

P252 Consultation Responses

Consultation issued on 15 March 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
EDF Energy	13/0	Supplier/Generator/Trader/Consolidator/Exemptible Generator/Party Agent/Distributors
SAIC Ltd. (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
RWE npower	10/0	Supplier/Generator/ Trader / Consolidator / Exemptible Generator / Party Agent
E.ON UK	6/0	Supplier / Generator / Trader / Consolidator / Exemptible Generator
Conoco Phillips	1/0	Non physical
Utilita	1/0	Supplier

Question 1: If your Trading Party does not use both votes, or does not vote at all during a BSC Panel election, please let us know why.

Responses

Respondent	Response
EDF Energy	EDF Energy participates fully in the BSC election process and uses all votes available to it.
SAIC Ltd. (for and on behalf of ScottishPower)	n/a

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Respondent	Response
Scottish and Southern Energy	-
RWE npower	RWE npower currently casts both of its two votes. There is no reason why other parties cannot or should not do this.
E.ON UK	n/a – like 28 of the 31 voting Trading Parties in 2008 we have used both voting papers.
Conoco Phillips	The value of voting for an independent small market participant is a function of the resource required to fully understand the election process itself and knowledge of the proposed panel members up for election coupled with the perceived benefits that the resource costs of engaging with the election will achieve. Although the Ofgem led code governance review aims to simplify governance processes across the industry there are currently many differences between codes that an independent smaller market participant simply cannot get on top of—election processes being an example.
Utilita	-

Question 2: Do you believe that the solution proposed under P252 would lead to a more reflective elections process?

Summary

Yes	No	Neutral/Other
2	5	0

Responses

Respondent	Response	Rationale
EDF Energy	No	We do not consider the proposal will lead to a more reflective elections process. All trading party groups will continue to be treated equally in the number of votes available to them.
SAIC Ltd. (for and on behalf of ScottishPower)	No	One of the concerns highlighted in this proposal is that not all participants are using their available voting rights. The option to vote is the prerogative of the relevant Party.
Scottish and Southern Energy	No	We recognise that P251 is a separate Modification; however, we believe that P252 (when combined with P251) will lead to a far less reflective election process. Furthermore, even if P252 were to be approved on its own (and P251 rejected) we would still hold this view (that P252 will lead to a less reflective election process).
RWE npower	No	Currently all trading parties are constituted with both

Respondent	Response	Rationale
		production and consumption accounts. The proposal itself states that – "...it is the norm for all eligible voting parties to have two votes to cast." So it should be that all voting parties have equal voting capabilities. With this in mind RWE npower cannot see how any changes to the voting process could lead to a more reflective process.
E.ON UK	No	<p>P252 might appear neutral at first glance as there seems little difference between one party, one voting paper and one party, two voting papers. However as Ofgem/DTI stated in their Oct 1999 NETA conclusions, 'a key concern has been to obtain a Panel that contains a broad range of views', this would seem best facilitated by allowing more not less flexibility/choice in the voting process. By definition how could restricting choice by allowing Parties to express only up to 3 preferences instead of up to 6 produce a more reflective outcome, when 6 preferences could be split between 1 and 6 candidates to reflect a Party's strength of support for those candidates? Also, as the consultation document identifies, if the intention at NETA go-live was to create a system whereby Suppliers receive one vote, Generators receive one vote, and those with both aspects to their business two votes, allowing all voting trading parties one voting paper with up to three preferences would seem overly restrictive for all Parties, but particularly integrated companies.</p> <p>The current process could be viewed as advantaging companies with an interest in only one aspect of the industry, but not changing the definition of voting trading party and keeping the same number of voting papers for all, P252 would not change this or make voting more reflective for any Parties. Though all Parties could choose to give their first preference votes on each account to one particular candidate, this seems likely to be more attractive to such companies in comparison with those having e.g. both Generation and Supply arms. In such integrated companies, though some may on principle vote the same way on each account, each part of the business might wish to give their first preference vote to a separate candidate. In the proposer's representative's scenario of 12 Parties agreeing how to cast their votes, if 12 integrated companies wished to elect candidates with expertise in two areas potentially 2 candidates would indeed get 12 votes each. But if 12 independent companies wanted to influence the election of someone with expertise in their particular area of concern they could give 1 candidate 24 votes. Implementing P252 would make no difference to this with the respective numbers just changing to 2 candidates with 6 votes each versus another given 12 votes. It is for every Party to consider how to vote on each voting paper they have while considering that under the present methodology, voting the same way on each voting paper increases the chance of those candidates being elected, but if this is successful the papers would then be excluded from rounds 2 and/or 3 and only reconsidered in the further round. Maintaining the current flexibility would seem preferable for all Parties.</p>
Conoco Phillips	Yes	The current process does not reflect the principle of

