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Robert Clay
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Sent by email to: FSO@ofgem.gov.uk

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Dear Robert

New electricity supply and generation licence conditions to implement new ownership arrangements for Elexon

This is a non-confidential response to the above consultation on behalf of Centrica Group. We have answered your specific consultation questions in turn below.

Overall we find that further clarity is needed. Firstly, the licence condition remains in informal draft rather than complete legal text form. It is not sufficiently clear what the content of the revised licence will be in order to provide meaningful review. Secondly, the intended practical implementation of the new licence condition appears to differ between the explanatory text in the main body of the consultation document at paragraph 3.6 and the draft licence condition in Appendix 2.

We are also interested to see that the licence obligation is not in fact mandatory if certain conditions apply to a funding party and so it is possible that the initial cohort may not be made up of 13 shareholders. There is also potential for parties actively to seek to avoid the obligation, although this should not be desirable if the policy intention is met as outlined, with no additional liabilities or risk falling on shareholders.

It is unclear why Ofgem has chosen to use its powers under the Energy Bill to enact this licence change. This may result in a shorter consultation period than would otherwise be required.

While Ofgem has provided material informally to stakeholders bilaterally in recent months, this has not been sufficiently complete, informative or representative of the approach contained in the current consultation to form part of any stakeholder review of the proposals.

Yours sincerely

Kirsty Ingham
Head of Industry Transformation, Governance & Forecasting
Centrica Regulatory Affairs & Policy

1. Do you agree with our proposed approach to implementation, including our proposal for flexibility?

We understand that several parties requested flexibility to delegate or designate the licence obligation between their group entities. We welcome that measures have been proposed to allow for this and, while we are not directly impacted by this issue currently, we hope that the proposals will reduce the risk of the future shareholder group being unable to take their Elexon share simultaneously.

We require clarification of how the proposed flexibility will be implemented. At paragraph 3.6 of the consultation document the directed party and designated party are defined respectively as a licence holder directed to hold a share and a party nominated by the directed party to hold the share. It is stated that the designated party “*may be the same as the directed party.*” This suggests that a nomination or delegation will take place, i.e. the directed party may (must) nominate or declare itself as the shareholding party. It is perhaps possible that the intention here was to allow for circumstances where a directed party may be designated to hold a share for a further directed party (i.e. two shares held within the same group).

Appendix 2 suggests that delegation of the responsibility to hold a share is optional and the Secretary of State shall only be informed of the shareholding party if different to the directed party:

2. *The licensee may delegate any responsibility for holding a share in Elexon to one of their wholly owned affiliates that is a signatory to the BSC.*
3. *Where the responsibility for holding a share in Elexon is delegated in accordance with paragraph 2, the licensee must inform the Secretary of State and the Authority of the name of the party to whom responsibility is delegated, [...]*

In our view it should be unnecessary for a directed party to make a delegation to itself and inform the Secretary of State.

The requirements for delegation are for a wholly owned affiliate, either owned by the directed party or related via a common parent company. Parties would be allowed not to take a share if they are not a licensee and have no wholly owned affiliated licensees in their group. It is feasible that these conditions would be met, for example, if all relevant affiliates were majority owned only. It is possible that this could cause behaviour to avoid the licence obligation e.g. for a party to sell minority stakes in affiliates. This is unlikely if the stated policy intentions were achieved and no additional liability or cost were to fall on obligated shareholders. We are interested to understand Ofgem’s consideration of the requirement for 100% ownership of the delegated affiliate.

2. Are there any other factors that we should consider to enable successful implementation?

It is unclear how and when topping up would be triggered and under what governance route. For example, if this process were to sit purely at the gift of the Secretary of State, the intention for where it will be described in regulation is unclear. It is also possible that topping up may not occur in a timely manner due to other requirements on the Secretary of State and governmental business. It is not clear why 13 shareholders is considered the appropriate cohort size regardless of funding share in the long term, but if this has become the policy aim then clear, appropriate mechanisms to maintain this figure would be helpful.

3. Do you agree that the approach taken in the proposed licence condition serves the purpose required?

See our response to questions 1 and 2 above. The approach to delegation outlined in the draft licence condition is preferable to our interpretation of that contained in the main body of the consultation; we are unclear why the directed party may need to delegate to itself. We would also welcome consideration and explanation of the requirement for 100% ownership of affiliates for the purpose of delegation the licence obligation.

We look forward to providing our response to the full and final draft of the licence condition in the anticipated further consultation process.

4. Do you have any additional comments on the proposed licence condition?

In respect of the intention to use the prospective powers under the Energy Bill which enable a 'relevant authority', in this case we expect Ofgem, to modify electricity supply and generation licences to introduce an obligation to own shares in Elexon. The procedures associated with the power prescribed in the Energy Bill¹ does not set out a minimum consultation period. We are concerned that stakeholders therefore will not be afforded a sufficient opportunity to provide feedback and evidence in relation to policies which place obligations and responsibilities in respect of Elexon ownership to new parties. As there is a lack of clarity in terms of the proposals, particularly in respect of a sufficiently clear and rationalised process on the delegation of the requirement to have a shareholding, and how any subsequent top-up process would operate, adequate further consultation is required.

We understand that Ofgem has referred to this as an initial consultation, to be followed by a second consultation carried out under the terms of the Energy Bill. However, given the confusion concerning the operation of the proposals and the lack of licence drafting beyond a high-level indication, it is imperative that the secondary consultation, in so far as Ofgem will exercise powers to modify under the Energy Bill, provide stakeholders with sufficient time to respond. Ofgem's statutory powers under section 11A(3) of the Electricity Act 1989 provide for a minimum 28-day consultation period. There is no justification as to why this should not apply here, particularly given the consultation process to date. We would ask that Ofgem agree to a minimum consultation period of 28 days, a shorter period would not be proportionate in the circumstances.

We are also concerned that the powers under the Energy Bill do not provide for a standstill period from the date of any decision to modify licences. Ofgem's own statutory powers to modify licences under section 11A(9) Electricity Act 1989 requires that there be a standstill period of 56-days before a licence modification takes effect. This sensibly allows stakeholders to take appropriate steps to ensure compliance. Licensees will need to be afforded appropriate time to obtain necessary board approvals in respect of holding an Elexon share. Approvals would be based upon an understanding of the final policy and process which will not be ascertained until a decision is made after the secondary consultation. Licensees will therefore reasonably require a period of time to make arrangements to comply. We believe this should align with the 56-day standstill period under

¹ We understand that you refer to the powers to modify under clause 166 and 167 of the Energy Bill 340 2022-23 (as amended in Public Bill Committee), published on 11 July 2023, which correlated with the publication of this consultation. The Bill has been subsequently amended.

Ofgem's statutory powers to modify licences, however in any event we would expect Ofgem to allow for a reasonable standstill period and inform stakeholders well in advance.