

Responses from P170 Assessment Consultation

Consultation Issued 24 September 2004

Representations were received from the following parties

No	Company	File number	No BSC Parties Represented	No Non-Parties Represented
1.	EDF Energy	P170_AR_001	9	0
2.	Central Networks	P170_AR_002	1	0
3.	E.ON UK	P170_AR_003	15	0
4.	Centrica	P170_AR_004	1	0
5.	ConocoPhillips	P170_AR_005	2	0
6.	RWEpower	P170_AR_006	10	0

P170 ASSESSMENT PROCEDURE CONSULTATION QUESTIONS

BSC Parties ("Parties") and other interested parties are invited to respond to this consultation expressing their views or provide any further evidence on any of the matters contained within this document. In particular views are sought in respect of the following questions. Parties are invited to supply the rationale for their responses.

Respondent:	Jim Beynon – EDF Energy
No. of Parties Represented	9
Parties Represented	EDF Energy Networks (EPN) plc; EDF Energy Networks (LPN) plc EDF Energy Networks (SPN) plc; EDF Energy (Sutton Bridge Power) EDF Energy (Cottam Power) Ltd; EDF Energy (West Burton Power) Ltd; EDF Energy plc; London Energy plc; Seeboard Energy Limited
No. of Non Parties Represented	0
Non Parties represented	N/A
Role of Respondent	Supplier/Generator/ Trader

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P170 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	Yes	EDF Energy believes that P170 will provide clarity of obligations to comply with the changed application of VAT and protect other parties from incurring costs relating to erroneous VAT declarations. Our view is that Applicable BSC Objective (c) will be better facilitated as participants costs will potentially be reduced and this will aid competition.
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	
3.	Do you believe that Code obligations should be implemented and take effect a specified number of Working Days after an Authority determination? Please indicate how many Working Days.	Yes	Implementation date of 23 December 2004 or 5 working days after the Authority determination whichever is the later.

Q	Question	Response	Rationale
4.	Do you believe that Code obligations should be implemented a certain number of Working Days after an Authority decision but with a further period of a specified number of Working Days before these obligations take effect. Please indicate how many Working Days should be allowed for both steps.	No	
5.	Do you have any comments on the draft legal text appended to the Consultation Document? Please give rationale	No	
6.	Does P170 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	
7.	Are there any further comments on P170 that you wish to make?	No	

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Please send your responses by **12:00 on Friday 24 September 2004** to modification.consultations@elexon.co.uk and please entitle your email 'P170 **Assessment Consultation**'. Please note that any responses received after the deadline may not receive due consideration by the Modification Group.

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Central Networks would like to send a response of 'No Comment' for Modification Consultation P170

Thank you

Julie Turner

Deregulation Control Group

01332 393507

P170 ASSESSMENT PROCEDURE CONSULTATION QUESTIONS

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Respondent:	Geoff Allen
No. of Parties Represented	15
Parties Represented	E.ON UK plc, Powergen Retail Limited, Cottam Development Centre Limited, Enizade Ltd, E.ON UK Drakelow Limited, E.ON UK Ironbridge Limited, E.ON UK High Marnham Limited, Midlands Gas Limited, Western Gas Limited, TXU Europe (AHG) Limited, TXU Europe (AH Online) Limited, Citigen (London) Limited, Severn Trent Energy Limited (known as TXU Europe (AHST) Limited), TXU Europe (AHGD) Limited and Ownlabel Energy
No. of Non Parties Represented	0
Non Parties represented	
Role of Respondent	Supplier, Generator, Trader, Consolidator, Exemptable Generator and Party Agent

Q	Question	Response <small>Error! Bookmark not defined.</small>	Rationale
1.	Do you believe Proposed Modification P170 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	Yes	We believe that proposed modification P170 would enable the BSCCo to more effectively administer the balancing and settlement arrangements in respect of VAT, and that should a Party provide inaccurate VAT registration details, it was not prudent for any resulting costs to be smeared across all Parties. We therefore agree with the provisional thoughts of the modification group that P170 would better facilitate applicable objective (d) 'promoting efficiency in the implementation and administration of the balancing and settlement arrangements'.
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	The requirement for the proposed modification has been driven by a change to VAT regulations under an EU directive. Whilst it is possible that other solutions exist, the proposed method has been subject to scrutiny by the BSCCo's external auditors, and we understand has the provisional approval of H.M. Customs and Excise.

