

The Governance of ELEXON

Report by Bill Knight OBE

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To: the BSC Panel
the directors, ELEXON Limited
Ofgem

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ELEXON Governance Review

On 26th April 2013 I was appointed to review the governance of ELEXON within the Balancing and Settlement Code. Here is my report.

I am grateful to all those interviewed who gave freely of their time and were helpful and forthcoming. ELEXON provided excellent support, particularly through Adam Richardson and Sam Herridge.

My report recommends radical change and although we all know how difficult change can be, we always seem to forget how difficult it actually is. I was taught long ago that business structures are relatively easy to devise and implement, but much harder to get out once they are in. However change is coming to the power industry and its institutions will have to react if the opportunities are to be seized and the threats avoided.

The BSC is very important and the electricity industry is rightly proud of ELEXON – indeed that pride is perhaps itself a barrier to change. For my part I was very pleased to be asked to play a small part in seeking to improve the systems which bring power to the nation.

Bill Knight

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Recommendations

- 1. There should be a single board to govern the BSC.**
- 2. Board members should be appointed by the board for renewable three year terms. A nomination committee should recommend appointments to the board and recommend its size.**
- 3. The chair should be appointed by the board on the recommendation of the nomination committee, subject to approval by Ofgem.**
- 4. At least one half of the members of the board, excluding the chair, should be independent.**
- 5. The chief executive should be appointed to the board.**
- 6. Board members should be remunerated.**
- 7. BSC modifications should be dealt with by a modification committee of the new board with a majority of independent board members but otherwise with the same modification procedures as at present which should be systematised and improved.**
- 8. Consumer Futures should have sufficient resource to enable them to monitor modifications and to have input at working group level when they wish. Consumer Futures should have the right to make representations to the modification committee. The board should have a duty to keep Consumer Futures informed on the progress of modifications and other board business likely to affect the interests of domestic consumers.**
- 9. The board should consider similar steps in relation to the smaller BSC parties.**
- 10. The system operator and the distribution system operators should continue to be involved in working groups and have the right to make representations to the modification committee.**
- 11. BSC parties should have voting rights in accordance with their annual funding shares, with the right to appoint proxies.**
- 12. All board members should retire annually and be eligible for re-election.**
- 13. BSC parties should have the right to dismiss board members by ordinary resolution (a majority of votes cast).**
- 14. The BSC report and accounts should be voted on.**
- 15. The board should follow the UK Corporate Governance Code.**
- 16. The restrictions in National Grid's licence which prevent the BSCCo from undertaking activities outside the BSC should be removed and Ofgem should reconsider the conditions for modifying the BSC.**
- 17. Any change to the constitutional provisions of the BSC, including the governance structure and the objects of the BSCCo, should normally be made only after approval by special resolution of the BSC parties (75 per cent of votes cast) and Ofgem approval which would be withheld if the authority believed that there was a danger that minority BSC parties or the consumer might be oppressed by the change. Ofgem should consider whether the transmission licence conditions should protect minority BSC parties. Ofgem would retain a reserve right to make any change, to cope with unforeseen circumstances.**

- 18. Any circular to BSC parties should be prepared to high standards and contain all relevant information.**
- 19. Ofgem should reconsider the conditions attached to outsourcing.**
- 20. There should be a development fund to enable ELEXON's future to be properly considered.**

CHAPTER 1

INTRODUCTION

My terms of reference, which are reproduced in full in Appendix 1, require me to consider the governance of ELEXON with regard to the confines of the BSC, particularly in the light of discussions over recent years in relation to changes in the BSCCo's vires. I am asked to take note of the context of the existing arrangements, to consider the roles and responsibilities of the BSCCo board and the Panel, and provide a forward look on wider governance issues identified in the course of the review. I am also asked to propose actions to ensure that the BSCCo board, ELEXON and the Panel processes and working practices align with principles of good governance and can deal effectively with any conflicts of interest such that the industry, regulator and other stakeholders can continue to have confidence in the operation and conduct of the Panel, BSCCo board and ELEXON.

It is these forward-looking provisions of my terms of reference which I have taken most to heart. I have decided to present my review as a series of recommendations for the future, some of which are radical. Much of my report is spent explaining and justifying these proposals and I hope that my reasoning and analysis will sufficiently deal with the other matters set out in my terms of reference.

Until 2010 the relationship between the Panel and the BSCCo worked reasonably well, but the proposals for ELEXON to undertake activities outside the BSC tested the structure and it was found wanting, because the debates were not satisfactory and trust was lost.

The pressures which have made these problems apparent will not go away. On the one hand the electricity industry is changing and ELEXON's skills and experience are in demand outside the confines of the BSC, but on the other hand ELEXON is funded by the BSC parties to deliver the BSC and any expenditure by ELEXON comes directly out of the pockets of the BSC parties, in their funding shares, which are basically calculated in the proportions in which they sell and buy electricity into and from the national grid. Attempts to solve this fundamental disconnect by setting up structures in which the core BSC services continue but the new activities are conducted outside the BSC by ELEXON, or at least by its management and staff, have so far foundered.

It was put to me that personalities played their part in the difficulties which have arisen between the Panel and the BSCCo board, but the relationship between the two bodies is not clear, and it seems to me that a clearer structure would have produced a better result. People come and go and any solution which only involves change to individuals or to their behaviour will not stand the test of time. I therefore wish to propose a structural change rather than a series of exhortations to modify behaviour.

I have identified four important governance problems. The first is the lack of clarity in the relationship between the BSCCo board and the Panel. Allied to this is the second problem which is that, given the constraints imposed on National Grid as shareholder under the BSC, it is difficult to know to whom the BSCCo board is accountable.

The third problem is the perceived want of independence in the Panel - likely to be an issue with any elected body. I am sure that elected Panel members do their best to fulfil their duties as laid down in the BSC, which are to act impartially and not to give undue regard to the interests of those appointing them, but it was put to me time and again, not least by Panel members themselves, that 'you know where Panel members are coming from.' When it comes to independence, a problem of perception is a real problem.

The fourth problem is that the modification procedures in the BSC were not designed to deal, and do not deal satisfactorily, with constitutional amendments, particularly where ELEXON relinquishes its role as 'critical friend' and becomes a protagonist.

In very brief summary I propose a single board to govern the BSC, with modifications to the BSC being dealt with by a board committee. Board members will be appointed by a nomination committee but I also propose rights for the BSC parties, in proportion to their annual funding shares, to re-elect board members annually and to approve constitutional amendments such as vires changes. My hope is that this will provide a simpler system of governance which is fundamentally familiar, which can be easily understood and where the lines of accountability are clear. Any future proposal to change ELEXON's vires can be formulated by the new board, consulted upon and put directly to the BSC parties. It will be for those proposing the change to make a convincing case.

I am calling the new body a board rather than a panel, because that is the terminology generally used for a body which runs a commercial organisation. I do not mean to imply that everything should be run by the BSCCo board as presently constituted. I wish to replace both BSCCo board and the Panel with an entirely new body, although existing BSCCo board and Panel members will be eligible for appointment to it.

I recommend that one half of the new board, excluding the chair, should be independent. I do not underestimate the expertise of the Panel and I appreciate that the new board will require the knowledge and skill both to run the BSC and oversee modifications. But a director can be independent and still have relevant experience. I find it impossible to accept that our electricity industry cannot produce independently-minded men or women with the necessary skills.

ELEXON is a creature of the BSC and changing its vires to any great extent has proved problematic. I hope the changes I propose will result in a simpler and more straightforward form of BSC governance and give a structure in which these difficult issues can be debated and resolved.

CHAPTER 2

THE GOVERNANCE OF THE BALANCING AND SETTLEMENT CODE

The BSC was introduced in 2000 as part of the new electricity trading arrangements, which superseded the pool trading arrangements established on privatisation of the electricity industry in 1990. It is established under the licence granted to National Grid Electricity Transmission as system operator.

The BSC sets out the arrangements for electricity balancing and settlement in Great Britain. The energy balancing aspect allows parties to make submissions to National Grid to buy or sell electricity into and out of the market at close to real time in order to keep the system from moving too far out of phase. The settlement aspect relates to monitoring and metering the positions of generators, suppliers and interconnectors against their contracted positions and settling imbalances.

The governance principles were set out in the consultation for the new arrangements.

Objectivity - the decision-making processes within the BSC should be objective and not unduly biased by the interests of any particular party or group.

Transparency - decisions should be taken transparently.

Inclusivity - there should be no exclusion of relevant information or viewpoints.

Effectiveness - decision-making processes should balance the need for timely decision making and thorough consideration of issues.

Efficiency - the procurement, management and enforcement of contracts with service providers, the monitoring and enforcement of rules, financial control and dispute resolution need to be undertaken impartially and efficiently, with scope and responsibilities laid out clearly.

Origins of the Panel

In the 1999 consultation Ofgem said that the Panel 'will be the key body tasked with ensuring that the BSC is effectively and efficiently managed, and that appropriate revisions to the trading arrangements are secured in a robust and timely fashion.' The consultation went on to describe the function of the Panel 'to establish, supervise and administer the operation of BSC functions, systems and processes.'

One of the important objectives of the new arrangements was to ensure that the governance of the BSC should not be factional in nature. Ofgem aimed for an approach which emphasised objective decision-making with reference to pre-defined objectives rather than negotiation among competing commercial interests.

Ofgem therefore proposed that Panel members should not formally represent any pre-defined constituency but would provide expertise and experience in carrying out the duties assigned to them in accordance with the principles set out in the BSC. The aim was to establish rules and structures to ensure as far as possible that Panel members acted impartially in accordance with the objectives of the BSC and not merely in accordance with the interests, wishes or directions of a particular company or group. The aim was to avoid factionalism as far as possible and encourage a constructive, efficient and objective approach to decision-making, although it was

recognised that there was a risk that Panel members drawn from within the industry might always be partisan to some extent.

Two possible options for the composition and appointment of the BSC Panel were consulted upon. Under option 1, the Panel would comprise members elected by the industry, while option 2 entailed members being appointed by the Panel chair and being independent of the industry. Following consultation a hybrid approach was adopted with the Panel consisting of a chair appointed by Ofgem, five elected industry members, two independents and two consumer members, plus a member appointed by National Grid. The chair can appoint a further industry member to reflect industry interests which would not otherwise be represented.

Origins of the BSCCo

The BSC operates as a contract between the market participants *inter se* and the system operator and provides for the BSCCo to facilitate the effective implementation of the BSC. The BSCCo acts as the contracting party with service providers; employs individuals involved in the management of the BSC and provides secretariat and resources to support the BSC governance arrangements. National Grid is the sole shareholder in the BSCCo.

The BSC provides that the BSCCo is precluded from undertaking any business or activity apart from the BSC. In its 1999 consultation on the new electricity trading arrangements Ofgem said that the BSCCo's objectives would be limited so as to minimise any scope for its directors to owe duties to the system operator as shareholder which would conflict with decisions appropriate to implement the BSC. Ofgem's concerns about conflict were reflected in the response to the consultation and assurances were given that the constitution of the arrangements would be specifically designed to achieve an arm's-length relationship between the system operator and the BSCCo. The safeguards included the objectives of the BSCCo, the funding of BSCCo participants, and the governance arrangements, particularly the basis for appointment of the BSCCo directors.

The 1999 consultation did not seek views on the composition of the board of the BSCCo. In the response to the consultation it was said that the chair and the Panel would select four persons to become non-executive directors of the BSCCo and to form the BSCCo Board. Ofgem and DTI considered that the board should be smaller in size than the Panel, 'as a smaller body is better able to exercise the required level of scrutiny and control of the BSCCo'. Two of the directors would be drawn from the industry members of the Panel. The remaining two directors could be selected either from within the remaining Panel members or from outside, if particular skills were required on the Board that were not present among the Panel membership.

ELEXON was formed at the time of the introduction of the new arrangements and became the BSCCo.

Governance of the BSC in 2013

The system operator's licence contains high-level requirements for the BSC. The licence requires the setting up of the Panel, which must have an independent chair approved by Ofgem and a consumer representative appointed by the National Consumer Council (now Consumer Futures), with a vote, but does not specifically require the establishment of the BSCCo, providing instead for a 'secretarial or

administrative person or body, as specified in the BSC' – defined as the 'code administrator.'

The Panel today

The Panel's constitution and powers are set out in detail in the BSC. In summary the Panel's objectives are to give the BSC full and prompt effect so as to facilitate the efficient discharge by National Grid of its licence obligations; the efficient, economic and co-ordinated operation of the transmission system; and effective competition in the generation and supply of electricity. The BSC is to operate without undue discrimination between parties and as economically and efficiently as is reasonably practicable. There must be transparency and openness in the conduct of the business of the Panel and BSCCo.

The Panel comprises: (a) the chair, now nominated by the Panel after consultation with the BSCCo board and approved by Ofgem; (b) not more than five industry members elected by trading parties; (c) not more than two members appointed by Consumer Futures; (d) a member appointed by National Grid; (e) not more than two independent members appointed by the chair; and (f) an additional member appointed by the chair if he or she decides that the interests of a class of generators or suppliers who are exempt from the requirement to hold a license are not reflected in the composition of the Panel. A representative of distribution system operators, a representative from the Authority and the chief executive of BSCCo are allowed to attend and speak, but not to vote, at any meeting of the Panel.

The Panel chair holds office for three years, and Panel members for up to two years. Panel members retire together on 30th September in each even year. All are eligible for re-appointment or re-election.

Panel members are bound to act impartially with a view to achieving the Panel's objectives. Panel members are not representative and must act without 'undue' regard to the particular interests of those appointing them. Panel members are bound to disclose such interests and as a condition of appointment they must confirm in writing that they accept their obligations. Where the member is an employee he or she must provide a letter from the employer agreeing that these requirements prevail over their duties as an employee. Panel members are expected to attend meetings personally but with the consent of the chair they may appoint an alternate of their choice.

The Panel has important powers relating to the suspension of the rights of parties and modifications of the BSC. The Panel is responsible for approving the business strategy of the BSCCo. The Panel meets monthly, with a quorum of a majority of members, and may delegate to committees with members of suitable experience and qualifications including employees of any BSC party or BSCCo. The Panel may not, however, delegate its functions relating to BSC modifications.

The BSCCo today

The principal role of BSCCo is to provide and procure facilities, resources and services required for the proper, effective and efficient implementation of the BSC. This includes providing or procuring resources required by the Panel and Panel committees. BSCCo is forbidden from undertaking any business or activity other than provided for in the BSC. BSCCo is bound to act consistently with the Code Administration Code of Practice Principles and is given the same objectives as the

Panel. The BSCCo is funded by the BSC parties in their funding shares, as set out in the BSC. It operates on a zero profit basis, with any surpluses being returned to BSC parties.

The memorandum and articles of association of BSCCo are treated as forming part of the BSC and are subject to modification accordingly. The rights of National Grid as shareholder are completely constrained. It is not allowed to deal with its shares in any way or to authorise the issue of any further securities of BSCCo. National Grid must transfer its shares at par value as and when directed by Ofgem. National Grid is bound to exercise its voting and other rights solely to give effect to the BSC.

