

Modification proposal:	Balancing and Settlement Code (BSC) : Removal of Trading Parties' ability to submit two votes at elections of BSC Panel Industry Members (P252)		
Decision:	The Authority ¹ has decided to reject this proposal		
Target audience:	National Grid Electricity Transmission Plc (NGET), Parties to the BSC and other interested parties		
Date of publication:	16 June 2010	Implementation Date:	n/a

Background to the modification proposal

The BSC Panel has overall responsibility for administering the BSC, including making recommendations on BSC modifications to the Authority. The Panel includes five industry members who are elected by BSC Trading Parties every two years. Elections are held if more than five suitable candidates are nominated by Trading Parties. Industry members are not to be representative of any particular industry constituency. Instead, they must act impartially to further the Panel Objectives². The aim of the Panel elections is to achieve an appropriate balance of industry expertise on the Panel. The Panel chair can appoint a sixth industry member if the five elected members do not provide an appropriate balance of industry expertise.

Trading Parties or Trading Party groups (in the case of a Trading Party with affiliates) have up to two votes in Panel elections, one for each Energy Account they hold. For example, a Trading Party group which has generation and supplier interests may cast one vote for its Production (generation) Energy Account and one for its Consumption (supplier) Energy Account. The existing voting rules for electing industry Panel members are set out in full in the BSC³. In the most recent elections in 2008, 59 votes (out of a possible 308) were received from 31 Trading Parties and Trading Party groups⁴.

The modification proposal

Utilita raised P252 in February 2010. The proposer considers that there is no compelling reason why Trading Parties or Trading Party groups should be able to submit two votes in Panel elections. The proposer seeks to amend the BSC so that each Trading Party can only submit one vote. In its view, this approach would ensure that industry Panel membership aligns more closely to Trading Parties' views, making the election process more transparent and accessible to parties and more democratic (the principle of 'one party, one vote'). It would also remove the risk of tactical voting where one vote (the Production Energy Account vote) is cast in one way and the other vote (the Consumption Energy Account vote) is cast in another way.

The proposer considers that increasing transparency and democratic accountability of the elections process would simplify parties' understanding of it and encourage greater participation in Panel elections, removing a potential barrier to entry for participants and thereby better facilitating BSC Applicable Objective (c). The casting of fewer numbers of

¹ The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

² Section B 1.2 of the BSC.

³ Annex B-2 of the BSC.

⁴ Elexon noted during the assessment of P252 that 308 votes could have been cast in the 2008 Panel elections. The 2008 Panel election results appear on the Elexon website: www.elexon.co.uk.

votes would also marginally increase the efficiency of the counting process and better facilitate Applicable Objective (d).

BSC Panel⁵ recommendation

The BSC Panel considered the draft Final Modification Report at its meeting on 13 May 2010. The Panel agreed by a majority that the modification proposal does not better facilitate any of the BSC Applicable Objectives. Details of the Panel's views appear in the Final Modification Report.

The Authority's decision

The Authority has considered the issues raised by the modification proposal and the Final Modification Report dated 17 May 2010. The Authority has considered and taken into account the responses to Elexon's⁶ consultation on the modification proposal which are attached to the Final Modification Report⁷.

The Authority has concluded that implementation of the modification proposal will **not** better facilitate the achievement of any of the Applicable Objectives of the BSC⁸.

Reasons for the Authority's decision

We note the views of the modification group regarding the issue of the reason why each Trading Party or Trading Party group is able to cast two votes. We also note their views, those of respondents and the Panel regarding the issue of tactical voting.

The aim of the Panel elections process is to achieve an appropriate balance of industry expertise on the BSC Panel. During the assessment of the modification proposal, some modification group members noted that two votes have been provided to allow a Trading Party (or Trading Party group) which has interests in both generation and in supply to support two candidates, each of whom has the relevant expertise. Elected industry members are obliged by the BSC to act impartially and so are not representative of generation and supply interests. However, they would be able to provide an informed view from the perspective of generators or suppliers. Removing the ability to cast two votes may mean that a Trading Party (or Trading Party group) has to choose whether to support a candidate with expertise in generation or in supply but not both. There is a small risk that this leads to an absence of some expertise on the Panel which may impact on effective and informed decision-making by the Panel.

Regarding the issue of tactical voting, no evidence was presented that tactical voting is a concern in Panel elections. Tactical voting is not illegitimate if exercised within the voting rules. We note the difference between tactical voting and organised 'block' voting. The latter may result in an undemocratic attempt to achieve a particular result. However, no evidence was presented that this is a concern in Panel elections.

⁵ The BSC Panel is established and constituted pursuant and in accordance with Section B of the BSC.

⁶ The role and powers, functions and responsibilities of Elexon are set out in Section C of the BSC.

⁷ BSC modification proposals, modification reports and representations can be viewed on the Elexon website at www.elexon.com

⁸ As set out in Standard Condition C3(3) of NGET's Transmission Licence, see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=4151

Assessment against the BSC Applicable Objectives

The evidence of recent voting patterns and use of votes suggests that apathy or lack of understanding of the elections process is a significant issue for Panel elections. We note the feedback from the Cross-Codes Electricity Forum suggesting that changes to the voting system or the way that votes counted would not improve participation in Panel elections. We note and welcome Elexon's commitment, provided during the assessment of the modification proposal, to increase its efforts to engage with and educate Trading Parties about the Panel elections process in the run-up to the forthcoming 2010 Panel elections. This approach may raise parties' awareness and encourage them to participate.

We also note the views of the Panel that concerns regarding the Panel elections process could be addressed through an Issues Group. While this is a matter for the code arrangements, a more rounded consideration of all the relevant issues may be an appropriate way to address the concerns raised.

It is not clear that the modification proposal has identified any specific defect with the current elections process. At best, there may be a minor marginal efficiency benefit in counting a fewer number of votes which would allow the modification proposal to better facilitate Applicable Objective (d). However, we consider that, overall, for the reasons given above, the modification proposal is neutral against the Applicable Objectives.

Decision notice

The Authority has concluded that implementation of modification proposal BSC P252: 'Removal of Trading Parties' ability to submit two votes at elections of BSC Panel Industry Members' will not better facilitate the achievement of the Applicable Objectives of the BSC.

Mark Cox

Associate Partner, Transmission and Governance

Signed on behalf of the Authority and authorised for that purpose