

Responses from P206

Consultation Issued 29 September 2006

Representations were received from the following parties

No	Company	File number	No BSC Parties Represented	No Non-Parties Represented
1.	SmartestEnergy Ltd	P206_AR_01	1	0
2.	E.ON UK Plc	P206_AR_02	13	0
3.	Centrica	P206_AR_03	9	0
4.	EDF Energy	P206_AR_04	9	0
5.	National Grid	P206_AR_05	1	0
6.	British Energy	P206_AR_06	5	0
7.	RWE Npower plc	P206_AR_07	11	0
8.	Scottish Power	P206_AR_08	6	0
9.	Scottish and Southern Energy plc	P206_AR_09	6	0
10.	E.ON UK Energy Services	P206_AR_10	0	1

P206 ASSESSMENT PROCEDURE 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:	<i>Colin Prestwich</i>
Company Name:	<i>SmartestEnergy Ltd</i>
No. of BSC Parties Represented	<i>1</i>
Parties Represented	<i>SmartestEnergy Ltd</i>
No. of Non BSC Parties Represented (e.g. Agents)	<i>0</i>
Non Parties represented	
Role of Respondent	<i>Supplier/Trader / Consolidator</i>
Does this response contain confidential information?	<i>No</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current Code baseline? Please give rationale and state objective(s)	Yes	
2.	Do you believe Alternative Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current Code baseline? Please give rationale and state objective(s)	Yes	
3.	Do you believe Alternative Modification P206 better facilitates the achievement of Applicable BSC Objectives when compared to the Proposed Modification? Please give rationale and state objective(s)	No	

Q	Question	Response	Rationale
4.	Do you believe that the voting numbers in the 2006 Panel Elections should be disclosed retrospectively? Please give rationale.	Yes	I do not believe voting would have been any different had it been known that the numerical results would be published. If we were talking about publishing a list of who voted for whom then that might be a different matter.
5.	Would implementation of Proposed or Alternative Modification P206 cause you to vote any differently in Panel elections? Please give rationale.	No	
6.	Do you believe that the disclosure of voting information as in Proposed or Alternate Modification P206 could compromise the confidentiality of voting? Please give rationale. If yes, please provide examples to support your view.	No	
7.	Do you believe that any alternative solution should be used that minimises any risk to confidentiality? e.g. non-disclosure of votes below a given number. Please give rationale.	No	
8.	Do you believe that implementation of Proposed or Alternative Modification P206 would affect the level of participation in Panel elections by candidates or voting Parties? Please give rationale.	No	
9.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	
10.	Does P206 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	

Q	Question	Response	Rationale
11.	Are there any further comments on P206 that you wish to make?	Yes	I never thought such a simple modification could be made to look so potentially controversial and complicated.

Parties are encouraged to provide financial information with regard to either the costs or benefits of the Modification Proposal to support the Assessment Procedure. Where requested this information can be treated as confidential, although all information will be provided to the Authority.

Please send your responses by **12 noon on Friday 13 October 2006** to modification.consultations@elexon.co.uk and please entitle your email '**P206 Assessment Consultation**'. Please note that any responses received after the deadline may not receive due consideration by the Modification Group.

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.

P206 ASSESSMENT PROCEDURE 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:	Ben Sheehy
Company Name:	E.ON UK Plc
No. of BSC Parties Represented	13
Parties Represented	Citigen London Ltd., Cottam Development Centre Ltd., E.ON UK Ironbridge Ltd., E.ON UK plc, Economy Power plc, Enfield Energy Centre Ltd., Midlands Gas Ltd., Powergen Retail Ltd., TXU Europe (AH Online) Ltd., TXU Europe (AHG) Ltd., TXU Europe (AHGD) Ltd., TXU Europe (AHST) Ltd., Western Gas Ltd.
No. of Non BSC Parties Represented (e.g. Agents)	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 believe Proposed Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current Code baseline? Please give rationale and state objective(s)	Yes	<p>The Proposal aims to address two separate points. Firstly, it will be more sensible for the industry to assess any future governance developments openly, using actual data, than it will be to make judgements on speculative modelled data. Experienced modification group members will know that the latter approach is likely to be hampered by politics and suspicion of motives. The second point is that governance is a material risk issue for Parties; particularly now, as the role of ELEXON is being re-assessed for the future. Parties will be more receptive to change if they can be confident that governance arrangements are robust. Transparency fosters such confidence.</p> <p>Parties should be aware that the current voting system employed in the BSC, particularly in respect of the none disclosure of actual results, is</p>

