

Responses from P129 Assessment Consultation

Consultation issued 11 July 2003

Representations were received from the following parties:

No	Company	File Number	No. BSC Parties Represented	No. Non-Parties Represented
1.	Entergy-Koch Trading Ltd	P129_ASS_001	1	0
2.	NEDL/YEDL	P129_ASS_002	2	0
3.	East Midlands Electricity Distribution	P129_ASS_003	1	0
4.	Western Power Distribution	P129_ASS_004	2	0
5.	Powergen	P129_ASS_005	14	0
6.	British Energy	P129_ASS_006	3	0
7.	EDF Energy	P129_ASS_007	8	0
8.	Barclays Capital	P129_ASS_008	1	0
9.	Aquila Networks	P129_ASS_009	1	0
10.	Alcan Smelting and Power	P129_ASS_010	0	1
11.	Innogy	P129_ASS_011	9	0
12.	NGT	P129_ASS_012	1	0
13.	British Gas Trading	P129_ASS_013	1	0

14.	Scottish and Southern	P129_ASS_014	4	0
15.	ConocoPhillips (late response)	P129_ASS_015	2	0

P129_ASS_001 – Entergy-Koch Trading Ltd

Respondent:	<i>Entergy-Koch Trading Europe Ltd</i>
No. of BSC Parties Represented	<i>1</i>
BSC Parties Represented	
No. of Non BSC Parties Represented	
Non BSC Parties represented	
Role of Respondent	<i>Trader</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P129 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	The effective removal of independent regulatory decision making for many modification proposals is a retrograde step that will be detrimental to promoting effective competition in the generation, sale, purchase and supply of electricity.
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	

Q	Question	Response	Rationale
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	No	There is no optimal number of constituency classes as modification proposals ought to be assessed on the relevant arguments, rather than by votes from constituent blocks. We consider that it is not possible to reconcile constituent structures with a requirement for impartiality. Further, it is far easier to ensure impartiality in panel considerations when an independent regulator is responsible for decisions.
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	Yes / No	See answer to 3
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	Yes / No	See answer to 3
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	No	In respect of this modification, we do not consider that changing the election period will have any material effect.
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	No	We do not support the panel being able to make decisions at all. Further, the number of votes is not always an indication of the best decision against the relevant objectives.

Q	Question	Response	Rationale
8.	<p>Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives?</p> <p>Please give rationale.</p>	Yes	<p>It is difficult to see how the panel could make decisions without considering Ofgem’s wider objectives, given that these wider objectives are statutory requirements. However, it would make no sense trying to adjust the BSC objectives to align with Ofgem’s wider objectives, as BSC parties do not have the expertise or the relevant public policy experience to consider the broader Government framework.</p>
9.	<p>Do you believe it is appropriate for the Panel to make conditional determinations?</p> <p>Please give rationale.</p>	No	<p>If the panel is empowered to make decisions it should do so. It would be inappropriate to have conditional decisions in place while consideration of other codes is underway. Having the panel make decisions raises a further issue on whether this body should have the ability to force a licence holder to take supplementary action to ensure that there is consistency between codes.</p>
10.	<p>Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval?</p> <p>Please give rationale.</p>	Yes	<p>All of it. See previous answers stating why we do not support this modification.</p>
11.	<p>Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not?</p> <p>If so, what should the process be?</p> <p>Please give rationale.</p>	Yes	<p>If this modification proposal is implemented there will be a need for an appeals mechanism that is open to any BSC party within prescribed timeframes. Appellants should be able to lodge an appeal directly with Ofgem outlining a case for the appeal. Ofgem should invite parties to comment on the appeal, and also consider the previous responses and assessment of the panel.</p>

Q	Question	Response	Rationale
12.	<p>Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.</p>	No	<p>The grounds for appeal should be wide enough to allow any party to participate to ensure that the eventual decision is the best policy outcome, not necessarily the most popular one. The grounds should also include the right to appeal on administrative and procedural grounds.</p>
13.	<p>Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.</p>	Yes	<p>This will reduce some of the risk that an appeals mechanism will prevent the development of further policy issues.</p>
14.	<p>Does P129 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.</p>	Yes	<p>It is not clear whether Ofgem has the ability to delegate its legislated authority to the panel. During the MALC considerations, it was clear that Ofgem's authority could not be delegated even from an appeals perspective, so it would be difficult to see how primary decision making processes could be offered out to a party not subject to primary legislation. At the very least, it seems that there is a requirement to change NGT's transmission licence.</p>

Q	Question	Response	Rationale
15.	Are there any further comments on P129 that you wish to make?	Yes	<p>We consider that it is inappropriate for industry participants to decide on modification proposals because this model is less likely to reach decisions based on the quality of the arguments, runs the risk of accusations of cartel behaviour in some circumstances and may be viewed as increasing the barriers to entry for companies to the detriment of competition.</p> <p>A move to industry based decision-making is a retrograde step with respect to continued industry reform in the England and Wales and is counter to the principles of having an independent regulator as envisaged in the European electricity directive.</p>

P129_ASS_002 – NEDL/YEDL

Respondent:	<i>Mike Harding</i>
No. of BSC Parties Represented	<i>2</i>
BSC Parties Represented	<i>Northern Electric Distribution Limited Yorkshire Electricity Distribution plc</i>
No. of Non BSC Parties Represented	
Non BSC Parties represented	
Role of Respondent	<i>Licensed Distributor</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P129 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	BSC objectives are narrower in scope than those of the Authority This means that by moving the decision making, away from the Authority the Panel will not be able to take account of LDSO Licence obligations. This would unduly discriminate against LDSO's who are obligated through their licence to be a party to the BSC. We believe this new regime would open up the scope for an abuse of power.
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	We believe the existing arrangements better consider the impact on overall industry players and customers
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	No	We are concerned that this proposal to make the Panel omnipotent in all things related to the BSC chooses to ignore proper representation of LDSO on the Panel (i.e. as a voting Panel member).

Q	Question	Response	Rationale
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	Yes	The Authority should be responsible in order to ensure impartiality
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	Yes / No	No view
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	No	
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	No	
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	Yes	Although some changes may lie within the scope of the BSC objectives the impact and implications of such changes may lie outside that scope. It is therefore inappropriate that the Panel should be able to make such determinations from a relatively narrow perspective..
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	No	Where conditional determinations are made, any work that is done as a consequence will need to be undone if the Authority subsequently rejected the proposal.

Q	Question	Response	Rationale
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	Yes	Rationale similar to above: the Authority has a wider scope.
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	Yes	See above
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	N/A	Appeal should also be allowed on the grounds of unreasonable costs.
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	No	A longer time period is required for detailed comments / evidence can be collated for an appeal
14.	Does P129 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	Customers are a key focus in the processes of industry participants. The Panel has no direct responsibilities in ensuring that the needs of customers are properly served
15.	Are there any further comments on P129 that you wish to make?	Yes	We are concerned that the Panel members with a narrow remit as the BSC should be given powers to authorise changes that could have much wider consequences and implications.

