

P250 Consultation Responses

Consultation issued on 5 February 2010

What stage is this document in the process?

01 Initial Written Assessment

02 Definition Procedure

03 Assessment Procedure

04 Report Phase

We received responses from the following Parties

Company	No BSC Parties / Non-Parties Represented	Role of Parties/non-Parties represented
International Power	7/0	Generator/trader/supplier
SAIC Ltd. (for and on behalf of ScottishPower)	7/0	Supplier / Generator / Trader / Consolidator / Exemptible Generator / Distributor
RWE npower	10/0	Supplier/Generator/ Trader / Consolidator / Exemptible Generator / Party Agent
Drax Power Limited	1/0	Generator
EDF Energy	13/0	Supplier/Generator/Trader/Consolidator/Exemptible Generator/Party Agent
Scottish and Southern Energy	9/0	Supplier / Generator
Centrica	10/0	Supplier/Generator/Trader/
E.ON UK	6/0	Supplier / Generator / Trader / Consolidator / Exemptible Generator

Question 1: Would P250 Proposed Modification help to achieve the Applicable BSC Objectives compared to the current baseline?

Summary

Yes	No	Neutral/Other
1	7	

Responses

Respondent	Response	Rationale
International	No	Allowing open ended implementation dates will

Respondent	Response	Rationale
Power		<p>increase regulatory uncertainty and could result in supporting analysis having to be repeated</p> <p>A backstop implementation date of x days after an Authority decision might be appropriate for modifications that do not require changes to BSC systems and procedures. We doubt it would be appropriate where changes to systems and procedures are required as an implementation date x days after an Authority decision might not fit with BSC release dates creating extra costs to industry.</p> <p>P250 does not therefore facilitate objective d in that it is less efficient than the current administration of the BSC arrangements.</p>
SAIC Ltd. (for and on behalf of ScottishPower)	No	<p>P250 Proposed Modification is considered to better facilitate the achievement of Applicable BSC Objective (d) by</p> <ul style="list-style-type: none"> • reducing/removing the potential for Authority decisions on Modification Proposals to "time out", thereby preventing a potential waste of industry resource and the associated costs incurred; and • ensuring that the validity of underlying assumptions/analysis which support a Panel recommendation can be questioned should circumstances surrounding the Modification Proposal change after a period of time has elapsed. <p>The suggestion that this modification prevents wasting industry resources and costs may be correct from the Authority's position. However, this Proposed Modification does not appear to consider the implication of the lack of a decision date and hence the inability for the industry members to plan and implement the requirements of any such Modification. It can be argued that preventing a 'time out' will add uncertainty into the market and hence increase the potential for wasted industry resources, time and money.</p> <p>Taking cognisance of the time bound relevance of underlying data is a sensible and as such will promote efficiency as detailed in BSC Objective (d). However, this improvement is swamped by the detrimental effects of removing the 'time out' clause.</p> <p>It is understood that the Authority has a wider remit than industry members when considering Modifications. However, the industry as a whole needs a level of certainty which will allow it to plan for (the implications of) any Modification. The longer the Authority takes to make a decision is directly proportional to the increased risk to industry members, given that the Panel cannot</p>

Respondent	Response	Rationale
		revise the analysis or its original recommendation to the Authority.
RWE npower	Yes	<p>Delays in the Authority’s decision making process on Modifications to Codes, however caused, may result going past a proposed implementation date. This introduces uncertainty into the Modification process, which increases the costs to Parties. In some cases Parties have sought to frustrate the process by extending the time to implement a Modification, which may not serve the wider interests of other parties and consumers.</p> <p>The Proposed Modification would give the Authority some flexibility when assessing a Modification. It allows for a more efficient operation of the BSC and would better facilitate Applicable BSC Objective (d). The Proposed Modification does not provide any barriers to entry and would better facilitate Applicable Objective (c).</p>
Drax Power Limited	No	<p>Drax does <u>not</u> believe that the Proposed Modification would help to achieve the Applicable BSC Objectives when compared to the current baseline.</p> <p>Drax agrees with the Modification Group that the Proposed Modification would be detrimental to competition (Applicable BSC Objective (c)) due to the uncertainty created by open-ended dates for Modifications that have a material impact on BSC Parties. The Proposed Modification also fails to address the validity of analysis over time and the potential implications (to both BSC Parties and consumers) if a decision was reached based upon out-of-date analysis. With regards to the efficient operation of the BSC (Applicable BSC Objective (d)), the Proposed Modification does not provide analysis that will stand the test of time above and beyond that provided under the current baseline; however, the proposal would allow the Authority to make decisions that are potentially based upon out-of-date analysis. The process would prove less efficient if subsequent Modifications were required to rectify anomalies caused by such actions.</p> <p>Finally, Drax agrees with the Modification Group that the Proposed Modification does not introduce any new date constructions over those currently available to the BSC Panel at present; the BSC Panel and the Modification Groups currently use their experience and best judgement to determine the appropriate date construction for Modifications on a case-by-case basis.</p>
EDF Energy	No	<p>We consider the proposed modification does not better facilitate the applicable BSC objectives (c) or (d). The current construct used by the BSC Panel strikes the right balance between providing some regulatory certainty to the market as to when decisions on modifications will be made and providing the Authority</p>