Q	Question	Response	Rationale
			<p>without precedent. As such, it should be open to transparent evaluation. Parties should also be reminded that the principle of the secret ballot is universally accepted and would not be compromised by this Proposal.</p> <p>The Modification Group has acknowledged that it is difficult to tie governance issues to the BSC Objectives. However on ELEXON's advice we are confident that the proposal better facilitates Objective (c). Transparency will benefit competition as every Party will be certain that governance processes are both clear and accessible.</p>
2.	<p>Do you believe Alternative Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current Code baseline? Please give rationale and state objective(s)</p>	Yes	<p>Without disclosure of the BSC Panel Election results of 2006, the Proposal will still better facilitate Objective (c), as the governance flaw in the baseline – that the non disclosure of results is unnecessary, inhibits evaluation and is without precedent – will be corrected.</p>
3.	<p>Do you believe Alternative Modification P206 better facilitates the achievement of Applicable BSC Objectives when compared to the Proposed Modification? Please give rationale and state objective(s)</p>	No	<p>We maintain that there will be an additional benefit against Objective (c) if Parties are allowed to evaluate any new governance proposals openly, with reference to the results of the 2006 Panel Election rather than speculative data.</p> <p>However we recognise the legitimate concerns of the majority of the Modification Group that the retrospective implementation of proposals should only be allowed in exceptional circumstances. The counter view is that this Proposal will not have any commercial impact. It is also notable that the Proposal was submitted a week before the close of the voting deadline.</p> <p>We accept that the Alternative is a suitable compromise – and are satisfied that the Group has recognised the importance in principle of introducing transparency.</p>

Q	Question	Response	Rationale
4.	Do you believe that the voting numbers in the 2006 Panel Elections should be disclosed retrospectively? Please give rationale.	Yes	As mentioned above, there will be additional benefit if the voting numbers are disclosed.
5.	Would implementation of Proposed or Alternative Modification P206 cause you to vote any differently in Panel elections? Please give rationale.	No	---
6.	Do you believe that the disclosure of voting information as in Proposed or Alternate Modification P206 could compromise the confidentiality of voting? Please give rationale. If yes, please provide examples to support your view.	No	The Modification Group agreed that, in practise, it would not be possible to guess which Party voted for which Candidate. Even supposing it to be possible, the 'guessing Party' would only have a useless assumption; the principle of the secret ballot would not be affected.
7.	Do you believe that any alternative solution should be used that minimises any risk to confidentiality? e.g. non-disclosure of votes below a given number. Please give rationale.	No	Adding a target number, above which votes could be disclosed, would be contrary to aim of the Proposal, which seeks to add transparency to an unusual and needlessly secretive voting system. It would also be unnecessary, as any 'guessing Party' would merely attain a useless assumption.
8.	Do you believe that implementation of Proposed or Alternative Modification P206 would affect the level of participation in Panel elections by candidates or voting Parties? Please give rationale.	Yes	<p>The essential point here is that under the current arrangements we do know what the level of participation is. Voting Party turnout could be very low; a quality issue in itself.</p> <p>That said, the Proposal is likely to increase participation in Panel elections, as at present more experienced Parties understand the peculiarities of the voting system better than new entrants. Of around ninety Trading Parties or Trading Party Groups only 5 candidates stood in 2004 and only 7 in 2006.</p>

Q	Question	Response	Rationale
9.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	The Modification Group adhered to the Panel's instructions to keep the remit of the assessment focussed.
10.	Does P206 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	---
11.	Are there any further comments on P206 that you wish to make?	No	---

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P206 ASSESSMENT PROCEDURE 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:	<i>Dave Wilkerson</i>
Company Name:	<i>Centrica</i>
No. of BSC Parties Represented	<i>9</i>
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 (e.g. Agents)	<i>–</i>
Non Parties represented	<i>–</i>
Role of Respondent	<i>(Supplier/Generator/ Trader)</i>
Does this response contain confidential information?	<i>No</i>

Q	Question	Response Error! Bookmark not defined.	Rationale
1.	Do you believe Proposed Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current Code baseline? Please give rationale and state objective(s)	No	While we support the introduction of the requirement to publish the results of the Panel elections, on the basis that open and transparent governance would better facilitate BSC Objective C by promoting competition, we do not believe that the retrospective element is desirable. We do not believe that the significance of this Modification is such that an exception to precedent should be made. We therefore do not believe that the Proposed Modification is an improvement to the current baseline.
2	Do you believe Alternative Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current Code baseline? Please give rationale and state objective(s)	Yes	We believe that the Alternative Modification better facilitates BSC Objective C, by promoting transparent governance and thereby promoting effective competition.

