

Responses from P206 Draft Report

Consultation Issued 20 November 2006

Representations were received from the following parties

No	Company	File number	No BSC Parties Represented	No Non-Parties Represented
1.	EDF Energy	P206_AR_001	9	0
2.	E.ON UK plc	P206_AR_002	11	0
3.	Scottish and Southern Energy plc	P206_AR_003	5	0
4.	National Grid	P206_AR_004	1	0
5.	SAIC Ltd. (for and on behalf of ScottishPower)	P206_AR_005	7	0
6.	Centrica	P206_AR_006	9	0

P206 REPORT PHASE CONSULTATION QUESTIONS

BSC Parties ("Parties") and other interested parties are invited to respond to this consultation expressing their views or provide any further evidence on any of the matters contained within this document. In particular views are sought in respect of the following questions. Parties are invited to supply the rationale for their responses.

Respondent:	Paul Mott
Company Name:	EDF Energy
No. of BSC Parties Represented	9
Parties Represented	EDF Energy Networks (EPN) plc; EDF Energy Networks (LPN) plc; EDF Energy Networks (SPN) plc; EDF Energy (Sutton Bridge Power); EDF Energy (Cottam Power) Ltd; EDF Energy (West Burton Power) Ltd; EDF Energy plc; EDF Energy Customers Plc; Seeboard Energy Limited
No. of Non BSC Parties Represented	0
Non Parties represented	N/A
Role of Respondent	Supplier/Generator/Trader/Distributor
Does this response contain confidential information?	No

Q	Question	Response ¹	Rationale
1.	Do you agree with the Panel's provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P206 should not be made? Please give rationale.	Yes	Were BSC modification 206 not retrospective (albeit only "just" so - insofar as some votes were in before it was proposed and certainly all were before it will be eventually approved or rejected by Ofgem – and not in a commercial sense), then we would say that it better met BSC objective (c). As it is, one cannot really say this of BSC Mod 206 original; one can only say it of the alternative.

Q	Question	Response ¹	Rationale
2.	Do you agree with the Panel's provisional recommendation to the Authority contained in the draft Modification Report that Alternative Modification P206 should be made? Please give rationale.	Yes	EDF Energy agrees with the Panel, because the alternative it is not retrospective, on any interpretation, whereas Mod 206 as originally proposed can be said to be so. We are not opposed to all retrospective modifications, as they can be considered acceptable in very unusual circumstances where strong evidence is advanced that they are justified. The evidence required to consider retrospectivity for a non-commercial mod is of a lower standard, but there is little real need here. It is true that the framer of a mod in relation to voting rules could be assisted in the analysis, framing and presentation of his mod if he had recent real voting data to use, but this advantage is not quite sufficient to overcome the natural predisposition against retrospectivity.
3.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P206? Please give rationale.	Yes	The proposed Implementation Date of 5 Working Days following an Authority decision is entirely achievable and seems reasonable (it would take a while before it became operationally-relevant)
4.	Do you agree with the Panel's view that the legal text provided in the draft Modification Report delivers the solution agreed by the Modification Group? Please give rationale.	Yes	
5.	Are there any further comments on P206 that you wish to make?	No	

Please send your responses by **12:00 on Monday 27 November 2006** to modification.consultations@elexon.co.uk and please entitle your email '**P206 Report Phase Consultation**'. Please note that any responses received after the deadline may not receive due consideration by the Panel.

Any queries on the content of the consultation pro-forma should be addressed to Dean Riddell on 020 7380 4366, email address dean.riddell@elexon.co.uk.

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Respondent:	Ben Sheehy
Company Name:	E.ON UK plc
No. of BSC Parties Represented	11
Parties Represented	E.ON UK plc, Powergen Retail Limited, Citigen (London) Limited, Midlands Gas Limited, TXU Europe (AHG) Limited, TXU Europe (AHGD) Limited, TXU Europe (AH Online) Limited, TXU Europe (AHST) Limited, Economy Power, Western Gas Limited, Enfield Energy Centre Limited
No. of Non BSC Parties Represented	0
Non Parties represented	<i>Please list all non Parties responding on behalf of (including the respondent company if relevant).</i>
Role of Respondent	Supplier / Generator / Trader / Consolidator / Exemptable Generator
Does this response contain confidential information?	No.

Q	Question	Response	Rationale
1.	Do you agree with the Panel's provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P206 should not be made? Please give rationale.	No	We maintain that it would be more beneficial to implement greater transparency in practise now, rather than wait until the next election. However it is understandable that the Panel has noted the weight of concern regarding the principle of retrospection, as expressed by several Parties.
2.	Do you agree with the Panel's provisional recommendation to the Authority contained in the draft Modification Report that Alternative Modification P206 should be made? Please give rationale.	Yes	The Alternative corrects the needless and unhelpful secrecy of the current drafting and upholds the essential point, that increased transparency leads to more open governance arrangements, to the benefit of fair competition. It is an appropriate compromise given the weight of concern regarding retrospection.