On a winding-up of BSCCo its assets and resources are to be transferred to any successor and any amount which would otherwise be available for distribution to the shareholders of BSCCo is to be paid to the BSC parties in their annual funding shares or such other proportions as Ofgem may decide.

The powers and responsibilities of BSCCo are set out the BSC. They include entering into and enforcing contracts with service providers, advising the Panel on matters which it should consider and otherwise performing administrative and secretarial functions. Although it is the BSC party to the Code Administration Code of Practice BSCCo is required to obtain the Panel's consent before raising any potential amendments to that Code. BSCCo is bound to take proceedings against any party who is in breach of the BSC as and when instructed to do so by the Panel.

BSCCo is subject to restrictions which limit its borrowing, lending and litigation and prevent it from disposing of intellectual property rights or acquiring securities. From time to time it carries out reviews of the operation of the BSC.

The same person chairs both Panel and BSCCo board. A minimum of two 'industry-independent' directors must be appointed to the board of the BSCCo and the majority of BSCCo board members (excluding the chair) must have 'relevant electricity industry experience'. There are currently two industry-independent directors of BSCCo and three from within the industry. Appointments are made on the recommendation of a nomination committee empowered to determine the required size of the BSCCo board and select candidates for appointment, subject to terms of reference approved by the Panel. The Panel can veto appointments if the terms of reference have not been followed. The nomination committee is made up of the chair, one 'industry' director and one 'industry-independent' director, with provision for the Panel to appoint an adviser to the committee. The nomination committee must have appropriate regard to reflecting different classes of industry participants on the board. Directors serve for an initial term of two years and are eligible for re-appointment.

An 'industry-independent' director is one who has not in the five years prior to their appointment been a Panel member or employee, director or representative of any BSC party or class of parties or any BSC agent or agent of the BSCCo.

The business strategy and budget

BSCCo prepares its business strategy and budget for each BSC year and each of the following two years. The strategy is approved by the Panel in accordance with a timetable set out in the BSC, which provides for initial presentation not later than 1st

December and approval not later than 1st March. Revisions are only permitted with the approval of the Panel.

At the same time as preparing each draft of the business strategy BSCCo must prepare or revise a draft annual budget and following approval by the Panel of the business strategy, BSCCo finalises and adopts the annual budget.

BSCCo's costs are paid by the BSC parties. As the BSCCo is a 'zero profit' company the amount charged to BSC parties matches the costs for each financial year. Parties pay a proportion of the costs every month based on the approved annual budget and the prevailing forecast. Any under-spend against the budget is returned to BSC parties. Any over-spend against the budget must be notified to the Panel and is subject to a further business plan approval process. If approved, the additional monies are recovered from BSC parties in line with the amended annual budget.

Reports and Annual BSC Meeting

No later than 30th June in each year the Panel must produce a report summarising the implementation of the BSC and the activities of the Panel and its committees and of BSCCo in the preceding BSC year (to 31st March). The report includes a comprehensive review of Panel and BSC activity during the year and a review against the business strategy and budget.

The annual BSC meeting is held in July in each year to discuss the report. Attendance for Panel and board members is compulsory. The BSC parties may attend and speak but may not vote. The only vote which may be taken is a vote of the Panel immediately following the meeting to remove a BSCCo director appointed since the last annual BSC meeting, but only if that director was not appointed in accordance with the terms of reference of the BSCCo nomination committee or the process followed in appointing that director had not been approved by the Panel. Such a vote can be taken on the instigation of any BSC party or Panel member and requires a two-thirds majority of votes cast. Subject to that it is expressly provided that 'The Annual BSC Meeting shall not be a general meeting of BSCCo or a meeting of the Directors of BSCCo or of the Panel; and the Annual BSC Meeting shall have no power to take any decision; and no vote on any matter shall be taken at such meeting; and nothing said by any Panel Member or Director of BSCCo at such meeting shall amount to a decision of the Panel or Board of Directors of BSCCo or have any other binding effect'

Modifications to the BSC

The modification process can be used to change any part of the BSC. In certain limited circumstances the Panel can decide modifications but in the majority of cases Ofgem makes the final decision on whether the BSC should be changed, in the light of its statutory objectives. The Panel is required to provide a view on whether the change would better achieve the applicable BSC objectives. These are set out in National Grid's transmission licence and are, in summary, as follows:

- a) the efficient discharge by National Grid of its obligations under the transmission licence;
- b) the efficient, economic and co-ordinated operation of the GB transmission system;
- c) the promotion of effective competition in the generation and supply of electricity and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity;

- d) the promotion of efficiency in the implementation and administration of the balancing and settlement arrangements; and
- e) compliance with electricity regulations.

Modification proposals can be raised by any BSC party by Consumer Futures and other representative bodies designated by Ofgem. The Panel can itself raise modification proposals in limited circumstances. The BSCCo is obliged to recommend some modifications to the Panel, eg when they are supported by designated Panel committees.

Unless the modification proposal is self evident and capable of being sent directly to report, the Panel will establish a workgroup to deal with it. The workgroup consists of at least five members, including a member appointed by the proposer, qualified industry experts, a National Grid representative and ELEXON employees. Workgroup members are expected to act impartially. A representative from Ofgem may attend and participate.

The Panel appoints the chairman of the workgroup (who is usually an employee of ELEXON) and sets the terms of reference. The Panel also lays down the timetable for the modification taking due account of its complexity, importance and urgency. ELEXON provides facilities for workgroup meetings and provides secretariat and analyst support.

Workgroup meetings are open and any interested parties may attend and participate in discussion. The workgroup can develop alternative modifications but the proposed modification will always be presented, unless withdrawn. The workgroup produces an assessment report for consideration by the Panel and as part of this process will conduct an industry consultation and make a recommendation on whether the modification should be made. Having considered the assessment report the Panel will itself make a recommendation on the proposed modification and any alternative modification and this will be issued for industry consultation as part of the draft modification report. The Panel will consider the industry responses when agreeing its final recommendation which is then presented to Ofgem for its determination.

All Panel members may vote on recommendations relating to modification proposals with the exception of the member appointed by National Grid. Ofgem considers the final report and publishes a decision letter setting out the reasons for its decision.

CHAPTER 3

PROPOSED GOVERNANCE STRUCTURE

My proposals would treat the BSC as a company with a single board whose shareholders are the BSC parties in their annual funding shares. This approach gives a clear governance structure which is well understood.

The new board will have the same duties as the existing duties of the Panel, namely to give the BSC full and prompt effect so as to facilitate the efficient discharge by National Grid of its licence obligations; the efficient, economic and coordinated operation of the transmission system; and effective competition. Although the BSC parties are treated in some respects as shareholders under my proposals they will not be shareholders and the new board's duties will arise not as a matter of company law but by contract, through the BSC, as the Panel's duties arise at present.

The BSCCo will continue to exist as the legal entity for contract and employment purposes and, subject to legal advice, it seems to me that the simple way to achieve the necessary legal structure is to give the BSCCo itself all the powers and duties of the Panel, so that the duties of the directors under the Companies Act, namely to act in good faith to promote the success of the company, follow the duties of the BSCCo. The BSCCo will continue to be constrained, as a matter of contract, by the vires set out in the BSC and if the vires change then the duties of the board will reflect the change.

Directors are bound to act for the benefit of the company's members as a whole. Given National Grid's duties only to use its shareholding rights for the implementation of the BSC I do not see any difficulty here, and would not change the BSCCo shareholding arrangements.

A single board

The designers of the BSC intended that the Panel should have the oversight of the BSC, with the BSCCo as code administrator. The differences between the Panel and the BSCCo board and executive which came to a head in the arguments about ELEXON's future arose because ELEXON started to develop a life of its own and tried to expand its activities beyond the BSC. It then became apparent that the relationship between the Panel and the BSCCo board, as spelt out in the BSC, was not clear or straightforward.

The Panel approves BSC strategy and the BSCCo is the code administrator– the BSC provides that the principal role of the BSCCo is to provide and procure facilities, resources and services. So the BSCCo owns the infrastructure and employs the staff and BSC agents while the Panel conducts its business through a series of meetings without any resources except those provided by the BSCCo. The Panel decides on modifications but ELEXON services the modification process. Although the Panel approves the strategy, the BSCCo sets the budget and therefore has power over the allocation of resources.

In parenthesis I should say that I believe that the BSC draftsman thought that setting the budget was a mechanical exercise which would follow from the agreement of the business plan rather than a policy instrument which could be used to allocate resources and emphasise some parts of strategy at the expense of others. I do not think the draftsman envisaged significant disagreement between the institutions of the BSC.

Approval of the BSC strategy by the Panel carries with it a sense of oversight of the BSCCo's activities. Oversight and management of the same activities by two different bodies is inherently confusing unless those bodies enjoy a clear relationship between each other, which the Panel and the BSCCo board do not. The Panel does not control the BSCCo, or its board. Indeed, given the constraints on National Grid as shareholder, it is not clear to whom the BSCCo board is accountable.

Matters came to a head over the vires debates, on which I comment further in the next chapter. Members of the Panel did not believe that they were being kept fully informed as ELEXON developed its plans. One incident is particularly remembered. At one point the Panel asked to see ELEXON's legal advice and ELEXON refused. That is normal in a commercial negotiation but not where two parts of the same organisation are working to resolve a common problem. In the view of Panel members there was a lack of openness and transparency.

My terms of reference require me to give consideration to the transparency of information of the BSCCo board and the Panel, including the transparency of information about expenditure. I have given these issues consideration and I have decided not to conduct a forensic enquiry with a view to establishing exactly what information should have been provided by ELEXON to the Panel in the vires debates. My report is about governance and given my proposals for combining the BSCCo board and the Panel I do not see the point of such an exercise. It is clear to me that there was a loss of trust and that Panel members believe that ELEXON was not as frank as it might have been. It seems to me that the important lesson to be learned, by all concerned, is that clarity and consistency of roles are vital for good governance. It is noteworthy that in the vires debates ELEXON stepped outside of its normal role as 'critical friend' to the modification procedure and became *parti pris*.

My proposal combines the governance of the BSCCo with the overall governance of the BSC into a single board, which in this report I shall call the new board to distinguish it from the current BSCCo board. This removes at a stroke any conflict between the Panel and the BSCCo board and makes moot any question of transparency between the two. In the United Kingdom we are used to the unitary board model and I would follow this model in the governance of the BSC. I would not try to devise a supervisory board and operational board as the task of trying to define their respective roles would raise the issues which have caused enough trouble already. BSC modifications need their own system of governance and I deal with this below.

I do not want to be prescriptive about the size of the new board – I would leave it to the nomination committee - but I draw attention to the work of the Tavistock Institute and Crelos which indicates that the ideal size for a board is 8 to 12. See Annex 4 to the report by Sir David Walker ' - A review of corporate governance in UK banks and other financial industry entities.'

The chief executive should be appointed to the new board. This will make him or her accountable as a director. It will be up to the new board whether to appoint any other executive to the board. All members of the new board should be properly remunerated, even if their arrangements with their employers require them to account for their remuneration.

The appointment of the chair is a key appointment from which other appointments follow and I recommend that it should be made by the new board, on the recommendation of its nomination committee, with the approval of the regulator. National Grid's transmission licence provides that the chair should be independent and of course there is no problem with this.

I would also say that all experience shows that the relationship between the chair and the chief executive is critically important in the governance of an organisation and any appointment process should take this into account.

Independence

Members of the new board should be appointed by the board on the recommendation of a nomination committee. At least one half of the board, excluding the chair, should be independent. This follows the UK Corporate Governance Code.

I appreciate that the BSC parties may be reluctant to give up their rights to elect Panel members. It can be said of course that the method of appointment should make no difference to the behaviour of the Panel members. Once appointed they are bound to act impartially with a view to achieving the Panel's objectives. Panel members are not representative and must act without 'undue' regard to the particular interests of those appointing them. Where the member is an employee he or she must provide a letter from the employer agreeing that these requirements prevail over their duties as an employee.

Given all this, what is the attraction to the BSC parties of electing Panel members? Once appointed they will owe the same duties as members chosen by a nomination committee and ought to act according to the same considerations.

One argument for electing directors is that the electors can themselves judge the suitability of the candidate but in my view a nomination committee, who can be assisted by search consultants and who can compare candidates against each other, should be able to do a better job.

The other argument for election is that you know the member's background. In reaching any decision an elected member of a body is likely to be able to choose from a range of actions each of which can be justified as furthering the interests of that body. It follows that a member who is elected by particular parties will have the ability to avoid decisions unwelcome to those parties without being called to account for breach of duty. Such a member may genuinely believe that he or she is acting in the interests of the body, rather than the electors, but as Ofgem said in 1999 and as the BSC seeks to provide now, what is needed in the governing body is independence. I am sure that Panel members try their best to carry out their duties under the BSC but the fact remains that the Panel as a whole is not perceived as truly independent - Panel members themselves told me that you know where Panel

members are coming from, even if some of them sometimes vote in unexpected ways.

Election does not help board discipline. Board meetings are work. Directors are expected to attend board meetings unless they have overriding reasons for absence and to stay to the end of the meeting. If they really cannot attend they should read the papers and give their views to the chair. They are expected to prepare properly and then to give their full attention at the meeting free from distraction by BlackBerrys etc. They are expected to behave courteously to other board members, particularly if they disagree with them. They are expected to make a full and sensible contribution in the interests of the organisation. If they do not do any of those things the chair has every right to ask them to change their behaviour. These canons of behaviour are vital if the board is to be fully effective and make the best use of its time. In a normal plc a director who offended continuously would be asked to leave or would not be re-appointed when his or her term came to an end. The chair does not have the same power over elected board members.

The UK Code on Corporate Governance requires that at least one half of the board, excluding the chair, should be independent. This requirement was introduced by the Higgs Report in 2003. In that report Derek Higgs, dealing with independence from the executive, said:

'Although there is a legal duty on all directors to act in the best interests of the company, it has long been recognised that in itself this is insufficient to give full assurance that these potential conflicts [between the interests of the company and the interest of its executive] will not impair objective board decision-making. ...a board is strengthened significantly by having a strong group of non-executive directors with no other connection with the company. These individuals bring a dispassionate objectivity that directors with a closer relationship to the company cannot provide.'

In relation to independence the UK Code on Corporate Governance provides as follows:

'The board should identify in the annual report each non-executive director it considers to be independent. The board should determine whether the director is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement. The board should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the director

- has been an employee of the company or group within the last five years;
- has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;
- has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme;
- has close family ties with any of the company's advisers, directors or senior employees;

- holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- represents a significant shareholder; or
- has served on the board for more than nine years from the date of their first election.'

The board must form its judgment on independence in each individual case. The list (which is not exclusive) does not define independence; it indicates circumstances in which the board is required publicly to justify the decision as to the independence of any director.

Of course Higgs was primarily concerned with independence from the executive, but independence is independence and the Corporate Governance Code approach works for the BSC if you regard the BSC as the company and the BSC parties as the shareholders.