Respondent	Response	Rationale
		<p>with a flexible and reasonable time period in which to assess and ultimately determine on each proposal. A case has not been made to remove incentives on the Authority to make timely decisions by obliging the Panel to set "open ended" implementation dates. By increasing uncertainty about future arrangements, we consider that efficient market operation would be hindered.</p> <p>We do not consider a case for change has been demonstrated and that a real defect in current baseline has been identified. The current processes allow the Panel flexibility in setting implementation dates and the Panel is free to take account of an appropriate amount of time required by the Authority to make a decision. The current construct within the BSC and the other industry codes has to date been extremely successful and the Authority generally makes decisions well in advance of the 'decision by' dates. Timing-out has only ever occurred once under the BSC in respect of the zonal transmission losses proposals in 2007. However, these modifications timed out as a result of the Authority's assumption with respect to its powers rather than an inappropriate timetable or any unforeseen circumstances.</p> <p>We note that the judge in the JR proceedings in respect of the 2007 zonal losses proposals expressed concerns about long consideration times that could potentially arise if existing BSC processes were changed, particularly in cases where the analysis of the costs and benefits is very time sensitive. In such cases the judge questioned whether the Authority was in substance and reality actually considering the same modification that has been submitted by the Panel when there is a long delay in the Authority making a decision. We consider the current BSC Panel construct appropriately addresses the above risks. Whilst the modification proposal seeks to provide a formal mechanism for the Panel to ask the Authority for likely decision dates and advise the Authority of issues around the validity of the analysis, we note that the Panel is free to do this now and the proposal provides no additional benefits or certainty to BSC parties.</p>
Scottish and Southern Energy	No	<p>We appreciate the desirability for there to be additional time for the Authority to consider a Final Modification Report where the Authority has not decided on that report prior to the 'decide by date'.</p> <p>However, having taken account of the discussions outlined in the Assessment consultation document;</p>

Respondent	Response	Rationale
		<p>including the previous BSC history with respect to timing out by the Authority, such as with P4, P93 and P198; we conclude that P250 Original would not better achieve the Applicable BSC Objectives.</p> <p><u>History – P4</u></p> <p>We are mindful that the issue that P250 seeks to address, namely a delay in deciding upon a Final Amendment Report by the Authority, first arose with P4.</p> <p>The situation at that time is explored in more detail in Panel Paper 37/033 and the Memorandum issued by Elexon, on behalf of the Panel, to BSC Parties on 27th February 2002.</p> <p><u>History – P93</u></p> <p>We have been mindful that this (timing out) situation first arose with P4 (see above) and that a Modification Proposal to address this situation was first raised, by the Panel itself, with P93 (“Introduction of Process for Amendment of Proposed Modification Implementation Dates”).</p> <p>The Authority set out its view on this matter in its Decision Letter of 21st November 2002:-</p> <p>“The rationale behind submitting an Implementation Date is to provide certainty to Parties as to when a change to the Code will take effect. Ofgem considers that the addition of yet another mechanism to alter Implementation Dates would introduce unnecessary regulatory uncertainty to the market with no corresponding gains in efficiency.”</p> <p>The Authority went on to state that:-</p> <p>“This would not better facilitate achievement of the Applicable BSC Objectives in that it would not promote efficiency in the implementation and administration of the balancing and settlement arrangements.”</p> <p>We find it hard to construct a case (with respect to P250 Original) that overcomes this cogent argument from the Authority, namely that “the addition of yet another mechanism to alter Implementation Dates would introduce unnecessary regulatory uncertainty to the market with no corresponding gains in efficiency. This would not better facilitate achievement of the</p>

Respondent	Response	Rationale
		<p>Applicable BSC Objectives....”.</p> <p>We agree with the Authority’s view, as set out in their P93 decision letter, in respect of changing implementation dates and therefore believe that P250 Original would not better facilitate achievement of the Applicable BSC Objectives.</p> <p><u>History – P198</u></p> <p>We note the discussions at the Modification Group meeting that P250 Original would allow the Authority till "infinity" to make a decision. We understand that neither the P250 Proposer or the Ofgem representative disputed this construct at the Modification Group meeting.</p> <p>We note, and agree with, the Modification Group deliberations that such a time-frame (of infinity) would clearly go beyond ‘a reasonable period’ set out in law (referred to in the P198 Judgement at paragraphs 62 and 66) and would also fall foul of the Judgement with respect to the Authority not having the power "to sit upon a Modification Report for years and then seek to restart the exercise by a purported variation of the timetable set in the [Final Modification] Report."</p> <p>Given this we do not believe it is appropriate to allow the Authority to take till infinity to make a decision on a particular Code change. In this regard we are mindful of the P198 Judgement (at paragraph 83) that:-</p> <p>“The justification for a Proposed Modification put forward by the Panel might be dependent upon a very time sensitive analysis of costs and benefits, and the Panel timetable for implementation might accordingly be tailored to that time sensitive analysis. If for any reason there were then a long delay before the Authority could take a final decision, a question might arise whether the Authority was in substance and reality considering the same modification as had been submitted by the Panel, or was considering an altogether different modification, putatively predicated on a cost benefit analysis that the Panel did not, and could not have, evaluated.”</p> <p>Furthermore, we are also conscious of the statements by Counsel representing the Authority at the P198 hearing about the Authority being able to opine on a Code Modification four years after it was submitted to them for deliberation and the two years so far taken, by the Authority, in considering CUSC Amendment</p>

