

## Assessment Consultation Responses: P284 Expansion of Elexon's role via the 'contract model'

**Consultation issued on 11 June 2012**

We received responses from the following Parties

Company	No BSC Parties / Non-Parties represented	Role of Parties/non-Parties represented
RWE npower	10/0	Supplier/Generator/Trader/Consolidator/Exemptable Generator/Party Agent
Smartest Energy Ltd	1/0	Supplier
Electricity North West Limited	1/0	Distributor
Eggborough Power Limited	1/0	Generator
The Renewable Energy Company Ltd (Ecotricity)	1/0	Independent Generator and Supplier
ScottishPower	7/0	Supplier/Generator/Trader/Consolidator/Exemptable Generator/Distributor
Drax Power Limited	1/0	Generator
EDF Energy	10/0	Generator/Supplier/Party Agent/Consolidator/Exemptable Generator/Trader
EnAppSys Ltd	0/1	Provision of Value Added Data and Information Services
SSE plc	9/0	Supplier/Generator/Trader/Consolidator/Embedded Generator
E.ON UK	5/7	Supplier/HH DC/NHH DC
Centrica	13/0	Generator/Trader/Supplier/BSC Party
National Grid	1/0	n/a

What stage is this document in the process?

**01** Initial Written Assessment

**02** Definition Procedure

**03** Assessment Procedure

**04** Report Phase

## Question 1: Would the P284 Proposed Modification help to achieve the Applicable BSC Objectives compared with the current baseline?

### Summary

Yes	No	Neutral/Other
6	7	0

### Responses

Respondent	Response	Rationale
RWE npower	Yes (marginal)	P284 could deliver potential cost savings and benefits to BSC Parties if provisions of BSC services is outsourced and subject to periodic competitive tender. However, we note that ELEXON is the only competitor at present, and it is not clear how the division of resources between BSCCo and 'New ELEXON' would not carry at least some element of risk for BSC Parties. At this stage we believe there is a marginal benefit against BSC Objective (d).
Smartest Energy Ltd	Yes	Whilst the future arrangements and the new structure are yet to be understood, and it is difficult to predict whether any new arrangements would better achieve the BSC Objectives, we do agree that the proposal has the potential to better facilitate the achievement of BSC objective (d) and also think it has some scope for objective (c). We are mindful of the competition areas however, and would like to see some safeguards to ensure confidential information relating to BSC parties is not compromised with the introduction of new functions.
Electricity North West Limited	Yes	P284 Proposed Modification would help to achieved objective d for the following reasons; <ul style="list-style-type: none"> <li>• Provides clear responsibilities of BSCCo</li> <li>• Opportunity for competitive tendering process for BSc Services being outsourced which could provide cost savings and benefits to parties.</li> <li>• The BSC arrangements are still protected even though the activities maybe outsourced.</li> </ul>
Eggborough Power Limited	No	Eggborough recognises that it may be possible to improve the efficiency of the delivery of the BSC via a contracting process. However, as the modification has been rushed into an assessment, the case has simply not been made that the contractual structure proposed would be more efficient. If the same people in Elexon are doing the same jobs, in terms of running the BSC, then there will be no improvement. In the meantime Elexon staff may be distracted into new ventures and the service levels could become worse.

Respondent	Response	Rationale
		<p>The statements made about the “benefits” in the modification consultation are simply assertions, with no supporting evidence. As a business we believe a more robust assessment is required before parties can be sure this is the right business decision, as most of our boards will not accept assertions as a business case for change. A tender may allow parties to assess if the BSC can be managed more efficiently, but in the absence of such, one assumes Elexon internally has a model it could share with BSC parties.</p> <p>Eggborough is also concerned that the proposal will move all control of the BSC systems to a third, uncontrolled, party who can leverage the BSC systems (owned by parties such as ours) without any commercial benefits being passed back to the BSC parties. In a worst case scenario, Elexon could be sold with all value to parties being lost, but one assumes senior management of Elexon, along with National Grid as the ultimate owner, potentially gaining financially.</p> <p>If it is believed that the BSC should be outsourced, to Elexon or another party, then the BSC parties would want to go out to tender (as we do for the IT contracts) with a robust services agreement, documents on system’s ownership, usage by the contractor, protection of intellectual property, penalties for non-delivery, etc. The modification itself does not require such as process is undertaken. If such a process were to be undertaken, we believe that it would benefit from a change in the BSC governance to make sure that those awarding the contract were either BSC parties, employees or their representatives, i.e. not Elexon staff awarding a contract to themselves. The proposed model moves everything to Elexon leaving the BSC parties unable to obviously manage the service delivery.</p> <p>The timing associated with the consultation on this modification has meant that parties have not even had time to review and discuss in detail how the model works in practice. Issues around the removal of a BSC Chief Executive, along with core team, would have been beneficial. How the value for the current BSC parties is protected has not been covered, nor the protection against sales of Elexon to third parties.</p> <p>Looking at xoserve in the gas market, the retained ownership by the DNs left the gas shippers at the whim of an organisation over which it had limited control (only being able to pressure the DNs). Elexon could suddenly start insisting that new services required additional fees,</p>

