

# The Future Ownership of Elexon:

## Licence and Code Changes – Utilita's Response

### Policy Approach

To establish the Future System Operator (FSO) Elexon's ownership model must change. Given the nature of Elexon's work Utilita believes that industry is best suited to taking ownership. Industry ownership preserves the accountability of Elexon to their key industry stakeholders and preserves Elexon's independence from one specific organisation.

We understand Ofgem's desire not to disrupt the timeline for the creation of the FSO and the need for any new ownership structure to ensure that Elexon can continue to operate effectively. Given this, we recognise that a larger group of shareholders could make implementation harder due to the complexity of coordinating across more parties. To avoid this issue, licensed, funding parties should be the shareholders, as this option would make implementation of the ownership structure easier.

The proposed qualifying threshold for the initial shareholder group (a Balancing and Settlement Code (BSC) Party with a funding share of over 2% as of January 2023) is therefore a reasonable compromise, to having all licenced parties as shareholders. Funding parties are already responsible for paying a proportion of Elexon's costs each month, based on energy sold/traded, so it is reasonable that these parties should take ownership. This qualifying threshold should also mean these parties are more financially stable which reduces the potential for adjustments in the future.

It is our understanding that the rights and responsibilities of the new shareholders would be unchanged from those of the current shareholder National Electricity Transmission System Operator (NETSO). The policy approach proposed should therefore not alter the roles or governance of Elexon, although we would accept minor consequential alterations due to this ownership change. This approach should minimise disruption of the work done for BSC, Market-wide Half-Hourly Settlement (MHHS), and Electricity Market Reform (EMR).

DESNZ and Ofgem retaining the option to temporarily move Elexon into public sector ownership, should the implementation of the enduring ownership option pose a risk to timelines for the establishment of the FSO, ought to be used as a last resort and only as a temporary measure with industry set to take enduring ownership as soon as can be established.

### Draft Licence Conditions

The proposed provision under the electricity supply and generation licence conditions that allows a Relevant Authority to direct any of the largest funding parties by funding share to take a share in Elexon, as needed, is at the Authorities discretion. Whilst such circumstances are outlined in the proposed modification, there does not appear to be any restriction on the Authority's ability to add or remove shareholder parties at their will, nor is there any proposed review period of existing shareholders, or period outlined to allow the party to make appropriate changes to facilitate being a shareholder. It is our recommendation that defined standards are set, to give transparency to the process. What happens when a voluntary shareholder is then directed to assume shares as part of the licence conditions should also consider being addressed.

The process defined as “Topping up” aims to ensure that the number of shareholders persist at a reasonable level should the initial cohort’s numbers reduce over time. The minimum threshold of seven shareholders appears to be sufficient. However, a regular review could prevent the shareholder numbers dropping to this level. Although, we accept that a review may lead to continued adjustments of shareholders which may prove potentially disruptive.

If no proper conditions are set with regards to establishing the conditions to become a shareholder beyond the initial cohort, a voluntary approach should be used for ease of implementation, as parties which could find it difficult to take on shares due to specific financial or corporate governance structures would not be mandated to do so. Utilita accept that the BSC sets out that shareholders (in that capacity) have no obligations to fund Elexon, so financial concerns may be limited.

## BSC Modifications and Articles of Association (AoAs)

The proposed modification of the BSC includes amending the form of AoAs to reflect the policy described in the consultation and new licence conditions. These changes do not appear to conflict with the BSC and should adequately fulfil this aspect of the change, as where the form of the AoAs is modified by code modification, NGENO (as the current shareholder of Elexon) is required by the BSC to exercise its voting rights as shareholder to adopt the amended AoAs.

The exit arrangements proposed appear to cover the relevant scenarios to stop a party holding a share if they no longer have an association with the BSC and/or relevant license.

## Summary

Utilita believe that Elexon’s ownership is best placed with industry parties. Specifically, licensed, BSC funding parties as per the proposal, as to simplify the process and not impede the timescale for the creation of the FSO. Consideration of additional industry parties as shareholders should be considered in the future.

Public sector ownership of Elexon should only be considered as a temporary measure and used as a last resort.

We recommend that standards are defined to improve transparency for when the Authority directs parties to become shareholders beyond the initial cohort in the “Topping up” process.