Q	Question	Response Error! Bookmark not defined.	Rationale
3	Do you believe Alternative Modification P206 better facilitates the achievement of Applicable BSC Objectives when compared to the Proposed Modification? Please give rationale and state objective(s)	Yes	The removal of the retrospective element makes the Modification viable.
4	Do you believe that the voting numbers in the 2006 Panel Elections should be disclosed retrospectively? Please give rationale.	No	There is a possibility, however small, that parties may have voted differently had they known that their votes would be published – it is not appropriate for election rules to be changed after the event. This modification could have been raised some time ago if the proposer had wanted the 2006 election results to be published.
5	Would implementation of Proposed or Alternative Modification P206 cause you to vote any differently in Panel elections? Please give rationale.	No	We would hope that parties vote for the candidates they believe are the most appropriate to sit on the Panel, whether or not their votes would be published.
6	Do you believe that the disclosure of voting information as in Proposed or Alternate Modification P206 could compromise the confidentiality of voting? Please give rationale. If yes, please provide examples to support your view.	No	It has not been demonstrated that there is any risk to confidentiality of voting. Even if there were low turnout, for example with the replacement of only one Panel member, it would be even more difficult to work out who had voted and for whom.
7	Do you believe that any alternative solution should be used that minimises any risk to confidentiality? e.g. non-disclosure of votes below a given number. Please give rationale.	No	We don't believe there is a risk to confidentiality.
8	Do you believe that implementation of Proposed or Alternative Modification P206 would affect the level of participation in Panel elections by candidates or voting Parties? Please give rationale.	No	

Q	Question	Response Error! Bookmark not defined.	Rationale
9.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	
10.	Does P206 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	
11.	Are there any further comments on P206 that you wish to make?	No	

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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; Seaboard Energy Limited
No. of Non BSC Parties Represented (e.g. Agents)	0
Non Parties represented	N/A
Role of Respondent	Supplier/Generator/Trader/Distributor
Does this response contain confidential information?	No

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current Code baseline? Please give rationale and state objective(s)	No	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.
2.	Do you believe Alternative Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current Code baseline? Please give rationale and state objective(s)	Yes	EDF Energy agrees with the modifications group that BSC Objective (c) is most appropriate, because perceptions of transparency and confidence in governance arrangements are linked to competition. Linking this type of modification to specific BSC objectives is more difficult than is usually the case.

Q	Question	Response	Rationale
3.	Do you believe Alternative Modification P206 better facilitates the achievement of Applicable BSC Objectives when compared to the Proposed Modification? Please give rationale and state objective(s)	Yes	Because it is not retrospective, on any interpretation, whereas Mod 206 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.
4.	Do you believe that the voting numbers in the 2006 Panel Elections should be disclosed retrospectively? Please give rationale.	No	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.
5.	Would implementation of Proposed or Alternative Modification P206 cause you to vote any differently in Panel elections? Please give rationale.	No	We would vote just the same as if it were a secret ballot. Transparency would make no difference. We simply cast our votes for the best candidates as independent BSC panellists.
6.	Do you believe that the disclosure of voting information as in Proposed or Alternate Modification P206 could compromise the confidentiality of voting? Please give rationale. If yes, please provide examples to support your view.	No	
7.	Do you believe that any alternative solution should be used that minimises any risk to confidentiality? e.g. non-disclosure of votes below a given number. Please give rationale.	No	

Q	Question	Response	Rationale
8.	Do you believe that implementation of Proposed or Alternative Modification P206 would affect the level of participation in Panel elections by candidates or voting Parties? Please give rationale.	No	
9.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	
10.	Does P206 raise any issues that you believe have not been identified so far and that should be progressed as pare of the Assessment Procedure? Please give rationale	No	
11.	Are there any further comments on P206 that you wish to make?	No	

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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 (e.g. Agents)	<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	Rationale
1.	Do you believe Proposed Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current Code baseline? Please give rationale and state objective(s)	Neutral	We are neutral as to whether Proposed Modification P206 better facilitates the Applicable BSC Objectives when compared to current Code baseline.
2.	Do you believe Alternative Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current Code baseline? Please give rationale and state objective(s)	Neutral	We are neutral as to whether the Alternative Modification P206 better facilitates the Applicable BSC Objectives when compared to current Code baseline.
3.	Do you believe Alternative Modification P206 better facilitates the achievement of Applicable BSC Objectives when compared to the Proposed Modification? Please give rationale and state objective(s)	Neutral	We are neutral as to whether the Alternative Modification P206 better facilitates the Applicable BSC Objectives when compared to the Proposed Modification.

