

P284 Consultation Responses

Consultation issued on 20 July 2012

We received responses from the following Parties

Company	No BSC Parties/Non-Parties Represented	Role of Parties/non-Parties represented
National Grid	1/0	Transmission Company
Drax Power Limited	1/0	Generator
SmartestEnergy Limited	1/0	Supplier
Electricity North West	1/0	Distributor
EDF Energy	10/0	Generator/Supplier/Party Agent/Consolidator/Exemptable Generator/Trader
IBM UK Ltd for and on behalf of the ScottishPower Group	7/0	Supplier/Generator/Trader/Consolidator/Exemptable Generator/Distributor
SSE plc	9/0	Supplier/Generator/Trader/Consolidator/Exemptable Generator
Centrica	13/0	Generator/Trader/Supplier
RWE npower	10/0	Supplier/Generator/Trader/Consolidator/Exemptable Generator/Part Agent
E.ON	5/7	Supplier/Generator/BSC Agent (HH & NHH DC, MOP)
ELEXON Limited	0/1	Independent response for the ELEXON Executive team

What stage is this document in the process?

01 Initial Written Assessment

02 Definition Procedure

03 Assessment Procedure

04 Report Phase

Question 1: Do you agree with the Panel's view that the Proposed Modification should be rejected?

Summary

Yes	No	Neutral/Other
9	2	-

Responses

Respondent	Response	Rationale
National Grid	Yes	<p>National Grid raised P284 as an enabling modification in order to allow New Elexon to undertake non-BSC activities via a contract model. The intent of P284 is in line with the industry support for a contract model (expressed during Issue 40 discussions) and Ofgem's view that "... a formal separation between the BSCCo and a 'New Elexon' is better able to protect the interests of the BSC Parties" .</p> <p>National Grid notes the workgroup and Panel concerns related to the contractual framework and the BSC Manager Service Description which are yet to be agreed. National Grid notes that, without appropriate clarity around these issues it is difficult to conclude whether an enabling modification has the potential to better meet the applicable BSC objectives than the baseline. National Grid also considers that better safeguards need to be in place to protect the BSC Parties.</p> <p>National Grid agrees with the Panel's view that the Proposed Modification should be rejected.</p>
Drax Power Limited	Yes	<p>We agree with the rationale provided by the Panel. A robust business case to demonstrate the benefits of the Modification has not been produced. Moreover, any identified benefits are uncertain to be achieved and there are a number of risks associated with the change. As such the risks associated with the proposal outweigh the benefits. Also, the lack of safeguards present in the Modification does not provide sufficient protection to the industry in the event that P284 Proposed is implemented.</p>
Smartest Energy Limited	Yes	<p>We are supportive P284's principles and believe the expansion of Elexon's role will benefit the BSC objectives. However, having reviewed the Alternative Solution we now believe the original Proposed Solution should be rejected.</p>

Respondent	Response	Rationale
Electricity North West	Yes	We support the alternative proposal.
EDF Energy	Yes	<p>Yes. We agree with the Panel that the risks associated with the proposal outweigh the benefits against Objective (d) and that the safeguards introduced are insufficient to provide suitable protection to the industry. The Proposed Modification should, therefore, be rejected.</p> <p>It is not our intention to hinder Elexon's aspirations, but all modification proposals are subject to the existing governance structure for change modification. We simply do not think the applicable BSC objective will be better achieved under P284, as currently proposed.</p>
IBM for ScottishPower	No	<p>ScottishPower continues to believe that there may be efficiency gain in outsourcing all or some of the BSC services. We acknowledge the view that there has yet a clear business case to justify the potential risks and liabilities to BSC parties and the BSC service. However, the issue of Elexon extending its vires and diversifying into other business ventures has been discussed and considered at length, particularly through the Ofgem's consultation, with the general consensus that a contract model would be the best method of facilitating the development. We therefore are prepared for such an arrangement to be in place, with the expectation that BSC services and BSC parties to be protected via 'the contract'. With the right protection, it does not detriment any applicable BSC objectives, but has the potential to better facilitate Objective (d) – efficiency.</p> <p>The Modification Group and Panel appeared to have focussed attention on the applicability of Objective (d). While we agree that the case for better facilitation of Objective (d) is unproven, we do consider that Applicable Objective (a) might be better facilitated by the Modification.</p> <p>Condition C3 1 (e) requires that the licensee establish: <i>"a secretarial or administrative person or body, as specified in the BSC, (the "code administrator") and setting out the code administrator's powers, duties and functions..."</i></p> <p>Although the term 'code administrator' might imply that both secretarial and administrative duties can be performed by one entity, it also appears to be an acknowledgement that the two functions are fundamentally distinct from one another.</p> <p>If the Licensee is able to fulfil its obligations under C3,</p>