P129_ASS_003 – EME Distribution

Respondent:	<i>Name</i> Andrew Neves
No. of BSC Parties Represented	1
BSC Parties Represented	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant).</i> East Midlands electricity Distribution plc
No. of Non BSC Parties Represented	nil
Non BSC Parties represented	<i>Please list all non BSC 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 state)</i> DSO

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P129 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	Moving the decision making from The Authority to the BSC Panel removes the protection enjoyed by DSOs by virtue of The Authority's obligation to take account of the DSOs licence obligations. This would unduly discriminate against DSOs. Under BSC B1.2.1(c) the Panel has a duty to ensure "that the Code is given effect without undue discrimination between parties or classes of Party".
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 current arrangements are reasonably satisfactory, apart from the absence of a DSO vote on the Panel
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	No	DSOs are poorly served by the current Panel and should have a dedicated voting representative.

Q	Question	Response	Rationale
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	Yes / No	
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	Yes / No	
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	No	The benefit of stability in Panel membership would be lost if members terms were shorter. Volatility in the makeup of the panel is not in the interests of the industry
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	No	DSOs do not get a vote and their interests are not adequately protected by the Applicable BSC Objectives
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	No	This could lead to undue discrimination (see above)
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	No	DSOs do not get a vote and their interests are not adequately protected by the Applicable BSC Objectives

Q	Question	Response	Rationale
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	Yes	All of it
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	Yes / No	
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	N/A	
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	Yes / No	
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as pare of the Assessment Procedure? Please give rationale.	No	
15.	Are there any further comments on P129 that you wish to make?	No	

P129_ASS_004 – Western Power Distribution

Respondent:	<i>Graham Smith</i>
No. of BSC Parties Represented	<i>2</i>
BSC Parties Represented	<i>Western Power Distribution (South Wales) Ltd & Western Power Distribution (South West) Ltd</i>
No. of Non BSC Parties Represented	
Non BSC Parties represented	
Role of Respondent	

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P129 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	In its current form the modification will require The Panel to make decisions without considering the impact on Distributions Businesses, as the applicable BSC objectives do not adequately take in to account the interests of Distributors. This would unfairly discriminate against Distributors, who have a license obligation to be a BSC Party. Given that The Panel has a duty to ensure that the code is given effect without undue discrimination between Parties or classes of Party, (BSC Section B1.2.1(c)), this modification would appear to be irreconcilable with the Code.
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	

Q	Question	Response	Rationale
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	No	The balance is wholly inadequate given that Distributors will not be able to vote on issues that impact them.
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	Yes / No	We do not have a view on this issue.
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	Yes / No	We do not have a view on this issue.
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	Yes / No	We do not have a view on this issue.
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	No	We do not consider that the Panel should make decisions at all if they will be failing to take in to account the interests of Distributors.
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	Yes	Changes to the BSC can have a direct or consequential impact on areas not covered by the Applicable BSC Objectives and it is important that these are adequately considered by any decision making body. Not considering them will increase the likelihood of legal challenges to decisions, which will potentially increase the uncertainty in the market.

Q	Question	Response	Rationale
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	No	A benefit of the current system is that the Authority is able to coordinate BSC changes with those required to other Industry Governance documents. Conditional determinations, made with no control over other changes, will create uncertainty and confusion.
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	Yes	Should the modification be implemented then its scope should be limited to require Authority approval if the change impacts anyone other than Trading Parties. IE: Allow the Trading Parties to vote on, and implement, changes that will only affect those Parties who have a vote.
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	Yes	An appeals process must be introduced to reduce the potential for legal challenges. It would provide some protection for Parties who are disenfranchised by the voting mechanism and, potentially, adversely affected by the proposal.
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	No	Additional reasons would be: That a decision unfairly discriminates against a party or class of parties. That a decision is made without a clearly proven cost/benefit analysis. That a decision is made without due consideration being given to the views of dissenting Parties.
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	No	Elexon should distribute comprehensive minutes of the meeting and votes taken. These minutes should set out the basis on which each Panel Member has made their decision and, in a similar manner to current Ofgem decision letters, should make reference to the views of Parties who have made responses to the proposals. This reference should include reasons why each Panel Member agrees or disagrees with the respondents' views thereby demonstrating that those views have been considered. Following distribution of the minutes, a minimum period of ten working days should be allowed for any appeal.

Q	Question	Response	Rationale
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as pare of the Assessment Procedure? Please give rationale.	No	
15.	Are there any further comments on P129 that you wish to make?	No	

P129_ASS_005 – Powergen

Respondent:	Powergen UK plc
No. of BSC Parties Represented	14
BSC Parties Represented	Powergen UK plc, Powergen Retail Limited, Cottam Development Centre Limited, TXU Europe Drakelow Limited, TXU Europe Ironbridge Limited, TXU Europe 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 BSC Parties Represented	0
Non BSC Parties represented	
Role of Respondent	Supplier, Generator, Trader and Exemptable Generator.

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P129 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	Yes	It will speed up the decision making process by avoiding the need to for Ofgem to be involved the approval or rejection of the majority of modification proposals. By establishing a Panel that is more likely to reflect the diversity of stakeholder views such a Panel will be in a better position to make decisions that stand the test of time, reducing the need for further modification proposals. Overall the proposal will promote efficiency in the implementation and administration of the balancing and settlement code.
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale.	Yes	As the proposer of P129 Powergen was concerned to counter potential arguments that the Panel cannot decide to approve something that may be dependent on a change to a document that sits outside the governance of the BSC. Hence we proposed the concept of 'conditional' Panel decisions.

Q	Question	Response	Rationale
			<p>Nevertheless respondents to this consultation may remain concerned about the Panel making conditional decisions. One solution would be to allow the Panel to reject proposals, but not approve proposals, on a "substantial majority" vote. The modification group may wish to consider this as an alternative.</p>
3.	<p>Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.</p>	Yes	<p>The constituency classes would seem to encourage the election of Industry Members that are likely to reflect a reasonable balance of industry views. The current balance between voting members and non-voting members seems about right, as does the balance between Industry Members and the members appointed by energywatch and the Panel Chairman.</p>
4.	<p>Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.</p>	No	<p>Changes to the constituency class (including the threshold values) should only be made by means of another BSC modification. It would be entirely inappropriate for changes to constituency classes, for example, to be instigated by the BSC Panel, given that this may directly affect the chance of particular Industry Panel Members being re-elected.</p>
5.	<p>Do you believe that Interconnector Users should have their own constituency class? Please give rationale.</p>	No (see qualifying comment)	<p>Interconnector users are likely to form part a trading party group's activity, and it a trading party group [a defined BSC term] that defines individual constituents. The 5 categories defined under P129 are therefore likely to reflect the range views of constituents.</p> <p>There may be an argument for trading organisations with some physical interconnector flows to vote only in the Trading constituency. This could be achieved by allocating trading party groups with a modulus of their net annual interconnector flows (i.e. imports less exports) of less than X, two votes in the Trading constituency. This would only apply where such a party did not have not have physical metered deliveries or offtakes at any</p>