Q	Question	Response	Rationale
4.	Do you believe that the voting numbers in the 2006 Panel Elections should be disclosed retrospectively? Please give rationale.	Neutral	We are neutral as to whether the voting numbers in the 2006 Panel Elections should be disclosed retrospectively.
5.	Would implementation of Proposed or Alternative Modification P206 cause you to vote any differently in Panel elections? Please give rationale.	N/A	National Grid does not vote in panel elections.
6.	Do you believe that the disclosure of voting information as in Proposed or Alternate Modification P206 could compromise the confidentiality of voting? Please give rationale. If yes, please provide examples to support your view.	Neutral	We are neutral as to whether the disclosure of voting information as in Proposed or Alternative Modification P206 could compromise the confidentiality of voting.
7.	Do you believe that any alternative solution should be used that minimises any risk to confidentiality? e.g. non-disclosure of votes below a given number. Please give rationale.	Neutral	We are neutral as to whether any alternative solution should be used that minimises any risk to confidentiality.
8.	Do you believe that implementation of Proposed or Alternative Modification P206 would affect the level of participation in Panel elections by candidates or voting Parties? Please give rationale.	Neutral	We are neutral as to whether the implantation of Proposed or Alternative Modification P206 would affect the level of participation in Panel elections by candidates or voting Parties.
9.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	
10.	Does P206 raise any issues that you believe have not been identified so far and that should be progressed as pare of the Assessment Procedure? Please give rationale	No	
11.	Are there any further comments on P206 that you wish to make?	No	

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Respondent:	<i>Steven Eyre</i>
Company Name:	<i>British Energy</i>
No. of BSC Parties Represented	<i>5</i>
Parties Represented	<i>British Energy Power & Energy Trading Ltd, British Energy Generation Ltd, Eggborough Power Ltd, British Energy Direct Ltd and British Energy Generation (UK) Ltd</i>
No. of Non BSC Parties Represented (e.g. Agents)	<i>-</i>
Non Parties represented	<i>-</i>
Role of Respondent	<i>Supplier/Generator/Trader/Consolidator/Exemptable Generator/ Party Agent</i>
Does this response contain confidential information?	<i>No</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current Code baseline? Please give rationale and state objective(s)	No	The publication of voting information in respect of Panel elections would clearly introduce greater transparency and confidence in the election arrangements. However, these benefits are outweighed by the proposal to apply the modification retrospectively. Retrospectivity per se undermines market confidence and increases regulatory uncertainty which in turn creates barriers to entry. Consequently, the proposed modification is likely to have a negative impact on applicable BSC objective (c).

Q	Question	Response	Rationale
2.	<p>Do you believe Alternative Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current Code baseline?</p> <p>Please give rationale and state objective(s)</p>	Yes	<p>With the removal of the retrospective element from the original proposal we consider that the alternative modification would introduce the benefits described above. However, we note that it is difficult to apply the BSC objectives to modifications that are seeking to improve the BSC governance arrangements. With this in mind we consider that the alternative modification is most likely to better facilitate the achievement of BSC objective (c) in that making the governance arrangements more transparent is likely to reduce barriers to entry and thus increase competition.</p> <p>We do not consider the possibility of the modification allowing potential future modifications in respect of the election process to be properly assessed as a valid reason for supporting the modification. Evaluating proposed modifications should be constrained to the current BSC baseline and not attempt to prejudge possible future modifications. Furthermore, there appears to be a presumption that the current election process is flawed which is an issue which is not part of the Terms of Reference nor was it considered by the Modification Group. Consequently, we do not support the 2nd and 3rd reasons set out under Applicable BSC Objective (c) in para 4.2.2 of the Assessment consultation.</p>
3.	<p>Do you believe Alternative Modification P206 better facilitates the achievement of Applicable BSC Objectives when compared to the Proposed Modification? Please give rationale and state objective(s)</p>	Yes	See above
4.	<p>Do you believe that the voting numbers in the 2006 Panel Elections should be disclosed retrospectively? Please give rationale.</p>	No	See above
5.	<p>Would implementation of Proposed or Alternative Modification P206 cause you to vote any differently in Panel elections? Please give rationale.</p>	No	<p>Despite not altering the way in which we would vote we do not believe this is justification to support the proposed modification. Prior to participating in an election process it is vital that parties are fully aware of the election arrangements so that they are able to participate in the knowledge that these arrangements will not be amended retrospectively.</p>