Respondent	Response	Rationale
		<p>Proposal CAP148.</p> <p>Therefore the risk outlined in the Judgment; that “a question might arise whether the Authority was in substance and reality considering the same modification as had been submitted by the Panel”; is a real one if the Authority is given till infinity.</p> <p>We therefore believe that P250 Original would not better facilitate achievement of the Applicable BSC Objectives.</p>
Centrica	No	<p>P250 would increase regulatory uncertainty by mandating that a modification can never time out. This would be detrimental to competition (objective (c)) and the efficient administration of the balancing and settlement arrangements (objective (d)). Centrica notes that there is currently no barrier to the Panel to allow open ended implementation dates, and where circumstances have suggested that is the most efficient route for implementation (generally in low material modifications) that has been the approach taken.</p> <p>Centrica believes that Modification Groups and Panel in constructing these dates have applied the appropriate judgement in this regard.</p> <p>However, mandating this would mean that significant modification proposals (which have impacts on key areas of market design, Parties systems and/or Party cashflows) would have to have an open-ended implementation date. This presents significant uncertainty as it is difficult for a Party to plan for potentially open ended risks. Such uncertainty does not facilitate investment.</p> <p>Centrica is also concerned about the validity of impact assessments, analysis and recommendations after a significant period of time. It is sensible that for significant modifications, implementation dates are set which become part of the modification. If the Authority cannot make a decision in the time provided to allow implementation, then this necessitates timing out of the modification such that it cannot be approved.</p> <p>Centrica believes that the suggested benefits of the modification in terms of reducing wasted industry resource are negligible and there are in fact reasons in which additional resource would be required under P250. For example, this could occur when Parties engage consultants to support responses. These consultants would need to be kept on a retainer (or at least available) until such time as a Ofgem decision is made and the implications can be worked through. This</p>

Respondent	Response	Rationale
		<p>could be expensive without a clear end date and could especially impact smaller players. Additionally, where a decision has had a substantial delay, the whole area has to be reworked by stakeholders to get back up to speed - duplicating effort. This period is also more likely to involve personal changes which would also require duplication of work.</p> <p>The duplication of resource identified under the current arrangements would only occur in the very infrequent occasions when the Authority cannot make a decision within the timescales set out. Whilst this might result in a similar modification being raised, the fact that the validity of analysis and recommendation has decayed, means it is efficient for the industry to readdress these aspects prior to the Authority making a decision. This is the appropriate process to follow.</p> <p>Additionally, it is not clear that there would be any efficiency gain by including a formal process by which the Panel can communicate with the Authority. The Assessment Report makes it clear that the Panel can already write to the Authority for any purpose.</p>
E.ON UK	No	<p>P250 is neutral regarding Objective (B) but would have a negative impact in terms of Objectives (A), (C) and (D). As identified by the Group, the proposal is disproportionate to the claimed defect, and as implementation dates can and often are already constructed to avoid timing-out the proposal is unnecessary. Uncertainty that may arise through the potential for occasional 'timing out' of proposals is far less than P250 Proposed would create for all proposals. The Authority acknowledged this in its rejection of P93. Instituting a decision-by date of infinity is unreasonable and increased regulatory uncertainty from effecting open-ended decision making for all modification proposals would have a negative impact on Parties, making accurate cost-benefit analysis and impact assessments difficult for individual Parties and the market as a whole. Ofgem's aim to make decisions within 25 working days is welcome and we hope that such prompt decision-making will be enabled through improvements to the Authority's internal process efficiency wherever possible. Ofgem already have opportunities throughout the modification process to feed in to working group and Panel discussions and agree that the decide-by and implementation dates should allow them to meet this target. However P250 would weaken the incentive to ensure that prompt decisions are made. Fixed decision-by dates increase this incentive and provide desirable certainty regarding potential implementation dates for changes which may have a substantial impact upon BSC Parties. As stated</p>

Respondent	Response	Rationale
		<p>in the 2008 Judicial Review judgement regarding P198/P200/P203/P204, the power to send a proposal back to the Panel for further consideration would 'better preserve the institutional balance between the Panel and the Authority and better serve the objectives of the BSC'.</p> <p>The BSC Panel can presently contact the Authority to inform them that analysis may be out of date.</p> <p>However as suggested by Part 2 of the modification, formalising this process to request a likely decision date and/or highlight that analysis is time-sensitive would be a necessary safeguard should P250 Proposed be approved, acknowledging the possibility that this proposal might actually increase the risk of proposals timing-out.</p>

Question 2: Would the P250 Alternative Modification help to achieve the Applicable BSC Objectives compared to the current baseline?

