

**Stage 04: Draft Mod Report**

What stage is this document in the process?

**01** Initial Written Assessment

**02** Definition Procedure

**03** Assessment Procedure

**04** Report Phase

# P252: Removal of Trading Parties' ability to submit two votes at elections of BSC Panel industry members

This proposal seeks to remove the ability of Trading Parties/Trading Party groups to cast two voting papers in the BSC Panel elections (one per Energy Account) and instead allow them one voting paper per Trading Party/Trading Party group.



Initially, the Panel recommends  
**Rejection** of the Proposed Modification



High Impact:  
The BSC Panel and participants in Panel elections



Low Impact:  
ELEXON

P252  
Draft Mod Report

09 April 2010

Version 0.1

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### Any questions?

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## About this document:

This document is a Draft Modification Report, which ELEXON will present to the Panel on 13 May 2010. The Panel will consider the recommendations, and agree a final view on whether or not this change should be made.

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### Why Change?

Under the current Panel election voting process, **Trading Parties/Trading Party groups** are entitled to submit two voting papers. It is argued that not all Parties are aware that they can submit two voting papers and that simplifying the Panel elections process would increase participation. The Proposer also argues that the current system can lead to organised tactical voting.

### Solution

P252 would amend Annex B2 so each Trading Party may submit only one voting paper in the BSC Panel elections.

### Impacts & Costs

P252 would impact those Parties voting in the BSC Panel election. No costs have been identified.

### Implementation

If Proposed Modification P252 is to be implemented the Group recommends that it is implemented:

- On 24 June 2010 if an Authority decision is received on or before the 16 June 2010; or
- 5 Working Days following an Authority decision

### The Case for Change

The **majority** of the Panel believes that P252 **does not** better facilitate any of the applicable Objectives and agrees with the Modification Group's conclusion that either:

- There is no defect, and as such P252 does not address any issue and is neutral against the objectives; and/or
- Removing the ability for Trading Party group to cast 2 voting papers would result in the representatives of one Energy Account having to conform to the wishes/will of the other. Hence the proposed modification disenfranchises the respective part of that Trading Party and does not reflect the overall wishes of the electorate, which is counter to promoting effective competition.

The minority of the Panel believes that P252 would better facilitate the Applicable BSC Objectives. They argue that simplifying the process would promote competition and increase participation in the process.

### Recommendations

The recommendation of the Group is to **reject** P252.

### Current Issue

Under the current Panel election voting process, **Trading Parties** are entitled to submit one voting paper for each Energy Account that they hold, Production and/or Consumption. Since each Trading Party will always have a Production and Consumption account it means that they will always have two voting papers.

Like Trading Parties, **Trading Party groups** are also entitled to submit one voting paper for each Energy Account that they hold. A Trading Party group is a group comprised of a Trading Party and every Affiliate of that Trading Party. Only one Trading Party in a Trading party group may submit voting papers.

There is an argument that not all Trading Parties/Trading Party groups are aware of this element of the Panel election process. This is supported by the figures for the 2008 elections which showed 59 voting papers received from 31 Trading Parties. It is clear that not all Trading Parties used both their voting papers (although the rationale for this behaviour cannot be inferred).

The proposer argues that regardless of the reason of why Trading Parties do not use both voting papers, the existence of the ability to cast two voting papers creates a number of issues:

- The current process does not reflect the principle of one party, one vote. The existence of Production and Consumption Accounts does not reflect a relevant distinction in the election of BSC Panel Members in respect of either the objectives of the Panel or its duties and powers. There is therefore no need for Trading Parties to have two voting papers; and
- There is anecdotal evidence that the ability of Trading Parties to cast two voting papers has in the past lead to tactical voting with a view to maximising the number of seats secured for a particular interest or constituency. Thus aligned Trading Parties could vote their production accounts one way, and consumption accounts another

The Proposer believes this Modification would improve overall BSC governance by improving the accuracy with which industry Panel membership reflects the views of the electorate, making the process more accessible and transparent, and establishing better democratic accountability through 'one party, one vote'.

