

P262 Code Governance Review: Significant Code Reviews, Self-Governance and Code Administration Code of Practice Consultation Responses

Consultation issued on 20 October 2010

We received responses from the following Parties

Company	No BSC Parties / Non-Parties Represented	Role of Parties/non-Parties represented
Accenture Services Limited (for and on behalf of ScottishPower)	7/0	Supplier / Generator / Trader / Consolidator / Exemptible Generator / Distributor
Scottish and Southern Energy	9/0	Supplier / Generator / Trader / Consolidator / Exemptible Generator
EDF Energy	10/0	Supplier/Generator/Trader/Consolidator/Exemptible Generator/Party Agent
National Grid Electricity Transmission Plc	1/0	Transmission Company
Centrica	10/0	Supplier/Generator/Trader
RWE Npower	10/0	Generator, Supply Company, Trading Company
E.ON	6/0	Supplier / Generator / Trader / Consolidator / Exemptible Generator

What stage is this document in the process?

01 Initial Written Assessment

02 Definition Procedure

03 Assessment Procedure

04 Report Phase

Question 1: Do you agree with the Panel's majority view that the Proposed Modification should not be made?

Summary

Yes	No	Neutral/Other
6	1	0

Responses

Respondent	Response	Rationale
Accenture Services Limited (for and on behalf of ScottishPower)	Yes	Whilst the Proposed Modification was acceptable and better than the current arrangements [Applicable BSC Objectives (a) and (d)], the Alternative had additional benefits.
Scottish and Southern Energy	Yes	<p>We note that Modification Proposal P262 is part of a series of proposals raised by National Grid to implement the Final Proposals of the wider Code Governance Review which was initiated by Ofgem in November 2007 and taken forward for implementation via the Transmission Licence changes in July 2010.</p> <p>We concur with the unanimous recommendation of the Modification Group that, in principle, P262 does better achieve the Applicable BSC Objectives, and in particular Objectives (a) and (d). We are neutral on (b) and (c).</p> <p>However, when compared with the Alternative we agree with the Panel majority view that the Proposed Modification should not be made as the Alternative is Better and Best (when compared with the baseline and original).</p>
EDF Energy	Yes	<p>We believe the proposed modification better facilitates the applicable objectives compared to the baseline. In particular, the proposal would introduce benefits against Applicable Objectives (a) on the basis that it would ensure the BSC is consistent with the Transmission Licence and (d) on the basis that self governance arrangements should ensure that non-material modification proposals are progressed more efficiently.</p> <p>However, we consider the Alternative Modification is better than the original for the reasons set out below and therefore agree with the Panel's majority view.</p>

Respondent	Response	Rationale
National Grid Electricity Transmission Plc	No	We believe that the proposed modification should be made as it demonstrably achieves the applicable BSC objective (a) through implementing the licence modifications made in July 2010 within the BSC. In addition, the Proposed Modification also achieves applicable BSC objective (d) in relation to the Self-governance process as it can lead to greater efficiencies and reduce the implementation period for proposals progressing down the Self-governance route. Similarly the introduction of SCRs can lead to a more efficient process by reducing the duplication of similar modifications. The Code Administration Code of Practice will promote transparency for the Code Administrator and also provides an emphasis on supporting the smaller industry parties which promotes effective competition.
Centrica	Yes	The Alternative Modification would introduce the appropriate checks on ELEXON raised changes to the Code Administrator Code of Practice ensuring more efficient and appropriate administration of the BSC. It would therefore have additional benefit under applicable Objective (d) when compared to the proposed modification and is therefore Centrica's preferred solution. Hence we agree that the Proposed modification should not be made.
RWE Npower	Yes	Our preference is for the Alternative Modification to be made on the basis that it provides an additional check on the power of the Code Administrator by codifying the requirement for ELEXON to seek approval for any changes to the Code of Practice which they wish to make. In the absence of the Alternative Modification (e.g. if Ofgem decides that the Alternative Modification is inconsistent with the Transmission License) it is our view that the Proposed Modification better meets the applicable BSC objectives than the current arrangements, but the Alternative Modification is preferable.
E.ON	Yes	If the separate elements of P262 had been addressed by separate modifications we would have supported those for self-governance and to reference the CACoP. However as P262 also incorporates SCRs, on balance we do not support the Proposed or Alternative. This modification may have been presented as having positive impact under BSC Objective (a), but for both P262 Proposed and Alternative, as per our Assessment Phase comments, while neutral under (b) there are notable negative impacts under (c) and more negative than positive under (d). The Alternative is preferable to the Proposed, but we do not support either.