Summary

Yes	No	Neutral/Other
3	5	

Responses

Respondent	Response	Rationale
International Power	No	<p>P250AM overcomes the issue of extra costs to industry described in Q1 above. However it would still increase regulatory uncertainty and could result in supporting analysis having to be repeated.</p> <p>P250AM does not therefore facilitate objective d in that it is less efficient than the current administration of the BSC arrangements.</p>
SAIC Ltd. (for and on behalf of ScottishPower)	No	<p>The arguments for the Alternative Proposal are the same as those for the Proposed Modification, with the additional comments:</p> <p>The P250 Alternative Modification would introduce a new process into the BSC so that if the Authority were unable to make a decision before the final 'decision by' date in the Final Modification Report they could instruct the Panel to provide additional Implementation Dates. If the Authority were unable to meet the 'decision by' dates in these additional Implementation Dates then they could again request the Panel provide further</p>

Respondent	Response	Rationale
		<p>additional Implementation Dates.</p> <p>This does not provide the industry with a date upon which the members can plan. It only provides a mechanism for a potential indefinite loop of the Authority requesting new dates from the industry. Each new date requested by the Authority will require a new assessment of the impact of the Modification by industry members. These associated costs will also be potentially based upon increasingly invalid data, affected by a working environment since evolved during the time of the initial Modification.</p> <p>If the Authority were to provide its own indication of when a decision could be made, or even that a decision could not be made by a certain date, then this would perhaps help the process and reduce uncertainty.</p>
RWE npower	Yes	<p>The Alternative Modification allows the Authority to alter implementation dates but only in further consultation with the industry. This power would only be used infrequently and at times when a delay in coming to a decision would otherwise waste the work of a Modification Group. It balances the uncertainties associated with the decision making process with the need to introduce some flexibility when unforeseen circumstances arise.</p> <p>Although, it provides some means of implementing a Proposed Modification its use should be confined to Modifications that do not require changes to Parties' systems. The extra time a new consultation would take and any new analysis could mean that Parties may have to redo their own impact analyses of the changes. This would cause uncertainty and add costs to the process.</p> <p>There is merit in the Group's view that a modification to the Code should not be too prescriptive. However, in practice the Alternative does not provide enough clarity for Parties to plan for implementation dates.</p> <p>A preferred approach would be to set implementation dates that gave the Authority reasonable times to carry out its processes when assessing a Modification.</p>
Drax Power Limited	No	<p>Drax does not believe that the Alternative Modification would help to achieve the Applicable BSC Objectives when compared to the current baseline.</p> <p>Drax believes that the Alternative Modification would also be detrimental to competition (Applicable BSC Objective (c)) due to the fact that Modifications can still be left "openended" (as under the Proposed Modification) if the Authority were to make repeated requests for additional Implementation Dates. Thereby the Alternative Modification also introduces greater uncertainty with regards to Implementation Dates when compared to the baseline.</p> <p>With regards to the efficient operation of the BSC (Applicable BSC Objective (d)), the Alternative</p>

Respondent	Response	Rationale
		<p>Modification does not provide analysis that will stand the test of time above and beyond that provided under the current baseline; as with the Proposed Modification. There are a number of further issues that the Alternative Proposal does not appear to adequately address; please see our answers to Question 7 and 8.</p>
EDF Energy	Yes	<p>We consider that the alternative modification helps achieve the applicable BSC objectives compared to the baseline in respect of objective (d). The alternative proposal will promote efficiency in the implementation and administration of the BSC arrangements as it seeks to primarily extend the arrangements put in place by P180 in circumstances whereby a modification has timed out due to a legal challenge. A consistent approach makes for a clearer and easily understood governance process for all parties. In addition, this approach also formalises the approach to be adopted by the Panel when determining additional implementation dates i.e. parties will be consulted on the appropriate dates and provided an opportunity to raise issues regarding the validity of the analysis set out in the final modification report. We maintain the view that the risk of a modification timing-out is so small that substantial changes to the baseline are not warranted and as such the Panel should remain free to construct implementation dates as it sees fit based on the information made available to it. However, if following unforeseen circumstances the Authority consider there to be a risk of a modification proposal timing out it seems appropriate that a process based on one that is already in place within the BSC (as implemented by P180) should be used.</p>
Scottish and Southern Energy	Yes	<p>We believe that P250 Alternative is, intrinsically, a much better Modification than the Original.</p> <p>The Alternative is summarized on page 9 of the Assessment Consultation. It appears a pragmatic solution to the issue of timing out.</p> <p>It requires the Authority to set out why it is unable to meet the decide by date(s) set out in the Final Modification Report. This is an important element in the 'checks & balances' by which good regulatory practice operates.</p> <p>The Alternative allows the Panel to consult BSC Parties on any revised decide by and implementation dates and it also permits those Parties to comment with respect to the validity, or otherwise, of the analysis undertaken as part of the Final Modification Report.</p> <p>We therefore believe that P250 Alternative would</p>

Respondent	Response	Rationale
		better facilitate achievement of the Applicable BSC Objectives.
Centrica	No	Whilst preferable to the Proposed Modification, the Alternative retains a degree of regulatory uncertainty because there is the potential for implementation dates to be updated into perpetuity. Therefore the Alternative would not facilitate objectives (c) and (d) for the reasons outlined above.
E.ON UK	No	As per answer to question 1 it is questionable whether the claimed defect exists at all; the Alternative is neutral under Objectives (A) and (B), debatable with regards to (C) and negative under (D). Introducing the Alternative proposal would still increase uncertainty for Parties, albeit to a lesser extent than the Proposed. Striving for prompt decision-making in accordance with Ofgem's performance indicator and the original decide-by date which they have agreed to is more appropriate. Seeking further implementation dates with related decide-by dates from the Panel who would consult with industry on any time-sensitive issues in line with P180 provisions might help the Authority ensure that timing-out did not occur, but it seems that the Alternative suggests this would be an instruction, not a request. While it seems unlikely that the Panel would decline such a request, they should retain the ultimate right to stick with existing decision-by date(s) if they considered the request of Ofgem to be unreasonable.

