

Energy UK response to BEIS' consultation on the future ownership of Elexon

22 September 2022

About Energy UK

Energy UK is the trade association for the industry with over 100 members from established FTSE 100 companies to growing suppliers and generators, which now make up over half of our membership. We represent the majority of the energy sector excluding networks and upstream oil and gas.

Headline points

- Energy UK supports the option that can most effectively mitigate delays to the creation of the FSO as well as mitigate risks to Elexon's processes, including the vital role they are expected to take in the delivery of the Energy Price Guarantee.
- While both the public and industry ownership options allow Elexon to continue its essential work, if industry ownership is chosen, further consideration will be required in several areas:
 - the impact of Energy Code Governance Reform, the role that Elexon may play and the consequential impact on the risks and liabilities for the proposed shareholders. If BEIS chose to take forward the industry ownership model at this time it will need to ensure that sufficient protections and/or commitments are put in place to address or remove these potential future risks.
 - implementing industry ownership will require the coordination, agreement and mobilisation of a large number of different parties, as well as undertaking legal processes for the share transfer. Each industry party will incur costs to facilitate this and in aggregate these costs are material. BEIS should consider how Government or Elexon could mitigate some of these costs through a co-ordinating role.
- Finally, several Energy UK members have expressed dissatisfaction around the format of this consultation, in that market participants have been presented with a preferred position from BEIS and Ofgem, rather than an open question on which model the industry would prefer.

Do you agree with the proposed criteria to determine the future ownership of Elexon? Please state why.

- **Minimise disruption to work on the BSC, MHHS, EMR and the Energy Price Guarantee:** Energy UK supports the inclusion of the criteria that seeks to ensure that the preferred ownership minimises disruption to Elexon's crucial work on the BSC, as well as its work on energy system transformation through MHHS and EMRS.

- **Avoid disruption to the FSO delivery timeline:** Energy UK welcomes the establishment of the FSO and support the drive to avoid disruption to the FSO delivery timeline. As highlighted in the consultation, the industry ownership option will require the coordination, agreement and mobilisation of a large number of different parties. Government or Elexon could play a role in co-ordinating and driving through the changes needed to transfer to industry ownership.
- **Preserve accountability to industry stakeholders and independence:** Energy UK assumes that the change of the ownership structure of Elexon will not affect its existing accountability to its customers and that Elexon will continue to be a not-for-profit entity, funded by a subset of BSC parties with funding arrangements set out in the BSC. Energy UK would welcome clarification that there would be no change to the governance arrangements associated with the MHHS programme due to the ownership change proposed.
- **Ensure resilience to future change:** BEIS is seeking to ensure that any changes to the ownership structure of Elexon does not preclude its potential appointment as a code manager in future, or other potential changes such as code consolidation. Energy UK would welcome further clarity as to how this would be assessed and measured, including how accountability would be preserved under any future changes.
- **Implications for future shareholders:** the impacts on any future shareholders should be a criterion for consideration. Energy UK would appreciate further clarity around the management of non-BSC liabilities such as pensions, and how potential regulatory fines would be recovered following Elexon's licensing as a Code Manager.

Do you agree that public ownership and industry ownership are the two most credible ownership options? In your view, are there any other ownership options that we should consider, and why?

- Yes, these are the main options. However, further consideration should go to other ownership models suggested by Energy UK members:
 - Inviting market interest in ownership: BEIS could invite expressions of interest from licenced and funding BSC parties in becoming shareholders. This would uncover the extent of market interest in ownership.
 - Ownership by National Grid Electricity Transmission: this has the advantage of low likelihood of market exit and a low risk profile. Energy UK notes the doubts expressed in the consultation document regarding reversion to an ownership by National Grid Electricity Transmission. However, BEIS should not discount the option entirely at this stage, especially given the uncertainty in several areas of other options.

Do you agree with our stated preference of the potential combinations of BSC parties which could own Elexon if industry ownership were chosen? Please state why.

- Yes, if industry ownership is chosen, then licensed BSC parties that fund Elexon is a logical set of owners.
- Energy UK would welcome more detail on BEIS views on co-ordination and implementation and how Government and/or Elexon would support this process.

To what extent to you agree with the above analysis of the two main ownership options, public ownership and industry ownership, and our preference for industry ownership?

- Both options could likely be delivered with limited disruption to Elexon's activities. However, given the importance placed on not disrupting the FSO timetable, it is unclear why BEIS and

Ofgem have expressed initial support for the ownership option that appears to have the greatest danger of doing so (as acknowledged in the consultation document).

- Elexon's current governance arrangements deliver accountability to the industry and this needs to be preserved in any future shareholding arrangements. Energy UK has a number of reservations with the way that RECCo and Xoserve have handled similar arrangements, and are keen that the same mistakes aren't repeated; particularly since Elexon's governance is currently satisfactory. In particular:
 - RECCo board members are independent of the shareholders, which could put them at a distance from industry operations and an understanding of parties' needs.
 - On the other hand, Xoserve's constituency system has not worked out particularly well in practice, with parties not always finding that their representative shares their views.
- In addition, having a large number of shareholders could give rise to further complications:
 - Lots of parties with small shareholdings that have no value in themselves could limit the strength of each party's commitment to robust Board participation; and
 - Lots of shareholders could be more complicated than having a single shareholder in the FSO.

To what extent do you agree with our proposal that Elexon should transfer temporarily into the public sector as a subsidiary of the FSO as a last resort, if industry ownership was chosen following consultation but could not be implemented without delaying the creation of the FSO? Please explain why.

- Yes, maintaining Elexon's current governance arrangement is sensible in the event that the chosen option risked delaying deployment of the FSO.
- With that in mind, BEIS and Ofgem should devote sufficient time and resources to ensuring that all issues related to the fallback option have been resolved by the time of the FSO go-live date. There is a danger that Elexon contracts, procurement and staffing could be impacted from temporary transfer to public ownership and it may be difficult to extricate Elexon from public ownership once it has transferred.

Are any other changes required to implement either of the two ownership options?

No answer.

What are your views on the proposed licence and code changes set out above?

- Under the proposed framework, irrespective of the group of industry parties that would own Elexon, the rights and obligations for shareholders would remain set out in the BSC. However, whilst this introduces minimal change, the latest Energy Code Reform updates sets out the intention to create a new governance framework for the energy codes. Energy UK are concerned of the impact it may have on the rights and obligations. For instance, future non-performance of Elexon could then create new liabilities for its shareholders depending on how these proposals are implemented. It is important that in taking forward the industry ownership model at this time that sufficient protections/commitments are put in place to address/remove these potential future risks.
- Furthermore, if Elexon were to take on additional responsibilities under code consolidation, the potential for acquiring liabilities would likely increase.

- We are concerned about the mutual cooperation licence condition, how this interacts with competition law and how it is enforced, particularly in the event that parties find it impossible to reach agreement.

Have we considered all relevant costs and benefits of these proposals? Please state why.

- Whilst costs of implementing the industry ownership option are likely to be low, these costs to undertake the same work will be replicated across all BSC Parties and will ultimately be passed onto consumers. BEIS should reflect on how to mitigate these costs at this time and the role Government and/or Elexon could play to reduce the operational costs across all organisations.