Respondent	Response	Rationale
		<p>or they wanted to increase monthly charges but with no obligation to let BSC parties see where the new “costs” were arising from. This would allow Elexon to subsidize business development via BSC parties (as we already feel they have on their smart metering project).</p> <p>Even if Ofgem was minded to go ahead with this contractual structure, consideration needs to be given as to whether companies providing monopoly services do in themselves need to be regulated. This may have been less of an issue with a competitive tender for a time limited contract, having had time to develop a robust contract. An alternative to is allow Elexon to go ahead, but limit the transfer of staff, etc. to a small team leading on new business, who can then seek commercial funding. A competitive tender could then be conducted at a later date. The group have not had time to consider the staffing issues in detail, but Eggborough is very uncomfortable that our business could become subjected the risks associated with a third party that BSC parties have no control of.</p> <p>Eggborough is unclear how Elexon will be able to raise finance for new business development without a robust contract with the BSC. They would own no active, profitable, business without the BSC contract (which the modification does not provide and we have not seen). In order to protect BSC parties Elexon would have to be clear that they do now own the systems, contracts, intellectual property, etc. associated with the BSC and therefore should not be able to raise financing against those assets. This could be dealt with contractually, but at the present time Elexon is spending money on smart metering work and simply charging that back to BSC parties.</p> <p>On objective c, in relating to competition, this model could make competition worse not better. The lack of detail means that we cannot be sure that Elexon will offer help to new market entrants, not an expressed BSC requirement, but a market expectation. If every call to Elexon results in a new party getting say an “advisory” charge then competition would be reduced. Code administrators are meant to operate as a “critical friend”, but we do not see how such an obligation is defined or enforced under this model as currently proposed.</p> <p>Eggborough has not had time to look at the draft services description in any detail, as the consultation time is simply too short for a non-urgent modification. However, it seems wrong that Elexon would administer contracts</p>

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		<p>for other parties against which it may then compete in the longer term. We also believe this document needs to be read in conjunction with a full service contract to make sure that the two marry across. Ofgem will be aware that at NETA go live there were problems with Logica not operating services with the IT specifications as the service document had been incorrectly drafted. This was a costly mistake for BSC parties.</p>
Ecotricity	Yes	<p>We agree that the contract model will ensure clear BSCCo accountability for the BSC arrangements and that outsourcing the provisions of BSC Services may deliver cost savings to BSC parties. It therefore meets Objective (d) on efficiency and administration of BSC services.</p>
Scottish Power	Yes	<p>Objective A. In our view, the obligations imposed by Condition C3 of the Transmission Licence may be better achieved through P284, as the BSCCo should be able to drive efficiency gains from the BSC Services Manager by bringing competitive tensions to bear.</p>
Drax Power Limited	No	<p>We believe that BSC Objective (d) (Promoting efficiency in the implementation and administration of the balancing and settlement arrangements) is the relevant Applicable BSC Objective for the Proposed Modification.</p> <p>We consider it is important to place this Modification within the context of the current standard of service delivered under the baseline arrangements. Only then can the benefits and drawbacks/risks of the Modification be accurately evaluated. In our view the current balancing and settlement arrangements are delivered to a high standard under the baseline arrangements. Moreover, we observe improving BSCCo KPI performance year on year. Therefore, when it comes to evaluating the relative benefits and risks of the Modification we consider that special consideration should be given to any risks of deterioration in the current standard of service. In effect we believe that any risks to the efficient delivery of the balancing and settlement arrangements are highly likely to be more material relative to any potential benefits associated with the Modification.</p> <p>In our view any benefits that might be achieved through this Modification (such as efficiencies and cost savings) have a high degree of uncertainty attached to them. We also do not envisage that these benefits will materially alter the efficiency with which the current arrangements are delivered.</p> <p>More importantly, there are very real risks associated with the change (such as degradation in quality of service</p>