At present the BSC requires that at least two BSCCo directors shall be industry independent in that such individual or a related person shall not, at any time in the period of five years before their appointment, have been a Panel member or an employee, director or representative of any BSC Party, class of BSC parties (including as a representative of an industry trade association or other industry group), a BSC Agent or other agent of BSCCo. I prefer the approach taken by the Corporate Governance Code, which places the onus on the Board to decide on independence in each case rather than imposing bright line prohibitions. Also, I am not suggesting independence from the industry – just independence. Electricity industry experience is exactly what is wanted.

I therefore considered whether there should be a rule that some, or even a majority, of the directors of the new board should have electricity industry experience, as is required at present in the case of the BSCCo board. Such a provision would perhaps give some comfort to BSC parties who are giving up their rights to elect Panel members, and industry experience will be necessary, not least in order to deal with modifications. However I have decided not to recommend a rule. The nomination committee will have to construct a balanced board which has the necessary skills and should be trusted to do so. I do not underestimate the expertise which the Panel currently brings to bear, and although I do not wish to lay down rules it is obviously desirable to ensure that some of the independent members of the new board will be experienced in the industry, but I would rather leave it to the nomination committee to find the right men and women for the job.

It is of course the case that up to one half of the members of the new board do not have to be independent and a director could be, for example, a senior employee of a major BSC party if the nomination committee felt that he or she was suitable.

In considering this recommendation I would ask BSC parties to reflect that many organisations, including perhaps their own, are run by a board chosen by a nomination committee acting in the interests of that organisation. I have heard it said that the BSC is different because the BSC parties contract through the BSC but that seems to me (as it did to Ofgem when they first consulted on the issue) to make it even more important that the new board should be truly independent and be perceived as such. I would also ask BSC parties to take into account the requirement

for the annual re-election of directors and the right to dismiss directors to which I refer below.

I note that Ofgem is contemplating an elected board for Xoserve, but moving from a representative board to one selected for its skills is to move with the current of governance as I have experienced it in my career. I have watched as large professional organisations such as law firms have moved from boards which represent departments to boards elected by the whole firm and then to boards selected for their skills. I have seen it happen at Lloyd's of London, where I was deputy chair of council. In that case the elected council, established by act of Parliament, delegates responsibility for the running of the market to an appointed franchise board. The Financial Reporting Council, of which I was a member, changed in my term from a large representative body to a much smaller board appointed by a nomination committee. This is the direction of travel, and to my mind the question for the industry is whether they wish to arrive at the destination sooner or later.

BSC modifications

The most important business of the Panel, which it is not allowed to delegate, is modifications to the BSC. It does not make for good governance to give the Panel oversight of strategy and the BSCCo board the duty to deliver it, but it does make sense to separate the governance of modifications to the BSC from the governance of the delivery of the BSC. They are different processes calling for different inputs and to some degree for different skills.

I would place the ultimate responsibility for modifications on the new board but require them to delegate to a modification committee, which should have a majority of independent directors. This proposal would acknowledge the difference between the governance of BSC modifications and the governance of the delivery of the BSC, while minimising the possibility of conflict between the two bodies through similarity of membership and direct oversight.

In saying that I would place the ultimate responsibility for modifications on the new board I mean that it would be their responsibility to have oversight of the process (as opposed to any individual modification), to review the process periodically and to make the governance of modifications work well, if necessary by changing the procedures (subject to the BSC) or the membership of the modification committee, or both.

With limited exceptions modifications to the BSC have to be made by Ofgem so those affected, including for example the distributor system operators, consumers and the system operator, all of whom would be involved at working group level, could make representations to Ofgem where they thought it necessary. The modification committee would act as the Panel does at present. The committee would meet in public, and should be attended by representatives of Consumer Futures, National Grid and the distribution systems operators, all of whom would have the right to address the committee. The committee would have power to engage advisers. It would be continued to be supported by, and be the guardians of, the working group and consultation process. As its only business would be modifications it would no longer have confidential business.

In order to replace the Panel it will be necessary, as I say above, to ensure that some of the independent members of the new board are experienced in the industry.

I find it impossible to believe that the electricity industry will not be able to produce three or four independently minded men and women who are competent not only to run a business but also to deal with modifications at the level of the committee.

The working group and consultation processes provide the opportunity for the industry to be thoroughly involved in all aspects of a modification. If they work as they should then by the time the final assessment comes to be made by the modification committee any outstanding technical issues should have been worked through and clarified - if not, the proposal should be sent back. The committee will also have the ability to take advice, not least from ELEXON.

It was put to me that it is important to engage the major electricity companies in the work of modification, because they have the expertise and resources, but without raising the concern that the process is dominated by them. I hope that providing a bedrock of independence for the modification committee will allay that suspicion and enable the committee to engage with all comers. I would support a degree of informality in the committee's proceedings, encouraging outside attendance and participation from all those with a contribution to make.

I also believe that a concerted effort should be made by ELEXON to systematise the modification process. By the time a modification proposal reaches the modification committee it should have been thoroughly checked to ensure that the working group has covered all aspects, including non-technical aspects such as competition and the interests of smaller BSC parties. There should be impact reports, compiled by ELEXON, on those non-technical aspects, including a report on the impact on consumers. There should be an agreed checklist, intelligently applied, and all past decisions of Ofgem and the Panel which bear on the case should be available and commented on. Clear summaries should be written and all relevant materials should be to hand for each member of a working group and the modification committee, in hard copy if that is what the member wants. If delivery of the BSC is constantly improving then the same should apply to its administration.

I was struck by the pride and pleasure which the industry takes in constructive discussion to modify and improve the BSC. I was told that working groups work well and I would encourage ELEXON to continue to do all that it can to facilitate the working group process, including staff training in the running of such meetings.

Constitutional modifications to the BSC such as changes to vires require a different modification procedure and I deal with this below and in the next chapter.

Panel committees

I was told that these work well. I would leave it to the new board to continue them as working groups, appointed by the board, with such changes as the board thought necessary. It will be necessary to find some independent method of resolving disputes to which ELEXON is a party.

The consumer

At present Consumer Futures is entitled to two seats on the Panel. My proposals mean that only the new board would have the right to appoint members of the modification committee. I appreciate how important it is that the voice of the consumer should be heard and I wish to make that voice clearer and better informed.

I believe that Consumer Futures should be provided with additional resource sufficient to enable their representatives to monitor modifications and to have input at working group level when they wished. Consumer Futures should have the right to attend the modification committee and to speak. I would place a duty on the board to keep Consumer Futures informed about the progress of modifications and other board business likely to affect the interests of domestic consumers. As I say above, I believe that ELEXON should be required to prepare an impact report on how each modification affects the interest of consumers. I do not go so far as to suggest that the new board should have duties to protect consumers or to take their interests into account in its decisions, as that is outside my remit. I leave that debate to others.

The question of the vote of the consumer representative is problematic. The vote has symbolic importance and is guaranteed by National Grid's transmission licence. But the consumer representatives on the Panel have to undertake, in effect, not to give undue regard to the particular interests of the consumer when they vote and this makes their position quite unclear. I would wish to ensure that those who represent the consumer are free to act wholly in the interests of consumers, but if they were to have a seat and a vote on the modification committee it seems unavoidable that, as at present, they should be asked to exercise their judgment impartially like the other members of the committee.

My own view is that the interests of existing and future consumers are not much advanced by giving their representatives a vote which they are expected to exercise without undue regard for those interests on a committee on which they are a small minority. A vote is not enough, but there is a danger that it will be seen to be a palliative. If outvoted, are the consumers expected to accept a decision which goes against their interests? Far better, in my view, that consumers have an uncensored and well-informed voice which assists Ofgem in fulfilling its statutory duties.

Given Ofgem's final say on modifications, the duties Ofgem owes to consumers, and the ability of Consumer Futures to make representations to Ofgem, I believe that my suggestions of additional resources will be more effective in protecting the interests of consumers than allowing a particular interest to have a vote on decisions which ought to be taken independently. However, I accept that the issue is a difficult one, and Consumer Futures and Ofgem should be consulted before it is resolved.

National Grid

National Grid must be involved at working group level so as to contribute to the practical aspects of modifications. Where modifications would require changes to National Grid systems the system operator will have to be in a position to price those changes.

National Grid should have the right to attend and to make representations to the modification committee. Given the involvement of Ofgem in the modification process National Grid will be able, as at present, to rely on its position as system operator and its business relationship with the BSC parties to protect its interests. My suggestions for changes to National Grid's transmission licence are dealt with in the next chapter.

Smaller BSC parties

If the new board believes that the voice of the smaller BSC party is not being heard, particularly in relation to modifications, they should take steps to ensure that it is, perhaps following the model suggested above for consumers.

BSC parties' voting rights

At the same time as suggesting that BSC parties lose their right to elect Panel members I wish to reinforce the ownership rights of the BSC Parties over the BSC and to make the members of the new board directly accountable to the BSC parties. In order to do this, I propose that the BSC parties should have voting rights according to their annual funding shares, with the customary rights to appoint proxies. Questions would initially be decided on a show of hands at the meeting, with the usual rights to demand a poll.

There should be expanded provision for meetings of BSC parties. All board members should retire in each year and be subject to re-election at the annual BSC meeting. Given this requirement I recommend that non-executive directors be appointed for renewable three year terms.

I considered carefully whether it was necessary to require all board members to retire annually. The Corporate Governance Code only requires this of companies in the FTSE 350. However I believe that annual re-election will give an important degree of assurance for BSC parties who are giving up their rights to elect Panel members.

I also propose that BSC parties should have the right to dismiss directors. This right will be exercisable by ordinary resolution (a majority of those voting). Special notice to the BSCCo will be required. Such a vote could be taken at the annual meeting but also a suitable number of BSC parties will have the right to convene an extraordinary general meeting for the purpose. These are rights analogous to those enjoyed by ordinary shareholders. I do not, however, propose that BSC parties should have the right to appoint a director except for those retiring and seeking re-election. Appointments should be made by the nomination committee, in order to ensure independence and a balance on the new board.

The other important rights which I would give BSC parties is the right to approve constitutional amendments to the BSC by special resolution (75 per cent of votes cast). I elaborate on this in the next chapter with regard to vires. As well as provisions relating to vires, constitutional provisions would include the powers of the board, appointment of board members, provisions relating to meetings and votes and provisions relating to the admission and expulsion of BSC parties. Ofgem will continue to have the right to approve all modifications to the BSC, in order to ensure that the smaller BSC parties and the consumer are not oppressed, and will have reserve power to cope with unforeseen circumstances, but a special resolution of the BSC parties will be the standard procedure for constitutional modifications. Such modifications should be proposed by the new board following such procedure as they decide, but including consultation so that the views of all BSC parties could be known.

Annual funding shares for the purpose of a general meeting can be struck at a convenient record date when the notice is sent out (the year end in the case of the annual meeting). The notice should contain, or refer to, a list of parties entitled to

vote with their funding shares. Appendix 2 shows a list of BSC parties, in their trading groups, with their annual percentage funding shares on 31st March 2013.

It would also seem to me to be appropriate that BSC parties should vote to receive the annual BSC report.

There are those who will worry that the big six electricity suppliers will have voting control over the BSC as a result of these recommendations. But I am only suggesting the right to dismiss directors, not the right to appoint them. It seems to me to be fair that if the majority of those who fund the BSC are so dissatisfied with the performance of a director that they require him or her to stand down then their will should prevail. It is clear from the responses to consultation on modifications P281, P284 and P289 that the views of the major players can diverge significantly. When those views come together then I think they should be heard.

The UK Corporate Governance Code.

There are many ideas of what constitutes good governance and in conducting this review I have to decide what the benchmark should be. I have no hesitation in saying that it should be the UK Corporate Governance Code which has been developed in the United Kingdom for many years and is respected the world over.

Corporate governance is about what the board of a company does and is to be distinguished from the day-to-day operational management of the company by full-time executives. The Corporate Governance Code warns that there is now almost a belief that complying with the code in itself constitutes good governance. The code is only a guide to principles, structure and processes which cannot guarantee effective behaviour, because the range of situations in which it is applicable is too great.

The Corporate Governance Code operates on a comply or explain basis. It is recognised that an alternative to following a provision may be justified in particular circumstances if good governance can be achieved by other means. A condition of doing so is that the reasons for it should be explained clearly and carefully to shareholders, who may wish to discuss the position with the company and whose voting intentions may be influenced as a result. In providing an explanation, the company should aim to illustrate how its actual practices are consistent with the principle to which the particular provision relates, contribute to good governance and promote delivery of business objectives. It should set out the background, and provide a clear rationale for the actions it is taking, and describe any mitigating actions taken to address any additional risk and maintain conformity with the relevant principle.

ELEXON's stated approach to compliance with the Corporate Governance Code has changed between 2012 and 2013. In its report and accounts for the year ended 31 March 2012 ELEXON said this:

'ELEXON complies with the UK Corporate Governance Code to the extent this is applicable to the Group. Whilst ELEXON is not a listed Company, the Company's Board appreciates the value of good corporate governance, and considers compliance with the Corporate Governance Code appropriate given the unique position of the Company and its accountability and responsibility to the electricity industry. Throughout the year ended 31 March 2012 the Group complied

with the UK Corporate Governance Code, except in the limited circumstances where the BSC takes precedence over the UK Corporate Governance Code or where compliance is not practicable or appropriate due to the nature, structure and function of ELEXON. Any area in which ELEXON is not in accordance with the UK Corporate Governance Code is noted below.'

The report and accounts for the year ended 2013 says that 'the Company's Board recognises the value of good corporate governance and *supports the principles* (my italics) of the UK Corporate Governance Code.'

I have chosen one example to show ELEXON's approach to comply or explain. The Corporate Governance Code provides that the board should appoint one of the independent non-executive directors to be the senior independent director. ELEXON does not have a senior independent director. In the report and accounts for the year ended 31 March 2012 this was justified in the following terms, 'The Board has not considered it necessary or appropriate to appoint a senior independent Director as suggested in the UK Corporate Governance Code. This is because the primary purpose of a senior independent Director is for the benefit of institutional shareholders (which the Company does not have).' In the 2013 report and accounts there is no explanation of this item of non-compliance, only the general statement that, 'Certain principles set out in the UK Corporate Governance Code relating to shareholders and investors do not apply to the Company.'

In my view the 2012 explanation did not satisfy the Corporate Governance Code. The first duty of a senior independent director referred to in the code is to provide a sounding board for the chair and to serve as an intermediary for the other directors when necessary. There is no reference to institutional shareholders in the code, but the code provides that the senior independent director should be available to shareholders if they have concerns which contact through the normal channels of chairman, chief executive or other executive directors has failed to resolve or for which such contact is inappropriate.

The Corporate Governance Code also provides that, led by the senior independent director, the non-executive directors should meet without the chair present at least annually to appraise the chairman's performance and on such other occasions as deemed appropriate.

It can be seen that the senior independent director has functions other than communication with shareholders. It could also be said in this connection that a senior independent director who was available to BSC parties might have helped to resolve some of the tensions which have arisen of late.

I need hardly say that the statement in the report and accounts for the year ended 2013 that 'certain principles set out in the UK Corporate Governance Code.....do not apply' does not amount to a satisfactory explanation of this item of non-compliance with the Corporate Governance Code.