### Related change

The issue raised by P252 was first identified under **P251** 'Revision of the election process for BSC industry panel members'. P251 is a Pending Modification Proposal which also addresses the election of BSC Panel industry members. P251 is however targeted at a different aspect of the elections process, and does not address the number of voting papers that can be submitted cast by a Trading Party. The concern raised by P252 is therefore out of scope of P251.



#### Voting paper

Each voting Trading Party submitting a voting paper may indicate a first, second and third preference among the candidates. A voting paper need not indicate a second, or a third, preference, but the same candidate may not receive more than one preference vote in any single voting paper.

### 3 Solution

P252 seeks to amend the Panel election process so that each Trading Party/Trading Party group only receives one voting paper. Currently:

- Section B of the BSC states:  
Trading Parties may appoint up to five persons as Panel Members by election in accordance with Annex B-2
- Annex B-2 states:  
3.1.2 Subject to paragraph 3.1.3, each Trading Party may submit one voting paper for each Energy Account which is held by that Trading Party.  
3.1.3 Only one Trading Party (the “voting” Trading Party) in a **trading party group** may submit voting papers.

P252 would amend Annex B2 3.1.2 to state:

- Subject to paragraph 3.1.3 each Trading Party may submit one voting paper.

#### Potential Alternative solutions?

The P252 Group considered two potential Alternative solutions. One alternative was to disaggregate Trading Party groups into the constituent Trading Parties so that each Trading Party received a voting paper. It could be further contemplated that all BSC Parties should be able to vote. However, such a proposal would mean that larger integrated Parties would receive significantly more voting papers than independent Parties. None of the Group Members believed this would be better than the applicable objectives as it would be detrimental to competition and efficiency. Therefore this Alternative was not put forward.

The second potential alternative was to allow Trading Parties one voting paper for each active Energy Account, i.e. a Supplier only party would submit one voting paper for their active consumption account, a generation only party would submit one voting paper for their active production account and those parties who have both generation and supplier aspects to their business would receive two voting papers: one for their supply side and one for their generation side.

However, the Group did not believe that such a policy could be effectively ‘policed’ on the basis that additional work would be incurred in monitoring the account status of each Party between elections so as to work out whether a it is entitled to cast 1 or 2 voting papers prior to the Panel election. Further uncertainty arose in how to govern the assessment of whether an energy account is ‘active’ or not for sufficient duration before and after elections. In light of these considerations the Group did not believe that it was appropriate to put forward this alternative.

#### Report Phase Consultation question

Do you agree with the Panel’s majority view that the Proposed Modification should be rejected?

The Panel invites you to give your views using the response form in Attachment B.

#### Report Phase Consultation question

Do you agree that the legal text delivers the intention of the Proposed Modification?

The Panel invites you to give your views using the response form in Attachment B.



#### Trading or BSC Party?

A Trading Party is a Party who holds Energy Accounts.

A BSC Party is a Party means a person who is for the time being bound by The Code by virtue of being a Party to the Framework Agreement.

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## 4 Impacts & Costs

### Costs

ELEXON Cost		ELEXON Service Provider cost	Total Cost
Man days	Cost		
3	£720	Zero	<b>£720</b>

### Impacts

Impact on BSC Systems and process	
BSC System/Process	Potential impact
BSC Systems	None

Impact on BSC Agent/service provider contractual arrangements	
BSC Agent/service provider contract	Potential impact
BSC Agent/service providers	None

Impact on BSC Parties and Party Agents	
All Trading Parties (generators, Suppliers, non-physical traders, Interconnector Error Administrators and Interconnector Users) are eligible to vote in Panel elections and will be equally impacted by this Modification Proposal.	

Impact on Transmission Company	
None. The Transmission Company is not eligible to vote for Industry Panel Members, as it appoints its own member of the Panel.	

Impact on ELEXON	
Area of ELEXON's business	Potential impact
Panel administration	ELEXON would need to adopt the approved solution for future Panel elections following the approval of the Proposed Modification.