Q	Question	Response	Rationale
			other BMUs.
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	Yes	<p>We proposed annual elections primarily to encourage the elected industry members to remain actively in touch with the concerns of their constituents. It was also intended to ensure alignment with other codes such as the Network Code which have annual elections.</p> <p>This is not a critical feature of the modification proposal and we would be happy to see biennial elections as a refinement to the original proposal. Precedent (see P37 modification group proceedings) allows a modification group to agree to such refinements.</p>
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	Yes	<p>The newly elected Panel will reflect the full diversity of stakeholder views and thus should be in a good position to make robust decisions on a "substantial majority" basis. The 4 non industry appointees will ensure minority interests are safeguarded. This decision making process will encourage consensus wherever possible.</p>
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	No	<p>It would be preferable if the Panel could consider proposals using the same criteria as the Authority. In practice we do not believe the different decision making criteria is a major concern, and to date we are not aware of Ofgem overturning a Panel recommendation solely on the basis of its wider statutory obligations.</p> <p>That said, the introduction of an appeals process (see question 11) would allow parties to appeal a decision and allow Ofgem (or a relevant appeals body) to consider matters based on these wider statutory duties.</p>
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	Yes	<p>It is common practice to have conditions precedent in contracts. There are no reasons to suggest why the BSC is should be any different. The concept of condition Panel decision recognises this issue. It will allow</p>

Q	Question	Response	Rationale
			<p>changes to other documents which sit outside the governance of the BSC to be prosecuted, without the need for the Panel to delay its decision making.</p> <p>It may be prudent to allow the Panel to review its decision where the relevant changes to non BSC documents have not been made within say [6] months.</p> <p>An alternative to conditional Panel decision making may simply be to allow the Panel to reject, but not accept modification proposals on a substantial majority vote. This avoids the problem of inter-dependencies with non BSC documents. Clearly if such an alternative were to be adopted it would mean the benefits of quicker decision making for proposals that the Panel support would be lost compared to the original.</p>
10.	<p>Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.</p>	Yes	<p>Changes that relate to the appointment/election of the Panel and/or changes to the Panel's decision making powers should not only be made with the approval of the Authority. There may others areas that should be subject to Authority approval, however there must be very compelling arguments to limit the proposed new Panel decision making powers proposed under P129.</p> <p>All existing areas of the code that require Authority approval of Panel determinations such as BRL and CADL should also come within the scope of P129, i.e. the Panel should be permitted to approve or reject proposed changes to these parameters, provided a substantial majority agreement can be reached.</p>

Q	Question	Response	Rationale
11.	<p>Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.</p>	Yes	<p>The appeals process should ideally involve a public hearing chaired by the appeals body at which an appellant can make his case.</p> <p>The DTI have recently consulted on the transparency and accountability of the code modification process. The consultation considered whether an appeals process should be established for modification decisions. If the DTI were to establish the right of appeal to an as yet unnamed appeals body, we would envisage that appeals of Panel decisions would be to that body. In the absence of such a decision we would envisage that the Authority would be the appeals body for Panel decisions.</p>
12.	<p>Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.</p>	N/A	<p>We agree with the criteria for allowing appeals set out in the consultation document.</p>
13.	<p>Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.</p>	Yes	<p>This period provides parties with a reasonable time in which to prepare and submit its initial appeal papers.</p>
14.	<p>Does P129 raise any issues that you believe have not been identified so far and that should be progressed as pare of the Assessment Procedure? Please give rationale.</p>	No	
	<p>Are there any further comments on P129 that you wish to make?</p>	Yes	<p>Under fully competitive markets intrusive regulation is inappropriate. We accept that Ofgem should be involved in major electricity market reforms, typically where new legislation is require to such implement change, such as BETTA. However, we do not believe it as efficient or particularly effective for the regulator to continue to make decisions on every modification proposal.</p>

Q	Question	Response	Rationale
			<p>It is pleasing to note that Ofgem is seeking to achieve 'lighter-touch' regulation of other industry codes. A recent Ofgem consultation on the new gas SPAA agreement stated;</p> <p><i>"...every change to the Network Code , no matter how insignificant or patently beneficial, currently requires Ofgem's approval. Whilst this level of regulatory involvement ensures a high degree of accountability, it is perhaps no longer necessary in many instances."</i></p> <p>Approving P129 would ensure this principle is also applied to the BSC.</p>

P129_ASS_006 – British Energy

Respondent:	<i>Name</i>
No. of BSC Parties Represented	British Energy Power & Energy Trading, British Energy Generation Ltd, Eggborough Power Ltd
BSC Parties Represented	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant).</i>
No. of Non BSC Parties Represented	
Non BSC Parties represented	<i>Please list all non BSC 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 state)</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P129 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	The proposal will complicate the governance arrangements and increase market uncertainty. While the panel would be able to make determinations where a 'substantial majority' of its members are in agreement the right of appeal would mean that the Authority would continue to have the final say in many cases. In all other cases, including for urgent cases, the Authority would continue as now to make the determinations. This modification will potentially therefore result in greater delays, uncertainty and reduce efficiency. Consequently, we consider it would not better facilitate Applicable Objective (d) as compared with the current baseline.
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	Principally, the existing governance arrangements within the BSC work relatively well. The procedures are well defined, inclusive and flexible. Our concerns arise with the process following the Panel recommendation to the Authority. There are serious deficiencies in the transparency and accountability of the Authority's decision making process. British Energy considers that a separate appeals procedure on Authority decisions outside the governance of the industry codes to an independent body such as the

Q	Question	Response	Rationale
			Competition Commission is the appropriate solution to the present market governance problems.
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	Yes / No	It is always possible to develop alternative ways of identifying constituencies but the one proposed seems sensible. The current balance between voting and non-voting Panel members seems about right.
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	Yes	A review of constituency class could be held (say) every 5 years. This could be conducted by Elexon but the Authority should make the final decision.
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	No	There is no case for Interconnector Users since they can be accommodated within the proposed constituency classes identified in the proposal.
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	No	The present two-year term of office seems about right, as more regular election process would reduce the Panel efficiency and continuity.
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	No	See below.
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives?	Yes	The Panel is rightly restricted to considering modifications against the BSC Applicable objectives. Furthermore, it is recognised that the Authority, when deciding upon code modifications, can only act in a manner that is consistent with its statutory duties. We consider it essential that these wider duties together with the Government's overall energy policy objectives are considered when significant code modifications are proposed.