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3.	Do you believe that Code obligations should be implemented and take effect a specified number of Working Days after an Authority determination? Please indicate how many Working Days.	Yes	Whilst this Modification Proposal has not been granted Urgent Status, there is an element of urgency about it, in that the new regulations become effective on 1 st January 2005. As this proposal will require only BSC Code changes, we see no reason why the existing precedent of an Implementation Date of 5 Working Days after the Authority approval date cannot be similarly applied.
4.	Do you believe that Code obligations should be implemented a certain number of Working Days after an Authority decision but with a further period of a specified number of Working Days before these obligations take effect. Please indicate how many Working Days should be allowed for both steps.	No	We can see no reason why such an approach should be applied, and believe it could: <ul style="list-style-type: none"> • introduce a element of uncertainty and confusion about what happens on particular days, and • could prevent the implementation occurring in sufficient time prior to the new VAT requirements coming on board. Furthermore, it is in our view not unreasonable to expect Parties, particularly those with a non-UK registered office and VAT code, to already be aware of the changing VAT implications, and therefore to be in a position to move quickly once the new arrangements are put in place.
5.	Do you have any comments on the draft legal text appended to the Consultation Document? Please give rationale	Yes	Section N7.1.4. The draft text questions whether this paragraph should be included. Our view is that it should, as it formalises the responsibilities on both the FAA to provide BSCCo with details of any imbalances caused as a consequence of different VAT rates, and on the BSCCo to transfer funds to the FAA in respect of VAT shortfalls prior to distribution to BSC Parties. In respect of the comment following Section N9.6.9, we do not consider it necessary for this to be included, it is simply restating through the use of an example, how BSCCo would be affected should a BSC Party default on part or all of its payment to the FAA.

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6.	Does P170 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	Yes	E.ON UK is aware that BSCCo have, through their auditors, been discussing the impending EU Directive with Customs and Excise. Whilst we have no issue with BSCCo facilitating this process, we do believe that we and other BSC Parties, upon reasonable request, should be able to review the advice provided to BSCCo by Deloitte and that we should be given the opportunity to challenge any of the advice provided. Ultimately BSC Parties, through their Schedule D Participation Charges, would pick up any penalties imposed on BSCCo by Customs and Excise, and therefore need to be given the chance to satisfy themselves that such risks have been minimised. A further underlying assumption we have made is that in all instances BSCCo is the counterparty for VAT purposes. If not, then we would be looking for a specific confirmation from BSCCo that they are responsible for any reverse charging that may occur, and that they will also comply with any INTRASTAT reporting requirements, both of which should be in a form previously agreed with HM Customs and Excise and subject to review by BSC Parties upon request..
7.	Are there any further comments on P170 that you wish to make?	Yes	A further item which will require review, but is probably outside of the scope of P170, is the CAP price. This is presently set at £18.00 plus VAT. As this is used in determining a Party's Credit Cover, it is reasonable to expect that a Party not registered in the UK will request that the CAP value less VAT is used for calculating their Credit Cover position.

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Any queries on the content of the consultation pro-forma should be addressed to Roger Salomone on 020 7380 4369, email address roger.salomone@elexon.co.uk.

P170 ASSESSMENT PROCEDURE CONSULTATION QUESTIONS

BSC Parties ("Parties") and other interested parties are invited to respond to this consultation expressing their views or provide any further evidence on any of the matters contained within this document. In particular views are sought in respect of the following questions. Parties are invited to supply the rationale for their responses.

Respondent:	<i>Name Centrica plc</i>
No. of Parties Represented	<i>1</i>
Parties Represented	<i>Please list all Parties responding on behalf of (including the respondent company if relevant).</i>
No. of Non Parties Represented	
Non Parties represented	<i>Please list all non Parties responding on behalf of (including the respondent company if relevant).</i>
Role of Respondent	<i>Supplier/Generator and Trader</i>

Q	Question	Response Error! Bookmark not defined.	Rationale
1.	Do you believe Proposed Modification P170 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	Yes	
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	
3.	Do you believe that Code obligations should be implemented and take effect a specified number of Working Days after an Authority determination? Please indicate how many Working Days.	Yes / No	No view

Q	Question	Response Error! Bookmark not defined.	Rationale
4.	Do you believe that Code obligations should be implemented a certain number of Working Days after an Authority decision but with a further period of a specified number of Working Days before these obligations take effect. Please indicate how many Working Days should be allowed for both steps.	Yes / No	No view
5.	Do you have any comments on the draft legal text appended to the Consultation Document? Please give rationale	Yes	There are a number of issues to be addressed: <ol style="list-style-type: none"> 1. It needs to be made perfectly clear to Parties that where there is a payment due to the Party in respect of output tax on their 'sale' that their account will be settled in full (i.e. that they will not be out of pocket at all and will received the VAT payable to HMC&E by them). Clause 2.7.1 is not clear in what it is trying to say. 2. Clause 2.7.1 is confusing and would appear to give rise to a potential cash flow problem for Parties. 3. In clause 5.4.1 the square brackets around 'reasonably' should be removed 4. In clause 5.4.10 reference to 'that word' contained in brackets should be removed 5. Clause 9.6.9 again is very confusing. What may be useful would be a number of examples involving 4/5 parties which should not form part of the legal text but which should be provided to Parties for reference to assist with understanding of the VAT mechanics. 6. In clause 10.1.1, reference to 'and any other relevant value added tax payable in the European Community' should be taken out.
6.	Does P170 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	Yes / No	