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		<p>and exposing BSC Parties to new financial liabilities associated with 'Elexon' diversification). In the context of the high quality of service we observe today we are of the view that the risks of the change far outweigh any of the potential benefits identified. Therefore we believe that the Proposed Modification is negative against BSC Applicable Objective (d) compared with the current baseline.</p> <p>However, in the event that this modification is approved, it is important that the BSC governance arrangements are fit for purpose to allow the modification to work effectively in practice. In particular, BSC Parties need to be provided with adequate opportunities to oversee the actual execution of the potential opportunities created by the Modification. To put it more simply, there is a lack of 'checks and balances' within the BSC arrangements to allow effective scrutiny of the opportunities provided by the proposed Modification.</p> <p>There are also a number of issues that must be settled before the Modification can be executed in an effective manner by those actors tasked with ensuring the efficient delivery of the BSC arrangements. For example, if this modification is approved, clarity is required on which BSCCo Board entity would be expected to negotiate the degree of outsourcing to 'New Elexon'. For example, would these decisions be undertaken by the existing Board, a new Board following the Panel election in Summer 2012 (should there be changes in representation) or a new Board established as envisaged by either solution developed under P281 (assuming the original or the alternative solution is approved)?</p> <p>It's important that BSC Parties have confidence that there are no conflicts of interest within the existing Board when it comes to making decisions to outsource BSC services. Decisions to outsource must only be made where it is cost effective to do so. Moreover, it is essential that whichever Board entity it tasked with making outsourcing decisions that it has at its disposal the right level, or the correct balance, of expertise for its change in role (i.e. to service delivery contract negotiator). To ensure that the correct composition of expertise is available to the Board and that BSC parties retain confidence in the integrity of the Board, there must be satisfactory dialogue between the Board and BSC Parties. This dialogue may take many forms but must exist at every stage of the process to unlock ELEXON's vires.</p> <p>The essential accompaniment to this Modification must</p>

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		<p>be greater involvement of BSC parties in the decisions taken to establish what BSC activities should and should not be outsourced. This could take the form of an industry consultation process, a separate 'outsourcing committee' comprising industry representation and even, perhaps, putting a referendum to all eligible BSC parties.</p>
EDF Energy	No	<p>The applicable BSC objective for this modification is objective (d), i.e. promoting efficiency in the implementation and administration of the balancing and settlement arrangements.</p> <p>In principle, we can see some theoretical benefits arising from P284. However, where there are benefits, there are also risks. And unfortunately, the current proposals do not provide the necessary confidence to make us believe that the benefits will outweigh the risks.</p> <p>One of the justifications given by the proposer for raising this modification is "to ensure that BSCCo has clear accountability for the BSC arrangements following diversification of New Elexon". However, from a BSC perspective, Elexon's aspiration to diversify is irrelevant. BSCCo already has clear accountability for the BSC arrangements under the status quo and no further changes are necessary.</p> <p>The proposer also states that if the contract arrangements are outsourced, and the provisions of BSC services are exposed to periodic competitive tender, this may deliver cost savings and benefits to BSC parties. However, given that the initial contract will not go out for competitive tender and is expected to last 5-8 years, we do not see how this will lead to cost savings and benefits to BSC parties. On the contrary, we suspect that there will be an increase in both costs and risks arising from the organisational restructure e.g. incur implementation costs and be exposed to organisational change risks. As one of the pre-conditions of diversification, Ofgem states in its decision document that BSC parties should see commensurate and on-going cost savings within a reasonable period. We have not seen any evidence in the proposal to suggest this likelihood.</p> <p>To summarise, we do not believe this modification will help to better achieve the applicable objective, compared with the current baseline, because:</p> <ul style="list-style-type: none"> <li>• any identified benefits are unsubstantiated;</li> <li>• there are a number of risks associated with the change yet the proposal does not address how these risks will be managed;</li> </ul>