Q	Question	Response	Rationale
	Please give rationale.		Consideration of these issues is clearly a role for the Authority and not the BSC Panel. . Therefore allowing the panel to make determinations would prevent these wider issues being considered.. In addition, it could be argued that allowing the Panel to make determinations will inevitably lead to appeals and the Authority continuing to make its own determination. Such a governance process would appear to be cumbersome and inefficient and may well increase market uncertainty. Consequently, we do not support the proposal to allow the Panel to make determinations on modification proposals.
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	No	Such an arrangement is inefficient and will introduce additional market uncertainty and risk.
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	No	At present all code changes require Authority approval. A move to a situation where certain parts can only be changed with Authority approval will create unnecessary complexity and uncertainty.
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	N/A	This is an inevitable consequence of this proposal. Any right of appeal would have to be open to all parties recognised in the BSC. . However, for the reasons stated above we do not support the proposal to allow the Panel to make determinations.
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	N/A	
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made?	N/A	

Q	Question	Response	Rationale
	Please give rationale.		
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as pare of the Assessment Procedure? Please give rationale.	Yes / No	
15.	Are there any further comments on P129 that you wish to make?	Yes / No	

P129_ASS_007 – EDF Energy

Respondent:	Tony Diccico
No. of BSC Parties Represented	8
BSC Parties Represented	EDF Energy plc, Jade Power Generation Ltd, Sutton Bridge Power Ltd, West Burton Power, London Power Networks plc, EPN Distribution Ltd, Seeboard Power Networks plc, Seeboard Energy Ltd
No. of Non BSC Parties Represented	-
Non BSC Parties represented	-
Roles of Respondent	<i>Supplier/Generator/Trader</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P129 better facilitates the achievement of the Applicable BSC Objectives?	No	Modification 129 does not better facilitate any of the 5 objectives in particular it does <u>not</u> better facilitate (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?	No	There are none that are within the remit of a BSC Mod. As a matter of interest we have responded separately to the DTI on its consultation on appeals of regulatory decisions on matters considered by the industry panels – this is outside the remit of the BSC so we'll say no more than that.
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members?	-	We would not support a change to convert the panel elections to a constituency basis of any variety, and so cannot comment on the optimum number.

Q	Question	Response	Rationale
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process?	-	We would not support a change to convert the panel elections to a constituency basis, and so cannot comment on this question.
5.	Do you believe that Interconnector Users should have their own constituency class?	-	We would not support a change to convert the panel elections to a constituency basis, and so cannot comment on this question
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives?	No	We see no need for change to the stability that is inherent in the present arrangements.
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement?	No	We see no need for change to the present arrangements relying on a simple majority decision – this has worked well to date at the Panel level, notwithstanding the serious issue about appeals of regulatory decisions which is outside the BSC.
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives?	Yes	We believe that, disregarding modification 129 which lacks merit against the applicable objectives, it would generally represent an improvement if BSC Panel decisions were on the same basis and criteria as Ofgem decisions. In the absence of this, Ofgem in respect of its additional criteria – the "wider" ones – is making its decisions in splendid isolation, without the benefit of advice in these respects either from the industry panel or from industry consultees. This cannot be a good thing.
9.	Do you believe it is appropriate for the Panel to make conditional determinations? (conditional on decisions by other bodies such as the CUSC panel)	No	In the absence of P129, which lacks merit against the applicable objectives, we see no reason for this conditionality – the question is only relevant if the Panel's decisions are final.
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval?	-	See reply to questions 1,2, 3 and our remarks that we have views, elucidated elsewhere, on appeals of Authority decisions.

Q	Question	Response	Rationale
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be?	No	We believe that modification 129 Lacks merit against the applicable objectives, therefore this question is not relevant.
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? (new evidence, unfair prejudice to interests of appellant, would cause appellant to be in breach of licence)	-	See above
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made?	-	See above
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as pare of the Assessment Procedure?	-	See above
15.	Are there any further comments on P129 that you wish to make?	No	

P129_ASS_008 – Barclays Capital

Respondent:	Barclays Capital
No. of BSC Parties Represented	1
BSC Parties Represented	Barclays Capital
No. of Non BSC Parties Represented	None
Non BSC Parties represented	None
Role of Respondent	Trader

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P129 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	The proposal directly contravenes applicable objective (a) "the efficient discharge by the licensee of the obligations imposed upon it by this licence". Section C3 Paragraph 5 of the licence provides for the Authority to direct changes to the BSC and permits NGC to make modifications in response to such directions. The condition explicitly states that NGC "shall not have power to modify the BSC in any other circumstance". The proposal could therefore only work if Ofgem committed to direct NGC to make any modification backed by a Panel majority. We understand that Ofgem cannot legally fetter their discretion in this way. To implement the proposals detailed in the modification would therefore appear to require a licence change rather than a code modification.
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	It is not clear that the current system is flawed and therefore in need of a "solution".

Q	Question	Response	Rationale
3.	<p>Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.</p>	No	<p>The notion of constituency classes is inconsistent with the impartiality obligations set out in section B2.8 of the Code. The suggestion that non-physical traders have "less interest in the Code" and hence should be confined to voting in a single constituency class is not only wholly false but is indicative of a "representative" rather than impartial approach to Panel membership. It is no less anomalous to confine a trading party to one constituency than it is to allow a vertically integrated participant who may have a net generation or net supply position to vote in two separate constituencies.</p> <p>The need for constituencies is also not clear since the current voting procedures already allow market participants to form "informal" constituencies in voting for individual candidates.</p>
4.	<p>Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.</p>	No	<p>If a constituency approach is adopted, it makes sense to review the criteria for establishing those constituencies. However, this begs the question of who would perform that review. Neither the Panel (which reflects the existing contingencies) nor Ofgem seem to be the appropriate body to conduct this.</p>
5.	<p>Do you believe that Interconnector Users should have their own constituency class? Please give rationale.</p>	No response	<p>See answers above relating to the problems with constituency voting.</p>
6.	<p>Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.</p>	Yes	<p>The benefits of continuity are likely to be overstated and, if significant, can be captured by voting for existing Panel members to continue on an annual basis.</p>

Q	Question	Response	Rationale
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	No	See answers to questions 1 and 2 above. It is not clear why this would lead to better decisions or reduced administration to the current system. A substantial majority of constituency-based Panel members is also no guarantee of making the correct decisions. In particular, decisions taken by a majority of incumbent representatives are probably less likely to take decisions likely to foster greater competition further to the BSC objective to promote effective competition in the generation and supply of electricity.
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	No	The Panel does not legally have "wider statutory objectives" over and above those objectives specified in NGC's licence. While a licence change could remedy this, the case for extending the Panel's scope to address consequences beyond the scope of the BSC appears weak.
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	No	See answers to questions 7 and 8. We do not believe that the Panel should make any determinations, conditional or otherwise.
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	Yes	We believe that the Authority should retain the power to approve all modifications to the Code. However, if this modification proceeds, there should be areas of the Code that cannot be changed by the Panel without Authority approval.
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	Yes	We believe that the Authority should retain the power to approve all modifications to the Code. However, if this modification proceeds, any Panel modification decision should be subject to Appeal.