Respondent	Response	Rationale
		<p>1(e) through the secretariat procuring the administrator, then that appears to us to at least potentially be a more efficient mechanism for discharge, as it might return savings from operating a competitive tender process.</p>
SSE plc	Yes	<p>SSE agree with the Panel view that the benefits that might accrue to BSC Parties as a result of this modification are insufficiently quantified and are likely to be marginal. Furthermore, even were the benefits quantified, the solution developed offers no commercial mechanism to realise those benefits. Whilst benefits might accrue to other areas of the industry were Elexon allowed to diversify, this is of no concern to BSC Parties, who should not be required to underwrite the cost and risk of delivering any wider benefits perceived.</p> <p>In return for uncertain benefits, the modification critically requires BSC Parties to remove a key protection controlling the activities of BSCCo, with very little definition and substance around the equivalent controls that would apply to mitigate BSC Parties' risk. SSE therefore also agree with the Panel view that the risks of the modification outweigh the benefits.</p> <p>Ofgem in its open letter to industry on 30th April, set out a number of pre-requisite conditions which it expected to be met in allowing Elexon to diversify, namely :-</p> <ol style="list-style-type: none"> 1. BSC Parties should benefit from any diversification; 2. The arrangements should not place disproportionate risk on BSC Parties; 3. Standards of service under the BSC should be maintained; and 4. Elexon's BSC role should not give it any undue competitive advantage in a contestable activity. <p>SSE believes that the solution presented is inappropriately weighted towards enabling the removal of restrictions without adequately defining sufficient protections and controls to counterbalance the potential risks and implications and address the pre-requisites set out above. The principal means of doing this is envisaged to be the BSC Services Contract, the development of which has been deemed (inappropriately in our view) out of scope of this modification. Were the Contract within scope and being developed, or stronger obligations being prescribed in the Legal Text, then SSE would be more supportive of the modification. However, in absence of this detail,</p>

Respondent	Response	Rationale
		<p>BSC Parties are being asked to accept a leap of faith that such a contract will deliver these pre-requisites, but at the determination of the Board and subject to a regulatory oversight process which is discretionary and not defined. This leap of faith is particularly acute as there remains an outstanding debate as to whether the contract model should be "thin" or "thick", as described in Ofgem's consultation document. SSE is firmly of the view that the contract should be "thick" and retain assets within BSCCo that are leased to New ELEXON for reasons described further down (see Business Continuity).</p> <p>Without establishment of the Contract or at least key Heads of Terms (HoT), it is not clear to SSE how exactly Ofgem's conditions will be met. It is our view that the Legal Text must be much more explicit about what additional obligations should apply in developing the initial contract to ensure that BSC Parties interests are protected within the final terms, particularly :-</p> <ul style="list-style-type: none"> • Investment protection – assurance that the £ multi-million investment by BSC Parties since the introduction of NETA is adequately recognised, protected and priced. • Cost savings – assurance that a mechanism will be established that allows any realised synergy benefits to accrue to BSC Parties. • Exposure mitigation – assurance that liabilities are limited through contract, and BSC Parties are thus not exposed in appropriate and unnecessary cost escalation. • Business continuity – assurance that the service will operate to the benefit of BSC Parties with little disruption in the event of New Elexon business failure. • Service quality – assurance that appropriate incentives exist in the contract to compensate for poor performance or reward outstanding performance. <p><u>Investment protection</u></p> <p>BSC Parties have invested many millions of pounds into the running and development of Elexon, and delivery of the BSC arrangements since the introduction of NETA. SSE would expect that any initial service contract ascribes a value to this investment and establishes a commercial means of recognising and remunerating this value over time, particularly should New Elexon be expecting to retain the ELEXON brand name, which will</p>

Respondent	Response	Rationale
		<p>have considerable goodwill associated with it. Equally some of the costs incurred to date to facilitate the desired diversification should be recognised and a mechanism established to allow a recovery of monies over time. In exercising their fiduciary duties we would expect the ELEXON Board to ensure that value is determined and recognised.</p> <p>Additionally, the Board must seek to protect the investment made to date by retaining within BSCCo the necessary property rights (e.g. in systems, processes and data) and leasing to New ELEXON as required.</p> <p><u>Cost savings</u></p> <p>SSE can see the potential for cost saving and efficiency benefits across industry as a whole in allowing Elexon to diversify and deliver additional services. However much of the direct benefit would be realised by other initiatives within the industry that are not directly relevant to the BSC administration. For example, allowing New Elexon to bid for the SMART DCC role to provide a benchmark for the tender process, whilst (arguably) of benefit to the SMART programme, is of absolutely no incremental benefit to BSC Parties, until such time as a contract is actually awarded to New Elexon. Such award of contract is highly uncertain.</p> <p>Benefits to BSC Parties thus may be realised were New Elexon to actually be awarded new areas of business which would thus enable it to achieve synergies and allow a reduction in the price associated with certain costs of operation (e.g. corporate service costs) across its suite of contracts. However without even a high-level BSC Services Contract or HoT to assess, it is difficult to understand exactly which commercial mechanism will be used to ensure such benefits are realised for BSC Parties (for example, the contract could specify a price rebate mechanism that discounts provision of shared costs for each additional service established to demonstrate such direct benefit).</p> <p><u>Exposure mitigation</u></p> <p>SSE's key concern remains the need to ensure that BSC Parties are not unduly exposed to the risk of escalating costs or legal action associated with New Elexon business ventures that could result in unlimited liabilities to BSC Parties by virtue of the must-finance obligations enshrined within Section D of the BSC. The Legal Text provides for BSCCo at its discretion to authorise the BSC Services Manager to incur liabilities on its behalf, and attempts to restrict this to its BSC-related duties, but this is in SSE's view not strong</p>