Respondent	Response	Rationale
		<p>Ofgem directed that licence modifications be made to implement their Code Governance Review Final Proposals and consequently both Proposed and Alternative P262 support (a), the efficient discharge by the Transmission Company of their obligations, as introduced by the new Licence conditions which they accepted. However the impact on all BSC Objectives must be considered and more weight given to the actual implications that the modification would have than the mere satisfaction of a directed change which Parties did not have a formal right to object or appeal. In order not to risk precluding a potential merits based appeal by affected parties under the statutory Energy Code Modification appeals process, the Panel recommendation must be based on due consideration of the modification merits, i.e. Objectives b, c and d. Taking the separate elements of P262 in turn, as also covered by CAPs 183, 184 and 185:</p> <p>Strategic Code Review – if SCRs are to take place, where a Proposer sees merit in continuing their modification in parallel with work taking place under an SCR this must remain the default route. Nevertheless „addition 1“ to enable a Proposer to request suspension of their proposal until they could take account of the SCR outcome, might result in development of a more fitting solution and ensure no duplication of work under a standard modification process and the SCR. However fundamentally SCRs are a flawed concept. Parties can bring forward modifications whenever they think a change is warranted. In comparison, though undertaking a comprehensive review of an area may on the face of it have merit, the prospect of any aspect of industry Codes being opened up to review at any time raises the spectre of unwarranted interference. Any change to a market framework such as the BSC that provides a mechanism for possibly unwarranted regulatory interventions and risk of frequent changes in policy increases market uncertainty for existing and prospective participants. Markets subject to such uncertainty are less likely to encourage new entrants and thus facilitate competition. Thus P262 Proposed would have a negative impact on Objective (c). The fact that once instigated any SCR may last up to and potentially beyond 12 months further increases regulatory uncertainty, also having a negative effect on competition, affecting companies’ ability to plan ahead, again deterring both new entrants and further investment by existing market participants. Thus a further negative impact on Objective (c), and also (d)</p>

Respondent	Response	Rationale
		<p>through the potential for stifling/delay of modifications raised by industry during an SCR.</p> <p>Any review undertaken with a lack of appropriate checks and balances allowing the Authority to both suggest and decide upon changes risks producing an impractical, unworkable solution: For instance the Authority directing the Licensee to raise a modification to perform a certain function risks enforcing an Authority-preferred solution that may have unforeseen negative effects for market participants, potentially a particular problem when concerning an area where the Licensee lacks expert knowledge. If the SCR process was to result instead in an overview of options from which the industry could develop the most suitable solution this would be more practical. As it is the process calls into question the independence of the Licensee and could stifle timely development of alternative options by „subsuming“ proposals raised during the SCR phase. Preventing industry development of other solutions is both inefficient and risks poorer quality decision-making through limiting the options on the table when a direction is made. Thus having further negative impacts on BSC Objectives (c) and (d).</p> <p>The negative impacts of P262 might be mitigated if:</p> <ul style="list-style-type: none"> a) a higher threshold of support was required for the BSC Panel to recommend implementation of a proposal that effectively originates from an SCR (such as that set out in P264 “Two-thirds majority requirement for Panel recommendations on licence originated Modifications”) and b) a limit was introduced on the time that work on an industry proposal could be suspended during an SCR, say 12 months maximum. <p>However as neither of these safeguards are incorporated in P262 we do not support the Proposed or Alternative.</p> <p>Self governance – This seems the most efficient route for minor modifications such as those raised for "housekeeping" purposes and we support this aspect of P262 as advancing BSC Objective (d).</p> <p>Code Administration Code of Practice – although it is clear that the Code takes precedence and the CACoP is not a Code Subsidiary Document, it would still be good governance, clearest and most transparent if the Code required Elexon to gain Panel approval for Elexon-suggested CACoP changes rather than assuming that this will be working practice. Thus we believe that the P262 Alternative is better than the Proposed.</p> <p>The minor positive impacts under (d) that P262</p>