I have laboured this point to show what I mean by compliance with the Corporate Governance Code. As the code says, to follow its spirit to good effect boards must think deeply, thoroughly and on a continuing basis about their overall tasks and the implications of these for the roles of their individual members. Absolutely key in this endeavour is the leadership of the chair, the support given to and by the CEO, and

the frankness and openness of mind with which issues are discussed and tackled by all directors.

On rereading the Corporate Governance Code for the purposes of this review I have been struck afresh by how relevant and important its provisions are. I will not set them out here, and would only draw attention to one point, because it relates to re-election of directors. The code provides that the board should set out to shareholders in the papers accompanying a resolution to elect a non-executive director why they believe the individual should be elected. The chair should confirm to shareholders when proposing re-election that following formal performance evaluation, the individual's performance continues to be effective and to demonstrate commitment to the role.

Corporate reporting

One important aspect of governance is corporate reporting. I have read the report and accounts of ELEXON for the years ended 31 March 2012 and 2013. I am not qualified to report on the financial information, and I have no reason to doubt that the accounts show a true and fair view, but I do have some comments on the narrative reporting.

I make the point above that the explanations of non-compliance with the UK Corporate Governance Code need to be more carefully considered.

The Companies Act requires a fair review of the company's business and a description of the principal risks and uncertainties facing the company. The review required is a balanced and comprehensive analysis of the development and performance of the company's business during the financial year, and the position of the company's business at the end of that year, consistent with the size and complexity of the business.

Given the amount of management time devoted to vires issues and the importance of those issues in the context of ELEXON's future development, I was surprised that there was no mention of them in the directors' report for the year ended 31 March 2013. Even though these issues have been well ventilated at the Panel and through consultations there is a clear requirement for a fair review in the directors' report, and whether these matters are regarded as relating to the development of the company's business or as uncertainties it seems to me that they deserve some reference.

The legal requirement to describe the principal risks and uncertainties is not limited to financial risks, but only financial risks are described in the 2013 report. Although the corporate governance statement says that a comprehensive process for identifying, evaluating and managing significant risks has been in place throughout the reporting period, the risks themselves are not described.

The BSCCo board maintains a comprehensive risk register which, for example, highlights risks relating to developments in European regulation and it seems to me that a broader approach to the annual report should have been followed. By way of further example it also seems to me that the risk of not maintaining good relationships with the Panel and BSC parties is worthy of mention in the report as a principal risk, as is the fact that considerable uncertainty surrounds ELEXON's future

given the continuing pressure from developments in the industry. These risks are well known to the BSCCo board.

In my opinion the formulation of the review and description required by the Companies Act is valuable, not just for the company's stakeholders but for the company itself. I appreciate that it can be an uncomfortable exercise, but it is required by law and there is much value in a frank approach.

The BSC and good governance

My terms of reference require me to seek to identify any aspects of the matters arising under the scope of my review which, while complying with the BSC, may not accord with principles of good governance. The most important matters which I have identified are the lack of clarity in the relationship between the BSCCo board and the Panel; the lack of clear accountability for the BSCCo board; the perceived want of independence in the Panel and the difficulties in dealing with constitutional modifications under the present system.

I am also tasked with seeking to identify any aspects of the matters arising under the scope of my review which may not have complied with the provisions of the BSC, to ensure appropriate conduct going forward. As referred to above, members of the Panel believe that, during the vires debates, the provisions of Section B1.3.1 which, by incorporating B1.2.1, require the BSCCo to ensure that there is transparency and openness in the conduct of the Panel and the BSCCo, may not have been given full effect. My answer to that, to ensure appropriate conduct going forward, is to combine the two bodies.

The new board will continue to be required to conduct its business with transparency and openness subject, as at present, to other provisions of the BSC and duties of confidence owed to third parties. Whether, and to what extent, this means open board meetings and published minutes I leave to the new board to decide. My own experience is that open meetings hamper effective board debate and decision-taking and that published minutes lead to abridgement. However the modifications committee should meet in public and I am very much in favour of frank and open corporate reporting, as I have tried to make clear above.

Above all I believe that the new board should cultivate good, open and constructive relationships with BSC parties. The initiative here lies with the chair.

Recommendations

- 1. There should be a single board to govern the BSC.**
- 2. Board members should be appointed by the board for renewable three year terms. A nomination committee should recommend appointments to the board and recommend its size.**
- 3. The chair should be appointed by the board on the recommendation of the nomination committee, subject to approval by Ofgem.**
- 4. At least one half of the members of the board, excluding the chair, should be independent.**
- 5. The chief executive should be appointed to the board.**
- 6. Board members should be remunerated.**

- 7. BSC modifications should be dealt with by a modification committee of the new board with a majority of independent board members but otherwise with the same modification procedures as at present which should be systematised and improved.**
- 8. Consumer Futures should have sufficient resource to enable them to monitor modifications and to have input at working group level when they wish. Consumer Futures should have the right to make representations to the modification committee. The board should have a duty to keep Consumer Futures informed on the progress of modifications and other board business likely to affect the interests of domestic consumers.**
- 9. The board should consider similar steps in relation to the smaller BSC parties.**
- 10. The system operator and the distribution system operators should continue to be involved in working groups and have the right to make representations to the modification committee.**
- 11. BSC parties should have voting rights in accordance with their annual funding shares, with the right to appoint proxies.**
- 12. All board members should retire annually and be eligible for re-election.**
- 13. BSC parties should have the right to dismiss board members by ordinary resolution (a majority of votes cast).**
- 14. BSC report and accounts should be voted on.**
- 15. The board should follow the UK Corporate Governance Code.**

CHAPTER 4

GOVERNANCE AND VIRES

The story so far

In its business plan for 2011/2012 ELEXON set out a vision for expanding its activities beyond the BSC into the field of smart metering. In November 2011 Ofgem undertook an industry consultation on the conditions that had to be met in order for ELEXON to apply its experience to activities beyond the BSC. One key question was the continuation of the BSC core services. Ofgem considered two different structural models: the contract model whereby 'New ELEXON' - an independent company - would be contracted to provide BSC services and the subsidiary model under which a series of sibling companies including the BSCCo would be created under a new holding company – perhaps a company limited by guarantee. Either of these structures would have allowed management and staff to apply their expertise outside the BSC while leaving the BSCCo to deliver the BSC services, either outsourced to New ELEXON or directly as a subsidiary of a new holding company.

In April 2012 after consultation with the industry Ofgem recommended the contract model. This would have involved the creation of a commercial contract between BSCCo, which would remain focused on BSC activities, and an independently owned 'New ELEXON' which would take on the ELEXON staff and provide a new BSC agent role of services manager. After an initial period the contract would have been put out to tender.

Ofgem laid down four conditions for ELEXON's diversification.

- BSC parties should benefit from any diversification;
- the arrangements should not place disproportionate risk on BSC parties;
- standards of service under the BSC should be maintained; and
- ELEXON's BSC role should not give it any undue competitive advantage in a contestable activity.

In May 2012 modification P284 'Expansion of ELEXON's role via the contract model' was raised by National Grid and although recommended for rejection by the Panel, the modification was made by Ofgem in September 2012. This was an enabling modification which permitted the outsourcing but did not carry it into effect.

In November 2012 the BSCCo board considered a proposal by the executive to outsource the BSC services but resolved not to approve it, on the grounds that the first of Ofgem's four conditions had not been met.

The BSCCo board continued to endorse ELEXON's strategy of diversification and modification P289 was proposed to enable ELEXON to participate in tendering, through a subsidiary, to be the data and communications company for smart meters. This modification was initially recommended for approval by the Panel but following consultation the Panel changed its view and recommended rejection. 12 of the 17 BSC parties who responded to the consultation recommended rejection – six on the grounds of process defects.

In January 2013 Ofgem confirmed its rejection on the grounds that the modification could not be approved without an amendment to the conditions of National Grid's transmission licence. Ofgem took the view that BSC modifications should only be

made for a purpose which is consistent with the condition of National Grid's transmission licence, which concerns the proper execution of the balancing and settlement function; this does not appear to include undertaking extraneous business activities, however profitable they may appear to be. In addition, Ofgem said that there was not enough evidence that the modification met the objectives of the BSC, in particular 'promoting efficiency in the implementation of the administration of the balancing and settlement arrangements'.

The structural issues

It is not part of my review to assess whether or not ELEXON should diversify or to comment on appropriate models of diversification. My brief is governance and in considering the governance of the BSC I am asked to have regard to these modifications and the events surrounding workgroup and Panel meetings.

There are two identities within the BSCCo. The code administrator is called the BSCCo, but when talking about the accumulated skills and experience of the organisation or its ambitions ELEXON staff will call the BSCCo ELEXON. They are of course the same entity, and that entity does not have an independent existence – it is a creature of the BSC – but it is understandable that an effective and ambitious management team should have ambitions for ELEXON beyond the BSC.

I have read the documents relating to the vires modifications and discussed them with Panel and BSCCo board members. The obvious and principal governance issue is that in considering the expanded role of ELEXON those involved found themselves in opposition more often than they found themselves in agreement. In the end the BSCCo board and the executive did not agree with the Panel on the desirability of modifications, the BSCCo board did not agree with the executive about the terms of the out-sourcing arrangements (indeed you might say that the BSCCo board did not agree with ELEXON!). The BSC parties did not agree amongst themselves and it followed that some of them did not agree with the BSCCo board and some of them did not agree with the Panel. The Panel changed its mind. The only arbiter was Ofgem, and as the regulator they limited themselves to regulatory considerations. The result was stalemate. The differences have not assisted general working relationships.

The fact that there may be differences, even heated differences, inside the board room is not an indicator of poor governance. Boards have to deal with difficult issues. But ventilation of the differences outside the boardroom is an indicator that the governance of the organisation is not working smoothly to resolve matters in the interests of the organisation.

The first issue is the number of bodies involved. The framers of the BSC did not contemplate differences of this order between the Panel and the BSCCo board. They intended that the Panel should be the strategic authority and the BSCCo its executive arm. My recommendations would treat the whole BSC as if it were a single company. As explained in the previous chapter I would modify the BSC to provide for a single board and I would treat the BSC parties in important respects as shareholders, in their annual funding shares.

But although this provides a single board and therefore cuts down on the number of BSC institutions who can disagree with each other it does not solve the vires problem. The BSC parties can, and in my view should, be treated as the owners of

the BSC but they cannot be treated in all respects as shareholders. In most respects their rights are less than those of shareholders, but in one case they are more - they are entitled to decide what the BSCCo will do.

Changing vires – who decides?

The BSC parties bear the costs of the BSC in proportion to their funding shares. This is not the same as buying shares in a company without further liability. When the joint stock company was originally conceived nearly two centuries ago it was normal for the incorporators to come together for a specific venture set out in the memorandum of association. Acts ultra vires the memorandum were void and it was difficult, if not impossible, to change the memorandum after incorporation. The ghost of that idea remained as part of company law until it was laid in 1989, as least as far as the validity of ultra vires acts was concerned, but in practice the lawyers had found ways around the restrictions many years before. What a modern company does is decided by its board. Shareholders who do not approve of the direction of the company and who cannot get their way through influence either sell their shares or, if they are in a majority, they change the directors.

In the case of the BSC however the parties cannot sell their shares and cannot, at present, change the BSCCo board or the Panel members – although in the latter case they can elect different ones. The funding of the BSC implies that the BSCCo should only do those things and incur those expenses which ought to be funded in the funding shares, which are basically calculated according to the amounts in which the parties buy and sell electricity from and into the system – these are the activities sanctioned by the BSC. BSC parties can legitimately complain if they are called upon to reimburse the BSCCo for costs incurred in relation to ultra vires activities.

There is an additional complication in the conditions of the National Grid transmission licence which have been invoked to prevent any departure by the BSCCo from its BSC activities. When presented with modification P289, which would have allowed ELEXON to act as smart meter DCC, Ofgem rejected it and one of the grounds - that it was outside the scope of the National Grid transmission licence – might be thought to be fatal to any role for BSCCo outside the BSC.

My view is that Ofgem was right to reject modification P289 in the circumstances as they then stood, not because of National Grid's licence but because principle requires that it should be the BSC parties who decide what the BSCCo should do. It may be appropriate to outsource the BSCCo's core functions to a provider which can do things outside the BSC but as matters stand it is not obviously appropriate for the BSCCo itself to do those other things, because it is owned and funded by the BSC parties to administer the BSC. In order for such a change to take place the BSC parties should give their consent.

However, I do not understand why National Grid's transmission licence should prevent the BSCCo from undertaking activities outside the BSC so long as the BSC parties agree to those activities. I can see that the licence should provide for the establishment and operation of the BSC but I do not see that it follows that the licence should prohibit the BSCCo from other activities. The original reason given by Ofgem for restricting the activities of the BSCCo, namely to minimise any scope for its directors to owe duties to the system operator as shareholder which would conflict with decisions appropriate to implement the BSC, is surely otiose given that National Grid's rights as shareholder are so constrained by the BSC as to be de-

natured. In particular National Grid is bound to use its share rights solely to give effect to the BSC.

My recommendation would be to amend the National Grid licence to provide that nothing in it prevented modifications to the BSC which enabled the BSCCo to undertake other activities. This would leave all modifications to be dealt with within the BSC. It is of critical importance that National Grid should be satisfied that this change achieves the desired effect, to prevent problems in the future.

I would also encourage Ofgem, when amending the National Grid licence, to reconsider the criteria for modifying the BSC, perhaps substituting more outcome based criteria relating to benefits to the industry.

There may be excellent arguments for changes to the BSCCo's vires now and in the future. In an ideal world it is possible to imagine ELEXON providing services in the energy field on a limited risk or even risk free basis and earning fees which would defray the BSC parties' funding shares. In some cases it might be possible to propose change along with a method of funding which takes account of the new activity, for example a different method of calculating funding shares. If the expense or risk is significant and the funding structure cannot be adapted it may be inappropriate for the BSCCo itself to undertake the activity, as the Issue 40 working party, who considered these issues in depth, pointed out and other models may be needed but in every case the fundamental principle should be that it is the BSC parties who should decide what the BSCCo does. He who pays the piper calls the tune.

The mechanics of change

At present changes to the BSC are made by Ofgem after the modification procedure set out in the BSC has run its course. The point has been made by several respondents to consultation that the BSC modification procedure is not suitable to a change which affects the vires of the BSCCo. This is not surprising because such a change was not contemplated by the BSC and so does not easily fall within the procedure in which modifications are tested against criteria which relate to the BSC rather than any wider purpose and which involve specialist working groups set up to deal with technical industry matters. It is also the case that in sponsoring such a change ELEXON steps outside its normal role as 'critical friend' to the modification procedure, and becomes *parti pris*, so removing an important neutral element.

I would identify constitutional provisions of the BSC, to include the governance and ownership structure and the objects of the BSCCo, and provide that these can only normally be changed after approval by special resolution of the BSC parties (75 per cent of votes cast calculated according to annual funding shares). I would expect Ofgem to veto the change if the authority believed that there was a danger that minority BSC parties or the consumer might be oppressed by it. I would retain a reserve right to Ofgem to change the BSC in any respect, to cope with unforeseen circumstances.