Q	Question	Response	Rationale
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	No	The grounds for appeal should also cover the possibility of the Panel's decisions being inconsistent with the applicable BSC objectives. That is, participants should have the right to appeal if they can demonstrate material flaws in the Panel's reasoning.
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	Yes	10 working days should be sufficient to lodge an appeal.
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as pare of the Assessment Procedure? Please give rationale.	No	
15.	Are there any further comments on P129 that you wish to make?	No	

P129_ASS_009 – Aquila Networks

Respondent:	<i>Name R Gardener</i>
No. of BSC Parties Represented	
BSC Parties Represented	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant).</i>
No. of Non BSC Parties Represented	
Non BSC Parties represented	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
Role of Respondent	<i>(Party Agent)</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P129 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	P129 is unlikely to have any impact on any of the stated objectives.
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	It is not clear what issue, or issues require resolution through such a proposal.
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	No	I do not believe that the constituents of the Panel accurately reflect the industry.
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	Yes	OFGEM , they must have ultimate responsibility for ensuring that the constituents of the industry are properly represented and without bias.

Q	Question	Response	Rationale
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	Yes	They are a specific and unrepresented group where their own specific views might be swamped by some other classification.
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	No	I do not believe it will have any impact on the performance of the stated objectives.
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	No	The panel should only make recommendations, as they are not necessarily in a position to consider the holistic view.
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	Yes / No	Doesn't seem to matter which way round you answer this question.
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	No	I do not believe the Panel should have such authority.
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	Yes	Responsibility must lie with the Authority

Q	Question	Response	Rationale
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	No	Appeals shouldn't be necessary at this stage of the process.
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	N/A	
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	Yes	Not sure if this is ten days, or working days, this isn't an unreasonable time frame.
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as pare of the Assessment Procedure? Please give rationale.	Yes	Definition for the constituents of the panel should be reconsidered in view of non-party involvement.
15.	Are there any further comments on P129 that you wish to make?	No	

P129_ASS_010 – Alcan Smelting and Power

Respondent:	Jonathan Scott
No. of BSC Parties Represented	0
BSC Parties Represented	
No. of Non BSC Parties Represented	1
Non BSC Parties represented	Alcan Smelting and Power UK
Role of Respondent	Other – Licence Exempt Generator

Q	Question	Response	Rationale
1.	<p>Do you believe Proposed Modification P129 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).</p>	No	<p>Alcan does not believe that the Modification Proposal better facilitates the achievement of Applicable BSC objectives (c) and (d).</p> <p>The Revised Election Procedures would lead to an increase in market power by larger players and reduce the representation of smaller organisations and reduce the number of independent Panel members. Whilst the Modification does provide Constituencies for 'small' generators and suppliers the qualification criteria would encompass most independent generators and suppliers. This would reduce the representation of non-BSC Parties, licence exempt generators and suppliers, and hence not facilitate effective competition, Applicable BSC Objective (c).</p> <p>Whilst the Modification would reduce time spent in the decision making process through the revised Panel Determination Procedures, Alcan does not agree that the proposal better facilitates Applicable BSC Objective (d). The proposed system for annual elections would unnecessarily increase the 'churn' of Panel members, and Alcan does not agree with the proposer that</p>

Q	Question	Response	Rationale
			the Revised Election Procedures would not alter the requirement of impartiality on Panel Members.
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 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	No	Alcan does not support Modification Proposal P129
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	No	Alcan does not support Modification Proposal P129
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	No	Alcan does not support Modification Proposal P129
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	No	Alcan does not agree that a move to annual elections would better facilitate Applicable Objectives and indeed would have a detrimental effect on Applicable Objective (d), efficiency of implementation and administration of balancing and settlement arrangements.
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	No	This would reduce the time spent in decision making and hence better facilitate Applicable Objective (d), however as stated above Alcan does not agree with the proposed changes to Panel Election Procedures and therefore does not support giving the Panel right of determination as outlined in the Modification Proposal.

Q	Question	Response	Rationale
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	No	
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	No	
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	No	
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	No	
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	N/A	
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	No	

Q	Question	Response	Rationale
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as pare of the Assessment Procedure? Please give rationale.	No	
15.	Are there any further comments on P129 that you wish to make?	Yes	Alcan would generally support a solution that increased the power of the Panel relative to that of the Authority, although does not support Modification P129 for the reasons outlined above.

P129_ASS_011 – Innogy

Respondent:	<i>Terry Ballard</i>
No. of BSC Parties Represented	<i>9</i>
BSC Parties Represented	<i>Innogy plc, Innogy Cogen Limited, Innogy Cogen Trading Limited, Npower Limited, Npower Direct Limited, Npower Northern Limited, Npower Northern Supply Limited, Npower Yorkshire Limited, Npower Yorkshire Supply Limited</i>
No. of Non BSC Parties Represented	<i>None</i>
Non BSC Parties represented	<i>Please list all non BSC 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 state)</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P129 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	Yes	If implemented, it could result in reduced bureaucracy within the modification process. This would lead to greater efficiency.
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 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	Yes	The suggested classes seem to allow the Parties to the Code to be adequately represented.

Q	Question	Response	Rationale
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	Yes	It would seem that review of the criteria can only be carried out in one of two ways; either by submission of a new modification proposal or the Authority. The BSC Panel who generally review criteria and parameters would seem to have a vested interest and therefore would be excluded in this case.
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	No	Interconnector Users would seem to naturally fall within the 'Trading' constituency.
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	No	Annual elections would be time consuming. The potential annual changing of BSC Panel members could compromise the effectiveness of the Panel.
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	Yes	In practice it can be anticipated that the modifications in these instances will be of minor impact. Those of a more contentious nature or where there are impacts on other codes are unlikely to achieve the 'substantial majority' threshold.
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	No	The remit of the Panel is clearly defined. The Authority's statutory obligations are wider. In the event that an impact on other codes, Panel approval could be conditional.
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	Yes	See answer to question 8.

Q	Question	Response	Rationale
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	Yes	It is unlikely that these issues will achieve the 'substantial majority' threshold therefore in practice the requirement for Authority approval should be retained.
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	Yes	Any Party capable of proposing a modification should have the right to appeal a decision by the Panel. Appeal should be to the Authority.
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	N/A	Yes
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	No	The time limit should be ten days after publication of approved Panel minutes.
14.	Does P129 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	
15.	Are there any further comments on P129 that you wish to make?	No	

P129_ASS_012 – NGT

Respondent:	<i>Name</i> Clare Talbot
No. of BSC Parties Represented	One
BSC Parties Represented	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant).</i> National Grid
No. of Non BSC Parties Represented	None
Non BSC Parties represented	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i> None
Role of Respondent	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state)</i> BSC Party

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P129 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	The proposer has suggested that the proposal meets BSC Applicable Objective d) and provides for a timely more efficient decision-making process. However, within the existing structure in the instance of urgent and house-keeping modifications there is already provision for the governance process to be accelerated. The existing process incorporates the consideration of all other relevant governances under the Authority via its wider statutory duties. With the Panel’s remit being focused on the consideration against the Applicable Objectives of the BSC only we believe that this change could result in inconsistencies with other codes and licences. Therefore we believe that the modification will not better meet Applicable BSC Objective d).
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	