Respondent	Response	Rationale
		Proposed would bring by incorporating self-governance measures and CACoP references are significantly outweighed by the negatives under (c) and (d) of enabling SCRs. In our view the Alternative is better than the Proposed but neither are better than the baseline.

Question 2: Do you agree with the Panel's majority view that the Alternative Modification should be made?

Summary

Yes	No	Neutral/Other
5	2	0

Responses

Respondent	Response	Rationale
Accenture Services Limited (for and on behalf of ScottishPower)	Yes	The Alternative Modification is identical to the Proposed Modification but the Alternative also includes potential alternative 2 (BSC requirement for ELEXON to agree CACoP changes with the Panel before raising them – in the Proposed Modification this is a working practice).
Scottish and Southern Energy	Yes	<p>ELEXON legal advice</p> <p>Before providing our rationale we are mindful that on page 8 of "Attachment A: Detailed Assessment for P262" five potential inconsistencies are identified between the Alternative and the Licence. We wish to address each of these in turn:-</p> <p>"1. The Licence does not place an obligation on Code Administrators to obtain approval to raise amendments to the CACoP. The effect of potential addition 2 [the Alternative] would be to fetter ELEXON's ability to propose change to the CACoP;"</p> <p>We note that "The Licence does not place an obligation on Code Administrators" in respect of anything. The Licence is ONLY applicable to that single party to which it applies, namely National Grid. Elexon is however bound by the BSC and the BSC requires compliance with the Licence. It is incorrect to say that Elexon is obliged by the Licence – it is not, only National Grid is. Failure to meet the obligations</p>

Respondent	Response	Rationale
		<p>in the Licence would see infringement proceedings being taken against National Grid, not Elexon – hence why National Grid has raised P262 to discharge its obligation in the Licence.</p> <p>Elexon is already fettered by the BSC in, for example, not being able to raise changes to the BSC. If the intention was that Elexon should be totally unfettered by the Panel then this would have been established when the BSC was designated by the Secretary of State at NETA Go-Live or re-designated at BETTA Go-Live. The principle of fettering of Elexon was accepted by the Secretary of State at that time and we see no reason why, at this stage, this should be seen, in some way, as a 'bad thing'.</p> <p>"2. It gives the Panel a power of veto over ELEXON"s ability to raise amendments to the CACoP. Therefore, by implication, potential addition 2 gives the Panel an indirect role in the change management approval process of the CACoP;"</p> <p>We note that the BSC "gives the Panel a power of veto over ELEXON"s ability to raise amendments to the" BSC. This was accepted by the Secretary of State (at both NETA and BETTA) to be appropriate and we see no valid reason why this cannot be the same for the CACoP.</p> <p>We do not accept the premise that this "gives the Panel an indirect role in the change management approval process of the CACoP". This appears to be a 'red herring' as (i) there are many other parties who can raise a change to the CACoP and (ii) the actual act of raising a change to the CACoP (be that with or without Panel agreement) does not relate in anyway to the change management <u>approval</u> process of the CACoP as the power of <u>approval</u> of a change to the CACoP resides with the Authority only, rather than the BSC Panel or Elexon (or others who raise a CACoP change).</p> <p>"3. If the Authority had intended that Panel should have a role (direct or indirect) in the change management approval process of the CACoP it is reasonably arguable that the Licence would have made provision for this role explicitly;"</p> <p>We refer you to our arguments in "2" above that the reference to "change management <u>approval</u> process</p>