Respondent	Response	Rationale
		<p>one party, one vote—and indeed the reason for the existence of two votes, regardless if they are a generator, supplier or both, is not well described (i.e. the decision was taken so long ago that the rationale for it being the way it is currently is not clear). If the original intention was to create a system whereby suppliers (i.e. those with consumption accounts) received one vote to elect a representative to the Panel to address supplier issues and generators (i.e. those with production accounts) received one vote to elect a representative to the Panel to address generator issues then this has not transpired.</p> <p>Further no argument has been put forward to maintain the two votes (nominally for different accounts) if there is no relevant distinction between consumption and production in the election of BSC Panel Members with respect of either the objectives of the Panel or its duties and powers.</p> <p>To simplify processes and to account for the fact that anecdotal evidence suggests that some parties do not appreciate they have two votes it would be a more efficient election process if each trading party had one vote. The proposal 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”</p>
Utilita	Yes	<p>It would be simpler and avoid potential confusion, particularly for those parties who generally only trade on either a production account or consumption account, but not both. One vote per person/party is generally the accepted best practice for most elections and the justification for a different approach within the BSC Panel process of two votes per party is not clear. Election processes that are readily understood and simpler to operate are more likely to encourage participation and produce a result more reflective of the electorate’s wishes.</p>

Question 3: Do you believe that organised tactical voting (block voting) is an issue in the Panel elections process?

Summary

Yes	No	Neutral/Other
2	5	0

Responses

Respondent	Response	Rationale
EDF Energy	No	There is no evidence to suggest that there is explicit

Respondent	Response	Rationale
		organised tactical voting in the election process. Individual participants are simply incentivised to vote in a manner which best suits their desired preferences for appointed Panel Members
SAIC Ltd. (for and on behalf of ScottishPower)	No	No evidence has been provided to suggest that tactical or block voting is being employed across the industry.
Scottish and Southern Energy	No	<p>It appears that the canvassing, by a candidate for Panel membership, is being perceived as being "organised tactical voting" and the inference is therefore that this is, in some way, wrong. If so then someone had better flag this up to the Parliamentary authorities prior to the forthcoming General Election. In a vote for elective office (in a democracy) it is appropriate for candidates to seek votes.</p> <p>We are confused (perhaps someone could clearly set out their concerns, rather than inferring something untoward by innuendo) as to how "organised tactical voting" could take place in the context of the BSC Panel. We are mindful that each Trading Party; be they associated with the very largest or very smallest BSC Party; is in exactly the same position.</p> <p>If any untoward tactical voting was taking place, say, amongst the Supplier community (or indeed the generator community) whereby a candidate for Panel membership actively sought votes from Suppliers then, given the small size of the electorate, this would be widely known.</p>
RWE npower	No	RWE npower is not aware of parties voting tactically. If there was any tactical voting then we do not see how this proposed change would remove this.
E.ON UK	No	Fears of 'block' tactical voting seem unlikely and are to our knowledge unfounded; we are not aware of any such tactics having been employed. Although the proposer has claimed 'anecdotal evidence' of tactical voting they have not provided any information to back up this claim; it seems doubtful that much if any advantage would be gained by 'block' voting, plus as the Group has pointed out all Parties are free to vote as they wish anyway. If any Party chooses to vote 'tactically' that is their choice, bearing in mind as above that casting the same vote on each account increases the chance of their first and second preference candidates being elected in an earlier round but if successful under the present methodology that paper being excluded from round 2 and/or 3. Also, although the proposer's representative claimed that it is 'harder for smaller participants to create an organised block of votes than it is for the larger integrated Parties', this seems doubtful. As there are more smaller Parties it would seem rather that there is greater scope for them to influence the election of certain candidates through 'block' voting.
Conoco Phillips	Yes	As the assessment consultation suggests there is

Respondent	Response	Rationale
		<p>anecdotal evidence that the ability of trading parties to cast two votes has in the past lead to tactical voting with a view to maximising the number of seats secured for a particular interest or constituency.</p> <p>Whether or not tactical voting has occurred the current procedure would appear to allow it, which in turn would not be in the interests of a simple, fair election process—particularly for smaller parties with infrequent engagement with BSC procedures that was unaware of block voting.</p>
Utilita	Yes	The issue is whether the present process unduly facilitates block voting to the potential detriment of the election process. The present process appears to make it easier for an organised group of parties to virtually guarantee the election of at least two seats, by splitting votes. Having only one vote per party would make this more difficult.