Q	Question	Response	Rationale
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	No	We do not believe that re-defining the current Panel electoral process and constituency classes outlined in the modification will better facilitate the Applicable BSC Objectives. We believe that the Panel acts representatively in respect of industry views and no evidence has been provided to demonstrate to the contrary.
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	No	See response to question 3 above.
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	No	See response to question 3 above.
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	No	We believe that a move to annual elections will add to the workload and administrative burden upon Exelon and remove some of the continuity benefits currently enjoyed by the industry.
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	No	This aspect of the proposal would result in decisions being made without reference to the Authority. In these circumstances there would be no consideration of any of the wider issues currently covered by the Authority that are outside the scope of the BSC. This could lead to inconsistencies between codes and in extreme circumstances would result in licensed operators being unable to discharge their licence obligations.
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as	Yes	We do not believe that it would be appropriate for the Panel to make decisions only against the background of the BSC Applicable Objectives. The role of the Authority and its wider remit adds to the clarity and consistency of the decision making process. The opportunity to look at the wider context beyond the BSC to the influence of external issues and other

Q	Question	Response	Rationale
	<p>the Applicable BSC Objectives? Please give rationale.</p>		<p>governances is an essential element in the decision-making process and can support the requirement for the co-ordination of the change management process. Removing the requirement to consider a broad spectrum of issues increases the risk of decisions being challenged due to inconsistency/conflicts with other governances and licence obligations.</p>
9.	<p>Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.</p>	No	<p>Whilst the option to make conditional decisions endeavours to acknowledge the impact of external influences outside of the remit of the BSC, we feel that this option creates an environment of uncertainty and an incomplete decision-making process and is wholly unsatisfactory. Currently the Panel make recommendations against the BSC Applicable Objectives with the Authority having a wider remit and hence decisions are reached without the requirement for conditionality. If a modification is reliant on changes to industry Codes we believe that making a decision even conditionally seems inefficient and builds in an additional unnecessary step to the process.</p>
10.	<p>Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.</p>	Yes	<p>We believe that all parts of the Code should be subject to Authority approval for any changes. We feel it would be difficult if not impossible to agree a list of inclusive sections of the Code to be restricted in any way.</p>
11.	<p>Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.</p>	No	<p>We do not agree with the proposal to allow the Panel to make implementation decisions. Therefore we do not believe that an appeals process is an appropriate method of addressing the likely inconsistencies between industry codes and licence conflicts that would arise from decisions being made against the background of narrow objectives. However, we note that in the wider context the subject of an appeals mechanism is the focus of the ongoing DTI Consultation on Increasing Transparency in the Code Modification process.</p>

Q	Question	Response	Rationale
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	No	See response to question 11 above.
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	No	See response to question 11 above.
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as pare of the Assessment Procedure? Please give rationale.	Yes	Whilst we would not suggest that the existing non-voting members of the Panel are provided with a vote, we would prefer an alternate route to ensure that the assessment of the non-voting members is included as a valid part of the decision-making process. As indicated above if a proposal is identified to conflict with licence obligations or require significant alternate Code changes we would suggest that the Distribution Network Operator or Transmission Company be provided with a route to require the modification in question to be referred to the Authority for decision. As mentioned above without this route the affected parties would have no option but to appeal a decision that would potentially lead to a licence breach.
15.	Are there any further comments on P129 that you wish to make?	No	

P129_ASS_013 – British Gas Trading

Respondent:	Mark Manley
No. of BSC Parties Represented	
BSC Parties Represented	British Gas Trading
No. of Non BSC Parties Represented	
Non BSC Parties represented	
Role of Respondent	BSC Party

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P129 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	<p>BGT do not believe the Proposed Modification will better facilitate the Applicable BSC Objectives. BGT do not concur with the assumption that this proposal will better promote efficiency in the implementation and administration of the balancing and settlement arrangements.</p> <p>Whilst BGT would like to see a more representative BSC Panel and recognise the frustrations surrounding the timescales of the decision making process, BGT do not believe this proposal will address the issue. The more contentious proposals will still be sent to the Authority for decision and time delays will still exist. By nature these proposals will tend to be the 'big ticket' issues that BSC Parties want decisions on quickly to remove uncertainty from the market place.</p> <p>The modifications that will be approved or rejected by the Panel under this proposal will tend to relate to the less contentious and will be simpler modifications i.e. housekeeping modifications. The Authority already provides decisions in respect of these types of modification proposals in a</p>

Q	Question	Response	Rationale
			relatively timely manner. On this basis it is difficult to foresee how this proposal will better facilitate the Applicable BSC Objectives.
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale.	Yes	P129 is attempting to promote accountability and transparency in the modification decision making process. This could be achieved by developing a more representative Panel but by maintaining the current level of power vested in the Panel. The Panel would continue to make recommendations to the Authority but if the Authority was 'minded to' make a different decision from that of the Panel they would need to provide a more detailed rationale for their decision within the decision letter.
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	Yes/No	<p>For Panel meetings to be manageable it would appear sensible to align the number of constituency classes with the current market model of industry appointees to the BSC Panel. However because of the nature of the proposal, which proposes amending the power of the Panel from making recommendations to taking decisions the question of how representative the Panel is of the whole industry a key issue.</p> <p>It is difficult to foresee the BSC Panel ever being truly representative of the BSC community because of the number of BSC signatories. Also the 5 constituencies proposed do not provide for a Renewables constituency. Whilst they can be shoe horned into a constituency their issues will not necessarily align with those of other BSC Parties within their constituency.</p> <p>From an efficiency perspective of managing the meetings BGT agrees that the balance of non-voting members to voting members is appropriate. Also in view of the proposal to invest decision making powers in the BSC Panel it will be essential to have representatives of the Transmission System Operator, the Distribution System Operators and the Authority.</p>
4.	Do you believe that the criteria for defining	Yes	The number of BSC Parties and their ownership is significantly different now

Q	Question	Response	Rationale
	<p>constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.</p>		<p>when comparing the market against the situation at Go-Live. On the basis of there being further merger and acquisition activity, plus parties withdrawing from the BSC and new parties acceding, the criteria needs to be open to review.</p> <p>The review should be undertaken by ELEXON in consultation with the industry with the decision making power vested in the Authority. It would appear perverse if the Panel had the ability to define the constituencies, as there may be some self-interest in the constituencies being defined in a specific way.</p>
5.	<p>Do you believe that Interconnector Users should have their own constituency class? Please give rationale.</p>	No	<p>As referred to in question 3 the issue of practicality against representation needs to be considered.</p> <p>The Interconnector could be viewed as simply demand or generation dependent upon which the interconnector is flowing. Also the way the constituencies have been drawn up they will not be representative because of the numerous segments within the constituencies. For example in the small supplier constituency there will be I & C suppliers and domestic suppliers. These 2 different types of suppliers are unlikely to have similar drivers. Which raises the question of how representative the constituencies will be.</p>
6.	<p>Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.</p>	Yes	<p>BGT believe the election process should be held once a year because of the significant changes that have been occurring in the market since Go-Live. The industry has undergone significant changes and BGT would argue that the industry should be able to change the Panel members on an annual basis to be more representative of the market place.</p>