Respondent	Response	Rationale
		<p>of the CACoP" [emphasis added] is a red herring.</p> <p>Notwithstanding that, the converse is also the case. Had the Authority intended that the Panel should <u>not</u> have a role (direct or indirect) in the change management process of the CACoP it is reasonably arguable that the Licence would have made provision for this explicitly.</p> <p>"4. It is arguably inconsistent with the functions of Panel under the BSC for the Panel to have a role (albeit indirect) in the change management process of a document in respect of which it has no governance function;"</p> <p>This is based on a false assumption. The Panel does have a clear governance function over the operation of Elexon. It is this specific matter (governance of Elexon) that is the basis of the Alternative. As noted under "2" above, many other parties may raise a change to the CACoP (and the BSC Panel will play absolutely no role, governance or otherwise, in that).</p> <p>The only role for the Panel is in respect of actions taken by Elexon. It is clear that the Secretary of State did intend that the Panel should exercise control over the way Elexon acts, and there are many examples of this being the case set out in the BSC. It is therefore wholly consistent with the functions of the Panel, under the BSC, for the Panel to provide explicit approval for Elexon raising a CACoP change proposal in the name of the BSC.</p> <p>"5. Potential addition 2 [the Alternative] of questionable value as, once the Panel has approved that ELEXON raises a proposed change to the CACoP is raised, the Panel will not have any control over the development of that proposed amendment by the Code Administrators."</p> <p>This is another 'red herring'. It is based on a false belief that the proponents of the Alternative wished the Panel to have "control over the development of that proposed amendment by the Code Administrators". If that was the case then they would have ensured that the Alternative required the CACoP change to be raised in the name of the Panel (rather than Elexon) and thus under the principle of modification ownership the Panel (rather than Elexon) would have the ability to "control over the</p>

Respondent	Response	Rationale
		<p>development of that proposed amendment by the Code Administrators”.</p> <p>Finally, we note that Elexon’s internal legal advice, as shown on page 16 of the Draft Modification Report (and based on these five arguments above) is “that the Alternative Modification may be inconsistent with the Transmission Licence”.</p> <p>We are mindful that the word “may” appears to be insightful here. If the legal arguments / case were clear then the legal advice from Elexon would be explicit in this regard. This lack of legal certainty, when combined with the five questionable arguments above as to why the Alternative Modification <u>may</u> be inconsistent with the Licence leads us (for the reasons we set out above) to conclude that the Alternative is, in fact, consistent with both the Transmission Licence and the associated statutory requirements.</p> <p>Rationale</p> <p>Moving onto the rationale as to why we agree with the Panel’s majority view that the Alternative Modification should be made we note the comments on page 13 of the Modification Group consultation document, under “Code Administration Code of Practice Change Process” (CACoP) that:-</p> <p>“...the Proposer and ELEXON believe the detail of the CACoP change process should be contained in the CACoP and not in the BSC.”</p> <p>We believe this is a ‘red herring’. We are not aware of any suggestion to, in some way, incorporate “the detail of the CACoP change process....in the BSC”.</p> <p>Rather, its about ELEXON, as BSCCo, acting as the Code Administrator of the BSC (which is set out in the BSC, not the CACoP). We believe that ELEXON, as the (BSC) Code Administrator, in performing its duties as Code Administrator, is only acting in accordance with the BSC and on behalf of the Panel and should not be acting in its own right per se.</p> <p>We believe that if the Code Administrator (ELEXON) was able to raise a CACoP change, in its own right without recourse to explicit Panel agreement, that this would place the Code Administrator in a serious ‘conflict of interest’ situation which would run counter to the principles of good governance practice; as has been set out by various Parliamentary and Standards</p>