Question 3: Would the Alternative Modification P250 help to achieve of the Applicable BSC Objectives when compared to the Proposed Modification?

Summary

Yes	No	Neutral/Other
6	2	

Responses

Respondent	Response	Rationale
International Power	Yes	Yes due to the risk that implementation could be avoided where it did not coincide with BSC release dates. Compared to the proposed, the Alternative would therefore be more efficient (objective d)
SAIC Ltd. (for and on behalf of ScottishPower)	No	Neither the Alternative nor the Proposed Modification achieves the applicable BSC Objectives.

Respondent	Response	Rationale
RWE npower	No	Whilst the Alternative provides a solution to the defect in the Code, the uncertainties associated with it outweigh its benefits. The delay associated with any new consultation the Panel may have to undertake is open ended whereas the Proposed Modification provides Parties with some clearer indication of the decision time table.
Drax Power Limited	Yes	<p>Drax believes that the Alternative Modification would help to achieve the Applicable BSC Objectives when compared to the Proposed Modification. Drax agrees with the Modification Group that the Alternative Modification better facilitates competition by ensuring:</p> <ul style="list-style-type: none"> • industry consultation on additional Implementation Dates; • industry consultation on the continued validity of analysis; • 'decision by' dates are used (as opposed to open-ended structures) to preserve • greater certainty of regulatory decision making; and • consistency with existing processes contained within the BSC (such those introduced under P180). <p>However, whilst Drax agrees that the Alternative Modification better achieves the Applicable BSC Objectives when compared to the Proposed Modification, we do not agree that the Alternative Modification adequately addresses the issues raised in the following quote from the Judgement (with regards to preserving the regulatory balance between the Authority and the Panel):</p> <p><i>"In such circumstances a power to remit the matter to the Panel for complete reconsideration, rather than a power in the Authority to change the timetable for implementation of what had in substance become by lapse of time a different modification, might better preserve the institutional balance between the Panel and the Authority and better serve the objectives of the BSC."</i></p> <p>It must be noted that the Alternative Modification does not provide a power to remit the matter to the Panel for <i>complete reconsideration</i>, as the Panel would not provide new analysis under the Alternative modification, nor a new decision based upon such new analysis.</p> <p>There are a number of further issues that the Alternative Proposal does not appear to adequately address; please see our answers to Question 7 and 8.</p>
EDF Energy	Yes	See above
Scottish and Southern	Yes	For the reasons we outlined in Q2 above.

Respondent	Response	Rationale
Energy		
Centrica	Yes	Centrica supports the rationale provided by the Modification group.
E.ON UK	Yes	Open-ended decision-by dates as suggested by the Proposed are unacceptable and the Alternative preferable, as agreed unanimously by the Modification Group including the proposer's representative. Gaining industry input to any revised dates means the Alternative would be less negative under Objectives (C) and (D) though still adding to uncertainty

Question 4: Do you support the implementation option preferred by the Modification Group?

- whether you support the Group's view that P250 Proposed Modification or Alternative Modification should only apply to Modification Proposals raised on or after the P250 Implementation Date; and
- whether you agree with proposed implementation timescales of 10 Working days after an Authority decision.

Summary

Yes	No	Neutral/Other
7	1	

Responses

Respondent	Response	Rationale
International Power	Yes	We already have a precedent that does not allow modifications to apply retrospectively. P250 should only apply to modifications raised following its implementation.
SAIC Ltd. (for and on behalf of ScottishPower)	Yes	Implementing P250 (either Proposed or Alternative) only on new Modifications is a sensible approach. The proposed implementation timescales are appropriate.
RWE npower	No	This Modification should apply immediately to Proposals on which it has not yet reached a decision. The dates for implementing any Proposed Modifications should not have any bearing on their development; Modification Groups consider the merits of a proposal and whether it better achieves the Applicable Objectives of the Code. The timing of its implementation should only be concerned with the lead times Parties need to put any changes in place. Applying P250 immediately would introduce more

Respondent	Response	Rationale
		<p>efficiency into the Modification process and ensure that the Authority has the ability to take action in the event that it may be unable to make a decision.</p> <p>Applying P250 immediately would introduce more efficiency into the Modification process and ensure that the Authority has the ability to take action in the event that it may be unable to make a decision.</p>
Drax Power Limited	Yes	<p>If approved, the implementation timescales appear reasonable.</p> <p>Drax agrees with the Modification Group with regards to P250 only applying to Modification Proposals raised on or after the P250 Implementation Date. This will prevent uncertainty over the process for existing Modification Proposals, whilst the outcome P250 is determined.</p>
EDF Energy	Yes	<p>We fully support the proposed implementation timescales. Further, we also agree that if implemented this new modification process should only apply to modification proposals raised on or after the implementation date of P250</p>
Scottish and Southern energy	Yes	<p>We support the Group's view that P250 Proposed Modification should only apply to Modification Proposals raised on or after the P250 Implementation Date. To do otherwise would mean that P250 would be a retrospective Modification. We do not believe in retrospective Modifications as it gives rise to a substantial increase in regulatory uncertainty.</p> <p>We note that the CUSC allows for a ten day period between an Authority decision and implementation. We are mindful, especially in this half term week, that if approved around the holiday period that a code change might be approved and implemented whilst many parties are absent from work. We therefore welcome the BSC adopting a similar 'best practice' approach as the CUSC in determining that P250 be implemented, if approved, ten working days after an Authority decision.</p>
Centrica	Yes to both.	Yes to both.
E.ON UK	Yes	<p>Undoubtedly if approved, implementation should only apply to proposals raised after the implementation dates.</p>

Question 5: Are you impacted by the Proposed Modification. If so, what are the impacts and costs of the Proposed Modification on you organisation?