Q	Question	Response	Rationale
			<p>The increased frequency of the election process does not necessarily mean that the industry has to elect different Panel Members.</p>
7.	<p>Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.</p>	No	<p>BGT do not believe the power to make decisions on Modification Proposals should be vested in the BSC Panel.</p> <p>The BSC Panel makes its recommendation in view of the Applicable BSC Objectives whilst the Authority have a number of other factors which they must consider when reaching a decision. When making decisions BGT feel it would be inappropriate if the wider statutory considerations were not part of the formal decision making process. However BGT are unsure of the validity of giving such power to a non-governmental body.</p> <p>The BSC Panel currently only has the vires to consider BSC Modifications and their effect on the BSC. The electricity industry has cross governance arrangements with the BSC, CUSC & Grid Code interlinking. BGT do not feel it is appropriate that the BSC Panel would be able to make decisions on proposed BSC Modifications. Whilst in the CUSC and Grid Code arenas all proposed changes would still be considered by the Authority.</p> <p>BGT also have concerns that if a substantial majority process is adopted it will mean numbers rather than the validity of arguments could be the primary factor in making decisions. BGT believe that the validity of one of the Panel Members arguments can be ignored because the other 8-voting members either support or dislike a proposal. The basis for decision-making needs to be strength of argument not weight of numbers.</p> <p>BGT also have underlying concerns about how representative the BSC Panel could ever become. To ensure true representation all BSC Parties would</p>

Q	Question	Response	Rationale
			<p>need to be represented on the BSC Panel. This assumption is based upon BSC Parties having different aims and objectives to other BSC Parties. The proposed constituencies have very large bandwidths and it is difficult to foresee all BSC Parties within a constituency having the same issues on the radar.</p> <p>BGT note that the Modification Proposal does not propose to change Panel Members obligations in respect of impartiality. However BGT believe if decision making powers were delegated to the BSC Panel then the question of impartiality would become very pertinent. The issue of impartiality is already a difficult issue with the Panel only making recommendations, if the power of the Panel was to increase as proposed by P129 the issue would become significantly more important. BGT believe decision-making in respect of Modification Proposals should remain with the Authority because of their unique independent position.</p>
8.	<p>Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.</p>	Yes	<p>BGT agree that decision-making criteria should not be limited to the Applicable BSC Objective. BGT also believe it would be equally inappropriate for the BSC Panel to be able to make decisions based on Ofgem's wider statutory obligations.</p> <p>Furthermore BGT does not believe that the BSC Panel is the correct body to be considering change that may impact upon licence conditions of System Operator and Distribution Businesses.</p>
9.	<p>Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.</p>	No	<p>Introducing conditionality will add to the uncertainty already faced by market participants in the market place. Conditional determinations may have a detrimental effect on the efficiency of delivering solutions to approved modifications. Work on approved modifications will need to commence to meet agreed deadlines proposed as part of the decision</p>

Q	Question	Response	Rationale
			<p>making process. If a conditional clause is included it may result in development work commencing and costs being incurred that need to be shelved because changes are not approved within the other governance arenas of CUSC & Grid Code.</p> <p>This highlights one of the many difficulties that would result if P129 were approved. It also highlights the potential inefficiencies of the BSC Panel making decisions relating to the BSC and the Authority making decisions on CUSC & Grid Code changes. If one body is responsible for all decisions then those decisions will align across the three industry codes.</p>
10.	<p>Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.</p>	Yes	<p>Whilst BGT do not support this Modification Proposal if P129 was approved then BGT believe it is essential that certain elements within the BSC can only be amended with the approval of the Authority.</p> <p>BSC Panel should not be in a position where they can be both judge and jury.</p>
11.	<p>Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.</p>	Yes	<p>If the ability to make decisions were delegated to the BSC Panel BGT would expect there to be an appeals mechanism implemented. The appeals process should mirror the process provided for by section P6.7 of the BSC. i.e. any Party should be able to refer a determination to the Authority.</p> <p>BGT does not support the implementation of an Appeals process within the current modification framework. However BGT feels extra assurance would be needed for BSC Parties if decision-making power were delegated from the Authority to the BSC Panel. In view of this additional assurance it raises questions of what value if any this proposal provides. As an appeals mechanism provides the potential for all decisions to be appealed to the</p>

Q	Question	Response	Rationale
			Authority. This is no different from the current model but merely lengthens the process in respect of decision making and creates uncertainty.
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	No	<p>BGT believe that the grounds for appeal should mirror those utilised by the Judicial Review process. In addition any appeals process should consider the bullet points highlighted in the consultation document with an additional reference to due process not being complied with.</p> <p>BGT note with interest the bullet points referenced in the consultation document and particularly those relating to breach of licence conditions. This outlines one of the fundamental flaws in the process whereby a BSC Panel can approve a modification without having the ability to amend licence conditions of the affected licensee. The proposed process thereby introduces a two step process into decision making. The Panel makes a decision and the Authority then has to consider if the licence condition changes should be made. If they do not believe the necessary changes should be made the Transmission Operator or the Distribution System Operators will be in breach of their licence condition and risk losing their licence.</p>
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	No	Whilst 10 days initially appears sensible BGT would expect a Party to appeal based on the minutes from the meeting and not the headline report. The minutes from the meeting are not approved until the following meeting and this is where the rationale behind the decision will be contained. In reality does this mean that you can appeal a decision for 10 days following the subsequent Panel meeting when the minutes were approved?
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as pare of the Assessment Procedure?	Yes	BGT would like confirmation of whether a BSC Party can appoint a Panel Member for each of their 2 constituencies. If this is the case then this is a significant issue that needs to be consulted upon with BSC Parties.

Q	Question	Response	Rationale
	Please give rationale.		
15.	Are there any further comments on P129 that you wish to make?	Yes	<p>BGT sympathises with the proposer and recognises the issue of getting decisions on certain proposals from the Authority in a timely manner. However BGT does not believe that delegating power from the Authority to the Panel is the appropriate method of addressing the issue.</p> <p>BGT believe that the root causes of the delay need to be identified and considered. Are the reports incomplete? Would the Authority like additional information to be provided? Once those have been considered and addressed it would remove the need to vest decision-making power in the BSC Panel.</p>

P129_ASS_014 – Scottish and Southern

This response is sent on behalf of Scottish and Southern Energy, Southern Electric, Keadby Generation Ltd. and SSE Energy Supply Ltd.

In relation to the 15 questions listed in the Consultation Paper, contained within your note of 11th July 2003 concerning Modification Proposal P129, we have the following comments to make:-

Q1 Do you believe Proposed Modification P129 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).

No. On balance we believe that the current arrangements better meet the Applicable BSC Objectives.

We note the comments in Section 1.1 of the Initial Written Assessment, dated 6th June 2003, that "if the Panel were to make determinations instead of recommendations, as proposed by P129, then the constitution of the Panel is of primary concern. In light of this, the Proposer has proposed revisions to the Panel election procedure for Panel Members". We believe that the first 'question' posed by the Proposer is should the Panel make determinations, this then leads onto the second 'question' posed by the Proposer is that if the Panel does make determinations then the composition of the Panel needs to be changed. It is our contention that the answer to the first 'question' (of allowing the Panel to make determinations) is that this should not happen and it therefore follows that the second 'question' does not arise; i.e. if the Panel is not making determinations then there is no need to amend the Panel composition by virtue of the introduction of a constituency class arrangement, as outlined in Modification Proposal P129.