In making a change to articles of association in a company, or for any other proposal which requires shareholder approval, the normal practice is for the board to formulate the proposal and put it to shareholders. This will normally be accompanied by discussions with major shareholders. In the case of the BSC any proposal to make a change to a constitutional provision such as vires should be proposed by the new

board, who will have the duty to justify and explain the proposals and subsequently carry the change into effect.

In the case of a constitutional change to the BSC approval by 75 per cent of votes cast in general meeting, followed by Ofgem approval, should be dispositive, notwithstanding the procedure followed. I would permit the new board to take such steps in relation to a constitutional modification as it thought appropriate and likely to be successful in ensuring passage of the modification but I would require that any proposal be put out to consultation to provide an opportunity for the views of all BSC parties to be given and therefore to be available to Ofgem and to the other parties. The final proposals, modified as appropriate, should then be put to the vote after a circular has been sent by the new board to the BSC parties explaining the changes and reporting on the consultation.

I appreciate that BSC parties may vote against a change to the BSCCo's vires for their own reasons. For example they may be competitors with the BSCCo in any proposed new activities. I would accept this, and say that BSC parties are entitled to vote in their own interests and if a majority of 75 per cent by funding shares cannot be secured then the constitution of the BSC should stay as it is. On the other hand I do not believe that a minority should be able to prevent a change approved by 75 per cent of the funding shares, provided Ofgem is satisfied that no oppression of minorities or the consumer is involved.

As I mention under next steps, I recommend that ELEXON should be allowed the resources to develop proposals for vires change.

In making these suggestions I am conscious that the smaller BSC parties will have less of a voice than the big six. Having reached the conclusion that it is for the BSC parties to decide on constitutional modifications however, the options for obtaining that consent become quite limited. Unanimous consent is unrealistic and would mean that nothing could be changed. Consent of a majority by number of parties would involve complex rules about groups and concert parties and would still involve a dissenting minority. In the end I believe that the precedent of the special resolution in company law is a good one. The requirement to obtain 75 per cent (by funding share) of votes cast is substantial but not unrealistic and gives appropriate weight to those who bear the lion's share of the BSC costs.

I am not well-informed enough to envisage a change which would disadvantage the smaller parties without equally disadvantaging the big six, but I accept that the mechanics of change should deal with that possibility. It is for that reason that I would make it compulsory to consult on the changes, so that the voice of all parties can be heard, and I would give the final decision on change to Ofgem (as at present) in the belief that, following the consultation, Ofgem will be in a position to take the views of the smaller BSC parties into account. In this respect Ofgem should also consider whether it is appropriate or necessary to include a condition in the transmission licence requiring that any vires change should not discriminate against smaller BSC parties.

These are my proposed mechanics of change, but in my view the reality is that change is unlikely to happen without a clear steer from government and Ofgem.

An enabling change?

A constitutional modification could be related to a specific proposal (e.g. Warm Homes) or it could be an enabling proposal which would allow unspecified activities subject to conditions.

In its letter of 30th April 2012 Ofgem had this to say:

'We recognise the concerns raised by some respondents that a fundamental restructuring of the BSC arrangements, as would be required under either the contract or the subsidiary model, may not be the most efficient means of allowing ELEXON to widen its activities and may prove to be disproportionate. We consider that our conditions [listed above] could be met without such a reorganisation if the scale, scope and associated risk of any new activities to be undertaken were of a more limited nature than those of a DCC bid, in essence ensuring the primacy of BSC activities to ELEXON's management.

Whilst we have consistently been of the view that any new governance arrangements must be future-proofed and facilitate any new activities ELEXON may reasonably wish to compete for, it may be appropriate to give further thought to this being part of a long-term evolution of the arrangements rather than any immediate step change. Given that there does appear to be widespread support for an expansion of ELEXON's role and that the success of a bid for the DCC is by no means assured, it would be appropriate to consider alternative means of unlocking ELEXON's vires and potentially securing some, if not all, of the associated benefits.

We consider that an alternative mechanism for facilitating limited expansion of ELEXON's vires would be to remove the BSC prohibition on it carrying out non-BSC activities, instead making the diversification subject to the consent of the BSCCo board and the authority. This could be subject to a materiality threshold, for instance being limited to no more than a small percentage of turnover. This would be similar to the restricted activity provisions under Standard Condition B6 of National Grid's Electricity Transmission licence.'

The expertise and facilities of ELEXON are in demand outside the BSC, and that demand looks likely to continue. A current example is the suggestion that ELEXON be the EMR settlement agent. In this case I understand that it is not envisaged that any cost will fall on BSC parties as the start-up costs will be covered by a grant from DECC and thereafter the operation should be self-funding.

I agree with those who say that ELEXON should not act ultra vires even if the risks are apparently small. It does not seem to me to be appropriate for the BSCCo board to act in breach of the BSC. It would be sensible to consider whether activities which will not involve the BSC parties in material cost or risk and which should benefit the industry as a whole should be allowed under an enabling modification, subject to conditions.

If my recommendations are followed I suggest that the new board consider whether or not to put such an enabling modification formally to BSC parties under the new procedure, perhaps as part of changes made to implement my recommendations. It will be for the BSC parties to decide whether they wish to permit such a change or would rather the new board sought approval to non-BSC activities on a case by case basis. Given the history of proposed vires changes there is likely to be concern that

in considering whether or not to undertake a new activity the new board might not assess the risks as strictly as it should, but without a Panel to take the final decision the onus will be squarely on the members of the new board to justify their actions. I do not know whether or not a limitation to a percentage of turnover would be practical as a safeguard - perhaps it would be more appropriate to develop safeguards based upon the risk and cost to BSC parties. But without such a modification the new board will be continually bumping up against the vires problem in these times of change.

There are additional safeguards. As my detailed recommendations explain, I would require the members of the new board to submit to annual re-election by BSC parties. I would also expand the rights of the BSC parties to include the right to dismiss board members and I would expect the new board to follow the UK Corporate Governance Code. I would place express duties upon the new board to ensure that any circular to BSC parties was prepared to high standards and contained all relevant information, by which I mean that it should be accurate and contain all information which a reasonable BSC party would expect to find there.

I note the views of the Issue 40 working group, which considered these matters in depth, that adapting the BSCCo itself to other roles has many disadvantages, including cross-subsidy, differential charging arrangements and added risk and these would have to be dealt with in any proposal.

The contract model

As modification P284 has already been made, it is already possible for the BSCCo board to outsource the BSC core services. Under the contract model this could be done to 'New ELEXON', a company which would, in one way or another, take over the existing ELEXON management and staff. New ELEXON, which would be independently owned, would be free to undertake other activities.

Under my proposals the new board will therefore be free, without further authority, to outsource the BSC functions subject to Ofgem's four conditions.

- BSC parties should benefit from any diversification;
- the arrangements should not place disproportionate risk on BSC parties;
- standards of service under the BSC should be maintained; and
- ELEXON's BSC role should not give it any undue competitive advantage in a contestable activity.

At first reading I did not think that these conditions added much to the ordinary duties of the board to promote the success of the BSCCo, although they served to reinforce those duties. It was put to me however that the first of these conditions might be thought to require a guaranteed benefit to BSC parties from the outsourcing, rather than a projected benefit over the medium term which should outweigh any initial disadvantages. I would encourage Ofgem to reconsider the conditions to clarify this point or better still, to drop the conditions entirely and rely on the new board to promote the success of the BSCCo and therefore act in the interests of the BSC.

The way forward

I believe that these proposals carry the possibility of adapting the BSC to the future of the industry, with safeguards which will prevent change which is not acceptable to the majority of the BSC parties or which oppresses a minority of them, or the

consumer. However the BSC is set up for a specific purpose, which is continuing, and it may not be possible to obtain the necessary majority of 75 per cent of votes cast by BSC parties to adapt the arrangements. In that case all parties may have to accept that changes will be catered for outside the BSC, even though ELEXON would have been well placed to carry them into effect.

Recommendations

- 16. The restrictions in National Grid's licence which prevent the BSCCo from undertaking activities outside the BSC should be removed and Ofgem should reconsider the conditions for modifying the BSC.**
- 17. Any change to the constitutional provisions of the BSC, including the governance structure and the objects of the BSCCo, should normally be made only after approval by special resolution of the BSC parties (75 per cent of votes cast) and Ofgem approval which would be withheld if the authority believed that there was a danger that minority BSC parties or the consumer might be oppressed by the change. Ofgem should consider whether the transmission licence conditions should protect minority BSC parties. Ofgem would retain a reserve right to make any change, to cope with unforeseen circumstances.**
- 18. Any circular to BSC parties should be prepared to high standards and contain all relevant information.**
- 19. Ofgem should reconsider the conditions attached to outsourcing.**

CHAPTER 5

NEXT STEPS

Once this report has been discussed by the Panel and the BSC board I recommend a consultation in principle on the proposed new structure. If changes are to proceed it will be necessary to incur expenditure on legal fees and (I would suggest) search fees for the new board members and unless these can be met out of existing budgets the consultation should include a paving modification to the BSC to authorise such expenditure.

If the outcome of the consultation is in favour the new board can be recruited and formal proposals can be drawn up. Those proposals would amount to a BSC modification which should be put to the vote, I suggest, at a meeting as if my proposals for constitutional change were already in force. Legal advice should be sought to determine at what point the necessary changes to National Grid's transmission licence should be made.

Ofgem should establish the first nomination committee to select the initial board. Present and past Panel and BSCCo board members should be eligible for appointment to the board, but their years of service should count when assessing their independence.

As any vires changes would have to be proposed by the new board it seems inevitable that they would have to be formulated and proposed as a separate exercise, but the power to incur expenditure on vires proposals could be included in the first set of changes and the ELEXON executive should make a reasonable proposal for a development fund. I appreciate that the benefits of expenditure on vires proposals are unlikely to be enjoyed by the present BSC parties in their precise funding shares, but it seems sensible to take a broad view in order that a decision can be taken as to the extent of ELEXON's role in the reformed industry. It would also be possible, and certainly convenient, to include a limited enabling change in the first set of proposals, along the lines suggested by Ofgem in their letter of 30th April 2012 and discussed above.

I am conscious that one possible outcome of my recommendations is that one set of constitutional changes, to implement my proposals, could swiftly be followed by another set in order to implement vires change. But any journey has to start from here.

Recommendation

20 There should be a development fund to enable ELEXON's future to be properly considered.

Appendix 1 – Terms of reference

1) Establishment

This independent review of BSCCo, BSC Panel and BSC Change Governance (the '*Governance Review*') is being commissioned with the support of the BSCCo Board and the BSC Panel.

In consultation with the BSCCo Board, Ofgem and the BSC Panel, the BSCCo Board Chairman will appoint an **independent senior person with experience of corporate governance** to undertake the review. The requirements for this appointment will be developed in consultation with the persons appointed as liaisons from the BSCCo Board and BSC Panel (see section 4 below).

2) Scope

The Review will consider the governance of ELEXON with regard to the confines of the BSC, particularly in the light of discussions over recent years in relation to changes to BSCCo's vires. It should:

- I. Take note of the context for the existing arrangements (including how the BSC arrangements came about);
- II. Consider the roles and responsibilities of the BSCCo Board and the BSC Panel (including any associated vires issues highlighted by Modification P289); and
- III. Provide a forward look on wider governance issues identified in the course of the review.

The review will give consideration to the roles, responsibilities and operating practices (including the transparency of information¹) of the BSCCo Board and the BSC Panel and assess their consistency with standards of good governance.

The review will include the application of BSC change processes with respect to matters of ELEXON governance including, but not limited to, the progression of Modifications P284 and P289 and the events surrounding Modification Workgroup and Panel meetings on these Modifications.

The review will have regard to those provisions that have a bearing on the governance and operation of ELEXON as set out in:

- The Electricity Transmission Licence;
- The UK Corporate Governance Code;
- ELEXON's Memorandum and Articles of Association;
- The Balancing and Settlement Code
- Amendments to the BSC considered under Modification P281, which recently redefined the composition and appointment process of the ELEXON board;
- The Code Administration Code of Practice; and
- Any other documents that relate to the governance or operation of ELEXON.

The review will also have regard to the context of the existing governance provisions including:

- The original intent, purpose and reason for the corporate arrangements established by the Secretary of State at the inception of the New Electricity Trading Arrangements (NETA);
- The current funding arrangements for the BSCCo and the rationale for disconnecting the shareholding of BSCCo from its funding; and
- The extent to which this governance remains fit for purpose (both today and for the future) in view of the rapidly changing shape of the industry.

¹ including the transparency of information about expenditure

3) Objective

The Governance Review will seek to:

- a) identify any aspects (of those matters arising under the scope of the review) which, while complying with the BSC, may not accord with principles of good governance;
- b) identify any aspects (of those matters arising under the scope of the review) which may not have complied with the provisions of the BSC, to ensure appropriate conduct going forward;
- c) propose actions to ensure that the BSCCo Board, ELEXON and BSC Panel processes and working practices align with principles of good governance and can deal effectively with any conflicts of interest such that the industry, regulator and other stakeholders can continue to have confidence in the operation and conduct of the BSC Panel, BSCCo Board and ELEXON;
- d) consider how, in the light of continuing changes in both corporate governance standards, and in rapid developments in the industry, the relationship between the decision making powers of the BSCCo Board and those of the Panel should be better delineated or amended;
- e) consider how, given the likelihood of supplementary income flow to ELEXON arising from new work (e.g. EMR), those arrangements referenced in (d) need to be amended to provide appropriate stakeholder input;
- f) consider how communication, collaboration, and the relationship between the BSCCo Board and the BSC Panel may be improved; and
- g) report on any other matter identified during the course of the review which the reviewer considers relevant under the scope of the review.

4) Approach

The person appointed to lead the review will produce their own, independent, report for the consideration of the BSCCo Board, the BSC Panel and the Gas and Electricity Market Authority. It is anticipated that, in conducting the review they will seek views from BSCCo Board members, BSC Panel members, members of the ELEXON Executive Management Team, Ofgem, National Grid and other interested parties as appropriate. This may include members of Modification Workgroups (e.g. P289) and employees of BSC Parties.

The BSCCo Board and the BSC Panel will provide support to the independent reviewer via a nominated liaison. In the case of the BSC Panel this will be **Richard Brealey**, (Independent Panel Member and Deputy Panel Chairman). In the case of the BSCCo Board this will be **Peter Teague** (Non-Industry Board Member and Chair of the BSCCo Audit Committee).

The persons nominated by the BSC Panel and the BSCCo Board above (**Richard Brealey** and **Peter Teague**) will provide regular progress updates to the BSC Panel and the BSCCo Board.

A representative of the Authority will be invited to participate in the review. **Lesley Nugent**, of Ofgem, will be responsible for liaising with the independent reviewer to ensure that the findings report addresses matters brought to the attention of the reviewer by the regulator.

The independent reviewer will also be supported by:

- a. The Panel Secretary;
- b. An external lawyer or other external support the reviewer feels appropriate.

5) Reporting

The independent reviewer will produce a Report setting out their findings and recommendations. The Report will be submitted in full to the BSCCo Board, the BSC Panel and the Gas and Electricity Market Authority.

In the event that the reviewer seeks to include information in the Report which identifies individuals, the reviewer will, prior to submission of the Report, notify those individuals (and include in that notice an extract containing the relevant information) and provide a reasonable opportunity for the individuals concerned to endorse or challenge such information.