Please let us know whether the Proposed Modification would impact your ability to provide accurate impact assessments to future Modification Proposals?

Summary

Yes	No	Neutral/Other
5	3	

Responses

Respondent	Response	Rationale
International Power	Yes	Assessing how the modification might impact on an organisation would become more challenging with no certainty on when it was to be implemented. The recent losses modification is a good example of the need to know when a modification will go live as the start date will be the start date of any analysis of the impact.
SAIC Ltd. (for and on behalf of ScottishPower)	Yes	<p>There would be a significant impact upon ScottishPower if the Proposed Modification were implemented.</p> <ul style="list-style-type: none"> The lack of an Authority decision date would compromise planning for implementation, given that there would not be a date provided. Given that the Authority does not have a decision date then a sudden approval of a Modification by the Authority, with an associated implementation date, may require industry members to radically change their business processes and priorities to satisfy the Authority. There would be associated additional costs. Preparation for an impending decision by the Authority, but without any indication of when the decision will be made, may require budgets to be allocated to mitigate the impact. Working capital would then be tied up. This would be especially detrimental to the smaller market participants and arguably detrimental to competition. The relevance of the analysis and data supporting the Modification will denude over time. If a decision date was delayed for a significant length of time then it could be argued that the Modification as eventually implemented would not correspond to the originally Proposed version. Changes in the industry, governmental policy, etc. could invalidate the original premise for the Modification but the assessment would

Respondent	Response	Rationale
		still be made on the original situation.
RWE npower	No	-
Drax Power Limited	Yes	<p>modifications that do not have a material impact on participants tend to have open ended date constructions; such modifications continuing to have open ended date constructions would not have an impact on Drax.</p> <p>However, those Modifications that are likely to have a material impact on participants tend to contain 'decision by' dates in order to provide greater certainty to both current and new investors. The removal of such date constructions, by effectively including provisions to allow Modifications to remain open to determination for an indefinite period of time, only serve to create greater uncertainty.</p> <p>As such, the Proposed Modification would increase costs to investors associated with regulatory uncertainty if decisions are not determined by the Authority in a timely fashion. It is important that the Modification process promotes timely decision making by the Authority, particularly where the analysis associated with the Modification has a finite life.</p>
EDF Energy	No	All parties have finite resources when implementing change irrespective of the source of change, i.e. industry obligation or internal improvement project. If an industry change is subject to an open ended period it makes scheduling and potential rescheduling of all other system and process changes, particularly internal ones difficult. This could have a detrimental impact on a party due to circumstances totally outside its control.
Scottish and Southern Energy	Yes	Directly we expect to be only slightly impacted if P250 Original itself were to be approved and implemented. The cost therefore would be low.
Centrica	No	The proposed modification has no impact on our systems. Any impact assessment we provide will relate to costs as determinable. Where such changes are required at a point that could be in the medium to long term future, these costs are likely to be difficult to determine with accuracy as prices would be subject to change. Whilst Centrica has not yet determined how it would construct its impact assessments were P250 approved, it might involve including an additional risk premium to reflect the uncertainty.
E.ON UK	Yes	As per previous answers, open-ended decision making would increase regulatory risk and uncertainty and undoubtedly make accurate analysis of the potential impacts of proposals on the company more difficult if not impossible.

Question 6: Are you impacted by the Alternative Modification. If so, what are the impacts and costs of the Alternative Modification on you organisation?

Please let us know whether the Alternative Modification would impact your ability to provide accurate impact assessments to future Modification Proposals?

Summary

Yes	No	Neutral/Other
5	3	

Responses

Respondent	Response	Rationale
International Power	Yes	Assessing how the modification might impact on an organisation would become more challenging with no certainty on when it was to be implemented. The recent losses modification is a good example of the need to know when a modification will go live.
SAIC Ltd. (for and on behalf of ScottishPower)	Yes	Rationale is the same as that for Question 5.
RWE npower	No	-
Drax Power Limited	Yes	<p>Whilst the Alternative Modification attempts to ensure that the analysis contained within Modifications with extended decision timelines is still valid (via consultation with the industry), it fails to address the need to promote timely decision making in order to provide greater certainty for investors.</p> <p>The process that the Alternative Modification aims to introduce would still allow Modifications to remain open ended, as there is no limit to the number of times a decision process could be extended, provided the analysis remained valid. Investors would still be subject to increased uncertainty (against the baseline) where, for example, decisions on changes to charging principles remain open to determination due to repeated requests to extend the timeline for decision making.</p> <p>In a similar way to the Proposed Modification, the Alternative Modification would increase costs to investors associated with regulatory uncertainty if decisions are not determined by the Authority in a timely fashion. Further to this, the Alternative Modification would increase costs to participants due to the resources required to respond to timetable consultations and the increased cost of administering the associated BSC Panel processes. Whilst this cost could be small in comparison to the changes that such Modifications seek to introduce, the repeated use of</p>