Q	Question	Response	Rationale
6.	Do you believe that the disclosure of voting information as in Proposed or Alternate Modification P206 could compromise the confidentiality of voting? Please give rationale. If yes, please provide examples to support your view.	No	
7.	Do you believe that any alternative solution should be used that minimises any risk to confidentiality? e.g. non-disclosure of votes below a given number. Please give rationale.	No	Currently we do not consider there to be an issue regarding confidentiality. However, if a significant number of parties believe there is an issue which may impact on their future participation in the Panel election process then further consideration of a possible de-minimis disclosure may be appropriate. We consider it essential that the election process is designed in a way that ensures full participation.
8.	Do you believe that implementation of Proposed or Alternative Modification P206 would affect the level of participation in Panel elections by candidates or voting Parties? Please give rationale.	No	See above
9.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	
10.	Does P206 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	
11.	Are there any further comments on P206 that you wish to make?	No	

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Respondent:	<i>Charles Ruffell</i>
Company Name:	RWE Npower plc
No. of BSC Parties Represented	<i>11</i>
Parties Represented	RWE Npower plc, RWE Trading GmbH, Great Yarmouth Power Ltd, Npower Cogen Trading Ltd, Npower Commercial Gas Ltd, Npower Direct Ltd, Npower Ltd, Npower Northern Ltd, Npower Northern Supply Ltd, Npower Yorkshire Ltd, Npower Yorkshire Supply Ltd
No. of Non BSC Parties Represented (e.g. Agents)	<i>None</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 /</i>
Does this response contain confidential information?	<i>No</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current baseline? Please give rationale and state objective(s)	No	Governance-related modifications can be difficult to assess against the achievement of the Applicable BSC Objective. However, we believe P206 is relevant to Applicable Objective (C). The retrospective element of the proposal does not facilitate the achievement of the objective when compared to the current baseline as it will undermine confidence in the existing voting process.
2.	Do you believe Alternative Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current baseline? Please give rationale and state objective(s)	Yes	Governance-related modifications can be difficult to assess against the achievement of the Applicable BSC Objective. However, we believe P206 is relevant to Applicable Objective (C). We support Alternative Modification P206 as by improving transparency around the governance of a key

			industry body it represents an improvement compared to the current baseline.
3.	Do you believe Alternative Modification P206 better facilitates the achievement of Applicable BSC Objectives when compared to the Proposed Modification? Please give rationale and state objective(s)	Yes	Governance-related modifications can be difficult to assess against the achievement of the Applicable BSC Objective. However, we believe P206 is relevant to Applicable Objective (C). We support Alternative Modification P206 as it is prospective in application rather than retrospective, as is the case with the Proposed Modification.
4.	Do you believe that the voting numbers in the 2006 Panel Elections should be disclosed retrospectively? Please give rationale.	No	Voters took part in the 2006 Panel Elections on the basis that votes would not be disclosed. While it is not possible to say whether behaviours would have been different, we do not support the principle of retrospective application of rule changes unless in exceptional circumstances. This is not the case in this instance.
5.	Would implementation of Proposed or Alternative Modification P206 cause you to vote any differently in Panel elections? Please give rationale.	No	Providing the rules are known in advance, it will be up to each party to decide how they wish to vote.
6.	Do you believe that the disclosure of voting information as in Proposed or Alternate Modification P206 could compromise the confidentiality of voting? Please give rationale. If yes, please provide examples to support your view.	No	Although it might be possible to infer voting patterns from the aggregated numbers, at best this will be an informed guess. Presumably, parties could attempt to infer voting patterns under the current arrangements.
7.	Do you believe that any alternative solution should be used that minimises any risk to confidentiality? e.g. non-disclosure of votes below a given number. Please give rationale.	No	Whilst there may be some merit conceptually in setting a de minimis level, it is not clear how the level could be set ex ante in practice.
8.	Do you believe that implementation of Proposed or Alternative Modification P206 would affect the level of participation in Panel elections by candidates or voting Parties? Please give rationale.	No	Increased transparency may encourage greater participation, particularly if potential Panel candidates are more confident under the arrangements.