Q	Question	Response Error! Bookmark not defined.	Rationale
7.	Are there any further comments on P170 that you wish to make?	Yes	It is imperative that confirmation is received from HM Customs and Excise regarding the applicability of the reverse charge to Section D charges and that such confirmation is relayed to Parties.

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Respondent:	<i>Rekha Patel</i>
No. of Parties Represented	<i>2</i>
Parties Represented	<i>ConocoPhillips UK Limited and Immingham CHP Limited</i>
No. of Non Parties Represented	
Non Parties represented	<i>Please list all non Parties responding on behalf of (including the respondent company if relevant).</i>
Role of Respondent	<i>Trader and Generator</i>

Q	Question	Response Error! Bookmark not defined.	Rationale
1.	Do you believe Proposed Modification P170 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	Yes / No	COP believe it is necessary to have access to Custom's full written agreement on the proposed approach prior to stating whether this proposal better facilitates the achievement of the Applicable BSC Objectives. It is necessary for market participants to gain access to Custom's written consent as a consequence of the non-existent secondary legislation on the issue.
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	Any alternative solution that may be raised by the modification group needs to be presented to Custom's for approval, before consulting all market participants.
3.	Do you believe that Code obligations should be implemented and take effect a specified number of Working Days after an Authority determination? Please indicate how many Working Days.	Yes / No	The specified number of working days after an Authority decision should ensure it does not jeopardise the 23 rd December 2004, the latest date on which a party should provide relevant VAT information, if it is outside the UK.

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4.	Do you believe that Code obligations should be implemented a certain number of Working Days after an Authority decision but with a further period of a specified number of Working Days before these obligations take effect. Please indicate how many Working Days should be allowed for both steps.	Yes/No	In order to determine the timeframe for implementation, consideration of the magnitude of system and process changes for market participants, under CP1078, needs to be taken into account.
5.	Do you have any comments on the draft legal text appended to the Consultation Document? Please give rationale	Yes	5.4.1. would like clarity upon why square brackets round [reasonably] have been included. 10.1.1 'and any other relevant value added tax payable in the European Union' should be deleted. It is trying to manage the rules surrounding self-billing. These rules are UK based rules and as under the reverse charge no physical VAT is ever paid VAT, and therefore should not appear on the invoice. It could be prejudicial in other tax jurisdictions.
6.	Does P170 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	
7.	Are there any further comments on P170 that you wish to make?	Yes	COP would like to further stress the importance of market participants gaining access to Custom's written agreement, thus ensuring the proposal complies with Custom's preferred approach and addresses their concerns.

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Respondent:	<i>Name</i>
No. of Parties Represented	<i>10</i>
Parties Represented	<i>RWE Trading, RWE npower, Npower cogen, npower cogen trading, npower, npower direct, npower northern, npower northern supply, npower yorkshire, npower yorkshire supply</i>
No. of Non Parties Represented	
Non Parties represented	<i>Please list all non Parties responding on behalf of (including the respondent company if relevant).</i>
Role of Respondent	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state¹)</i>

Q	Question	Response¹	Rationale
1.	Do you believe Proposed Modification P170 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	Yes /	It will further Applicable BSC Objective (d): 'promoting efficiency in the implementation and administration of the balancing and settlement arrangements'
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	
3.	Do you believe that Code obligations should be implemented and take effect a specified number of Working Days after an Authority determination? Please indicate how many Working Days.	Yes / No	The decision on implementation dates should be driven by the requirement to accommodate a change of law

¹ Delete as appropriate – please do not use strikeout, this is to make it easier to analyse the responses

Q	Question	Response ¹	Rationale
4.	Do you believe that Code obligations should be implemented a certain number of Working Days after an Authority decision but with a further period of a specified number of Working Days before these obligations take effect. Please indicate how many Working Days should be allowed for both steps.	Yes / No	See response to (3) above
5.	Do you have any comments on the draft legal text appended to the Consultation Document? Please give rationale	No	
6.	Does P170 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	
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