Impact on Code	
Code section	Potential impact
Section B	Annex B-2 will be impacted as a result of updating the election process.

Impact on Code Subsidiary Documents	
None	

Other Impacts	
None	

## 5 Implementation

If approved, the Panel recommends that P252 is implemented:

- On 24 June 2010 if an Authority decision is received on or before the 16 June 2010; or
- 5 Working Days following an Authority decision

### Report Phase Consultation question

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

- On 24 June 2010 if an Authority decision is received on or before 16 June 2010; or
- 5 Working Days following an Authority decision?

The Panel invites you to give your views using the response form in Attachment B.

### Modification Group Discussions

Whilst considering the case for change the P252 Modification Group discussed the following areas.

#### Rationale of 2 voting papers per Party

The P252 Group discussed why the current voting system existed. Those members that had been involved with the governance work streams at NETA Go-Live believed that the intention had been to create a system whereby:

- Suppliers (i.e. those with consumption accounts) receive one voting paper to elect a representative to the Panel to address Supplier issues
- Generators (i.e. those with production accounts) receive one voting paper to elect a representative to the Panel to address Generator issues
- Those parties who have both generation and supplier aspects to their business would receive two voting papers; one for their supply side and one for their generation side

However, all Trading Parties have both consumption and production accounts regardless of whether they are Generators, Suppliers or both. Therefore in practice all Parties receive two voting papers.

#### How reflective is the elections process?

The Proposer of P252 believes that under the current arrangements' some Parties are not aware that they can cast 2 voting papers in the election. It is argued that simplifying the process would increase Participation in the elections and make the outcome more reflective of the votes cast.

The P252 Group discussed this principle and questioned if removing 2 voting papers would indeed make the voting more reflective, as it simply halved the number of votes cast. The Group Members also argued that Participants with both Generation and Supply sides to their business should still have the ability to vote twice, to elect 2 Panel members 1 with expertise in Generation and 1 with Supply expertise, as outlined in the rationale section above. Removing this ability would make the elections process less reflective of Parties views.

#### Engagement in the process

The Group were curious as to why Parties did not use both of their voting papers as part of the elections process. A question was asked as part of the Assessment Consultation, but in order to bolster responses the Group requested ELEXON raise the question at the Cross Codes Electricity Forum where a number of smaller participants were due to attend.

The feedback received from participants at the [Cross-Codes Electricity Forum](#) was that changing how parties vote or how these votes are counted would make very little difference to their participation in the election process. It was universally believed that the fundamental issue was lack of education on the process and a feeling of disfranchisement from the Panel. It was suggested that more publicity about the elections, or the candidates that stand, would engage smaller parties better than tweaking the election process. It was also noted that small participants have limited resources and have to prioritise work. As such apathy could be more of an issue than education as there are more pressing concerns to deal with than the Panel elections. The forum did comment that having a



simpler process would seem intuitive and would also be in line with moves to simplify other areas of bureaucracy.

The Group noted the feedback from the forum. The Group Members believed that the views from the forum supported their view that P252 would not resolve the issue of increasing participation in the elections process. A member also noted that even if you simplify the process you cannot guarantee increased participation.

### **Organised Tactical Voting**

Under the current system, a Trading Party could submit either one or two voting papers. If they submitted two voting papers it would be possible to vote for different candidates on each voting paper. A question was raised as to whether or not this was tactical voting. The Group agreed that such behaviour could be called tactical voting, but that this was completely fair and acceptable within the current system.

A member noted that tactical voting wasn't an issue, but Parties colluding together to block vote might be. For example, 12 Trading Parties getting together and agreeing how to use their 24 voting papers. It was questioned if such a scenario was really feasible, and if it were feasible, is it really an issue as Parties can vote as they please. The Proposer's representative commented that whilst some might view block voting as acceptable, it is harder for smaller participants to create an organised block of votes than it is for the larger integrated Parties. They believed that P252 would not eliminate the potential for block voting, but it would simplify the structure of the election process to reduce the ability to block vote. The other Group members did not believe reducing two voting papers to one would make any difference to the manner in which people voted.