9.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	We believe the disclosure of the specified aggregated voting data, with the Code amendment applied prospectively is the best solution.
1	Does P206 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	The Modification Group identified and considered a comprehensive range of issues. It is not clear that any substantive issues remain to be addressed.
1	Are there any further comments on P206 that you wish to make?	No	

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Please send your responses by **12 noon on Friday 13 October 2006** to modification.consultations@elexon.co.uk and please entitle your email '**P206 Assessment Consultation**'. Please note that any responses received after the deadline may not receive due consideration by the Modification Group.

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.

P206 ASSESSMENT PROCEDURE 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:	<i>Timothy Roberts</i>
Company Name:	<i>Scottish Power</i>
No. of BSC Parties Represented	<i>6</i>
Parties Represented	<i>Scottish Power Energy Management Ltd; Scottish Power Generation Ltd; Scottish Power Energy Retail Ltd; SP Transmission Ltd; SP Manweb PLC; SP Distribution Ltd.</i>
No. of Non Parties Represented (e.g. Agents)	
Non Parties represented	
Role of Respondent	<i>Supplier/Generator/ Trader / Consolidator / Exemptable Generator / Party Agent /</i>
Does this response contain confidential information?	

Q	Question	Response	Rationale
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Q	Question	Response	Rationale
1.	<p>Do you believe Proposed Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current Code baseline?</p> <p>Please give rationale and state objective(s)</p>	No	<p>We believe that Proposed Modification P206 is flawed in that it seeks the disclosure of hitherto confidential information.</p> <p>Although it is unlikely that the spirit of this confidentiality would be breached by the requirements identified in the Proposal, we nonetheless believe that the data itself does remain subject to confidentiality. It seems likely, then, that such a provision would be open to legal challenge, which would render inefficiencies in ELEXON's administration of the Code.</p> <p>Such retrospective rules changes also introduce uncertainty and can send the wrong signals to the market, discouraging potential new entrants.</p> <p>In view of the above, we consider that Proposed Modification P206 would actually serve to frustrate the achievement of applicable objectives C and D.</p>
2.	<p>Do you believe Alternative Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current Code baseline?</p> <p>Please give rationale and state objective(s)</p>	Yes	<p>Alternative Modification P206 would introduce greater transparency to the process undertaken in future BSC Panel elections and address the issue of the confidentiality of the data to be made available.</p> <p>This increased transparency may serve to further encourage the interests of potential new market entrants, so satisfying applicable objective C.</p>
3.	<p>Do you believe Alternative Modification P206 better facilitates the achievement of Applicable BSC Objectives when compared to the Proposed Modification? Please give rationale and state objective(s)</p>	Yes	<p>By removing the requirement for the provision of retrospective data, we believe that Alternative Modification P206 better facilitates the achievement of the Applicable BSC Objectives compared to the Proposed Modification.</p>
4.	<p>Do you believe that the voting numbers in the 2006 Panel Elections should be disclosed retrospectively?</p> <p>Please give rationale.</p>	No	<p>For the reasons provided in our response to Q1, and because all of the candidates had been declared and the majority of votes cast by the time the proposer raised P206, we do not believe that this information should now be made available.</p>