Respondent	Response	Rationale
		<ul style="list-style-type: none"> <li>any potential cost savings could arguably be achieved by applying cost cutting measures to the existing organisation;</li> <li>no service enhancement is envisaged in the short term (e.g. the service description is based on existing services); and</li> <li>the first periodic competitive tender may not happen for 5-8 years, limiting any opportunity of cost savings and benefits to BSC parties.</li> </ul> <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>
EnAppSys Ltd	No	<p>In the short to medium term, the change and uncertainty is a distraction from the delivery of the core BSC objectives especially with other change processes in the market around EMR and European energy market liberalisation. In the long run one would hope a restructured more entrepreneurial New Elexon would help drive improvements in all areas of the BSC objectives alongside competing service providers.</p>
SSE plc	No	<p>SSE are neutral against objectives (a), (b) and (e).</p> <p>On balance, SSE remain neutral against objective (c), but would reiterate concerns that we have raised in previous BSCCo strategy consultations that there is a risk of impacting the competitive market if current 3rd party information service providers are detrimentally impacted through increased restrictions in access to transparently reported data or the imposition of additional, inappropriate surcharges on provision of data. It is imperative therefore that BSCCo maintain custody and IPR of BSC-related data and systems and provides access to such information on equal terms to all parties wishing to receive such data. Given that the BSC Services Manager is likely to be responsible for putting in place the delivery platforms for information transparency and reporting, it is crucial that the Contract between BSCCo and New Elexon protects this access right, and that New Elexon does not add premia and surcharges that would place current 3rd party service providers at a disadvantage to New Elexon, who may well be competing for similar services, adding cost and/or reducing choice to BSC Parties.</p> <p>The purported benefits of the modification are reported against objective (d) and SSE agree that this is the</p>



Respondent	Response	Rationale
		<p>principal objective to consider the proposal against.</p> <p>However, SSE do not support the majority conclusion of the workgroup that the proposal and solution developed better facilitates the achievement of objective (d). SSE agree with the minority view of the workgroup that this change would either offer no benefit or be detrimental towards objective (d).</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"> <li>1. BSC Parties should benefit from any diversification;</li> <li>2. The arrangements should not place disproportionate risk on BSC Parties;</li> <li>3. Standards of service under the BSC should be maintained; and</li> <li>4. Elexon's BSC role should not give it any undue competitive advantage in a contestable activity.</li> </ol> <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, 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</p>

Respondent	Response	Rationale
		<p>protected within the final terms, particularly :-</p> <ul style="list-style-type: none"> <li>• Investment protection – assurance that the £ multi-million investment by BSC Parties since the introduction of NETA is adequately recognised, protected and priced.</li> <li>• Cost savings – assurance that a mechanism will be established that allows any realised synergy benefits to accrue to BSC Parties.</li> <li>• Exposure mitigation – assurance that liabilities are limited through contract, and BSC Parties are thus not exposed in inappropriate and unnecessary cost escalation.</li> <li>• 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.</li> <li>• Service quality – assurance that appropriate incentives exist in the contract to compensate for poor performance or reward outstanding performance.</li> </ul> <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 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</p>

Respondent	Response	Rationale
		<p>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 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</p>

Respondent	Response	Rationale
		<p>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> <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</p>

Respondent	Response	Rationale
		detailed view of the contract.
E.ON UK	No	<p>We agree with the evaluation of the proposal against the applicable objectives as outlined in the assessment consultation paper.</p> <p>Whilst we agreed that Objective D would be better facilitated by the appointment of a service provider by competitive tender procurement for the provision of the services required by the code which would then be delivered against a contract, this would give the industry agreed service levels and base lined costs. We recognise however that this modification doesn't require this, but merely facilitates the possibility of the contractual model being put in place in the future – potentially. The difficulty is that having the ability to outsource BSC services without understanding the basis of the outsourcing and having transparency on the terms of that outsourcing could leave BSC parties exposed to the risks that might result from rushing ahead to facilitate the outsourcing but only having a restricted view of the consequences.</p>
Centrica	No	<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. Essential preconditions for this are:</p> <ol style="list-style-type: none"> <li>1. The BSCCo Board has a meaningful choice of credible and competitive BSC service managers to choose from;</li> <li>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 (veto points) if they believe the Board's proposals for a BSC services contract are worse than the status quo.</li> </ol> <p>On <b>precondition 1</b>, 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</p>