The Group concluded that tactical voting was a red herring and not an issue. Parties can choose how they wish to vote and for whom, all of which is legal within the system.

### **Responses to consultation**

The Group noted that the responses received from 7 Parties to the Assessment Consultation contained no new arguments or considerations that the Group had not previously discussed. The majority of respondents agreed with the majority of the Group that P252:

- Was not better than the current arrangements;
- Would not result in a more reflective elections process; and
- The issue of tactical voting was a 'red herring'

The respondents who were in favour of P252 were the proposers of the Modification. Full response can be found on the [P252](#) page of the ELEXON website.

## Applicable BSC Objectives

The majority of the Group do not believe that P252 better facilitates the Applicable BSC Objectives. Those members either believe that:

- There is no defect, and as such P252 does not address any issue and is neutral against the objectives; or
- Removing the ability for Trading Party group to cast 2 voting papers would result in the representatives of one Energy Account having to conform to the wishes/will of the other. Hence the proposed modification disenfranchises the respective part of that Trading Party and does not reflect the overall wishes of the electorate, which is counter to promoting effective competition.

The minority of the Group believe that P252 would better facilitate the Applicable BSC objectives. They argue that simplifying the process would promote competition and increase participation on the process.

The Group's views against the applicable objectives are captured below.

### Applicable Objectives (a) and (b)

The Group **unanimously** believe P252 is **neutral** when compared to Applicable Objective (a) and (b).

### Applicable Objective (c)

The **majority** of the Group believe that P252 would be **detrimental** to Applicable Objective (c) as removing the opportunity for Parties, with both Generation and Supply elements to their business, from submitting two voting papers (one for each of these elements) introduces discrimination. Also it would result in the representatives of one Energy Account having to conform to the wishes/will of the other. Hence the proposed modification would disenfranchise the respective part of that Trading Party and does not reflect the overall wishes of the electorate, which is counter to promoting effective competition.

The **minority** of the Group believe that P252 would **better** facilitate Applicable Objective (c) as simplifying the elections process makes it is easier to understand for all Parties, potentially increasing participation.

### Applicable Objective (d)

The **majority** of the Group believe that P252 would be **neutral** when compared to Applicable Objective (d) as the same process to send and collect votes would be in place, just with fewer voting papers to count.

The **minority** of the Group believe that P252 would **better** facilitate Applicable Objective (d) as there would be a slight improvement in efficiency.

### Panel's consideration of Assessment Report

The Panel considered the [P252 Assessment Report](#) of at its meeting on 8 April 2010.

The majority of the Panel believed that P252 Proposed Modification should be rejected, because:

- They do not believe any change would be better than the baseline, merely different;
- The Proposed Modification does not better facilitate any of the BSC Applicable Objectives; and
- Both the Modification Group and industry struggled to see the issue this Modification is trying to address.

One Panel member was in favour of P252 Proposed Modification being made because he believes P252 better reflects 'one Party, one vote' principle in elections process and the proposed solution makes it easier to understand for all Parties, potentially increasing participation. He also believed that P252 would bring slight improvement in efficiency.

### **The Panel's initial recommendation was therefore that P252 Proposed Modification should be rejected.**

The Panel noted the discussion of this Modification in the cross codes forum where small participants fed back that changing the process would make no difference to participation, as Panel elections were just not a top priority.

## 8 Recommendations

Having considered the P252 Assessment Report, the Panel initially recommend:

- that Proposed Modification P252 **should not** be made;
- an provisional Implementation Date of Proposed Modification to be:
  - On 24 June 2010 if an Authority decision is received on or before 16 June 2010; or
  - 5 Working Days following an Authority decision and
- the draft legal text for P252 Proposed Modification.

## 9 Further Information

More information is available in:

Attachment **A**: Legal Text Proposed

Attachment **B**: Report Phase Consultation Questions

All P252 documentation can be found on the [\*\*P252 page of the ELEXON Website\*\*](#).