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		<p>such mechanisms due to untimely decision making could become a burden to participants, particularly new and small participants.</p> <p>The Authority originally consulted on timetable extension provisions due to the need to react to unforeseen circumstances that may delay the decision process. As such, it would seem reasonable to expect that the Authority would only need to take advantage of such timetable extension processes on a single occasion for a given modification proposal (i.e. once the Authority has identified the issue and determined the extra time required to come to a decision). Drax believes that it may be more appropriate for the Alternative Modification to be worded in such a way that allows a <i>single</i> extension to the timetable, to take account of unforeseen circumstances that the Authority encounters during the decision making process. Please see our answer to Question 7.</p>
EDF Energy	No	There still remains some uncertainty as to when decisions on modification proposals will be made under the alternative proposal leading to the risks and impacts described in question 5. However, we consider the alternative mitigates these risks to a degree by allowing the Panel the flexibility to construct implementation dates taking account of the views expressed by interested parties.
Scottish and Southern Energy	Yes	Directly we expect to be only slightly impacted if P250 Alternative itself were to be approved and implemented. The cost therefore would be low.
Centrica	No	As for Question 5.
E.ON UK	Yes	The Alternative Modification would still increase uncertainty such that as with the Proposed, an impact assessment carried out based on the original dates might no longer be accurate if these dates are revised, with a knock-on effect to business planning and preparation, plus potentially changing our preference for implementation/non-implementation of the Proposed or any Alternative. It would be preferable to be consulted on potential new dates than not but any revision to timescales would necessitate further work and possibly considerable costs in reassessing the impact and preparing for the potential change

Question 7: Are there any alternative solutions that the Modification Group has not identified, that it should consider?

Summary

Yes	No	Neutral/Other
2	6	

Responses

Respondent	Response	Rationale
International Power	No	-
SAIC Ltd. (for and on behalf of ScottishPower)	No	-
RWE npower	No	
Drax Power Limited	Yes	<p>Drax believes that it may be more appropriate for the Alternative Modification to be worded in such a way that allows a single extension to the timetable to take account of unforeseen circumstances that the Authority has encountered during the decision making process; the ability to table repeated requests would only serve to undermine certainty.</p> <p>In order to ensure that the Alternative Modification provides certainty of decision dates, the proposal must ensure that the Authority could not effectively make the decision timetable open-ended by making continual requests for additional 'decision by' dates over a period of time.</p> <p>Further to this, it should be clear that a request to revise a Modification timetable can only be made prior to the final 'decision by' date currently in operation, i.e. to ensure that requests are not made retrospectively. Inaction by the Authority prior to the 'decision by' date should result in the modification timing-out, in order to ensure that the Authority continues to make timely decisions and that the Modification timetable function does not, in essence, become defunct. This would not need to be a new alternative solution; it could be a simple amendment to the current Alternative Modification.</p>
EDF Energy	Yes	<p>Whilst we consider the alternative is better than the baseline we do believe additional elements to the alternative proposal would be appropriate and further achieve the BSC objectives. The ability of the Panel to not only revise its implementation dates but also revise its analysis and recommendation should be included. Again the Judge in his decision on the JR (as referred to above) stated that where there was a long delay in obtaining an Authority decision and there was an issue of time sensitive analysis any power to remit the issue back to the Panel should be one that allows for complete reconsideration rather than simply revising the implementation dates. We note that the Modification Group has discussed this issue. However, it would appear that extending the Panels ability in this</p>

Respondent	Response	Rationale
		respect has not been included because of Ofgem's ongoing governance review and its initial proposals for "sending back" modification proposals to the Panel for further analysis. Any consideration of modification proposals and alternatives should be based on the current version of the BSC and not in anyway anticipate potential future changes to the BSC code or transmission licence that may or may not materialise. Consequently, we consider improper to discount these additional elements and recommend them to be added to the alternative proposal.
Scottish and Southern Energy	No	-
Centrica	No	Any alternative solution that mandates the inability for modification proposals to time out would have the same impact on regulatory certainty as mentioned in Q1.
E.ON UK	No	-

Question 8: Do you have any further comments on P250?

Responses

Respondent	Comments
International Power	-
SAIC Ltd. (for and on behalf of ScottishPower)	<p>Modification P250 is contrary to the Authority decision on P93, which the Authority supported the Implementation Date as a method of providing certainty as to when a Code change will take effect.</p> <p>Modification P250 is contrary to the Judge's comments on the outcome of the High Court of Justice ruling on "Teesside, Immingham, Drax, British Energy versus The Gas and Electricity Markets Authority" from 25th June 2008. This stated that a delay in a decision from the Authority could create a situation where the time sensitive nature of the date has arguably meant that the Panel and the Authority are not considering the same Modification.</p>
RWE npower	-
Drax Power Limited	<p>Drax believes that greater detail is required regarding the ability of the Authority to <i>"specify that the revised proposed Implementation Date shall not be prior to a specified date"</i> under the Alternative Modification. It is important to ensure that such revised dates are still deemed "reasonable", in accordance with the Judgement; if they were not, the Alternative Modification would not adequately address concerns over the validity of the analysis, nor provide the market with the certainty it had prior to the request to revise the Modification timetable. There also needs to be greater clarification over what would happen to the process should the BSC Panel advise that the analysis is no longer</p>