Q	Question	Response	Rationale
3.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P206? Please give rationale.	Yes	
4.	Do you agree with the Panel's view that the legal text provided in the draft Modification Report delivers the solution agreed by the Modification Group? Please give rationale.	Yes	The clarification from BSCCo that 'Candidate' refers to a named candidate is welcome.
5.	Are there any further comments on P206 that you wish to make?	Yes	<p>This modification was intended to be comparatively modest in scope, as it was anticipated that any governance proposal was likely to raise wider issues. We are therefore satisfied that, in addition to acknowledging the importance of increased transparency, the Panel's discussion noted that:</p> <ul style="list-style-type: none"> • Even minor governance proposals produce emotive arguments, And – • It is difficult to tie governance proposals to the current Applicable Objectives. <p>It is also notable that under the current arrangements even modest proposals require the completion of the full – and lengthy – modification process.</p> <p>We are confident that by these issues being raised now, any more-comprehensive governance proposals in the future should proceed more smoothly than they otherwise would have done.</p>

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Dear Sirs,

This response is sent on behalf of Scottish and Southern Energy, Southern Electric, Keadby Generation Ltd., Medway Power Ltd. and SSE Energy Supply Ltd.

In relation to the five questions contained within your note of 20th November 2006, and the associated Modification Report consultation for P206, we have the following comments to make.

Q1 Do you agree with the Panel's provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P206 should not be made? Please give rationale.

Yes. The proposed P206 modification clearly seeks a retrospective implementation in our view. We do not favour retrospective implementation of rule changes and would always seek to keep to a minimum any such changes.

It is suggested, as recognised in Section 3.5 of the Assessment Consultation, that “the Modification Proposal was submitted before the conclusion of the 2006 Panel election and it could thus potentially be argued that it was not strictly speaking seeking retrospective change”. This is a flawed argument in our view and we do not accept it. The proposal was raised in the midst of the election process, at the critical stage of voting. Indeed, the report indicates that upto two thirds of the vote had been cast by the time the proposal was submitted. The election process has now completed and is a matter for the history books and the proposal cannot therefore be agreed or implemented before its conclusion. On both accounts this seems to fit the dictionary definition of retrospective, i.e. “applying to the past”.

Furthermore, it is an absurd and dangerous argument to suggest that a modification is not retrospective if when raising it the proposer suggests that the implementation date should align with the submission date. This takes no account of the practicalities and timescales of developing, assessing and implementing (if appropriate) a modification proposal. We suggests that if this argument were to be accepted, then practically all future modifications will include such wording and as a consequence we would anticipate a reduction in the efficiency of delivering change to the BSC, which would act contrary to applicable objective d).

Whilst the issue raised may be a non-commercial issue and perhaps deemed by some to have no significant impact if retrospectively implemented, we do not share this view. We feel that it is important to uphold the fundamental principle at stake and maintain the presumption against retrospection at every possible opportunity. This will avoid setting unnecessary and ill-advised precedents. It is inappropriate to sacrifice this principle on a non-material, non-commercial issue.

We consider that this issue is not material and therefore does not meet the criteria for retrospection previously outlined by the Authority in its P19 decision letter dated 1st August 2001.

Therefore, for all the reasons outlined above, we agree with the Panel that P206 (original) should not be made.

Q2 Do you agree with the Panel's provisional recommendation to the Authority contained in the draft Modification Report that Alternative Modification P206 should be made? Please give rationale.

Yes. The alternative P206 modification is better than the proposed P206 modification in that it is prospective, which mitigates our main concern with the P206 (original).

Whilst it is not immediately obvious how governance modifications meet the applicable objectives, it is our view that the alternative modification better meets applicable objective c) than the current baseline.

We believe that the alternative modification will lead to improved transparency of the election process, thus improving the governance arrangements. Improved transparency leads to greater confidence in the process amongst market players and improved confidence leads to greater certainty and reduced risk.

Such transparency and certainty will naturally tend towards a healthier competitive environment thus better meeting applicable objective c).

We would make the observation that it seems at odds with the democratic election process outlined within the BSC that the final results are not disclosed in full and that candidates have no opportunity to understand exactly how the final votes were cast. This also seems inconsistent with virtually every other voting system that we are aware of, particularly political voting systems.

Therefore we agree with the Panel that P206 (alternative) should be made.

Q3 Do you agree with the Panel's view that the legal text provided in the draft Modification Report correctly addresses the defect or issue identified in the Modification Proposal? Please give rationale.

It appears to.

Q4 Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P206? Please give rationale.

If the Modification Proposal P206 is approved, we agree with the proposed BSC Panel recommendation on the timing for the Implementation Date, as outlined in the Modification Report.

Q5 Are there any further comments on P206 that you wish to make?

Nothing further at this time.