Respondent	Response	Rationale
		<p>in Public Life bodies recently.</p> <p>The inclusion of an explicit requirement for Panel approval would, in our view, (i) conform with good governance principles (ii) would act as a reasonable 'check & balance' (iii) comply with the existing principle used in the BSC (where ELEXON is unable to raise, in its own name, a change to the BSC but rather requires the approval of the Panel) and (iv) be consistent with the principle set out by the Secretary of State when designating the BSC at NETA Go-Live (and re-endorsed by the Secretary of State when designating the BETTA version of the BSC).</p> <p>Furthermore, the suggestion (on page 13 of the Modification Group consultation document) that because "the approval of [CACoP] changes will sit with Ofgem" this somehow means that its therefore suitable for ELEXON to be able to raise a change to the CACoP in its own name is, in fact, fatally undermined by the approach used in the BSC currently (where, as with the CACoP, Ofgem approves such changes, suggested by ELEXON, but raised only with Panel approval). For the avoidance of doubt, we do not advocate ELEXON being able to raise a change to the BSC, in its own right, without explicit Panel approval.</p> <p>Finally we note the comments in the equivalent CUSC change (CAP185) at the end of paragraph 4.6 of that Working Group consultation document (published on 4th August 2010), namely:-</p> <p>"The National Grid representative agreed to consider the issue further and take legal advice on the implications of including such a requirement within the CUSC."</p> <p>It was our understanding, based on the discussion at the industry workshop held on 23rd June 2010 at ELEXON and the clear statements from the representatives of (i) ELEXON (ii) National Grid and (iii) Ofgem at that time, that the Code Administrators Code of Practice did not take precedence over the industry codes (such as the BSC). Whist attendees at the workshop expressed scepticism about this, we took these representatives at their word.</p> <p>However, the inference of National Grid seeking legal advice on the implications of including a requirement within the CUSC would appear to be that the CACoP does, after all (and as we had long suspected) take precedence. If this is indeed the case then this reinforces the need for the Code Administrator</p>

Respondent	Response	Rationale
		<p>(ELEXON) not being able to raise a change to the CACoP (without explicit Panel approval) as the change they might be seeking could materially benefit them.</p> <p>We therefore wholeheartedly agree with the general consensus of the Modification Group that explicit BSC Panel approval (to allow the Code Administrator to raise a CACoP amendment) should be codified in the BSC.</p>
EDF Energy	Yes	<p>The Alternative Modification introduces the same benefits against the BSC Objectives as the original does as outlined above. However, the Alternative introduces an additional check and balance on the Code Administrator (CA) in that it will require the CA to obtain consent from the Panel prior to proposing any changes to the Code Administrator Code of Practice (CACoP). This is important for BSC Parties given that changes to the CACoP can lead to changes to the BSC in order to ensure that they are aligned. We believe the Alternative introduces additional benefits under BSC Objective (d) compared to the Original proposal as it better promotes the administration of the Code by the CA on behalf of BSC parties.</p>
National Grid Electricity Transmission Plc	No	<p>We believe that the original proposal should be made for the reasons set out in Question 3.</p>
Centrica	Yes	<p>The Modification ensures the BSC is consistent with the Transmission licence and therefore can be said to efficiently discharge the Transmission Company's licence obligations (objective (a)).</p> <p>While the solution includes significant process steps to enable self governance, having this route available should, on balance, allow for a more efficient process. This should result in a benefit under objective (d).</p>
RWE Npower	Yes	<p>Our view is that the MP262 Alternative Modification better helps to achieve BSC objectives A & D on the basis that it will allow the Licensee to discharge their License conditions by aligning the BSC with the License (Objective A) and will also improve the efficiency of the change process (Objective D) in the following ways:</p> <ul style="list-style-type: none"> • SCRs – will improve the efficiency of the change process if significant issues are