Q	Question	Response	Rationale
5.	<p>Would implementation of Proposed or Alternative Modification P206 cause you to vote any differently in Panel elections? Please give rationale.</p>	Yes	<p>While the implementation of Alternative Modification P206 would not influence our voting in the 2008 Panel elections, it is possible that having access to voting data from previous elections could.</p> <p>Therefore, the implementation of Proposed Modification P206 could have such an effect on our voting in the 2008 elections and the implementation of Alternative Modification P206 could influence our voting in any subsequent elections.</p>
6.	<p>Do you believe that the disclosure of voting information as in Proposed or Alternate Modification P206 could compromise the confidentiality of voting? Please give rationale. If yes, please provide examples to support your view.</p>	Yes and No	<p>We believe that the implementation of Proposed Modification P206 would be a technical breach of confidentiality, but believe that this would be addressed through the necessary Code changes to allow the implementation of Alternative Modification P206.</p> <p>(Note: This may have been better asked as two separate questions.)</p>
7.	<p>Do you believe that any alternative solution should be used that minimises any risk to confidentiality? e.g. non-disclosure of votes below a given number. Please give rationale.</p>	No	<p>This would further limit the utility of these proposals, the usefulness of which is already questionable.</p>
8.	<p>Do you believe that implementation of Proposed or Alternative Modification P206 would affect the level of participation in Panel elections by candidates or voting Parties? Please give rationale.</p>	No	<p>With regard to the participation of voting Parties, we believe this should be unaffected as voting will remain confidential following implementation of either the Proposed or Alternative Modifications.</p> <p>Whether the implementation of the Proposed or Alternative Modifications might result in potential candidates no longer being prepared to stand for election is rather more subjective. Nonetheless, we do not believe that genuinely suitable candidates would be dissuaded from standing as a result of the publication of voting shares.</p>
9.	<p>Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale</p>	No	

Q	Question	Response	Rationale
10.	Does P206 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	
11.	Are there any further comments on P206 that you wish to make?	No	<p>There may be some argument to completely overhaul the Panel election process, as the preference voting currently used has the potential to deliver unpopular results. For example, it is possible within the current system for a candidate to receive the majority of the second preference votes and yet lose out to a candidate who received only one vote, provided that the single vote was a first preference one.</p> <p>However, we recognise that the Mod Group's Terms of Reference would not allow for such wider discussion and another Modification Proposal would be required should any Party wish to pursue such a change.</p>

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P206 ASSESSMENT PROCEDURE 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:	<i>Andrew Colley</i>
Company Name:	<i>Scottish and Southern Energy plc.</i>
No. of BSC Parties Represented	<i>6</i>
Parties Represented	<i>SSE Energy Supply Ltd., SSE Generation Ltd., Keadby Generation Ltd., Medway Power Ltd., Southern Electric Power Distribution plc, Scottish Hydro-Electric Power Distribution Ltd</i>
No. of Non BSC Parties Represented (e.g. Agents)	<i>0</i>
Non Parties represented	
Role of Respondent	<i>Supplier/Generator/Trader/Distributor</i>
Does this response contain confidential information?	

Q	Question	Response	Rationale
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Q	Question	Response	Rationale
1.	<p>Do you believe Proposed Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current Code baseline? Please give rationale and state objective(s)</p>	No	<p>The proposed modification clearly seeks a retrospective implementation in our view. SSE do not favour retrospective implementation of rule changes and would always seek to keep to a minimum any such changes.</p> <p>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”.</p> <p>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. SSE 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).</p> <p>Whilst the issue raised may be a non-commercial issue and perhaps deemed by some to have no significant impact if retrospectively implemented, SSE 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.</p> <p>SSE 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.</p>

Q	Question	Response	Rationale
2.	<p>Do you believe Alternative Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current Code baseline?</p> <p>Please give rationale and state objective(s)</p>	Yes	<p>The alternative modification is better than the proposed modification in that it is prospective, which mitigates SSE's main concern with the proposed modification.</p> <p>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.</p> <p>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).</p> <p>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 SSE are aware of, particularly political voting systems.</p>
3.	<p>Do you believe Alternative Modification P206 better facilitates the achievement of Applicable BSC Objectives when compared to the Proposed Modification? Please give rationale and state objective(s)</p>	Yes	For the reasons explained in the answer to Q2 above.
4.	<p>Do you believe that the voting numbers in the 2006 Panel Elections should be disclosed retrospectively?</p> <p>Please give rationale.</p>	No	For the reasons explained in the answer to Q1 above.