Respondent	Response	Rationale
		<p>risks of deviating from the status quo.</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul> <p>Fulfilment of <b>precondition 2</b> 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"> <li>• P284 as proposed 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"> <li>○ 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 from BSC parties.</li> </ul> </li> </ul>

Respondent	Response	Rationale
		<ul style="list-style-type: none"> <li>○ The Board has the right to grant or transfer existing BSCCo assets to the BSC services manager. If this were done, it would give the new provider a huge advantage over any future competitors, and a position of extraordinary strength in BSC service contract negotiations. It would also make it infeasible for BSCCo to take services back in house, as it would not have the means to provide BSC services in house.</li> <li>○ There are no guaranteed standards or costs of service “hardwired” into P284, and no vetoes available to BSC parties if the Board proposes a contract which doesn’t serve BSC party interests.</li> <li>○ The description of services which has been drawn up in parallel to this consultation does not amount to a meaningful control over key contract terms for BSC parties or the Panel.</li> </ul> <p><b>P284 and the “no change” scenario</b></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>
National Grid	Yes	<p>The proposed changes, aimed at facilitating complete separation between BSCCo and ‘New Elexon’ via a robust contract, will ensure clear BSCCo accountability for the BSC arrangements following diversification of New Elexon and will therefore promote efficiency in the implementation and administration of the BSC arrangements.</p> <p>If the contract arrangements are outsourced and the provisions of BSC services are exposed to periodic competitive tender, the proposed changes may deliver cost savings and benefits to the BSC Parties, thus improving the efficiency of BSC arrangements.</p>

## Question 2: Do you support the Workgroup's proposed implementation approach for the P284 Proposed Modification?

### Summary

Yes	No	Neutral/Other
8	5	0

### Responses

Respondent	Response	Rationale
RWE npower	Yes	The aim of P284 is to facilitate the implementation of the 'contract model' and enable a formal separation of BSCCo and 'New ELEXON' via a BSC services contract. An implementation approach of 1 Working Day following approval by the Authority would be appropriate to facilitate this at the earliest opportunity.
Smartest Energy Ltd	Yes	We understand the rationale in treating P284 as a fast track modification because of the timescales associated with the DCC.
Electricity North West Limited	Yes	As there is no impact on BSC parties or other participants this modification should be implemented as soon as possible once it has approval from the Authority, this is also to achieve 'New Elexon' to bid in the DCC Award process.
Eggborough Power Limited	No	The legal text is simply not robust to protecting BSC Parties' interest as it stands. This modification should not be signed off without a robust process for implementation and a far greater understanding as to how practically the process for change will be managed. Even if Ofgem were to approve it, the implementation date should not be until the BSC parties are satisfied all of the necessary documents, along with a more robust BSC governance structure, are in place.
Ecotricity	Yes	We believe that enabling the formal separation of Elexon into BSCCo and a services manager and giving the latter powers to perform activities outside the BSC will ensure accountability for BSC parties and improve flexibility and efficiency in the delivery of BSC arrangements.
Scottish Power	No	While, for the reasons given elsewhere in this response, we are broadly supportive of P284, we would prefer an alternative approach where the BSCCo is obliged to outsource these code administration activities to a BSC Services Manager.
Drax Power Limited	Yes	Yes, when considering the Modification in isolation. However, it is important that other developments (the creation of a Service Description for example) which the