Respondent	Response	Rationale
		<p>enough. One might normally expect a consequential clause within a contract to address this, but in the absence of development of a contract or HoT SSE cannot be assured that the provisions to provide this protection are strong enough.</p> <p><u>Business continuity</u></p> <p>Appendix 1 of the consultation describes that it is “the intention is for necessary staff to transfer from ELEXON to New ELEXON to deliver the required obligations. Transfer of ELEXON staff to New ELEXON would not be done under any process introduced by P284 or otherwise codified but would proceed as a matter of course under normal law outside of BSC.”</p> <p>Whilst SSE agree that the process to transfer any necessary staff is outwith the BSC and subject to employment law, the determination of what is necessary to transfer is critical to the debate. Because we have no contract to assess, we cannot determine whether the proposal is to progress a “thin” or “thick” contract model. It is not in BSC Parties interests to proceed on a “thin” model basis, as in the unfortunate event that New ELEXON fails, the ability to deliver the service that we rely upon becomes more uncertain in an event of insolvency. In particular, SSE would be concerned that BSC Parties may become exposed to a pre-pack administration, where existing contracts are voided through administration, and the subsequent entity that arises seeks to establish much higher prices as the BSCCo and BSC Parties become distressed buyers. Competition Law may provide some protection in this instance, but the outcome of any investigation would be uncertain and take some time to conclude.</p> <p>As such SSE strongly advocate the development of the “thick” contract model that transfers minimal numbers of staff to New ELEXON (e.g. executive management, business development), and puts in arrangements to lease/second the remaining members of staff to New ELEXON. Employment contracts for the majority of operational and BSC change management staff retained in BSCCo. This, coupled with the retention and lease of core property rights described above, along with appropriate termination provisions within the leasing/secondment agreement, would allow critical operational staff to transfer back to BSCCo to continue to operate services with least disruption. SSE strongly opposed any model that retains only a skeleton staff permanently employed by BSCCo.</p> <p><u>Service quality</u></p>

Respondent	Response	Rationale
		<p>Whilst accepting that the BSC Services Manager Services Description should set the scope of services to be delivered, it will not assure the quality of service desired by BSC Parties, as it does not set measurable standards or targets, nor does it describe the framework for compensation or reward for failure or success in meeting the measurable standards. Whilst SSE accept that this is absolutely the detail that might be expected to be determined upon and included within the final Contract, it serves to show the difficulty in separating the process to relax restrictions within the BSC from the primary tool that will be developed to ensure the protection of BSC Parties. On the face of it, it seems to impossible to see how the service quality condition required by Ofgem can be assessed to have been delivered without a more detailed view of the contract.</p>
Centrica	Yes	<p>We agree with the Panel’s view that P284 should be rejected.</p> <p>We believe the relevant objective is objective (d), promoting efficiency in the implementation and administration of the balancing and settlement arrangements. However we do not believe P284 will further objective d), and are concerned that P284 could actually work against objective d).</p> <p>We are happy with the quality of service Elexon currently provides and believe that the existing BSC arrangements give parties appropriate means of control.</p> <p>If P284 is to represent a furthering of objective d) there must be a reasonable prospect of BSCCo entering into a BSC services contract which is better for BSC parties than the status quo. Important preconditions for this are:</p> <ol style="list-style-type: none"> 1. The BSCCo Board has a meaningful choice of credible and competitive BSC service managers to choose from; 2. BSCCo Board and BSC party views of what “improved” BSC services constitute (including price, service quality, control, risk) are aligned, and BSC parties have appropriate controls if they believe the Board’s proposals for a BSC services contract are worse than the status quo. <p>On precondition 1, we think it unlikely that competition for the BSC services contract will be strong, rendering the potential benefits of contracting lower than the costs and risks of deviating from the status</p>

Respondent	Response	Rationale
		<p>quo.</p> <ul style="list-style-type: none"> • BSC services are too esoteric to attract large numbers of competitors for the BSC services contract – it would be difficult for an outsider to understand the scope of its duties without first hand delivery experience – this is likely to put new bidders off and result in weak competitive pressure on the incumbent; • The tight timescales being proposed for approving P284 mean that insufficient time is available to create conditions favourable to an effective competition for the BSC services manager contract – selection of the BSC services manager for the term of the first contract is likely to be an uncompetitive appointment, with only “new” Elexon in contention. • Proper mechanisms to make future competitions for the BSC services contract contestable and the BSC services manager’s duties easily transferable have not been put forward, developed and hardwired into P284. There is therefore a significant risk that the incumbent BSC services manager will become entrenched, and have an unduly strong position in any future competitions for the contract. • The provider of the BSC services contract will be “for profit” as opposed to the “not for profit” BSCCo/Elexon we have at present. Absent any credible alternative provider of the BSC services contract, the new “for profit” provider will be in a position of extraordinary strength to secure contract terms in its favour. These terms are unlikely to align with BSC party interests. <p>Fulfilment of precondition 2 would go some way to averting the risks of an unfavourable contract being negotiated between BSCCo and the BSC services manager. However, P284 is not proposing to build in safeguards of the kind that would be necessary to protect BSC parties from an unfavourable contract being drawn up against a backdrop of weak competition for the contract.</p> <ul style="list-style-type: none"> • P284 provides the BSCCo Board with large amounts of discretion in whether and how it goes about contracting for BSC services with a third party: <ul style="list-style-type: none"> ○ The Board may appoint a BSC services manager, but there are no provisions as to how it should go about that appointment, and no provisions for consultation with / agreement