Q	Question	Response	Rationale
5.	<p>Would implementation of Proposed or Alternative Modification P206 cause you to vote any differently in Panel elections? Please give rationale.</p>	No	<p>Our vote is cast based on the merits of the particular candidates and our belief in the skills and experience that they can bring to the role as an impartial industry expert. Publication of ex-post voting statistics would not in any way alter these prime considerations.</p>
6.	<p>Do you believe that the disclosure of voting information as in Proposed or Alternate Modification P206 could compromise the confidentiality of voting? Please give rationale. If yes, please provide examples to support your view.</p>	Partly	<p>The results of voting would be disclosed at an aggregated level per candidate. Whilst it is possible for a candidate to work out that he/she did not receive all of the votes that might have been indicated through election lobbying, in most scenarios the candidate would not be able to ascertain which particular votes changed.</p> <p>Only if the candidate received very few votes, i.e. between nil and 2 is it likely that he/she could work out exactly who did or did not vote. He/she would not be able to work out which other candidate the vote went to however, so the Party's confidentiality is still maintained. Any residual vote of 2 or less remaining with the candidate is likely to be the proposer of the candidate, whose vote can be surmised by industry anyway as this information is provided upon publication of the list of candidates.</p> <p>So the only Party confidentiality at risk, is likely to be the proposer of a candidate with 2 or less votes, and it can be reasonably argued that such confidentiality is broken upon declaration of the candidate in the first place.</p> <p>Realisation of this scenario is a risk of participation in the election and there is no compulsion upon any Party to vote for a particular candidate, despite any provisional support indicated as part of electioneering. We therefore do not believe this risk to be a significant barrier to making this change.</p>

Q	Question	Response	Rationale
7.	Do you believe that any alternative solution should be used that minimises any risk to confidentiality? e.g. non-disclosure of votes below a given number. Please give rationale.	Potentially	As stated in Q6 above, SSE do not consider that the risk presents a significant barrier to making the change as we believe that it is part of the price of participation. We also believe, as indicated in our answer to Q1, that it is right and proper to have full disclosure of voting results to deliver a fully democratic process. Notwithstanding the above, were sufficient concern expressed amongst industry regarding potential breach of confidentiality, then SSE would support non-disclosure of a specific candidate's votes below a de-minimis level. We believe that an appropriate de-minimis could be set at 3 votes or less, i.e. only votes greater than 4 would be disclosed. Such rules should apply per candidate.
8.	Do you believe that implementation of Proposed or Alternative Modification P206 would affect the level of participation in Panel elections by candidates or voting Parties? Please give rationale.	No	Reporting of voting statistics on an ex-post basis at an aggregated level seems highly unlikely to act as a deterrent to those wishing to participate. SSE consider that other factors would override any possible concerns in this area and that participation should remain consistent with historic levels.
9.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	
10.	Does P206 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	
11.	Are there any further comments on P206 that you wish to make?	No	

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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.

P206 ASSESSMENT PROCEDURE 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:	<i>Alastair Barnsley</i>
Company Name:	<i>E.ON UK Energy Services</i>
No. of BSC Parties Represented	<i>0</i>
Parties Represented	
No. of Non BSC Parties Represented (e.g. Agents)	<i>1</i>
Non Parties represented	<i>E.ON UK Energy Services</i>
Role of Respondent	<i>Party Agent</i>
Does this response contain confidential information?	<i>No</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current Code baseline? Please give rationale and state objective(s)	Yes / No	We wish to maintain a neutral position on this modification as we are not parties to the Agreement and as such this modification will have no direct impact on our activities.
2.	Do you believe Alternative Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current Code baseline? Please give rationale and state objective(s)	Yes / No	See response to question 1
3.	Do you believe Alternative Modification P206 better facilitates the achievement of Applicable BSC Objectives when compared to the Proposed Modification? Please give rationale and state objective(s)	Yes/ No	See response to question 1

Q	Question	Response	Rationale
4.	Do you believe that the voting numbers in the 2006 Panel Elections should be disclosed retrospectively? Please give rationale.	Yes / No	See response to question 1
5.	Would implementation of Proposed or Alternative Modification P206 cause you to vote any differently in Panel elections? Please give rationale.	Yes / No	See response to question 1
6.	Do you believe that the disclosure of voting information as in Proposed or Alternate Modification P206 could compromise the confidentiality of voting? Please give rationale. If yes, please provide examples to support your view.	Yes / No	See response to question 1
7.	Do you believe that any alternative solution should be used that minimises any risk to confidentiality? e.g. non-disclosure of votes below a given number. Please give rationale.	Yes / No	See response to question 1
8.	Do you believe that implementation of Proposed or Alternative Modification P206 would affect the level of participation in Panel elections by candidates or voting Parties? Please give rationale.	Yes / No	See response to question 1
9.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	Yes / No	See response to question 1
10.	Does P206 raise any issues that you believe have not been identified so far and that should be progressed as pare of the Assessment Procedure? Please give rationale	Yes / No	See response to question 1
11.	Are there any further comments on P206 that you wish to make?	No	

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