

Electricity Systems Team
Department for Business, Energy and Industrial Strategy
Abbey 1, 3rd Floor
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22 September 2022

Dear Electricity Systems Team,

The future ownership of Elexon

EDF is the UK's largest producer of low carbon electricity. EDF operates low carbon nuclear power stations and is building the first of a new generation of nuclear plants. EDF also has a large and growing portfolio of renewables, including onshore, offshore wind and solar generation, and energy storage. With around six million electricity and gas customer accounts, including residential and business users, EDF aims to help Britain achieve net zero by building a smarter energy future that will support delivery of net zero carbon emissions, including through digital innovations and new customer offerings that encourage the transition to low carbon electric transport and heating.

We welcome the opportunity to respond to this consultation on the future ownership of Elexon. The key points we wish to highlight are set out below:

- Elexon undertakes a critical role to support the operation of the electricity system; mitigating potential risks from this change is essential.
- EDF supports the proposed industry ownership option, BEIS' preferred option, as this is the most effective solution both to mitigate risks to Elexon's processes and to mitigate risks of delays to the creation of the Future System Operator (FSO).
- However, if the industry ownership model is implemented, industry parties will incur legal and administrative costs that are replicated across the industry which together will be material. It is essential that BEIS consider how Government or Elexon could minimise these costs.
- We note that earlier this year BEIS separately recommended a number of changes to Energy Codes, including the licensing of code bodies. Potential changes from this reform could impact the liabilities of Elexon shareholders. If BEIS chose to take forward the industry ownership model it will be necessary to provide protection to industry against liabilities that otherwise could arise from this separate reform.

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- Finally, Elexon is expected to play a key role in the delivery of the new Government Price Guarantee which is likely to be a complex process that needs to be in place in tight timescales. It is critical that Elexon is able to continue its existing priority activity and is not impeded by work undertaken to transfer the ownership of Elexon.

Should you wish to discuss any of the issues raised in our response or have any queries, please contact me or Natasha Ranatunga on 07875 112 981.

Yours sincerely

A handwritten signature in dark ink, appearing to read "Mark Cox".

Mark Cox
Head of Nuclear & Wholesale Policy and Regulation

1. 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, and EMRS:** We support 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:** We welcome the establishment of the FSO and support the criteria 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, and certain legal processes required for the share transfer. This means each industry party will incur costs to facilitate this; we would welcome BEIS' views on how all of these costs could be minimised – could Government or Elexon play a role in co-ordinating and driving through the changes needed to transfer to industry ownership.
- **Preserve accountability to industry stakeholders and independence:** We assume 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 the BSC parties with funding arrangements set out in the BSC. Additionally, we recognise that Elexon has needed to create a separate programme ('Helix') due to business separation to deliver the changes to the Elexon systems required by MHHS. We assume there would be no change to the governance arrangements associated with MHHS programme due to the ownership change proposed.
- **Ensure resilience to future change:** We note that 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. We would welcome further clarity as to how this would be assessed and measured. We are also concerned about the interaction between these two proposals. While the exact detail of BEIS' decision changes to Energy Codes has not been fully worked up, there is clearly potential for new liabilities to be imposed on code managers, e.g. through penalties for non-performance. If BEIS chose to take forward the industry ownership model it will be necessary to provide protection to industry against liabilities that otherwise could arise from this separate reform.
- **Cost of change:** while BEIS notes that the cost of change is likely to be largely administrative, as highlighted in the consultation, the industry ownership option will require the coordination, agreement and mobilisation of a large number of different parties, and certain legal processes required for the share transfer. This means each industry party will incur costs to facilitate this. In aggregate these costs are material. We would welcome BEIS' views on how all these costs could be minimised – could Government or Elexon play a role in co-ordinating and driving through the changes needed to transfer to industry ownership.

2. 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, we agree that public ownership and industry ownership are the two most credible ownership options. These options are likely to best mitigate both the risks to Elexon's activities and the risks to the FSO delivery programme.

3. 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.

BEIS sets out its preference for Licenced parties who fund Elexon to own Elexon rather than all Licenced BSC Parties. The rationale for this preference appears to be that whilst both options allow for all these parties to be given a licence obligation to own the shares and cooperate to implement the new structure, by limiting to parties that fund Elexon there are fewer parties involved and it *may* make co-ordination and implementation easier. We consider that either option would work given either approach only involves licenced parties. As highlighted elsewhere, while the process and costs are largely administrative, the fewer the number of parties involved the lower the costs, so we support BEIS's stated preference.

We would though welcome more detail on BEIS views on co-ordination and implementation and how Government and/or Elexon would support this process.

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

We would support the most effective option that can mitigate delays to the creation of the FSO as well as mitigate risks to Elexon's processes. Ultimately, both the public and industry ownership options allow Elexon to continue its essential work. There does not appear to be any clear evidence provided in the consultation that either private ownership or Elexon as a public body raises any specific issues.

5. 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.

We support the drive to avoid disruption to the implementation of the FSO. Therefore, we welcome BEIS' 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 and could not be implemented without delaying the creation of the FSO. However, we strongly suggest

that it will be far optimal to get industry buy-in for the necessary changes and mitigations to ensure that a last resort temporary option is unnecessary.

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

We have not identified any other changes required.

7. 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. We 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 protections are put in place to address these concerns.

8. 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. We believe that 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.