Respondent	Response	Rationale
		<p>from BSC parties or the Authority.</p> <ul style="list-style-type: none"> ○ The Board has the right to grant, transfer or make available existing BSCCo assets to the BSC services manager. Depending on how BSCCo assets were transferred or made available, the BSC services manager could acquire a significant advantage in any future competitions for the contract, and thus a position of considerable strength in future BSC service contract negotiations. There is also a risk that the transfer of assets is done in such a way that makes it infeasible for BSCCo to take services back in house, which would further reduce the pressure on the BSC services manager to deliver high performance. ○ There are no guaranteed standards or costs of service “hardwired” into P284, and no controls available to BSC parties or the Authority if the Board proposes a contract which doesn’t serve BSC party interests. ○ The description of services which has been drawn up as a result of discussions on P284 does not amount to a meaningful control over key contract terms for BSC parties or the Panel. <p>P284 and the “no change” scenario</p> <p>We accept that there is a scenario whereby P284 is approved, but the Board, in its discretion, decides not to appoint a BSC services manager. However, this scenario would not further objective d), as in practical terms, the status quo would be maintained at the cost of additional administrative time and effort, whilst the risk of an unfavourable contract being struck in the future would remain. In any event, we think this scenario unlikely, based on our understanding of the circumstances.</p>
RWE npower	Yes	<p>We support the Panel’s view that the Proposed Modification should be rejected as the subsequent division between the good working arrangements between the Panel and Elexon may be damaged.</p> <p>While neither Modification better facilitates the BSC objective, they also don’t promote an obvious detrimental effect, so further consideration should be given to the impact of division of resources between BSCCo and Elexon as it is not clear what element of risk would be associated to BSC Parties.</p>
E.ON	Yes	The proposed modification failed to give the

Respondent	Response	Rationale
		reassurance that the safeguards that Ofgem indicated would need to exist for Elexon to be a contracted service provider were a requirement of the proposal, and therefore parties were concerned by the potential risks in the proposed model.
ELEXON Limited	No	<p>1.1 At the most recent Panel meeting on 12 July, it was stated that the benefits associated with the creation of an option to contractualise BSC services had not been identified. We believe these are relevant for the Panel, in assessing whether P284 better facilitates achievement of the Applicable BSC Objectives¹, and also for Ofgem, in considering its wider statutory duties when approving a change to the BSC.</p> <p>1.2 ELEXON's aspiration to apply its expertise and resources to activities beyond the BSC was first proposed over 2 years ago and, as evidenced by the work of the Issue 40 Group and responses to ELEXON's Business Plans and Ofgem's consultation, has the support of the majority of Parties, Ofgem and (in the context of Smart DCC) DECC.</p> <p>1.3 Industry and Ofgem have considered different structural models and have declared a preference for the creation of a commercial contract between BSCCo (which would remain restricted to BSC activities) and an unconnected company "New ELEXON" (which would provide a new BSC Agent role of Services Manager and which would be able to pursue additional activities), the "Contract Model".</p> <p>1.4 Currently the BSCCo is a monopoly provider of BSC services under an "evergreen contract". Enabling the option to contractualise BSC Services will:</p> <ul style="list-style-type: none"> • allow BSCCo the flexibility to expose the BSC Services to periodic benchmarking and/or competitive tender pressures; and • enable competition in the delivery of central market arrangements by creating New ELEXON. <p>1.5 BSC Parties currently indemnify BSCCo against any claims brought against it and, in effect, the BSC releases BSCCo from any liability in respect of any breach by it of any provision of the Code. The current BSC funding arrangements require that the costs associated with any breach or rectification of</p>

¹ In line with the views of the Workgroup and the Panel to date this response assumes that the relevant objective is objective (d) i.e. promoting greater efficiency in the implementation of the balancing and settlement arrangements

Respondent	Response	Rationale
		<p>any BSCCo failings are met by BSC funding Parties. In short, BSC Parties currently incur the full risk and costs of the delivery of the BSC arrangements. This would not be the case in a contractual relationship.</p> <p>1.6 Under current arrangements, any and all costs are simply passed through to Parties. The incentive for efficiency gains has been driven by leadership rather than business structure. However, it is recognised that there are increased financial incentives to drive cost efficiencies once companies are operating in a truly competitive and commercial environment.</p> <p>1.7 It is our view that contractualising the current BSC arrangements will bring benefits to BSC Parties, the market, industry and ultimately to consumers, by:</p> <ul style="list-style-type: none"> • introducing commercial pressures into the delivery of monopoly BSC services; • introducing appropriate risk/reward mechanisms resulting in service improvements; • introducing contractual incentives promoting innovation, long term strategic gains and cost benefits; • facilitating competitive reprocurement upon expiry of the initial contract term; and • creating a new competitor amongst the small field of players capable of delivering central market arrangements. <p>1.8 It is our view that the creation of an option to put in place a contractual arrangement must be of benefit to BSC Parties, industry and ultimately the consumer as without this option the anticipated benefits cannot be realised. We firmly believe that creating the option to access these benefits fulfils the Applicable BSC Objectives and Ofgem’s wider statutory considerations and that both Panel and Ofgem should approve the Modification.</p> <p>1.9 This optionality and flexibility does not currently exist and is, in our view, a significant improvement against the current BSC baseline.</p>