Respondent	Response	Rationale
		<p>addressed in a holistic way as oppose to a piece-meal approach led by individual parties' specific interests.</p> <ul style="list-style-type: none"> Self Governance – reduces the administrative burden involved with assessing non-material modifications without significantly reducing the level of scrutiny available. <p>The Alternative Modification is preferable to the Proposed Modification insofar as it provides an additional check on the power of the Code Administrator by codifying the requirement for ELEXON to seek approval for any changes to the Code of Practice which they wish to make.</p>
E•ON	No	<p>As per our answer to question 1, the Alternative is preferable to the Proposed by clarifying in the Code that Elexon cannot instigate changes to the CACoP that it itself should adhere to, without gaining Panel approval. To do so would be inappropriate thus the Alternative stipulating this in the Code is an improvement on P262 Proposed's presumptions on what „should“ happen. However the negative impacts of the Proposed in terms of increasing regulatory uncertainty thus deterring new entrants and further investment in the market, negatively affecting competition, remain for P262 Alternative.</p>

Question 3: Do you agree with the Panel's majority view that the Alternative Modification is better than the Proposed?

Summary

Yes	No	Neutral/Other
6	1	0

Responses

Respondent	Response	Rationale
Accenture Services Limited (for and on behalf of ScottishPower)	Yes	See response to Question 2. Note that both P262 Proposed and Alternative would better promote the applicable BSC objectives. P262 Alternative contains additional clarification.

Respondent	Response	Rationale
Scottish and Southern Energy	Yes	For the detailed reasons given in our answer to Q2 above.
EDF Energy	Yes	See above
National Grid Electricity Transmission Plc	No	Whilst the Alternative Modification is better than the BSC baseline, we believe that the proposed modification is better than the alternative as the CACoP change process should not be detailed within the BSC but in the CACoP as stated in principle 4 which deals specifically with amendments to the Code of Practice. We note that the majority of the Modification Group believes that the Alternative would provide appropriate checks and balances; however, we believe that these checks and balances are already in place as any changes to the CACoP would have to be approved by the Authority. The Alternative may also be inconsistent with the Licence as it does not place an obligation on the Code Administrator to obtain approval from the Panel to raise changes to the CACoP. Similarly the Licence does not give the Panel a role in the change management process of the CACoP.
Centrica	Yes	See response to Question 1
RWE Npower	Yes	The Alternative Modification is preferable to the Proposed Modification as it provides an additional check on the power of the Code Administrator by codifying the requirement for ELEXON to seek approval for any changes to the Code of Practice which they wish to make.
E.ON	Yes	As per our previous comments it would be inappropriate for the Code Administrator themselves to have the power to alter the Code of Practice to which they are supposed to adhere. This should not be possible without the approval of the BSC Panel which the

Question 4: Do you agree with the Panel's suggested Implementation Date?

Summary

Yes	No	Neutral/Other
7	0	0

Responses

Respondent	Response	Rationale
Accenture Services Limited (for and on behalf of ScottishPower)	Yes	The Implementation date will be 31/12/10 (date of revised Licence in force) if the Authority decides by 10/12/10, or 15 working days after an Authority decision thereafter.
Scottish and Southern Energy	Yes	It appears to be appropriate in the circumstances.
EDF Energy	Yes	-
National Grid Electricity Transmission Plc	Yes	National Grid supports the Panel's preferred implementation approach and consider that the proposed 15 Working days implementation timescale should be sufficient time to implement this modification.
Centrica	Yes	-
RWE Npower	Yes	The Code needs to be changed to meet the deadline for the License changes to prevent the Licensee being in breach. We see no reason to deviate from the proposed Implementation Date.
E.ON	Yes	-

Question 5: Do you agree that the updated legal text (Attachment D) and BSCP40 changes (Attachment F) delivers the intention of the P262 Proposed Modification?