If the BSCCo Board and BSC Panel agree to publish the Report it may, prior to publication, be redacted so as to remove information which the BSCCo Board and BSC Panel consider to be confidential, provided that in doing so the Report clearly shows where information has been redacted and the BSCCo Board and BSC Panel shall in advance of publication: (i) consult with the independent reviewer in relation to the proposed redaction and take reasonable account of the independent reviewer's views; and (ii) publish an explanatory note accompanying publication of the Report confirming its redaction and the rationale for doing so.

6) Budget Implications

The independent reviewer will be reimbursed expenses in line with existing policies for BSC Panel and Panel Committees and will be paid a retainer fee.

It is anticipated that the cost for the review will be no more than £60k of external spend excluding use of ELEXON resources to support the review and that this can be accommodated within the existing BSCCo budget.

7) Timetable

It is anticipated that the independent reviewer will be appointed in March/April 2013 and that their findings report will be published in summer 2013. However, this may vary as work progresses to ensure that full and robust consideration can be given to those matters within the scope of the review and to allow for those interested parties noted above to be interviewed.

Appendix 2 - Funding shares by party groups – prepared by ELEXON

Overview of Funding Shares by Party Groups

BSCCo and the BSC are funded Parties signed up to the BSC. The BSC refers to ELEXON's costs as 'BSC Costs'. There are different types of BSC Cost and the amount of each type of cost each BSC Party pays depends on their market role and the volume of energy they generate, supply or trade. BSC Costs are recovered from Trading Parties (those BSC Parties, other than the Transmission Company, that hold Energy Accounts). All BSC Parties (including non-Trading Parties e.g. Distribution System Operators) are also liable for those Specified BSC Charges that are applicable to them. Specified BSC Charges include, but are not limited to, a Base Monthly Charge (currently £250) and a CVA Metering System Monthly Charge per Metering System.

As ELEXON is a 'zero profit' company the amount charged exactly matches out costs for each financial year. BSC Parties pay a proportion of the BSC Costs (if they are a Trading Party), together with applicable Specified BSC Charges, every month – their 'BSCCo Charges'. Section D of the BSC details the BSC Charges and their recovery.

Funding Shares define the proportion of different BSC costs that Parties are required to pay as defined in Section D of the BSC. There are various types of funding share as outlined below.

Annual: The Annual Funding Share of a Trading Party is the sum of its General Funding Shares for the 12 consecutive months ending with and including that month, divided by the sum for all Trading Parties of their General Funding Shares for such 12 months.

General: In relation to month m, a Trading Party's General Funding Share reflects its proportionate share of the aggregate of certain BSCCo Charges for that month.

Main: The Main Funding Share represents a Trading Party's proportionate share of the aggregate Credited Energy Volumes for month m;

SVA (C): In relation to a month m, the SVA (Consumption) Funding Share represents a Party's proportionate share of the aggregate non-half hourly consumption for that month.

SVA (P): In relation to a month m, the SVA (Production) Funding Share represents a Party's proportionate share of aggregate Credited Energy Volumes for Production BM Units for that month.

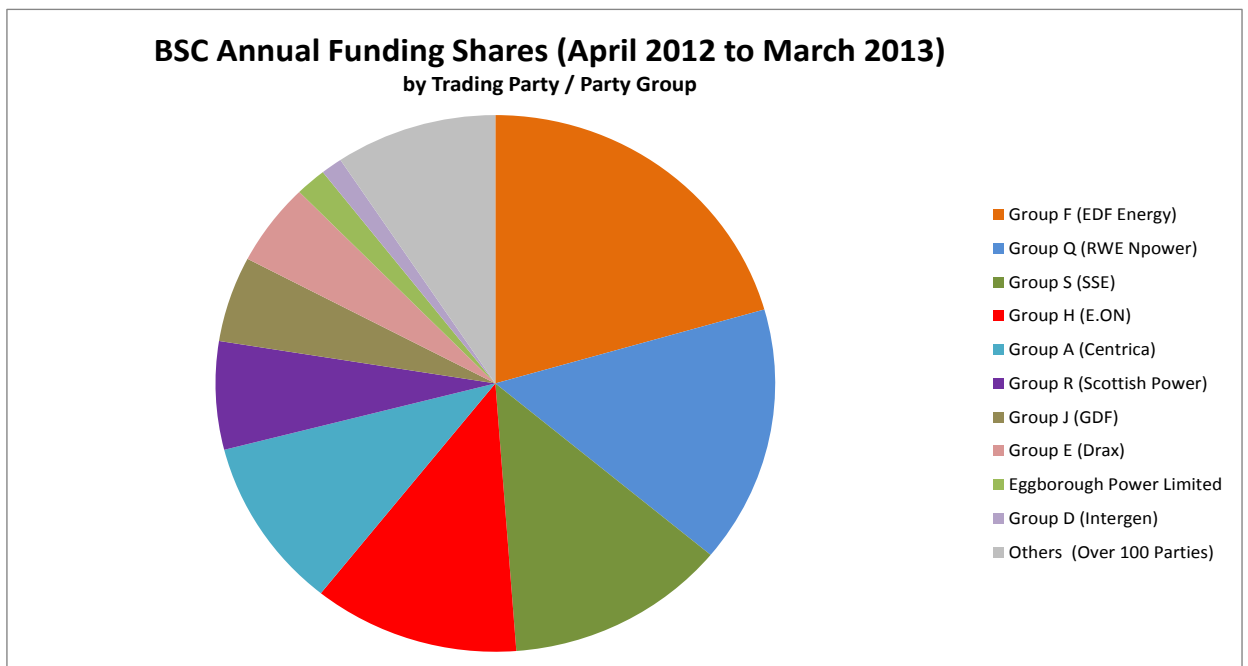
Further guidance on BSC Costs, Charges and Funding Shares is available on the [ELEXON website](#).

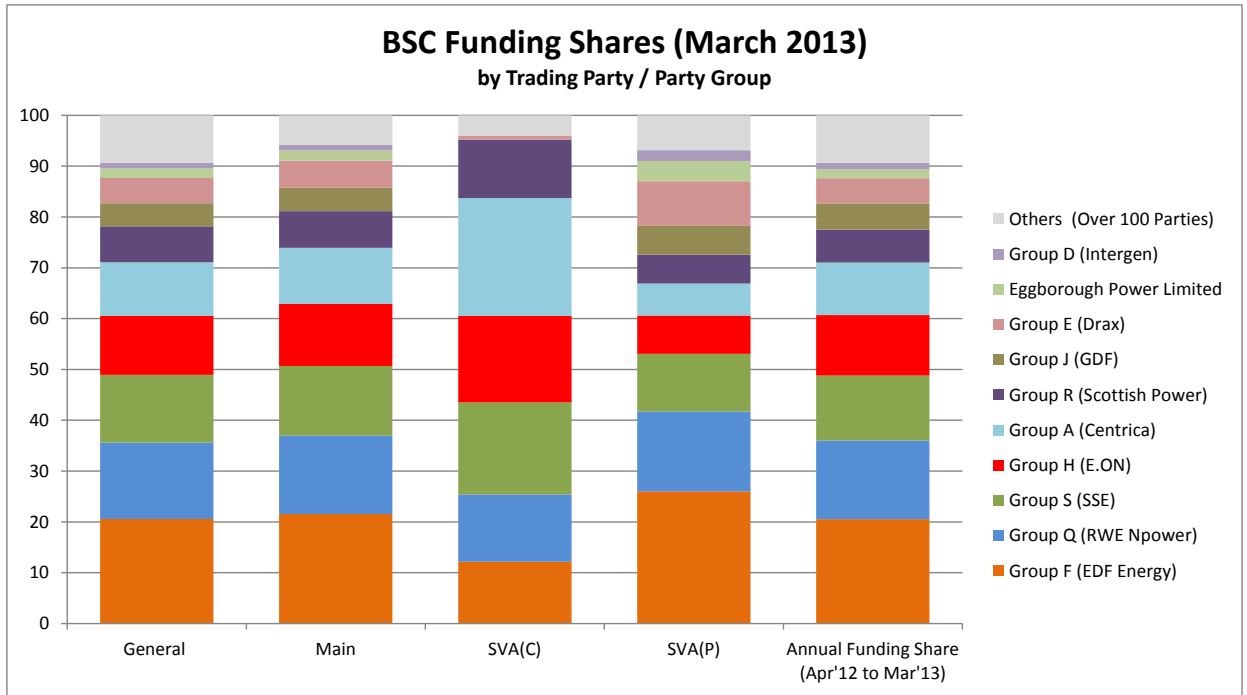
ELEXON billed Parties approximately £31m for Financial Year 2012/13. The actual cost incurred for FY 2012/13 was just over £29.5m. The difference will be returned to Parties as part of the normal final reconciliation process in August/September 2013.

An indicative estimation of the amounts payable by BSC Parties across the Financial Year, encompassing all types of BSC Cost, can be made by applying the Annual Funding Share to the annual billed amount. The following BSC Parties (aggregated across Party Groups²) are the top 10 contributors to BSC Costs.

² See Schedule 1

| Rank | Party Name / Trading Party Group | Funding Share (March '13) | | | | Annual Funding Share (12 Months to March '13) | Cumulative Annual Funding Share |
|------|------------------------------------|---------------------------|---------------|---------------|---------------|---|---------------------------------|
| | | General | Main | SVA(C) | SVA(P) | | |
| 1 | Group F (EDF Energy) | 20.5928 | 21.5287 | 12.1832 | 26.0208 | 20.557 | 20.56 |
| 2 | Group Q (RWE Npower) | 15.0103 | 15.4544 | 13.2216 | 15.6908 | 15.4741 | 36.03 |
| 3 | Group S (SSE) | 13.3481 | 13.6841 | 18.1126 | 11.343 | 12.774 | 48.81 |
| 4 | Group H (E.ON) | 11.5735 | 12.2453 | 17.0027 | 7.5309 | 11.9097 | 60.71 |
| 5 | Group A (Centrica) | 10.554 | 11.0412 | 23.1823 | 6.2947 | 10.3062 | 71.02 |
| 6 | Group R (Scottish Power) | 7.066 | 7.1954 | 11.5063 | 5.7033 | 6.5095 | 77.53 |
| 7 | Group J (GDF) | 4.5593 | 4.6047 | 0.0348 | 5.674 | 5.1554 | 82.69 |
| 8 | Group E (Drax) | 4.9695 | 5.3375 | 0.7629 | 8.7711 | 4.9583 | 87.64 |
| 9 | Eggborough Power Limited | 1.8897 | 1.9944 | 0 | 3.9887 | 1.7845 | 89.43 |
| 10 | Group D (Intergen) | 1.0786 | 1.0692 | 0 | 2.1383 | 1.2345 | 90.66 |
| | Others (Approximately 100 Parties) | 9.3582 | 5.8455 | 3.9936 | 6.8441 | 9.3373 | 100.00 |
| | TOTAL | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 | |





List of Schedules

Schedule 1: Party Groups

Schedule 2: Annual Funding Shares for Financial Year April '12 to March '13

(by Annual Funding Share Incorporating Party Groups & Excluding Inactive Parties or Parties with Funding Share less than 0.0001)

Schedule 1: Party Groups

Parties have been grouped using the definition of a trading party group established for the purposes of electing Panel Members in accordance with the BSC.

Paragraph 3.1.5 of Annex B-2 states that a trading party group is a Trading Party and every Affiliate of that Trading Party. Affiliate is defined in Section X of the BSC as:

“in relation to any Party, any holding company of that Party, any subsidiary of that Party or any subsidiary of a holding company of that Party, in each case within the meaning of section 1159 of the Companies Act 2006, but subject to Section X2.2.7 in relation to the Transmission Company”.

This means that a Trading Party will constitute a trading party group with any other Trading Parties who are:

- A subsidiary of that Trading Party
- A holding (parent) company of that Trading Party; or
- A company which is a subsidiary of the same holding company as that Trading Party.

The following Party Groups have been identified:

| Party Name | Funding Share (March '13) | | | | Annual Funding Share | Party Group (Reviewed in May '13) |
|------------------------------------|---------------------------|---------|---------|--------|------------------------|-----------------------------------|
| | General | Main | SVA(C) | SVA(P) | 12 Months to March '13 | |
| British Gas Trading Limited | 10.1627 | 10.9686 | 23.1823 | 6.1577 | 9.919 | A (Centrica) |
| Centrica Energy Limited | 0.18 | 0.0054 | 0 | 0.0027 | 0.1419 | A (Centrica) |
| Centrica SHB Ltd | 0.062 | 0.045 | 0 | 0.09 | 0.0758 | A (Centrica) |
| Centrica KPS Ltd | 0.0249 | 0.0103 | 0 | 0.0206 | 0.0398 | A (Centrica) |
| Centrica Langage Ltd | 0.0223 | 0.0074 | 0 | 0.0148 | 0.0252 | A (Centrica) |
| Centrica Barry Limited | 0.0189 | 0.0014 | 0 | 0.0028 | 0.0195 | A (Centrica) |
| CENTRICA PB Limited | 0.0178 | 0.0024 | 0 | 0.0047 | 0.0191 | A (Centrica) |
| Centrica Brigg Ltd | 0.0183 | 0.0007 | 0 | 0.0014 | 0.0185 | A (Centrica) |
| CENTRICA KL Limited | 0.0157 | 0 | 0 | 0 | 0.0158 | A (Centrica) |
| Centrica RPS Limited | 0.0157 | 0 | 0 | 0 | 0.0158 | A (Centrica) |
| Lincs Wind Farm Ltd | 0.0157 | 0 | 0 | 0 | 0.0158 | A (Centrica) |
| BizzEnergy.com Limited | 0 | 0 | 0 | 0 | 0 | A (Centrica) |
| Electricity 4 Business Ltd (ECO A) | 0 | 0 | 0 | 0 | 0 | A (Centrica) |
| SONI Ltd | 0.0191 | 0.0019 | 0 | 0.0009 | 0.0194 | AA (EirGrid) |
| EirGrid Interconnectors Limited | 0.0177 | 0.0001 | 0 | 0 | 0.0148 | AA (EirGrid) |
| ENDESA Generacion SAU | 0.0412 | 0 | 0 | 0 | 0.0508 | B (Endesa) |
| ENDESA GENERACION SA | 0.052 | 0.0242 | 0 | 0.002 | 0.0389 | B (Endesa) |
| Phillips 66 Trading Ltd | 0.7742 | 0.8086 | 0 | 1.6172 | 0.6866 | BB (Phillips 66) |