Question 2: Do you agree with the Panel's view that the Alternative Modification should be rejected?

Summary

Yes	No	Neutral/Other
6	5	-

Responses

Respondent	Response	Rationale
National Grid	No	<p>The Alternative Modification provides industry safeguards by ensuring that any contract between BSCCo and New Elexon meets Ofgem's pre-requisite conditions set out in its open letter of 30 April 2012. It also incorporates provisions for the BSCCo to consult with the Panel and BSC Parties on the contract principles in relation to the initial BSC Services Manager Contract.</p> <p>National Grid considers that the above safeguards in the Alternative Modification should alleviate some of the Panel concerns (assuming that the legal text is workable with respect to the Authority involvement in the contract approval process), and that with additional clarity on the contractual framework and BSC Service Manager description, has the potential to better meet the applicable BSC objectives. Subject to this, National Grid is of the view that the Alternative Modification should not be rejected.</p>
Drax Power Limited	Yes	<p>We agree with the rationale provided by the Panel. The arguments to support the rejection of the Alternative are the same as those stated for the Proposed. Whilst the Alternative incorporates slightly better safeguards, we are not convinced that these adequately protect the industry.</p>
Smartest Energy Limited	No	<p>In our response to the Assessment Consultation, we stated that would like to see some safeguards to ensure confidential information relating to BSC parties is not compromised with the introduction of new functions. Having reviewed the Alternative Solution, we now feel satisfied that the safeguards outlined in this proposal, adequately protect the BSC Party's interests.</p>
Electricity North West	No	<p>In our opinion this Modification is an improvement on the original P284 and answers a number of concerns that party members have. We believe that since this is an enabling modification at best it is neutral on the objectives but allows diversification if deemed</p>

Respondent	Response	Rationale
		<p>appropriate without further modifications. To state that there is no business case to support this is difficult to understand. There seems to be sufficient safeguards in place to protect parties should such an initiative take place (over and above that of the initial modification) and any such use would have to ensure that there is a business justification in doing so otherwise it wouldn't take place and it would back off some of the parties liabilities.</p> <p>An alternative to rejection may be to provide more time for the group to consider the Panel's concerns although this may cause some concern over the potential opportunity that is before us.</p>
EDF Energy	Yes	<p>Yes. The Alternative Modification provides more safeguards for BSC Parties than the Proposed Modification. However, the business case presented remains the same; it is not robust enough to convince us that there will be any/much benefit to BSC Parties. As a result, the Alternative Modification should be rejected.</p>
IBM for ScottishPower	No	<p>As with the Proposed, ScottishPower continues to believe that there may be efficiency gain in outsourcing all or some of the BSC services and that it should be made. With its increased ratification and protection process, we favour P284 Alternative to the Proposed as it provides better transparency and comfort to the industry. We believe that</p> <p>it does not detriment any applicable BSC objectives (may better Objective (a)), but also has the potential to better facilitate Objective (d) – efficiency.</p>
SSE plc	Yes	<p>For the same reasons as stated in response to Question 1 above, whilst noting that the controls described within the Alternative solution are an improvement on those described in the Proposed Modification. However, the benefits remain unquantified, and SSE still consider that the controls are not strong enough and should be much more explicit within the legal text about the principles that will be addressed by the contractual framework.</p>
Centrica	Yes	<p>The P284 Alternative does not fully address our concern that competition for the BSC services contract is likely to be weak. Credible alternative service providers to new Elexon are likely to be few in number and Elexon would transition from a "not for profit" to a "for profit" entity under either proposal. The persistence of these factors reduces the likelihood that objective d) will be furthered by the BSCCO Board entering into a BSC</p>

