

Attachment B: P264 Discarded Potential Alternatives

This is Attachment B to the Assessment Report. This attachment provides additional details on the potential alternative solutions which were discussed by the P264 Group, but later discarded.

To help simplify the requirements of the alternatives not taken forward, the following table highlights where a two-thirds majority Panel vote would be required.

		P264	P264 Alt	Alt 1	Alt 2	Alt 3
Transmission	Before SCR Phase			X	X	X
Licensee	During SCR Phase		X	X	X	X
Modifications	Post SCR Phase	X	X	X	X	X
Raised:	Anytime					X
All Parties	Before SCR Phase				X	X
Modifications	During SCR Phase		X		X	X
Raised:	Post SCR Phase		X		X	X
	Anytime					X

1 Potential Alternative 1

Potential alternative 1 - All Modifications raised by the Licensee before, during and after an SCR

As noted in the main body of the assessment report, P264 Proposed solution includes only those Licensee Modifications raised at the end of an SCR Phase. Potential alternative 1 would have expanded this to include any Modifications raised by the Licensee that are Subsumed or suspended during a SCR Phase.

Furthermore, for any Transmission Licensee Modification raised before an SCR phase, that has not yet been subject to a final Panel recommendation, the BSC Panel shall decide whether or not such a Modification relates to an ongoing SCR. If the Panel decides that it does relate to an ongoing SCR then the Modification Proposal will be subject to a two-thirds majority vote. If the Panel decides that it is not related then the usual simple majority vote shall apply. This Panel decision may take place at any time up until its final recommendation.

Group's initial view

The majority of the Group thought that extending the provisions of P264 to cover all Licensee raised Modifications relating to an SCR would be beneficial as:

- P264 would cover the situation where the Licensee has raised a Modification as a result of an SCR conclusion. However, it would not cover any Modifications raised by the Licensee before or during an SCR which could potentially tackle the same issue. For completeness a two-thirds majority vote should apply to any Modifications raised by the Licensee relating to an SCR not just those raised at the end of the SCR Process.
- The Licensee is the most likely Party to be asked or directed by Ofgem to raise a Modification Proposal. Expanding the P264 arrangements would ensure that if Ofgem or the Licensee wish to short cut the SCR process, by raising a Modification before the SCR conclusion, then such a Modification would also be subject to a two-thirds majority Panel vote.

A minority of the Group felt that this was not a suitable alternative as it could prove potentially discriminatory against any changes raised by National Grid during an SCR.

Concern was also raised that the SCR process had been developed such that Modifications raised before an SCR would follow the normal Modification process and not be automatically affected by an SCR. The reason for this being that amending the process a Modification would follow after it had been raised, was not a transparent process. As such changing the voting arrangements for pre SCR Modifications would appear to run counter to the principle of not amending the process to be followed by a Modification after it has been raised.

Group's Conclusion

The Group agreed not to progress Alternative 1 as they felt that including Modifications raised prior to an SCR would be retrospectively applying Modification rules to a Proposal that was already in the Process, i.e. to raise a Proposal under one set of rules and assumptions and then to change these rules and assumptions once the Proposal has been raised.. This was not only poor governance in terms of consistency and certainty of approach, but it was counter to the principles discussed under the introduction of SCRs during the Code Governance review. Some Group members also felt this was discriminating against National grid Modification Proposals.



Pending Modifications

Pending Modifications are those Modifications which the Authority has not yet made a decision to approve or reject.

It includes all Modifications in assessment, in Report Phase or awaiting decision with the Authority.

2 Potential Alternative 2

Potential Alternative 2 – All Modifications, whether raised inside or outside of an SCR Phase, that seek to address the same defect as an SCR

In addition to any Modification that has been subsumed or suspended potential alternative 2 would also include those Modifications that relate to the SCR but which have been raised outside of an SCR phase; albeit before or after.

For any Modification raised before an SCR phase, that has not yet been subject to a final Panel recommendation, the BSC Panel shall decide if as to whether or not such a Modification relates to an ongoing SCR. If the Panel decides that it does relate to an ongoing SCR then the Modification Proposal will be subject to a two-thirds majority vote. If the Panel decides that it is not then a normal majority vote shall apply. This Panel decision may happen at any time up until their final recommendation.