Question 4: Would P252 Proposed Modification help to achieve the Applicable BSC Objectives compared to the current baseline?

Summary

Yes	No	Neutral/Other
2	5	0

Responses

Respondent	Response	Rationale
EDF Energy	No	We do not believe a defect has been identified with the current baseline. All trading party groups have equal voting rights under the existing arrangements and there is no evidence that organised tactical voting takes place to the detriment of the election process. Further, the proposal does not eliminate the potential for block voting to occur. Furthermore, we see no reason why trading party groups who have both generation and supply interests should not have the ability to submit two votes in order to elect Panel Members with expertise in generation and supply. Consequently, we do not consider the proposal better meets any of the applicable BSC objectives.
SAIC Ltd. (for and on behalf of ScottishPower)	No	The Proposed Modification does not better achieve the Applicable BSC Objectives. It is not clear which defect this Modification is trying to address.
Scottish and Southern Energy	No	We agree with the majority of the Modification Group that P252 does not better achieve any of the Applicable BSC Objectives.

Respondent	Response	Rationale
		<p>In particular we believe that there is no defect and that by removing the ability for a Trading Party that has both Supply and Generation interests to submit 2 votes this disenfranchises the respective part of that Trading Party which is denied a vote which, in turn, means it is counter to promoting effective competition.</p>
RWE npower	No	<p>On occasion there may be different requirements from those representing Production and Consumption Energy Accounts, under the current arrangements these requirements can be catered for, allowing independent votes to be cast. Under the proposed new arrangements this ability would be removed resulting in the representatives of one Energy Account having to conform to the wishes/ will of the other. The proposal therefore does not appear to be promoting effective competition, but fettering the ability to cast independent votes. In addition, RWE npower remain to be convinced that the introduction of one party, one vote would make it easier for parties to participate in the election process, as stated in the IWA.</p>
E.ON UK	No	<p>We are not sure if there is a defect and quite what P252 would achieve.</p> <p>P252 is neutral for Objectives (a) and (b) and it is doubtful if there is any positive impact but potential for negative impact under Objectives (c) and (d).</p> <p>Regarding Objective (d), less votes to cast/count would simplify the process, but it seems unlikely that the ability to only cast one vote not two will encourage greater participation, more likely the opposite as currently with 6 preference votes, depending on how many of their choices were elected in round one, a Party could potentially influence the election of all 5 industry Panel members, but under P252, only 3. It can be anticipated that this might lead Parties to feel less engaged with the elections and potentially modifications process than if they had been able to indicate more preferences and potentially influence more seats.</p> <p>The impacts regarding Objective (c) are unclear. Insofar as all Parties have Production and Consumption accounts and so two votes, there is no discrimination hence no defect in the Code or reason to change the process. If as it seems the current process is most satisfactory the fact that some Parties may have not been aware of having two votes is not a reason to change this; the knowledge gap could be satisfactorily addressed in further communications prior to the 2010 election. The fact that if they wished some Parties could agree amongst themselves to vote in a particular way is also as the Group has identified not a reason to change the process as this is possible for all Parties. If P252 would allay any fears, founded or unfounded, of block voting by any alliance of Parties, this might be considered worthwhile in itself. However it would not. Not only is there not a problem per se with such behaviour, but groups of Parties could still agree to 'block' vote their preferences for the same candidate(s)</p>

Respondent	Response	Rationale
		if they have only one voting paper, P252 would just remove flexibility from any companies who wished to vote differently on the two accounts. More radical changes to the voting process would be required to resolve this.
Conoco Phillips	Yes	We support the rationale as described in the initial written assessment. We would add that the "one party, one vote" is simpler and for smaller independent parties that do not have the resource to engage in code processes frequently any simplification helps.
Utilita	Yes	It would produce a simpler process that was easier to understand and access. If the process encourages more parties to cast votes the result is more likely to reflect the overall wishes of the electorate. This would support objective (c), competition, and simpler arrangements would support objective (d), promoting efficiency in the administration of the BSC arrangements.