Respondent	Response	Rationale
		<p>services manager contract.</p> <p>The Alternative does however represent an improvement over P284, as it provides BSC parties and the Authority with a greater degree of control over any initial contract between BSCCo and the BSC services manager, if the Board's proposals for a BSC services contract are worse than the status quo.</p> <p>We believe the P284 Alternative is a better proposal than P284. However, we note that the Alternative relies heavily on the Authority's principles set out in its 30 April 2012 open letter as protection for BSC parties against an unfavourable initial contract being struck between BSCCo Board and Elexon.</p> <p>We would hope that, under the P284 Alternative, the (required) consultation on initial contract principles would give comfort to BSC parties that:</p> <ul style="list-style-type: none"> • The initial BSC services contract would serve BSC party interests. • Key BSCCo assets would remain owned by BSCCo, and would be made available to the BSC services manager on a time limited basis to ensure: <ul style="list-style-type: none"> ○ portability of future BSC services contracts to facilitate future competitions for the contract. ○ A real possibility of BSC services going back in house in the event of inadequate performance from the BSC services manager and the absence of any credible alternative provider(s). • The terms governing charges/price, liabilities and performance would be favourable to BSC parties. • Service quality would at least be maintained. <p>However, in practice, only the Authority would see the actual terms of the contract and be able to prevent a contract being struck. BSC parties would therefore need the Authority to apply its 30 April principles robustly when assessing the contract (and other points from its 30 April letter) to ensure that the relevant objectives and BSC party interests are furthered by the P284 Alternative.</p>
RWE npower	Yes	See our response to Question 1.
E.ON	Yes	We had greater confidence that the alternate modification did require the Panel to be assured that the pre-conditions set by Ofgem had been met; however there remained too many uncertainties that need to be resolved.

Respondent	Response	Rationale
		<p>The Service Description which would need to exist for a contract to be awarded hadn't been proposed as part of the solution and whilst at the moment when all the services are delivered on a cost pass through model, BSC parties would no doubt want to assure themselves that in a commercial framework, all of the service description was required and that the service levels and performance assurance was satisfactory and that the benefits of outsourcing the new service description could be fully realised under the contractual arrangements.</p> <p>Whilst we accept that the contract award would be undertaken by the BSC Board, and that normally Elexon as a Contract Manager would undertake contract awards without BSC party oversight via the BSC Board, this is a unique set of arrangements that will set the tone for how the services will be delivered in the future under a contract and as such BSC Parties feel that they should have a role in ensuring that the contract will be robust and safeguards BSC funding parties exposure to future risks.</p> <p>We feel that the aggressive time table this mod has followed has not allowed for sufficient development of these important requirements, nor is it clear how Ofgem would satisfy itself and ultimately BSC parties of their pre-conditions for outsourcing.</p>
ELEXON Limited	No	[See response to question 1]

Question 3: Do you agree with the Panel's recommended Implementation Date for P284 Proposed and Alternative Modifications?

Summary

Yes	No	Neutral/Other
8	3	-

Responses

Respondent	Response	Rationale
National Grid	Yes	National Grid agrees that both P284 Proposed and Alternative be implemented 1 Working Day after following approval by the Authority.

Respondent	Response	Rationale
Drax Power Limited	Yes	The implementation date proposed appears reasonable.
Smartest Energy Limited	Yes	-
Electricity North West	Yes	This is about implementing P284 and not the next stage (should there be a next stage) of putting in place the necessary safeguards.
EDF Energy	No	The implementation of P284 in itself would not impact us directly. Direct impact would arise from any re-structuring of BSC services that might follow from it, which would require its own consultation and implementation timescale. However, 1 working day for implementation following the Authority's approval is not standard practice or good governance for modifications, other than those of an urgent nature, and certainly should not set a precedent for future modifications. We suggest 10 working days would be a more appropriate timescale.
IBM for ScottishPower	Yes	ScottishPower agrees that the modification should be implemented as soon as possible to take advantage of the potential benefit from DCC.
SSE plc	No	SSE do not believe that the solution is complete, as it does not adequately balance concerns as to how BSC Parties interests will be protected and as such cannot support such a hasty implementation.
Centrica	Yes	<p>We agree that the implementation date for P284 (and Alternative) is practicable, i.e. 1WD following approval by the Authority. This is because P284 (and Alternative) permits the Board to enter into a contract (with consultation on the initial contract principles and subject to confirmation from the Authority that its principles are met in the case of the Alternative), and does not require a contract to actually be in place by the implementation date.</p> <p>For the avoidance of doubt, we do not support P284 or the Alternative even though we recognise that the proposed implementation date is practicable.</p>
RWE npower	Yes	A 1 Working Day implementation from acceptance of P284 would seem a reasonable timeframe providing that safeguards are in place before any contract is signed.
E.ON	No	The implementation date should be conditional upon the approval of the service description by BSC parties,

Respondent	Response	Rationale
		so that the risk of a contract being struck against an incomplete or unsatisfactory service description is avoided.
ELEXON Limited	Yes	As the Modification is an enabling change there is no reason to delay its implementation

Question 4: Do you agree that the Proposed Modification legal text delivers the P284 Proposed solution?

Summary

Yes	No	Neutral/Other
9	1	1

Responses

Respondent	Response	Rationale
National Grid	Yes	-
Drax Power Limited	Yes	We believe so.
Smartest Energy Limited	Yes	-
Electricity North West	Yes	We agree that the legal text represents the proposed modification change.
EDF Energy	No	<ul style="list-style-type: none"> Under BSC section C 3.1.1, BSCCo has the powers, functions and responsibilities: <ul style="list-style-type: none"> a) to enter into, manage and enforce contracts with service providers (as BSC Agents) ... and negotiate and agree amendments to such contacts. It is proposed under BSC Section C 3.1.1 (u) that BSCCo would be able to delegate responsibility of the powers, functions and responsibilities specified in paragraph 3.1.1 and otherwise provided for in the Code, to the BSC Services Manager (save in respect for paragraph (k) and its obligations and responsibilities under Section E, paragraph 4). If the BSCCo delegates BSC section C 3.1.1 (a) to the BSC Services Manager, this would mean that the BSC Services Manager would be responsible for procuring and monitoring its own contract, which is clearly unacceptable.