| Party Name | Funding Share (March '13) | | | | Annual Funding Share | Party Group (Reviewed in May '13) |
|--|---------------------------|---------|---------|---------|------------------------|--------------------------------------|
| | General | Main | SVA(C) | SVA(P) | 12 Months to March '13 | |
| Immingham CHP LLP | 0.0408 | 0.0214 | 0 | 0.0428 | 0.0503 | BB (Phillips 66) |
| Coryton Energy Company Limited | 1.0121 | 1.0839 | 0 | 2.1678 | 1.1546 | D (Intergen) |
| Spalding Energy Company Limited | 0.0392 | -0.0189 | 0 | -0.0378 | 0.048 | D (Intergen) |
| Rocksavage Power Company Limited | 0.0273 | 0.0042 | 0 | 0.0083 | 0.0319 | D (Intergen) |
| Drax Power Limited | 4.1124 | 4.3855 | 0 | 8.7711 | 4.1426 | E (Drax) |
| Haven Power Ltd | 0.8571 | 0.952 | 0.7629 | 0 | 0.8157 | E (Drax) |
| Drax Ouse Limited | 0 | 0 | 0 | 0 | 0 | E (Drax) |
| EDF Energy PLC | 17.8612 | 20.8692 | 0 | 24.8606 | 17.9669 | F (EDF Energy) |
| EDF Energy Customers PLC | 1.1671 | 0 | 10.1414 | 0 | 1.1819 | F (EDF Energy) |
| EDF Trading Limited | 0.6412 | 0.3999 | 0 | 0.6409 | 0.5837 | F (EDF Energy) |
| British Energy Direct Limited | 0.1995 | 0 | 0.0044 | 0 | 0.2117 | F (EDF Energy) |
| EDF Energy (Transactions) Limited | 0.2763 | 0.2923 | 0 | 0.5846 | 0.1847 | F (EDF Energy) |
| British Energy Trading and Sales Limited | 0.1222 | 0 | 0 | 0 | 0.1277 | F (EDF Energy) |
| EDF Energy Nuclear Generation Limited | 0.1179 | 0 | 0 | 0 | 0.1184 | F (EDF Energy) |
| Seaboard Energy Limited | 0.1014 | 0 | 2.0374 | 0 | 0.1032 | F (EDF Energy) |
| West Burton Limited | 0.0329 | -0.0136 | 0 | -0.0272 | 0.024 | F (EDF Energy) |
| EDF Energy (West Burton Power) Limited | 0.0235 | 0 | 0 | 0 | 0.0236 | F (EDF Energy) |
| EDF Energy (Sutton Bridge Power) Limited | 0.0162 | 0.0006 | 0 | 0.0012 | 0.0169 | F (EDF Energy) |
| Jade Power Generation Limited | 0.0177 | -0.0197 | 0 | -0.0393 | 0.0091 | F (EDF Energy) |
| Fallago Rig Wind Farm Limited | 0.0157 | 0 | 0 | 0 | 0.0052 | F (EDF Energy) |
| British Energy Generation (UK) Limited | 0 | 0 | 0 | 0 | 0 | F (EDF Energy) |
| Dong Naturgas A/S | 0.2419 | 0.2356 | 0 | 0.4711 | 0.35 | G (Dong Energy Power (UK) Ltd) |
| Walney (UK) Offshore Windfarms Limited | 0.0346 | 0 | 0 | 0 | 0.0351 | G (Dong Energy Power (UK) Ltd) |
| London Array Limited | 0.0294 | 0 | 0 | 0 | 0.0238 | G (Dong Energy Power (UK) Ltd) |
| Dong Energy Power (UK) Ltd | 0.0228 | 0 | 0 | 0 | 0.0227 | G (Dong Energy Power (UK) Ltd) |
| DONG Energy Burbo (UK) Ltd | 0.0157 | 0 | 0 | 0 | 0.0158 | G (Dong Energy Power (UK) Ltd) |
| Gunfleet Sand Ltd | 0.0157 | 0 | 0 | 0 | 0.0158 | G (Dong Energy Power (UK) Ltd) |
| Gunfleet Sands II Ltd | 0.0157 | 0 | 0 | 0 | 0.0158 | G (Dong Energy Power (UK) Ltd) |
| Seven Power Limited | 0.0118 | -0.0087 | 0 | -0.0175 | 0.0138 | G (Dong Energy Power (UK) Ltd) |

| Party Name | Funding Share (March '13) | | | | Annual Funding Share | Party Group (Reviewed in May '13) |
|--|---------------------------|---------|--------|---------|------------------------|---------------------------------------|
| | General | Main | SVA(C) | SVA(P) | 12 Months to March '13 | |
| E.ON UK plc | 7.2199 | 8.4155 | 0.3347 | -0.1287 | 7.2518 | H (E.ON) |
| E.ON Global Commodities SE | 3.6732 | 3.8298 | 0 | 7.6596 | 3.9766 | H (E.ON) |
| E.ON Energy Ltd | 0.6804 | 0 | 16.668 | 0 | 0.6813 | H (E.ON) |
| Economy Power Limited | 0 | 0 | 0 | 0 | 0 | H (E.ON) |
| Enfield Energy Centre Limited | 0 | 0 | 0 | 0 | 0 | H (E.ON) |
| ESB Independent Generation Trading Ltd | 0.1202 | 0.1113 | 0 | 0.1002 | 0.0665 | I (ESB Independent Energy (N.I.) Ltd) |
| Corby Power Limited | 0.0513 | 0.0084 | 0 | 0.0169 | 0.0498 | I (ESB Independent Energy (N.I.) Ltd) |
| ESB Independent Energy (N.I.) Limited | 0.0176 | 0 | 0 | 0 | 0.0177 | I (ESB Independent Energy (N.I.) Ltd) |
| IPM Energy Trading Limited | 2.7147 | 2.9071 | 0 | 5.8141 | 2.936 | J (GDF) |
| GDF SUEZ Marketing Limited | 1.5856 | 1.7675 | 0.0348 | 0.0005 | 1.9035 | J (GDF SUEZ Marketing Ltd) |
| First Hydro Company | 0.0842 | -0.0001 | 0 | -0.0002 | 0.1066 | J (GDF) |
| GASELYS | 0.0524 | 0 | 0 | 0 | 0.0528 | J (GDF) |
| GDF SUEZ Teeside Ltd | 0.0523 | 0.0008 | 0 | 0.0017 | 0.0526 | J (GDF) |
| Electrabel S.A. | 0.0319 | 0.0005 | 0 | 0.0003 | 0.0321 | J (GDF) |
| Deeside Power Limited | 0.0153 | -0.0004 | 0 | -0.0008 | 0.0229 | J (GDF) |
| Indian Queens Power Limited | 0.0218 | 0.0003 | 0 | 0.0005 | 0.0222 | J (GDF) |
| Saltend Cogeneration Company Limited | 0.0036 | -0.031 | 0 | -0.062 | 0.0168 | J (GDF) |
| Rugeley Power Generation Limited | -0.0025 | -0.04 | 0 | -0.0801 | 0.0099 | J (GDF) |
| GDF SUEZ Marketing Ltd | 0 | 0 | 0 | 0 | 0 | J (GDF) |

| Party Name | Funding Share (March '13) | | | | Annual Funding Share | Party Group (Reviewed in May '13) |
|--|---------------------------|---------|--------|---------|------------------------|--------------------------------------|
| | General | Main | SVA(C) | SVA(P) | 12 Months to March '13 | |
| Shotton Combined HeatandPower Limited(Liquidation) | 0 | 0 | 0 | 0 | 0 | J (GDF) |
| Teesside Energy Trading Ltd | 0 | 0 | 0 | 0 | 0 | J (GDF) |
| INEOS Chlor Energy Limited | 0 | 0 | 0 | 0 | 0 | K (INEOS Chlor Energy Ltd) |
| ICI Chemicals and Polymers Limited | -0.1644 | -0.2086 | 0 | -0.4171 | -0.1566 | K (INEOS Chlor Energy Ltd) |
| JP Morgan Securities plc | 0.1037 | 0.0321 | 0 | 0.0402 | 0.0702 | L (JP Morgan Chase Bank) |
| JP Morgan Ventures Energy Corporation | 0.0516 | 0 | 0 | 0 | 0.0518 | L (JP Morgan Chase Bank) |
| JP Morgan Chase Bank | 0 | 0 | 0 | 0 | 0 | L (JP Morgan Chase Bank) |
| Kilbraur Wind Energy Ltd | 0.0157 | 0 | 0 | 0 | 0.0156 | N (Millenium Wind Energy Ltd) |
| Millennium Wind Energy Ltd | 0.0157 | 0 | 0 | 0 | 0.0155 | N (Millenium Wind Energy Ltd) |
| Viridian Energy Supply Limited (Energia) | 0.103 | 0.1012 | 0 | 0.0001 | 0.0602 | O (Northern Ireland Electricity plc) |
| Northern Ireland Electricity PLC | 0.0176 | 0 | 0 | 0 | 0.0177 | O (Northern Ireland Electricity plc) |
| Opus Energy Limited | 0.4665 | 0.5268 | 0.7168 | 0 | 0.446 | P (Opus Energy Ltd) |
| Opus Energy (Corporate) Limited | 0.0636 | 0 | 0.7955 | 0 | 0.0791 | P (Opus Energy Ltd) |
| Opus Energy Renewables | 0.0819 | 0 | 0 | 0 | 0.0722 | P (Opus Energy Ltd) |
| Donnington Energy Limited | 0 | 0 | 0 | 0 | 0 | P (Opus Energy Ltd) |
| Farmoor Energy Limited | 0 | 0 | 0 | 0 | 0 | P (Opus Energy Ltd) |
| RWE Npower Plc | 7.6206 | 7.9649 | 0 | 15.6908 | 7.5532 | Q (RWE Npower) |
| Npower Limited | 6.7982 | 7.4895 | 5.0898 | 0 | 7.3409 | Q (RWE Npower) |
| Npower Northern Supply Limited | 0.2014 | 0 | 4.7766 | 0 | 0.2017 | Q (RWE Npower) |
| RWE Supply and Trading GmbH | 0.1976 | 0 | 0 | 0 | 0.1895 | Q (RWE Npower) |
| Npower Direct Limited | 0.0695 | 0 | 1.4208 | 0 | 0.0722 | Q (RWE Npower) |
| Electricity Plus Supply Limited | 0.0577 | 0 | 1.1209 | 0 | 0.0558 | Q (RWE Npower) |
| Npower Yorkshire Supply Limited | 0.0457 | 0 | 0.8135 | 0 | 0.046 | Q (RWE Npower) |
| Gwynt y Mor Offshore wind farm limited | 0.0196 | 0 | 0 | 0 | 0.0148 | Q (RWE Npower) |
| Great Yarmouth Power Limited | 0 | 0 | 0 | 0 | 0 | Q (RWE Npower) |
| Npower Cogen Trading Ltd | 0 | 0 | 0 | 0 | 0 | Q (RWE Npower) |
| Npower Northern Limited | 0 | 0 | 0 | 0 | 0 | Q (RWE Npower) |
| Npower Yorkshire Limited | 0 | 0 | 0 | 0 | 0 | Q (RWE Npower) |

| Party Name | Funding Share (March '13) | | | | Annual Funding Share | Party Group (Reviewed in May '13) |
|---|---------------------------|---------|---------|---------|------------------------|--------------------------------------|
| | General | Main | SVA(C) | SVA(P) | 12 Months to March '13 | |
| ScottishPower Energy Management Ltd | 6.2156 | 7.1724 | 0 | 5.7134 | 5.6879 | R (Scottish Power) |
| ScottishPower Energy Retail Limited | 0.6474 | 0 | 11.5063 | 0 | 0.6299 | R (Scottish Power) |
| Scottish Power Generation Limited | 0.1056 | 0.0216 | 0 | -0.0129 | 0.0953 | R (Scottish Power) |
| Scottish Power Renewables | 0.0629 | 0 | 0 | 0 | 0.0625 | R (Scottish Power) |
| South Coast Power Limited | 0.0176 | 0 | 0 | 0 | 0.0177 | R (Scottish Power) |
| Damhead Creek Limited | 0.0169 | 0.0014 | 0 | 0.0028 | 0.0162 | R (Scottish Power) |
| SSE Energy Supply Limited | 12.922 | 13.7062 | 18.1126 | 11.3872 | 12.3531 | S (SSE) |
| SSE Generation Limited | 0.2821 | 0.0274 | 0 | 0.0548 | 0.2922 | S (SSE) |
| Keadby Generation Limited | 0.0512 | -0.0436 | 0 | -0.0872 | 0.0409 | S (SSE) |
| Griffin Wind Farm Limited | 0.0255 | 0 | 0 | 0 | 0.0254 | S (SSE) |
| Uskmouth Power Company Ltd | 0.0284 | -0.0055 | 0 | -0.0111 | 0.0234 | S (SSE) |
| Clyde Windfarm (Scotland) Ltd | 0.0232 | -0.0004 | 0 | -0.0007 | 0.0232 | S (SSE) |
| Medway Power Limited | 0.0157 | 0 | 0 | 0 | 0.0158 | S (SSE) |
| Airtricity Limited | 0 | 0 | 0 | 0 | 0 | S (SSE) |
| Gazprom Marketing and Trading Ltd | 0.3916 | 0.3194 | 0 | 0.2043 | 0.4498 | T (Gazprom Energy Ltd) |
| Gazprom Marketing and Retail Limited | 0.0619 | 0 | 0.1933 | 0 | 0.0667 | T (Gazprom Energy Ltd) |
| Vattenfall Energy Trading Services GmbH | 0.374 | 0.361 | 0 | 0.6971 | 0.4047 | U (Vattenfall Trading Services GmbH) |
| Thanet Offshore Wind Ltd | 0.0294 | 0 | 0 | -0.0001 | 0.0297 | U (Vattenfall Trading Services GmbH) |
| Ormond Energy Limited | 0.0196 | 0 | 0 | 0 | 0.0205 | U (Vattenfall Trading Services GmbH) |

Schedule 2: Annual Funding Shares for Financial Year April '12 to March '13

The following table sets out the Annual Funding Shares for BSC Parties for the Financial Year April '12 to March '13, sorted by Annual Funding Share. It incorporates the Party Groups information noted in Schedule 1. For example, Group F (EDF Energy) with an annual funding share of 20.557 comprises:

| Party Name | Funding Share (March '13) | | | | Annual Funding Share | Party Group (Reviewed in May '13) |
|--|---------------------------|----------------|----------------|----------------|------------------------|--------------------------------------|
| | General | Main | SVA(C) | SVA(P) | 12 Months to March '13 | |
| EDF Energy PLC | 17.8612 | 20.8692 | 0 | 24.8606 | 17.9669 | F (EDF Energy) |
| EDF Energy Customers PLC | 1.1671 | 0 | 10.1414 | 0 | 1.1819 | F (EDF Energy) |
| EDF Trading Limited | 0.6412 | 0.3999 | 0 | 0.6409 | 0.5837 | F (EDF Energy) |
| British Energy Direct Limited | 0.1995 | 0 | 0.0044 | 0 | 0.2117 | F (EDF Energy) |
| EDF Energy (Transactions) Limited | 0.2763 | 0.2923 | 0 | 0.5846 | 0.1847 | F (EDF Energy) |
| British Energy Trading and Sales Limited | 0.1222 | 0 | 0 | 0 | 0.1277 | F (EDF Energy) |
| EDF Energy Nuclear Generation Limited | 0.1179 | 0 | 0 | 0 | 0.1184 | F (EDF Energy) |
| Seeboard Energy Limited | 0.1014 | 0 | 2.0374 | 0 | 0.1032 | F (EDF Energy) |
| West Burton Limited | 0.0329 | -0.0136 | 0 | -0.0272 | 0.024 | F (EDF Energy) |
| EDF Energy (West Burton Power) Limited | 0.0235 | 0 | 0 | 0 | 0.0236 | F (EDF Energy) |
| EDF Energy (Sutton Bridge Power) Limited | 0.0162 | 0.0006 | 0 | 0.0012 | 0.0169 | F (EDF Energy) |
| Jade Power Generation Limited | 0.0177 | -0.0197 | 0 | -0.0393 | 0.0091 | F (EDF Energy) |
| Fallago Rig Wind Farm Limited | 0.0157 | 0 | 0 | 0 | 0.0052 | F (EDF Energy) |
| British Energy Generation (UK) Limited | 0 | 0 | 0 | 0 | 0 | F (EDF Energy) |
| Total | 20.5928 | 21.5287 | 12.1832 | 26.0208 | 20.557 | |

