

Modification proposal:	Balancing and Settlement Code (BSC) [P206]: Publication of BSC Panel Election Results(P[206])		
Decision:	The Authority ¹ directs that this proposal be made ²		
Target audience:	National Grid Electricity Transmission Plc (NGET), Parties to the BSC and other interested parties		
Date of publication:	24 January 2007	Implementation Date:	31 January 2007

Background to the modification proposal

Existing BSC governance arrangements mean that certain information relating to Industry Panel Elections is not publicly disclosed. The proposer of the modification believes that changing this rule so that certain categories of information are made available could result in a more transparent governance system and a more open election process. The proposer also believes that this modification would allow for the accurate analysis of any future modification proposals relating to governance or voting systems under the BSC as real data would be available for assessment purposes.

The modification proposal

This modification proposal seeks to amend the Code so that BSCCo would be required to disclose the following information in relation to voting behaviour for Industry Panel Members:

- The total number of voting papers received;
- The total number of 1st, 2nd and 3rd preference votes received by each candidate over all voting papers (i.e. prior to voting rounds);
- The number of remaining voting papers and remaining Panel vacancies in each round (and hence the qualifying total in each round); and
- The number of relevant preference votes for each candidate in the remaining voting papers in each voting round.

In addition, the proposal seeks to introduce a retrospective element so that the results of the BSC panel elections held in 2006 would be disclosed as per the above criteria.

During the assessment of the modification proposal, the Modification Group put forward an alternative proposal. This alternative again seeks to make the disclosure of such information necessary but not retrospectively. As such, the first election data available would be that for the 2008 Panel Elections, unless an ad hoc election takes place if a Panel member were to resign between the implementation of P206 and the 2008 elections.

¹ The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

²This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

BSC Panel³ recommendation

At the BSC panel meeting held on 14 December, panel members did not vote in favour of approving modification P206 but did vote in favour of approving alternative modification P206.

The Authority's decision

The Authority has considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 20 December 2006. The Authority has considered and taken into account the responses to Elexon's⁴ consultation which are attached to the FMR⁵. The Authority has concluded that:

1. **implementation of the alternative modification proposal will better facilitate the achievement of the relevant objectives of the BSC⁶; and**
2. **directing that the modification be made is consistent with the Authority's principal objective and statutory duties⁷.**

Reasons for the Authority's decision

In reaching our decision on this modification proposal we have considered its' merits against all of the Applicable Code Objectives. In doing so we have concluded that Applicable Objective C is the most relevant and so have based our decision on this.

Applicable BSC Objective C: promoting 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.

On balance respondents are in favour of implementing the alternative proposal. The key point on which respondents are against the implementation of the original proposal is its retrospective element. Respondents on the whole were not concerned that this element would have affected their voting behaviour in the 2006 elections or would affect it in future elections but that it could set a damaging precedent and one that is unnecessary on this occasion.

While we do not consider that retrospectively disclosing the results of the 2006 election is of itself a contentious issue, we do believe that participants in that election should be afforded the confidentiality that they were guaranteed at the time votes were cast.

Ofgem's views on retrospective proposals have been expressed in previous decisions. Our decision on modification proposal P19 'To provide for the remedy of errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications' stated that we take the view that "BSC parties would generally prefer the assurance of rules that are unlikely to be changed retrospectively"⁸. More recently, our decision on Uniform

³ The BSC Panel is established and constituted pursuant to and in accordance with Section B of the BSC.

⁴ The role and powers, functions and responsibilities of Elexon are set out in Section C of the BSC.

⁵ BSC modification proposals, modification reports and representations can be viewed on the Elexon website at www.elexon.com

⁶ As set out in Standard Condition C3(3) of NGET's Transmission Licence, see: <http://62.173.69.60/index.php?pk=folder132230>

⁷ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989.

⁸ P19 [decision](#) letter

Network Code Proposals 117 and 122⁹ expanded on our views regarding retrospective rule changes. Specifically, we acknowledged that there may be rare occasions when a retrospective rule change may be necessary. The criteria that we identified were:

- A situation where the fault or error occasioning the loss (which would need to be material) was directly attributable to central arrangements;
- Combinations of circumstances that could not have been reasonably foreseen; or
- Where the possibility of a retrospective action had been clearly flagged to the participants in advance allowing the detail and process of the change to be finalised with retrospective effect.

We consider that modification proposal P206 does not fulfil any of the above criteria and so the retrospective element contained in the [original] proposal should not be approved.

Some respondents commented on other means of releasing this election information. For example, the option of acquiring this information via a Freedom of Information Act request was considered. However, we do not consider that this is relevant to the decision as the proposal seeks to amend the election process within the BSC which would provide a more efficient and transparent method as opposed to any formal legal requests, of which the practicability has not been explored.

Respondents have, on the whole, confirmed that they do not consider the disclosure of voting information to be a problem. Respondents have made it clear that they do not believe that voting behaviour would have been affected had they known that such information would have been made public and by making it public going forward, the majority do not believe that it would affect future voting behaviour. Ofgem agrees with respondents on this point and so is comfortable that the objectivity of voting should not be adversely affected by this modification proposal.

We agree with the view of the proposer and the majority of respondents that the alternative modification proposal would help to increase the transparency of the voting process. In particular, the disclosure of election results should encourage and therefore facilitate confidence in the governance arrangements and contribute to the promotion of effective competition. This not only contributes to the better facilitation of Applicable Objective C but is also consistent with Ofgem's principal objective and wider statutory duties.

This modification proposal, if implemented, should have a positive, if small, impact on the way in which BSC panel elections are conducted and for that reason, in addition to those explained above we consider that alternative modification P206 should be implemented.

Decision notice

In accordance with Standard Condition C3 of NGET's Transmission Licence, the Authority, hereby directs that modification proposal BSC P206: Publication of BSC Panel Election Results be made on 31 January 2007.



Sarah Harrison. Managing Director, Corporate Affairs

Signed on behalf of the Authority and authorised for that purpose.

⁹ http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/18191_UNC117-122D.pdf