Summary

Yes	No	Neutral/Other
6	1	0

Responses

Respondent	Response	Rationale
Accenture Services Limited (for and on behalf of ScottishPower)	Yes	-
Scottish and	No	With respect to the BSCP40 changes we believe that,

Respondent	Response	Rationale
Southern Energy		for the avoidance of doubt, it should be mandatory for proposers to confirm (i) if there is a material environmental impact (ii) if their proposal is to be dealt with as 'Self-governance' and (iii) if there is a linkage to any ongoing SCR. In this way there is a clear statement (from proposer) on these matters to assist ELEXON and the Panel (which will need to opine on these matters in due course).
EDF Energy	Yes	-
National Grid Electricity Transmission Plc	Yes	We believe that the legal text delivers the intention of P262 Proposed Modification.
Centrica	Yes	Subject to minor typos sent separately to ELEXON
RWE Npower	Yes	-
E.ON	Yes	The Proposed legal text (D) seems ok; we note the removal of 6.1.4b as featured in Attachment B aka v0.25 as provided to the Mod Group with the Assessment Report. Nb minor typo in 6.4.3b)i) where a space needs inserting. BSCP40 changes (F) appear appropriate; we note they cover P263 as well as P262 so this is presuming that both modifications are approved by the Authority.

Question 6: Do you agree that the updated legal text (Attachment E) and BSCP40 changes (Attachment F) delivers the intention of the P262 Alternative Modification?

Summary

Yes	No	Neutral/Other
6	1	0

Responses

Respondent	Response	Rationale
Accenture Services Limited (for and on behalf of	Yes	-

Respondent	Response	Rationale
ScottishPower)		
Scottish and Southern Energy	No	With respect to the BSCP40 changes we believe that, for the avoidance of doubt, it should be mandatory for proposers to confirm (i) if there is a material environmental impact (ii) if their proposal is to be dealt with as 'Self-governance' and (iii) if there is a linkage to any ongoing SCR. In this way there is a clear statement (from proposer) on these matters to assist ELEXON and the Panel (which will need to opine on these matters in due course).
EDF Energy	Yes	-
National Grid Electricity Transmission Plc	Yes	We believe that the legal text delivers the intention of P262 Alternative Modification.
Centrica	Yes	Subject to minor typos sent separately to ELEXON
RWE Npower	Yes	-
E.ON	Yes	The Alternative legal text (E) also seems adequate. The BSCP40 changes (F) appear appropriate for P262 and P263 presuming that both are approved by the Authority.

Question 7: What are your views on Ofgem's proposed legal text clarifications?

Responses

Respondent	Rationale
Accenture Services Limited (for and on behalf of ScottishPower)	Ofgem's comments appear rational and consistent with the approach being taken.
Scottish and Southern Energy	<p>We note that the late provision of Ofgem's proposed legal text clarifications has unfortunately prevented the Modification Group considering these.</p> <p>We further note that despite the principle of Modification Ownership introduced with P247 that ELEXON "have agreed updates to the legal text with Ofgem" but, according to the Draft Modification Report, without recourse to the views (or agreement?) of the proposal owner.</p> <p>We have a generic concern that a 'custom & practice' may be beginning to emerge whereby ELEXON and Ofgem change the legal</p>

Respondent	Rationale
	text after the Modification Group has finalised the legal text. We understand that some parties (and Panel members) have expressed concerns that this may lead to a 'disengagement' by Ofgem during the Modification Group development of the proposal (and alternative, if applicable). We hope this is not the case and that rather than waiting till after the Modification Group stage (or indeed after the Panel stage via the 'send back' process) that Ofgem provides its comments on the legal text at the earliest possible opportunity in the process; i.e. when Ofgem and other Modification Group members first receive it
EDF Energy	We consider the legal text clarifications that ELEXON have agreed upon with Ofgem are sensible amendments that should be made.
National Grid Electricity Transmission Plc	We agree with ELEXON's legal responses to Ofgem's proposed legal text clarifications and believe that it does provide greater alignment with the proposal and transmission licence modifications.
Centrica	ELEXON appears to have adequately addressed these in Appendix 1 of the consultation.
RWE Npower	The changes agreed by ELEXON and Ofgem do not have a detrimental material impact on the intention of the Modification and we agree that the changes are required in order to ensure that the new text is robust and do not conflict with the Transmission License.
E.ON	From a brief review both Ofgem's comments and Elexon's responses seem to make sense, e.g. 5.1.2a, 5.3.1b: Agree. Regarding 5.1.3 it seems unfortunate that this point is not clearer earlier in C3, only under the definitions in C3 14, but indeed the revised wording would comply with the definition of SCR phase.