The table below excludes Parties whose annual funding share appears as zero in the summary published by on the ELEXON Portal. This encompasses:

- Inactive Parties that have acceded to the BSC but not yet traded (and so any funding share over the full financial year will appear as zero as it is below 0.0001).
- Inactive Parties that had acceded to the BSC (and may or may not have traded energy) but withdrew during the Financial Year 12/13 (such that their funding share over the full financial year is either zero or so small as to be below 0.0001).
- Inactive Parties that had acceded to the BSC (and may or may not have traded energy) but withdrew prior to the Financial Year 12/13 (such that their funding share over the full financial year is zero).
- Active Parties that continue to operate under the BSC but whose trading activity is so small that any funding share over the full financial year so small as to be below 0.0001.

| Rank | Party Name / Party Group | Funding Share (March '13) | | | | Annual Funding Share |
|------|--|---------------------------|----------------|----------------|----------------|------------------------|
| | | General | Main | SVA(C) | SVA(P) | 12 Months to March '13 |
| 1 | Group F (EDF Energy) | 20.5928 | 21.5287 | 12.1832 | 26.0208 | 20.557 |
| 2 | Group Q (RWE Npower) | 15.0103 | 15.4544 | 13.2216 | 15.6908 | 15.4741 |
| 3 | Group S (SSE) | 13.3481 | 13.6841 | 18.1126 | 11.343 | 12.774 |
| 4 | Group H (E.ON) | 11.5735 | 12.2453 | 17.0027 | 7.5309 | 11.9097 |
| 5 | Group A (Centrica) | 10.554 | 11.0412 | 23.1823 | 6.2947 | 10.3062 |
| 6 | Group R (Scottish Power) | 7.066 | 7.1954 | 11.5063 | 5.7033 | 6.5095 |
| 7 | Group J (GDF) | 4.5593 | 4.6047 | 0.0348 | 5.674 | 5.1554 |
| 8 | Group E (Drax) | 4.9695 | 5.3375 | 0.7629 | 8.7711 | 4.9583 |
| 9 | Eggborough Power Limited | 1.8897 | 1.9944 | 0 | 3.9887 | 1.7845 |
| 10 | Group D (Intergen) | 1.0786 | 1.0692 | 0 | 2.1383 | 1.2345 |
| 11 | Total Gas and Power Limited | 0.8027 | 0.7937 | 0.2189 | 0.4728 | 0.8588 |
| 12 | BB (Phillips 66) | 0.815 | 0.83 | 0 | 1.66 | 0.7369 |
| 13 | P (Opus Energy Ltd) | 0.612 | 0.5268 | 1.5123 | 0 | 0.5973 |
| 14 | Nuclear Decommissioning Authority | 0.5786 | 0.5587 | 0 | 1.1173 | 0.5868 |
| 15 | T (Gazprom Energy Ltd) | 0.4535 | 0.3194 | 0.1933 | 0.2043 | 0.5165 |
| 16 | G (Dong Energy Power (UK) Ltd) | 0.3876 | 0.2269 | 0 | 0.4536 | 0.4928 |
| 17 | BritNed Development Limited | 0.4188 | 0.4468 | 0 | 0.8071 | 0.456 |
| 18 | U (Vattenfall Trading Services GmbH) | 0.423 | 0.361 | 0 | 0.697 | 0.4549 |
| 19 | Barclays Bank PLC | 0.284 | 0.1512 | 0 | 0.2997 | 0.3676 |
| 20 | Statkraft Markets GmbH | 0.2895 | 0.2197 | 0 | 0.5882 | 0.2756 |
| 21 | Baglan Operations Limited | 0.0663 | 0.0117 | 0 | 0.0235 | 0.2155 |
| 22 | Power4All Limited | 0.1812 | 0.1968 | 0 | 0 | 0.2029 |
| 23 | Morgan Stanley Capital Group Inc. | 0.1926 | 0 | 0 | 0 | 0.1857 |
| 24 | Merrill Lynch Commodities Limited | 0.1579 | 0.016 | 0 | 0.0013 | 0.1497 |
| 25 | Nasdaq OMX Stockholm AB | 0.109 | 0 | 0 | 0 | 0.1439 |
| 26 | I (ESB Independent Energy (N.I.) Ltd) | 0.1891 | 0.1197 | 0 | 0.1171 | 0.134 |
| 27 | First Utility | 0.1784 | 0.1855 | 0.5781 | 0 | 0.1282 |
| 28 | BP Gas Marketing Limited | 0.0836 | 0.0011 | 0 | 0.0021 | 0.1281 |
| 29 | L (JP Morgan Chase Bank) | 0.1553 | 0.0321 | 0 | 0.0402 | 0.122 |
| 30 | ConocoPhillips (UK) Limited | 0.0421 | 0 | 0 | 0 | 0.1201 |
| 31 | Statoil (UK) Ltd | 0.132 | 0.0858 | 0 | 0.1716 | 0.1101 |
| 32 | MACQUARIE BANK LTD (LONDON BRANCH) | 0.0553 | 0 | 0 | 0 | 0.11 |
| 33 | Ovo Energy | 0.1434 | 0.1435 | 0.4848 | 0 | 0.11 |
| 34 | VITOL SA | 0.1396 | 0.0883 | 0 | 0.1766 | 0.105 |
| 35 | Seabank Power Limited | 0.0791 | 0.0205 | 0 | 0.0409 | 0.1023 |
| 36 | Shell Energy Europe Limited | 0.1037 | 0.0295 | 0 | 0.059 | 0.0999 |
| 37 | Deutsche Bank AG London | 0.0831 | 0.0006 | 0 | 0.0003 | 0.0937 |
| 38 | B (Endesa) | 0.0932 | 0.0242 | 0 | 0.002 | 0.0897 |
| 39 | J. Aron and Company | 0.0815 | 0.0003 | 0 | 0 | 0.0884 |

| Rank | Party Name / Party Group | Funding Share (March '13) | | | | Annual Funding Share |
|-----------|--|---------------------------|---------------|----------|---------------|------------------------|
| | | General | Main | SVA(C) | SVA(P) | 12 Months to March '13 |
| 40 | APX Commodities Ltd | 0.0924 | 0 | 0 | 0 | 0.0882 |
| 41 | Barking Power Limited | 0.0692 | 0.0247 | 0 | 0.0494 | 0.082 |
| 42 | O (Northern Ireland Electricity plc) | 0.1206 | 0.1012 | 0 | 0.0001 | 0.0779 |
| 43 | Danske Commodities A/S | 0.077 | 0.0333 | 0 | 0.0393 | 0.0743 |
| 44 | Energi Danmark A/S | 0.0776 | 0.0567 | 0 | 0.0998 | 0.0719 |
| 45 | Citigroup Global Markets Limited | 0.0699 | 0 | 0 | 0 | 0.0694 |
| 46 | Noble Clean Fuels Limited | 0.0795 | 0 | 0 | 0 | 0.0634 |
| 47 | SembCorp Utilities (UK) Limited | 0.0374 | 0.0188 | 0 | 0.0376 | 0.0563 |
| 48 | Co-operative Energy Limited | 0.0692 | 0.0609 | 0.1957 | 0 | 0.0485 |
| 49 | BNP Paribas | 0.0513 | 0 | 0 | 0 | 0.0481 |
| 50 | BKW FMB Energie AG | 0.0252 | 0.006 | 0 | 0.0119 | 0.0462 |
| 51 | Cargill PLC | 0.0409 | 0 | 0 | 0 | 0.0458 |
| 52 | The Renewable Energy Company Limited | 0.0465 | 0.0244 | 0.154 | 0 | 0.0453 |
| 53 | BES Commercial Electricity Ltd | 0.0469 | 0.0373 | 0.1164 | 0 | 0.0407 |
| 54 | Marchwood Power Limited | 0.0382 | 0.025 | 0 | 0.0501 | 0.0396 |
| 55 | ElectroRoute Energy Trading Limited | 0.0514 | 0.0332 | 0 | 0.0057 | 0.039 |
| 56 | Hess Energy Power and Gas Company (UK) Limited | 0.0368 | 0 | 0 | 0 | 0.0381 |
| 57 | Iberdrola Generacion SAU | 0.028 | 0.0012 | 0 | 0 | 0.0365 |
| 58 | Compagnie Nationale Du Rhone (C.N.R) | 0.0314 | 0.0158 | 0 | 0.013 | 0.0363 |
| 59 | Bord Gais Eireann | 0.0766 | 0.0668 | 0 | 0 | 0.0355 |
| 60 | AA (EirGrid) | 0.0368 | 0.002 | 0 | 0.0009 | 0.0342 |
| 61 | Markedskraft ASA - Danish Office | 0.0245 | 0.0077 | 0 | 0.0138 | 0.0329 |
| 62 | Utilita Energy Ltd | 0.0471 | 0.0374 | 0.1165 | 0 | 0.0318 |
| 63 | N (Millenium Wind Energy Ltd) | 0.0314 | 0 | 0 | 0 | 0.0311 |
| 64 | Mercuria Energy Trading SA | 0.0455 | 0 | 0 | 0 | 0.0298 |
| 65 | Good Energy Limited | 0.0327 | 0 | 0.0871 | 0 | 0.0297 |
| 66 | Eneco Energy Trade BV | 0.0319 | 0.003 | 0 | 0 | 0.0289 |
| 67 | Esso Petroleum Company Limited | 0.0275 | 0 | 0 | 0 | 0.0276 |
| 68 | MA Energy Limited | 0.0314 | 0.0192 | 0.0114 | 0 | 0.027 |
| 69 | National Grid Interconnectors Ltd | 0.0224 | 0.0059 | 0 | 0.0042 | 0.0243 |
| 70 | Greater Gabbard Offshore Winds Ltd | 0.0235 | 0 | 0 | -0.0001 | 0.0237 |
| 71 | Infinis Renewables Generation (GB) Ltd | 0.0216 | 0 | 0 | 0 | 0.0218 |
| 72 | Grangemouth CHP Ltd | 0.0216 | 0 | 0 | 0 | 0.0217 |
| 73 | KOCH COMMODITIES EUROPE LIMITED | 0.0187 | 0 | 0 | 0 | 0.0215 |
| 74 | Dual Energy Direct Limited | 0.02 | 0 | 0.1602 | 0 | 0.0204 |
| 75 | Scira Offshore Energy Limited | 0.0196 | 0 | 0 | 0 | 0.0197 |
| 76 | Crystal Rig II Limited | 0.0196 | 0 | 0 | 0 | 0.0193 |
| 77 | Spark Energy Supply Ltd | 0.0211 | 0.0048 | 0.0933 | 0 | 0.0192 |
| 78 | Alpiq Suisse SA | 0.0176 | 0 | 0 | 0 | 0.0185 |
| 79 | Axpo Trading AG | 0.0182 | 0 | 0 | 0 | 0.0179 |

| Rank | Party Name / Party Group | Funding Share (March '13) | | | | Annual Funding Share |
|-----------|-------------------------------------|---------------------------|----------------|----------|----------------|------------------------|
| | | General | Main | SVA(C) | SVA(P) | 12 Months to March '13 |
| 80 | Rolls-Royce Power Development Ltd | 0.0176 | 0 | 0 | 0 | 0.0177 |
| 81 | Nordjysk Elhandel A/S | 0.0147 | -0.0108 | 0 | 0 | 0.0175 |
| 82 | ICE Clear Europe Limited | 0.018 | 0 | 0 | 0 | 0.0168 |
| 83 | Derwent Cogeneration Limited | 0.0161 | 0.0004 | 0 | 0.0009 | 0.0159 |
| 84 | Glens Of Foudland Wind Farm Limited | 0.0157 | 0 | 0 | 0 | 0.0158 |
| 85 | Hudson Energy Supply UK Limited | 0.0265 | 0.0133 | 0.0009 | 0 | 0.015 |
| 86 | Power NI Energy Limited | 0.0176 | 0 | 0 | 0 | 0.0133 |
| 87 | Energy Data Company Limited | 0.0117 | -0.0055 | 0 | 0 | 0.0131 |
| 88 | Garsington Energy Ltd | 0.0179 | 0 | 0.0313 | 0 | 0.012 |
| 89 | Energy COOP Ltd | 0.0199 | 0.0066 | 0.0209 | 0 | 0.0111 |
| 90 | F and S Energy ITD | 0.0145 | 0 | 0 | 0 | 0.0109 |
| 91 | Axis Telecom Limited | 0.0141 | 0.0005 | 0.0015 | 0 | 0.0104 |
| 92 | Energy24 Limited | 0.0079 | -0.0046 | 0 | 0 | 0.0098 |
| 93 | Flow Energy Limited | 0.0138 | 0.0001 | 0.0003 | 0 | 0.0069 |
| 94 | AXPO UK Limited | 0.0098 | 0 | 0 | 0 | 0.0066 |
| 95 | Economy Energy Trading Limited | 0.0127 | -0.0024 | 0.0167 | 0 | 0.0061 |
| 96 | Coulomb Energy Supply Limited | 0.0137 | 0 | 0 | 0 | 0.0046 |
| 97 | Freepoint Commodities Europe LLP | 0.0117 | 0 | 0 | 0 | 0.0029 |
| 98 | Smartest Energy Limited | 0.2189 | 0.0814 | 0 | 0 | -0.0789 |
| 99 | K (INEOS Chlor Energy Ltd) | -0.1644 | -0.2086 | 0 | -0.4171 | -0.1566 |

Appendix 3 – List of those interviewed

BSC Panel

Phil Baker
Peter Bolitho
Dick Brealey
Bob Brown
Stuart Cotten
Garth Graham
Richard Hall
David Lane
Ian Pashley
Andrew Pinder
Barbara Vest

ELEXON Board

Nigel Cornwall
Peter Teague
Jane Tozer

ELEXON Team

David Ahmad
Nick Brown
Mark Bygraves
Mark Couldrick
Mark Coulthread
Peter Haigh
Adam Lattimore
Victoria Moxham
David Osborne
Chris Rowell
Nigel Smith

Ofgem

Lesley Nugent

Previously Involved Contributors

Dorcas Batstone
Bharat Shah

Industry Participants

Shafqat Ali- *National Grid*
Colette Baldwin- *E.ON*
Mari Toda- *EDF*
Lisa Waters- *Waters Wye Associates*