Respondent	Response	Rationale
		<p>Modification is expected to facilitate (that are as such outside the scope of the Modification) are progressed in parallel with the progression of P284. These other developments must also be subject to effective BSC Party scrutiny. We discuss some of these developments below:</p> <ul style="list-style-type: none"> <li>• We believe that the Modification should not take effect without an agreed Service Description setting out the obligations and activities of the BSC Services Manager role. BSC Parties should be consulted on the BSC Services Manager Service Description before it is approved and this process of developing the BSC Services Manager Contract should be as clear and transparent as possible. Please note that the Service Description must be further reviewed and consulted on with BSC Parties prior to the outsourcing of BSC activities to ensure that there is widespread support from industry of the proposed level of outsourcing;</li> <li>• Provisions introduced by P284 must specify that the contract is based on a finalised and approved Service Description. The Service Description should only be considered „final“ once the Board (following industry consultation) makes a decision on what activities are to be outsourced (if any);</li> <li>• Related to this, the BSCCo Board should provide information to industry participants and/or present information to the BSC Panel on the process that is going to be undertaken when establishing a contract including engagement with industry participants. Transparency of Board discussions is also essential to allowing BSC Parties to respond to proposed changes in an effective manner.</li> </ul> <p>Finally, it is of paramount importance that any provisions introduced by the Modification do not jeopardise BSC obligations or the protection of the BSC arrangements and BSC Parties. Therefore effective scrutiny and progression of this Modification must not be compromised to meet DCC timescales at the expense of introducing risk to the security of the BSC or BSC Parties.</p>
EDF Energy	Yes	<p>In general, we support the workgroup’s proposed implementation approach for P284. However, in some areas, we would go further and suggest the following to better meet the applicable objective.</p> <p>We are aware that P284 is an ‘enabling modification’ and the details of the contract between BSCCo and New Elexon (BSC Services Manager) are outside the scope of P284. However, in practice, we need to understand the details to assess the potential benefits and risks that</p>

Respondent	Response	Rationale
		<p>could be faced by BSC parties as a result of this modification being implemented. The lack of transparency provides little comfort to BSC parties.</p> <p>In Ofgem’s decision letter, four pre-requisite conditions to diversification were outlined:</p> <ol style="list-style-type: none"> <li>1. BSC parties should benefit from any diversification;</li> <li>2. The arrangements should not place disproportionate risk on BSC parties;</li> <li>3. Standards of service under the BSC should be maintained; and</li> <li>4. Elexon’s BSC role should not give it any undue competitive advantage in a contestable activity.</li> </ol> <p>We can only assess whether the pre-requisite conditions are likely to be met by scrutinising the contract. We support the workgroup’s proposed implementation approach which requests the Chairman of the BSCCo Board to present an overview of the process, including the proposed engagement with industry participants to the BSC Panel. But there is a need to go further and we believe that the Board needs to proactively engage with BSC parties, perhaps meet them individually to explain plans, and share the contents of the contract. Commercially sensitive information may be redacted but BSC parties need to see the contract to make the necessary assessment e.g. ensure proper controls and provision for performance reviews are in place. It is our view that P284 and the contents of the contract cannot be treated as separate issues.</p>
EnAppSys Ltd	Yes	<p>Considering that the overall objective of Elexon to restructure to allow expansion of its role has been agreed a modification was required and this approach allows this to be achieved. The implementation of the contract negotiation is key.</p>
SSE plc	No	<p>For the reasons stated throughout this response, we 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.</p>
E.ON UK	No	<p>We do appreciate the urgency of this from Elexon’s perspective, their need to be in a position to bid for the DCC, but that is not a driver for BSC parties. The BSC doesn’t expose parties to the risk of a commercial operation based on the condition that operation of the BSC Co is completely underwritten by BSC parties and therefore they have a right to be afforded the protection of the limited role that the BSC Co has to do things that</p>

Respondent	Response	Rationale
		are not part of the Balancing & Settlement structures. This modification seeks to unlock the vires of Elexon to do other things but doesn't afford it the protection of the contractual framework against which to deliver those arrangements and to be accountable for their delivery. In our view the need for the BSC enabling change can only be implemented hand in hand with the contractual arrangements and the outsourcing of those services – they are dependent on each other.
Centrica	No	We do not support the implementation approach, because we do not support P284.
National Grid	Yes	-

### Question 3: Would implementation of P284 impact you?

Please describe any impacts directly related to implementation and provide an estimate of associated costs and timescales if possible.