Question 8: Do you have any further comments on P262?

Responses

Respondent	Response	Rationale
Accenture Services Limited (for and on behalf of ScottishPower)		-
Scottish and Southern Energy	Yes	We note that the cost of progressing P262 through the change process; including attending three Modification Group meetings, replying to two (Modification and Panel) consultations etc.; has not been recorded in the Draft Modification report and

Respondent	Response	Rationale
		<p>that this would, if correctly recorded, significantly increase the cost of P262 shown on page 17 (“7 Impacts & Costs”).</p> <p>We note the comments on page 13, under “Appeals Process”:-</p> <p>“Participants have 15 Working Days in which to raise an appeal following the Panel decision. This time period includes the day of the Panel decision.”</p> <p>We note that ELEXON will be obliged to notify BSC Parties of the Panel decision on a Self-governance Modification on the day of the Panel meeting. Failure to do this will inhibit a BSC Party’s appeal rights – as it will eat into the short (15 days) period they have to prepare and submit their appeal to the Authority.</p> <p>It seems to us intrinsically wrong to commence an appeal process, which is time limited, when affected BSC Parties have not been informed that the time period has commenced. In our view the 15 Working Days window for appeals should commence on the day that BSC Parties are informed. Clearly if this is done on the day of the Panel (as proposed) then there is no difference. However, if there is a few days delay (perhaps because at the Panel meeting in question there were more pressing matters?) then BSC Parties will still have 15 Working Days, from notification, to submit an appeal. We hope Ofgem, the Panel and ELEXON will keep this risk on their respective risk registers and seek ways to mitigate this risk at the earliest opportunity.</p>
EDF Energy	No	-
National Grid Electricity Transmission Plc	No	We do not have any further comments on P262
Centrica	No	-
RWE Npower	Yes	<p>Although our approval of Alternative Modification P262 is not contingent on any further changes being made or Alternative Modifications being raised, it is our view that additional checks and balances need to be included in relation to the SCR process in order to avoid the situation whereby Ofgem are effectively able to raise and decide upon BSC Modification Proposals. Whilst P264 - Two-thirds majority requirement for Panel recommendations on licence originated Modifications goes some way toward this</p>

Respondent	Response	Rationale
		<p>by preserving the right of appeal to the Competition Commission, this may prove to be insufficient. It seems likely that the Industry will need to raise additional Modifications to address this issue.</p>
E.ON	Yes	<p>Regardless of any Party's views the Modification Report's description (p5) of the SCR process as being „introduced to facilitate the progression of significant industry changes in the most efficient manner“ appears subjective for a factual report. Ofgem's „guidance on the launch and conduct of Significant Code Reviews (SCRs)“ states that in fact the introduction of SCRs aims to „provide a role for Ofgem to holistically review a code based issue (for the main commercial industry codes) and speed up industry reform“. This is slightly different.</p> <p>Minor Formatting points:</p> <ol style="list-style-type: none"> 1. It would aid clarity if ELEXON changed the version number as well as issued date when documents are updated. E.g. Attachment A dated 01/09/10 was v1.0, for the draft AR 04/10 down to v0.1, redlined also 04/10 v0.2, now 08/10 back to v1.0. 2. Where "potential additions" have been incorporated or not in a final Proposed or Alternative it might make the evolution of the Modification from the Assessment phase clearer if the report included a comment confirming this, i.e. (potential addition 1 as per Assessment Consultation), etc. 3. Where related modifications are referenced, for consistency it would be clearest to provide hyperlinks to all. E.g. in the draft Mod Report to P264 not only P263.