Any Modification that is Subsumed or suspended will automatically require a two-thirds majority Panel vote.

For any Modification raised after an SCR Phase the BSC Panel shall decide whether or not such a Modification relates to a Pending SCR Modification (i.e. any Modification raised by the Licensee as a result of an SCR conclusion). If the Panel decides that it does relate to an ongoing SCR Modification then the Modification Proposal will be subject to a two-thirds majority vote. If the Panel decides that it is not, then a normal majority vote shall apply. This Panel decision may happen at any time up until their final recommendation.

Group's initial view

The majority of the Group thought that it would be beneficial to include these additional requirements as:

- It is not just National Grid that may 'jump the gun' during or before an SCR Phase. Including all Parties would ensure that no such changes could be progressed without being subject to a two-thirds majority vote.
- Ofgem may ask or direct other Parties apart from National Grid to raise Modification Proposals in order to get SCR changes in place quickly. These provisions would ensure such changes were subject to a two-thirds majority vote.

Some of the Group questioned the benefits of including these requirements. An argument was raised that this was potentially catching all Parties; adding additional frustration and complexity to the change process for those who were raising changes that had nothing to do with Ofgem direction. Other Group members felt that such an inclusion was outside the scope of the Modification. They believed that P264 was seeking to address License obligated Modifications raised by the Licensee. Adding additional constraint on all Parties could unintentionally slow down the process when it should be about trying to maintain the rights of appeal.

Group's Conclusion

The Group agreed not to progress Alternative 2 as they felt that, similar to potential alternative 1, a solution which included Modifications raised prior to an SCR would be retrospectively applying Modification rules to a Modification proposal.

This solution would also rely on the BSC Panel, and ultimately Ofgem, making a decision on which Modifications would relate to an SCR; therefore the Panel would be deciding (by

a majority) vote which proposals would undergo a two-thirds majority vote at the end of the process. This did not seem a robust approach.

3 Potential Alternative 3

Potential alternative 3 – Requirement to state where all Modifications originate

Potential alternative 3 would place a requirement on Parties to state if they have been requested by Ofgem to raise a Proposal. It would also obligate Ofgem to state in an open forum where they have requested a Party to raise a Proposal.

The Modification Proposal Form would be updated to include a section which requires Parties to state if Ofgem had directed, instructed or requested them to raise the Proposal. This would be mandatory to complete.

Additionally, an obligation would be placed on the Panel to ask Ofgem, at the Panel meeting where the Modification Proposal is first presented, if they had directed, instructed or requested the raising Party to raise the change.

Group's initial views

A minority of the Group felt that it was not only the Transmission Company who may be directed, instructed or requested by Ofgem to raise change, and that there was potential for Ofgem to approach other Parties. Therefore, they believed that this potential Alternative had merit as it would cover off all Parties who had the ability to raise changes to the BSC, not just National Grid. They also believed that having both Parties and Ofgem publicly stating the reasons to why a change has been raised, and the level of Ofgem involvement, would ensure honesty. Such a public statement could also be used as evidence in court if it became necessary to do so.

The majority of the Group believed that such a process would be very hard to 'police' and that it would be difficult to prove if a Party had been requested or instructed by Ofgem to raise a change. Some Group members also felt that under such a solution it would place those Parties who had had conversations with Ofgem, when forming their Modification, in a difficult position. A Party who had spoken to Ofgem when drafting a Proposal to seek their views might be seen as colluding with Ofgem, when in fact it was an innocent conversation asking for the input of Ofgem.

Some Group members also felt that this would be out of scope of P264. This potential alternative solution would not focus on License obligated Modifications, but would instead encompass all Modification Proposals raised by all Parties. This was not the intention of P264 and it was felt by many to not address the defect identified.

Group's Conclusion

The Group agreed not to progress Alternative 3 as they felt that it included all Modifications, even those that did not relate to Licence obligated changes and therefore was out of scope.

Even if it only applied to those Modifications that were related to a license obligated Modification the Group again raised the issues of retrospectively changing arrangements and that it may cause Ofgem to disengage with the process.