Respondent	Comments
	<p>valid (after consultation with industry participants) under the Alternative Modification. Should the Modification time-out or would the Authority be able to perform its own analysis in replacement of that provided by the Modification Group? If the Authority were to produce its own analysis, would the Modification become, in essence, a different Modification? What implications would there be with regards to the appeals process, as the BSC Panel's recommendation would be based upon the original Modification Group analysis that is now out-of-date? Such issues need to be addressed and advice should be sought to ensure that the remedies for these issues are consistent with the Judgement.</p>
EDF Energy	-
Scottish and Southern Energy	<p><u>Legality – Revised Analysis</u></p> <p>We note the comments on page 3 of the Assessment Consultation document that:-</p> <p>"Under both the Proposed Modification and the Alternative Modification, the Panel would not have the ability to revise the analysis or its original recommendation as to whether the Modification Proposal should be made."</p> <p>This appears to stem from the P250 proposal itself:-</p> <p>"Should the circumstance occur, provide the Authority of any detail of why analysis has become out of date. The purpose of such information would be, for example, to allow the Authority to undertake additional analysis as part of a Regulatory Impact Assessment. " [emphasis added]</p> <p>The clear impression, with P250, is that if the original analysis (which we shall call 'analysis X') goes past its 'use by date' that if the Authority undertakes some form of "additional analysis [which we shall call 'analysis Y'] as part of a Regulatory Impact Assessment" this can, in some way, 'update' the out of date analysis 'X' such that it becomes 'usable' by the Authority alone.</p> <p>It is important to note that the matters being analysed under 'X' and 'Y' would have to be, in substance, identical - 'Y' is only updating 'X'. If not then the Authority would clearly; as noted in the P198 Judgement; be considering a different modification. Separate to this 'Y' analysis will be any additional analysis, with respect to the Authority's wider statutory duties, that is undertaken as part of the RIA.</p> <p>With regard to the 'Y' analysis its important to also note that (unlike with analysis 'X') there would be:-</p> <p>i) no Modification Group assessment (or recommendation) of that analysis ('Y');</p>

Respondent	Comments
	<p>ii) no industry consultation of that analysis ('Y') (a) by the Modification Group or (b) by the Panel or, potentially, (c) the Authority (if no RIA is issued); and</p> <p>iii) no Panel recommendation (with an industry consultation) based of that analysis ('Y').</p> <p>If this were the case it seems it misses a fundamental element of the P198 Judgement, namely that the Panel recommendation to the Authority (to accept or reject a particular Modification) would have been made on the basis of the analysis 'X' only.</p> <p>As the Judge, at paragraph 83, noted:-</p> <p>"The justification for a Proposed Modification put forward by the Panel might be dependent upon a very time sensitive analysis ['X'] of costs and benefits, and the Panel timetable for implementation might accordingly be tailored to that time sensitive analysis ['X']. "</p> <p>If the Authority then uses analysis 'Y', "a question [as the Judge stated] might arise whether the Authority was in substance and reality considering the same modification as had been submitted by the Panel, or was considering an altogether different modification, putatively predicated on a cost benefit analysis ['Y'] that the Panel did not, and could not have, evaluated".</p> <p>With P250, it would seem that the Authority would be inferring what the Panel would have recommended (in the Final Modification Report) if it (the Panel) had seen analysis 'Y', rather than on what the Panel actually recommended in the Final Modification Report based on Analysis 'X'.</p> <p>A further concern is that such an approach might, for example, effectively invalidate any successful BSC Party appeals (of an Authority code change decision) to the Competition Commission. This would arise where the analysis 'Y' was considered by the Authority and not the Panel. Without a Panel re-vote (of its original decision based, now, on the updated 'Y' analysis) then the Authority could argue, at the commission, that its (the Authority) decision is based on more up to date 'new' 'Y' analysis. This would clearly, if not explicitly, inferring that the original Panel decision is flawed (because its based on the 'out of date' information in the original 'X' analysis).</p>
Centrica	<p>The key issue is that the Authority makes a decision in reasonable timescales. If the analysis in the final Modification report is not sufficient for the Authority to make a decision, then Ofgem should have been more engaged in the process and should have identified the gap in analysis sooner. If this feedback process is not working adequately then this would lead to a waste of industry's efforts. Where Ofgem could not have foreseen that further analysis was required, then perhaps there should be a mechanism to send it back to the Panel/Working Group.</p>
E.ON UK	<p>Further consideration could perhaps be given to the relative benefits</p>

Respondent	Comments
	<p>of changing the Transmission Licence and BSC governance in line with the process for charging methodology change proposals, where decisions are time bound and Ofgem appears perfectly able to make decisions within a reasonable period. Under this more 'disciplined' decision making process a relatively short time period of time is allowed for an Ofgem decision (albeit with some leeway for Ofgem to extend the period on giving the appropriate notice). In addition if a veto decision is not received in time the charging proposal is implemented. For BSC Modifications a more efficient approach might be to implement the Panel's recommendation if a decision was not made within a specified time; this would be comparable to Ofgem failing to veto a charging proposal. It should also be noted that affected parties only have 3 weeks to lodge an appeal under the Code Modification Appeals Procedures, in contrast to the more generous time periods typically allowed by the BSC Panel's decision-by dates</p>