Respondent	Response	Rationale
		<ul style="list-style-type: none"> To address this, BSC section C 3.1.1 (u) could be amended to include (a) alongside (k). However, we assume that BSCCo's intention is to delegate the contract procurement and management function to the BSC Services Manager so that they could manage the contracts with other BSC Agents. The legal text could be redrafted to reflect the actual intention but raises the fundamental question as to whether BSCCo will have to retain a team of contract managers to manage the BSC Services Manager's contract. If the answer to the above question is "yes", then it is necessary to question whether the suggested cost savings could be achieved through the proposal or whether duplication of roles would result in practice. BSC section E 4.2.1 Appointment of BSC Services Manger will also need to be amended to reflect the above. Specifically, it should be drafted in such a way that BSCCo can only discharge 'some' of its powers, function and responsibilities rather than 'all'. <p>The functions BSCCo will retain/delegate are currently unclear. This makes it difficult to assess whether the legal text will deliver the proposed solution. If the modification is approved, the legal text must be reviewed as and when Elexon gains a better understanding of its new organisational structure and division of roles.</p>
IBM for ScottishPower	Yes	The legal text appears appropriate.
SSE plc	Yes	<p>SSE agree that the legal text appears to deliver the intent of the solution.</p> <p>However, we reiterate our belief that the solution is inadequate and deficient and therefore do not believe that the legal text is sufficiently robust to protect BSC Parties.</p>
Centrica	Yes	-
RWE npower	Yes	We agree that the Proposed Modification legal text is suitable.
E.ON	-	I have not had sufficient time to review the legal text to provide a view on this question
ELEXON	Yes	The legal text for the proposed Modification delivers the

Respondent	Response	Rationale
Limited		intent of the Modification in a simple but robust manner.

Question 5: Do you agree that the Alternative Modification legal text delivers the P284 Alternative solution?

Summary

Yes	No	Neutral/Other
9	1	1

Responses

Respondent	Response	Rationale
National Grid	Yes	<p>Whilst we consider that the Alternative Modification legal text delivers the P284 Alternative solution, we have the following comments on the legal text:</p> <p>Section E: BSC Agents</p> <p>Paragraph 4.3.2: The term "sufficient resources" could be more specific; for example, the obligations in network licences refer to matters such as "including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents and facilities on such terms and with all such rights" to enable them to carry on the licensed business.</p> <p>Paragraph 4.4.2(a): What is meant by "reasonably inform"; is this not covered by the "appropriate level of detail"? Also in this paragraph, while the sensitivity with regard to the "information of a commercially sensitive nature" is noted, the statement still needs to be at a level of detail that allows the Panel to make an informed decision as to the appropriateness of the proposal.</p> <p>Paragraph 4.4.3: Should the principles outlined in this paragraph also cover the scope of the proposed contract?</p> <p>Paragraph 4.4.3(e): It is not clear who owns the assets referred to in this paragraph.</p>
Drax Power Limited	Yes	We believe so.
Smartest Energy Limited	Yes	-

Respondent	Response	Rationale
Electricity North West	Yes	We agree that the legal text represents the proposed alternative modification change.
EDF Energy	No	As above [response to question 4].
IBM for ScottishPower	Yes	The legal text appears appropriate.
SSE plc	Yes	SSE agree that the legal text appears to deliver the intent of the solution. However, we reiterate our belief that the solution is inadequate and deficient and therefore do not believe that the legal text is sufficiently robust to protect BSC Parties.
Centrica	Yes	-
RWE npower	Yes	We agree that the Alternative Modification legal text suitable.
E.ON	-	I have not had sufficient time to review the legal text to provide a view on this question.
ELEXON Limited	Yes	The legal text for the Alternative Modification (as with the Proposed) delivers the intent of the Modification in a simple but robust manner. In addition, it also provides additional transparency and protections for BSC Parties

Question 6: Do you have any further comments on P284?

Summary

Yes	No
4	7

Responses

Respondent	Response	Rationale
National Grid	No	-
Drax Power Limited	No	N/A
Smartest Energy Limited	Yes	We appreciate that a significant driver for the timeliness of P284 is to allow Elexon to take part in the DCC Licence Award Process. We also believe that this is one of the key benefits for Elexon in the initial stages of their diversification plan, and that allowing them to