Question 5: Do you support the Groups preferred implementation approach?

Summary

Yes	No	Neutral/Other
4	2	0

Responses

Respondent	Response	Rationale
EDF Energy	Yes	-
SAIC Ltd. (for and on behalf of ScottishPower)	Yes	
Scottish and Southern Energy	No	<p>The Groups preferred implementation approach is confusing.</p> <p>We do not understand why there is a "Within 5 Working Days of* an Authority Decision" given that the implementation is stated as being "On 24 June is [sic] an Authority decision is received on or before the 16 June". As there is no year shown, there will always be a situation where 16th June will arise. Thus if a decision is received after 16th June 2010 (but before 16th June 2011) then P252 would be implemented on 24th June 2011.</p> <p>With respect to implementation occurring, generically,</p>

Respondent	Response	Rationale
		<p>five Working Days after an Authority decision we note that the CUSC allows for ten Business Days between Authority decision and implementation. We are mindful, especially at times of holidays (such as the summer holidays which start, in Scotland, in June) that if approved around the holiday period that a Code change might be approved and implemented whilst many parties are absent from work. For that reason we believe if Elexon are to go down the CUSC route of determining implementation X days after an Authority decision that X is set at ten, rather than five Working Days.</p> <p>*typo on page 3 "of" shown as "if".</p>
RWE npower	No	RWE npower currently do not see the need to implement any change to the voting arrangements.
E.ON UK	Yes	-
Conoco Phillips	Yes	Panel voting processes should be simplified as quickly as possible.
Utilita	Yes	A pragmatic approach that recognised the 2010 election timetable.

Question 6: Are there any alternative solutions that the Modification Group has not identified, that it should consider?

Summary

Yes	No	Neutral/Other
1	4	1

Responses

Respondent	Response	Rationale
EDF Energy	No	-
SAIC Ltd. (for and on behalf of ScottishPower)	No	
Scottish and Southern Energy	No	<p>We note the comments; on page 7 of the consultation document; that the minority of the Group argued that it is unfair that a Party who is purely production or consumption gain, in principle, an extra vote than those Parties who are both production and consumption.</p> <p>An alternative solution would be to remove one vote from any Trading Party where that Party "is purely production or consumption".</p>
RWE npower	Yes	Elexon could make it clear that Parties have and should

Respondent	Response	Rationale
		exercise their two votes.
E.ON UK	-	<p>As the Modification Group identified, allowing all Trading Parties within a trading party group, or indeed all BSC Parties, to vote would be considered anticompetitive as that would mean integrated Parties would be able to cast more votes than independent Parties.</p> <p>However as the consultation document identifies, if the intention at NETA go-live had been to create a system whereby Suppliers receive one vote, Generators receive one vote, and those with both aspects to their business receive two votes, if anything there is an argument from removing the second voting paper from Parties with Production or Consumption BMUs only.</p> <p>The other possible alternative of establishing constituencies, whether by Production/Consumption or size, would be problematic as identified by Ofgem/DTI in 1999.</p>
Conoco Phillips	No	-
Utilita	No	-

Question 7: Do you have any further comments on P250?

Responses

Respondent	Comments
EDF Energy	No
SAIC Ltd. (for and on behalf of ScottishPower)	No
Scottish and Southern Energy	<p>We provided our comments on P250 on 19th February 2010.</p> <p>With respect to P252 we have the following further comments to make.</p> <p>We fail to see how reducing the number of votes that a BSC Party can exercise (from two to one) will increase participation in BSC Elections. If there were a BSC Party who did not want to 'participate' in exercising their two votes all they need to do is exercise one of their votes.</p> <p>Furthermore, we fail to see how effectively halving the number of votes cast which in overall numbers terms is already small (a figure of 59 is quoted on page 4 of the consultation number) could result in 'more reflective voting'. The interaction with P251 (with its "+1" concept) would, in our view, be fatally flawed if the total number of</p>

Respondent	Comments
	<p>votes cast were just 31.</p> <p>With respect to the comments attributed; on page 4 of the consultation document; to the Proposer that "the current process does not reflect the principle of one party, one vote" we note that this will not be resolved with P252 as we, representing nine BSC Parties, only get one vote (or two with the Baseline) under P252 (rather than the nine the Proposer of P252 seems to desire with 'one party, one vote')</p>
RWE npower	No
E.ON UK	No
Conoco Phillips	No
Utilita	No