Regards

Garth Graham
Scottish and Southern Energy plc

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Respondent:	<i>Bec Thornton</i>
Company Name:	<i>National Grid</i>
No. of BSC Parties Represented	<i>1</i>
Parties Represented	<i>National Grid Electricity Transmission plc</i>
No. of Non BSC Parties Represented	<i>None</i>
Non Parties represented	<i>None</i>
Role of Respondent	<i>Transmission Company</i>
Does this response contain confidential information?	<i>No</i>

Q	Question	Response ¹	Rationale
1.	Do you agree with the Panel's provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P206 should not be made? Please give rationale.	Neutral	We are neutral as to whether Proposed Modification P206 should be made
2.	Do you agree with the Panel's provisional recommendation to the Authority contained in the draft Modification Report that Alternative Modification P206 should be made? Please give rationale.	Neutral	We are neutral as to whether Alternative Modification P206 should be made.

Q	Question	Response ¹	Rationale
3.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P206? Please give rationale.	Yes	We agree with the Panel's provisional recommendation concerning the implementation date for P206.
4.	Do you agree with the Panel's view that the legal text provided in the draft Modification Report delivers the solution agreed by the Modification Group? Please give rationale.	Yes	We believe that the legal text delivers the solution agreed by the Modification Group.
5.	Are there any further comments on P206 that you wish to make?	No	

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BSC Parties ("Parties") and other interested parties are invited to respond to this consultation expressing their views or provide any further evidence on any of the matters contained within this document. In particular views are sought in respect of the following questions. Parties are invited to supply the rationale for their responses.

Respondent:	<i>Name James Kelly</i>
Company Name:	<i>SAIC Ltd. (for and on behalf of ScottishPower)</i>
No. of BSC Parties Represented	<i>7</i>
Parties Represented	<i>Scottish Power UK plc, ScottishPower Energy Management Ltd, ScottishPower Generation Ltd, ScottishPower Energy Retail Ltd, SP Transmission Ltd, SP Manweb plc, SP Distribution Ltd</i>
No. of Non BSC Parties Represented	<i>0</i>
Non Parties represented	<i>Please list all non Parties responding on behalf of (including the respondent company if relevant).</i>
Role of Respondent	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / Distributor / other – please state ¹)</i>
Does this response contain confidential information?	<i>No</i>

Q	Question	Response ¹	Rationale
1.	Do you agree with the Panel's provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P206 should not be made? Please give rationale.	<i>Yes</i>	<i>ScottishPower supports the Panels provisional recommendation on Panel Elections as Parties will have cast their votes on the premise that no voting data was being released. We also oppose the release of retrospective data; the data is confidential and it's release could potentially be open to legal challenge. Furthermore, we do not believe that the Proposed Modification P206 would benefit the applicable BSC objectives.</i>

¹ Delete as appropriate – please do not use strikethrough, this is to make it easier to analyse the responses

Q	Question	Response ¹	Rationale
2.	Do you agree with the Panel's provisional recommendation to the Authority contained in the draft Modification Report that Alternative Modification P206 should be made? Please give rationale.	Yes	ScottishPower supports the recommendation that Alternative Modification P206 be made. The Alternative Modification would provide transparency for future BSC Panel Elections and address the issue of the confidentiality of the data to be published. The publication of voting data may also further encourage the interests of new entrants.
3.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P206? Please give rationale.	Yes	ScottishPower supports the proposed implementation date for P206.
4.	Do you agree with the Panel's view that the legal text provided in the draft Modification Report delivers the solution agreed by the Modification Group? Please give rationale.	Yes	ScottishPower agrees that the legal text in the draft Modification report accurately reflects the solution agreed by the Modification Group.
5.	Are there any further comments on P206 that you wish to make?	No	

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Respondent:	<i>Dave Wilkerson</i>
Company Name:	Centrica
No. of BSC Parties Represented	9
Parties Represented	<i>Accord Energy Ltd; British Gas Trading Ltd; Centrica Barry Ltd; Centrica Brigg Ltd; Centrica KL Ltd; Centrica KPS Ltd; Centrica PB Ltd; Centrica RPS Ltd; Centrica SHB Ltd</i>
No. of Non BSC Parties Represented	–
Non Parties represented	–
Role of Respondent	<i>(Supplier/Generator/ Trader)</i>
Does this response contain confidential information?	<i>No</i>

Q	Question	Response ¹	Rationale
1.	Do you agree with the Panel's provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P206 should not be made? Please give rationale.	Yes	As noted in our response to the Assessment Procedure consultation, Centrica believes that there is not a sufficiently strong argument for retrospection for this Modification, and so we do not believe that the proposed Modification should be made.
2.	Do you agree with the Panel's provisional recommendation to the Authority contained in the draft Modification Report that Alternative Modification P206 should be made? Please give rationale.	Yes	We believe that the Alternative Modification is an improvement on the current baseline. As noted in the Modification Group and Panel discussions, it is very difficult to pin governance-related Modifications onto the existing BSC Objectives, and so it may be that a review of these Objectives need to take place to better enable such changes to be made.

Q	Question	Response ¹	Rationale
3.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P206? Please give rationale.	Yes	
4.	Do you agree with the Panel's view that the legal text provided in the draft Modification Report delivers the solution agreed by the Modification Group? Please give rationale.	Yes	
5.	Are there any further comments on P206 that you wish to make?	No	

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