Furthermore, as noted in Section 2.2 of the Consultation Document dated 11th July, "the GSMG concluded that they were undecided as to whether or not the Proposal to allow the Panel decision making powers for Modification Proposals would in practice significantly cut down the time it takes for determinations to be made". In the light of this it is hard to agree that this change will improve on the status quo, and therefore better achieve the Applicable BSC Objectives.

Please note our response to any of the following questions should not be construed to lend support whatsoever to this Modification.

Q2 Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale.

No.

Q3 Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.

Yes. Five appears to be a suitable number for Industry Members on the Panel.

However, in respect of the two 'Supplier' and two 'Generator' constituencies it would seem to us appropriate that the threshold (on whether a party is 'large' or 'small') be set at such a level as to ensure that broadly speaking half of all Suppliers/Generators are classified as 'large' and the other half 'small'. To do otherwise would distort the representative nature of the Panel.

Q4 Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.

Yes. For the reasons outlined in our answer to Q3 above, we believe that the thresholds (in respect of the two 'Supplier' and two 'Generator' constituencies) should be set at such a level as to ensure that basically half of all Suppliers are classified as 'large' (and the remainder as 'small') as should the threshold for Generators. BSCCo should be able to achieve this relatively easily (by setting the TWh threshold - between 'large' and 'small' - at such a level as to broadly achieve this 50:50 split), advising Parties of which constituency class they reside. Parties would be able to appeal to the Authority if they felt they were demonstrably in the wrong constituency class.

Q5 Do you believe that Interconnector Users should have their own constituency class? Please give rationale.

No. Given the limited number of Industry Members on the Panel and the fact that Interconnectors do not represent anything like 20% (i.e. one of the five Industry Panel 'seats') of the market it would be wholly inappropriate for Interconnector Users to have their own constituency class. Furthermore, as all Interconnector Users are either Supplier ('consumption'), Generator ('production'), or Trader, we believe that all Interconnector Users should fit into one of the other constituency classes and would therefore be represented on the Panel. To allow Interconnector Users per se to have their own constituency class would distort the composition of the Panel.

Q6 Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.

No. There is a significant risk of discontinuity associated with annual elections as some Panel members may be leaving and new ones joining leading to a loss of experience in the 'process' and Modifications (together with other matters) being considered by the Panel. We believe there is merit in having a continuity of tenure for longer than 12 months and that 24 months represents a suitable period for elections to the Panel.

Q7 Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.

No. Whilst there maybe some merit if a Panel determination were to be via a unanimously* vote, rather than "substantial majority", we believe, on reflection, that there may be a fundamental legal issue regarding the Panel (by virtue of a "substantial majority" or "unanimously" vote) making a determination regarding a Modification Proposal and then directing the Transmission Company to make such a change to the BSC. It is our understanding that the power to direct (a change to the BSC) rests with the Authority and that they would not just 'accept'/'rubber stamp' a determination by the Panel, particularly if they had regard to their wider statutory obligations (which the Panel did not - see Q8).

*Unanimously in this context being all Panel members at a meeting voting the same; i.e. no dissenting votes and no abstentions.

Q8 Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.

We believe it is appropriate that the Panel uses broadly the same criteria, for assessing a Modification Proposal, as the Authority. We are deeply concerned that the Authority received no external comments (from market participants, or other stakeholders) about the materiality/impact etc., that one or more of these other criteria (such as environmental issues or consumer protection objectives) has in respect of the Modification Proposal under consideration. Furthermore, we believe that the Authority should conform to the Cabinet Office and Better Regulation Task Force requirements in this respect, indicating, as a minimum the weighting it attributes to each criteria when making a decision.

Q9 Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.

Yes. The reality is that changes in one industry document may impact on another. This appears to be a pragmatic approach for addressing multilateral changes across industry documents.

Q10 Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.

Yes. For the reasons outlined above.

Q11 Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what he process be? Please give rationale.

Yes. Parties should be able to appeal to the Authority. Furthermore, as indicated by the work of the Better Regulation Task Force, there should also be an independent appeals process, available to Parties, for all decisions made by the Authority.

Q12 Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.

Yes. The grounds indicated in the consultation document are appropriate.

Q13 Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.

No. Given that there are suggested to be only three grounds for appeal, and that one is if new evidence could be presented that the appealing Party felt had not been sufficiently explored during the Modification Procedures then (for non urgent Modification Proposals) a 20 working day timeframe would be more appropriate to allow Parties sufficient time to lodge an appeal. How does this fit with the timescale for external legal processes for appeal?

Q14 Does P129 raise any issues that you believe have not been identified so far and that should be progressed as pare of the Assessment Procedure? Please give rationale.

No.

Q15 Are there any further comments on P129 that you wish to make?

Nothing further at this time.

Regards

Garth Graham
Scottish and Southern plc

P129_ASS_015 – ConocoPhillips

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

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P129 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	P129 represents an attempt to revert to Pool style constituencies and governance, and does not meet any of the applicable objectives. The appeals issue is also being dealt with separately by DTI, and that process should be allowed to run its course.
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 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	No	We do not support the proposal for voting classes.
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	No	As above. We would add that in the dynamic industry environment, any fixed and formal definitions are unlikely to be responsive to industry change. Further when Ofgem last considered this type of issue against the backdrop of development of the BSC, it was not clear how robust constituency definitions could be developed.

Q	Question	Response	Rationale
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	No	No given the need to accommodate other interests.
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	No	It is essential that the Panel is allowed to develop some continuity of personnel, and annual elections are not compatible with this. The efficiency of the modifications process is likely to be undermined.
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	No	We cannot see how decision-making can be made more efficient if decision-making powers are essentially split between the Panel and the Authority. The change would certainly result in an increase in perceptions of regulatory risk within the market. There are other ways that the decision process can be made more efficient without undermining the ownership of decisions.
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	No	It is clearly nonsense to have two accountable parties with different objectives.
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	No	See answer to 7.
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	Yes	All decision-making authority should continue to sit with Ofgem.

Q	Question	Response	Rationale
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	No	As noted above, we believe all decision-making authority should continue to sit with Ofgem.
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	No	As noted above, we believe all decision making authority should continue to sit with Ofgem.
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	No	As noted above, we believe all decision-making authority should continue to sit with Ofgem.
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as pare of the Assessment Procedure? Please give rationale.	Yes	Two comments: 1.The modification is unwieldy and combines several separate issues, which should have been considered in isolation. The proposal would have benefited from having been discussed within the appropriate Standing Modification Group first. 2.The issue of the appropriateness of separate votes for production and consumption accounts should be considered. It is possible for the availability of a dual vote to be abused by party voting.
15.	Are there any further comments on P129 that you wish to make?	No	