Respondent	Response	Rationale
		enter into this process will also create more competition in the market which we see as a positive for BSC Parties. We do not believe that BSC Parties interests should be compromised as a result of this step, in line with the Alternative Solution.
Electricity North West	No	N/A
EDF Energy	No	No.
IBM for ScottishPower	No	-
SSE plc	Yes	<p>SSE maintain that it is unclear how changing a set of delivery arrangements that provides a valuable and necessary service, and satisfactory quality of service, to a set which introduces additional costs of change with uncertain benefits and a potential dilution of quality can ever be considered to better deliver the BSC arrangements in isolation. We can see that unlocking the expertise within Elexon may enhance overall industry arrangements to the benefit of consumers, but this seems on the face of it a decision that needs to be taken by governing authorities outwith the BSC arrangements, and an appropriate suite of tools used to deliver this outcome if considered beneficial to society. We do not agree that the BSC modification process in isolation is the correct mechanism to deliver the change.</p> <p>SSE have grave concerns regarding the expedited process that has been put in place to discuss in our view an incomplete modification. BSC Parties are being driven towards developing and assessing an incomplete solution solely to fit current Elexon ambitions to participate in the SMART process. This does not seem to be in the best interests of BSC Parties and BSC Parties do not appear to be receiving primacy in considering the way forward, as suggested needed to happen within the open letter published by Ofgem. It disconnects the relaxation of the restrictions within the BSC established by the Minister of State upon designation of NETA from the detail of the contract; which will serve as the only instrument to ensure value for money and delivery of standards, as well as the necessary risk mitigations to ensure that liabilities are limited and that BSC Parties do not underwrite and pay for New Elexon's business development or business failure.</p> <p>In particular, it is not clear how this modification in</p>

Respondent	Response	Rationale
		<p>itself allows ELEXON to bid for the DCC, according to the timescales required. The modification is an enabling modification that allows the Board of ELEXON to subsequently place a contract to appoint a service provider. SSE cannot imagine how the Board of ELEXON could make this decision without first having a fully formed contract developed to assess that provides the appropriate protections. To act in any other way would on the face of it act against BSC Parties interests and contrary to Ofgem’s conditions, as well as being inconsistent with their duties as Company Directors. Equally, we are told that a contract cannot be developed according to the DCC bid timetable, hence the need for an expedited process. So until such time as a contract is developed we fail to understand how ELEXON can participate. This may imply that New ELEXON will be established and participate in the process in the interim, with some independent financial backing that is willing to wait for a final contract to be developed and awarded. Whilst SSE’s have no view on whether this is a suitable route or not, we do reiterate our view that it is imperative that the contract be developed on a “thick” model basis and that minimal staff and no property assets be transferred to New ELEXON for the reasons described above. We would also be concerned about how current ELEXON continues to operate efficiently and without disruption in the interim period were this to be the case, as we can foresee a multitude of conflicts of interest arising.</p>
Centrica	No	-
RWE npower	Yes	<p>We are aware of Elexon’s aspirations to diversify and that they are keen for this modification to progress to a timescale which will allow them to participate effectively in the DCC award process. However, the protection of the BSC arrangements and BSC Parties should remain the prime consideration and the assessment of P284 should not be put at risk in order to meet DCC timescales.</p>
E.ON	Yes	<p>E.ON has always been very supportive of Elexon’s desire to diversify and to look at delivery of the BSC arrangements via a contractual model, and it is disappointing that modification process has resulted in a recommendation to reject the proposed and the alternate.</p> <p>However, given the way in which Elexon have approached this I am not surprised that Elexon haven’t managed to bring BSC Parties along with them on this</p>

Respondent	Response	Rationale
		<p>journey. We have always sought to encourage Elexon to look at the contractual model as the best way to achieve this aim, as have many other BSC Parties. Those parties who believe that benefits can attract to BSC parties by the competitive market approach support the delivery under a commercial mechanism.</p> <p>The BSC Co however is in a unique position in that the operation of the BSC cannot be underfunded, and therefore BSC parties expect to fully underwrite the operation of the BSC and that is why the safeguards exist in the BSC to prevent risk attaching to BSC parties by extending the scope of BSCCO/Elexon’s activities beyond the BSC delivery.</p> <p>Under normal circumstances the service provider in a commercial arrangement could not expose its contracting party to unlimited liability – most contracting parties seek to limit their liability by appropriate clauses in their contracts. The limiting of liability normally attracts a financial premium, but since the BSC Board cannot limit the liability of BSC parties by that mechanism, they have to be more risk averse than would normally be expected in proposed commercial arrangements.</p> <p>I can understand how frustrating this is for Elexon and their desire to meet the DCC bid timeline, but as has been pointed out by some BSC Parties, that is of secondary importance to some BSC parties who are only concerned with the safe operation the BSC. Personally I am disappointed that Elexon didn’t heed the industry recommendations for a preferred contracting model much earlier. The industry expressed a clear preference very early on for a contractual model, and had Elexon responded to this and abandoned their desires for the “subsidiary model”, work to deliver the diversification of Elexon and the separation from it’s role as BSC Co could have been achieved much sooner and we wouldn’t be feeling pressurised into rushing into this modification with so many unanswered questions and general feeling of uncertainty.</p> <p>I am not sure where Elexon will now stand in respect of their DCC aspirations, however I would recommend that the mod group pick up the development of the service description and contractual framework as I am sure that Elexon can have a successful future as an independent service provider when it is more in charge of its own destiny, and if the DCC bid process is out of scope there are other industry reforms they would be</p>

Respondent	Response	Rationale
		well placed to help facilitate, and service delivery of the BSC under a commercial model is still a valid outcome.
ELEXON Limited	No	-