, these costs will be covered by the DECC Grant which commences 1 April 2013.

## Capacity Market

	Current Month (June)  (£k)	Year to Date  (£k)
Internal Costs	13.8	28.7
External Cost	0	0
Total Costs	13.8	28.7

- 8.3 Man-days in June were 26 and year to date 54. The resource run-rate on the CM is much lower than under FiT CfD largely because the CM settlement agent's role will not become operational until the winter of 2016 when the potential for Demand Side Response (DSR) payments arise.
- 8.4 Capacity Market costs are not included within the scope of the FiT CfD Grant; a separate CM Grant is being discussed with DECC. It is hoped that having agreed key principles for the FiT CfD Grant, the process and timescales required to establish any further Grants will be much quicker.

## Vires Risk

- 8.5 At the May Panel meeting a concern was raised that until the EMR legislative processes are given effect and the BSC is modified, ELEXON has no vires to undertake the preparatory activities necessary to enable the EMR timetable to be met and consequently a BSC Party may object to work being undertaken on non-BSC activities.
- 8.6 At the meeting of the ELEXON Board on 3 July this risk was again discussed. Whilst the Board agreed that support to DECC on EMR should continue contingent on finalising the Grant and the assurance from DECC that the Energy Bill will provide the necessary powers to enable the Secretary of State to direct changes to the BSC, the Board also acknowledged the need for the continued support from the BSC Panel.
- 8.7 This matter was further discussed at the June Panel meeting at which the Chairman was requested to write to Ofgem seeking assurance that it supports ELEXON in undertaking this preparatory work for its future statutory roles 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.

## 9. Recommendation

9.1 We invite you to:

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

### For more information, please contact:

David Osborne  
[david.osborne@elexon.co.uk](mailto:david.osborne@elexon.co.uk)  
 020 7380 4199