#### Summary

Yes	No	Neutral/Other
4	9	0

#### Responses

Respondent	Response	Rationale
RWE npower	No (conditional)	<p>We recognise that P284 is an 'enabling' change to the BSC. Implementation will allow, but not require, BSCCo to outsource BSC services to the BSC Services Manager. We do not see any impact on BSC Parties directly related to implementation.</p> <p>However, we feel it appropriate to recognise that the aim of the Modification is to facilitate implementation of the 'contract model' and is a precursor to a formal separation of BSCCo and a 'New ELEXON'. At this stage, it is not clear how the division of resources between BSCCo and 'New ELEXON' would not carry at least some element of risk for BSC Parties. The development and approval of the BSC Services Manager Service Description should include input from BSC Parties, and any contract should replicate the BSC Services Manager Service Description.</p>
Smartest Energy Ltd	No	As P284 is an 'enabling' Consultation, implementing it will have no direct impact on parties. We support the implementation approach as we recognise that any further work in support of P284 to set out the governance arrangements will form part of a subsequent consultation. It appears that the key factor behind P284

Respondent	Response	Rationale
		in the immediate instance is to be able to respond to the timescales of the DCC which we also appreciate. However, further detail on any new structure, and introduction of a 'BSC Services Manager', is clearly required in order to fully understand the extent we may be impacted.
Electricity North West Limited	No	-
Eggborough Power Limited	Yes	Eggborough believes that we may received a worse level of customer service, at a higher cost. We are also concerned that as a BSC party we could lose value from the systems and staff that we have invested in.
Ecotricity	No	We do not believe that P284 will have any negative impact on us or impose any costs.
Scottish Power	No	Provided the implementation of P284 is seamlessly and efficiently executed, it should have no direct impact on our organisation.
Drax Power Limited	Yes	We will be affected by changes to service delivery that result from the implementation of this Modification, but the direct impacts associated with implementing the modification itself will be very small.
EDF Energy	No	The implementation of P284, as proposed i.e. an enabling modification, will not impact us directly. However, we note that 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. We do not want this timescale to set a precedent for future modifications.
EnAppSys Ltd	Yes	Whilst there is no direct impact from the implementation of this modification it is what comes next that is the important. It will impact EnAppSys Ltd because it introduces uncertainty. The on-going development of the process of creating New Elexon requires us to assign time and resources to monitor and contribute to protect the interests of EnAppSys Ltd, its customers and achieve the overall objective of an open and transparent market.
SSE plc	No	There are no direct costs to our systems and processes. For the reasons stated previously throughout this response, we remained concerned about the potential indirect costs that could accrue as a result of a hasty implementation of an incomplete solution.
E.ON UK	Yes	It would expose us to uncertainty and risk in terms of the BSC services provision, since the basis for the service provision doesn't yet exist within the code. Elexon still

Respondent	Response	Rationale
		need to formally separate themselves from the BSC Co in order to bid for the DCC, but it is not clear how this modification which enables the establishment of the BSC Services Manager clears the way for Elexon to do this. The creation of the new BSC agent still does not separate Elexon from the BSC Co until when or if they are appointed to that role, and they can't be until they establish themselves as a separate legal entity from BSC Co, with its own funding and management structure, fully independent of the BSC
Centrica	No	We do not believe that implementation <i>per se</i> would impact us. However, we believe that the consequences of implementation would impact us (and BSC parties in general) adversely compared to the current baseline, for the reasons stated in our response to Question 1.
National Grid	No	-

Question 4: Are there any alternative solutions that the Workgroup has not identified that they should consider?

### Summary

Yes	No	Neutral/Other
3	8	2

### Responses

Respondent	Response	Rationale
RWE npower	No	-
Smartest Energy Ltd	No	-
Electricity North West Limited	No	-
Eggborough Power Limited	Yes	<p>From what we can see in this document the modifications group has simply not had enough time to make any reasoned consideration of alternatives. There are a number of alternatives that Eggborough believes should be considered:</p> <p>Elexon "thin" model; where the new company is created and a few staff, say working on metering are moved to develop new business. This business can develop as it sees fit and the BSC can move forward to develop the necessary documents to allow for a full competitive tender on some – or all – of the BSC services.</p>

Respondent	Response	Rationale
		<p>BSC control – where the BSC keeps a core team and CEO whose job is to run tenders and administer contracts (with all BSC agents) on behalf of BSC parties. The modification would need to better define what is BSC and its team.</p> <p>Non-Elexon company – if Grid wants to be the owner of an uncontrolled subsidiary it could set such a company up offering other BSC parties opportunities to participate. This model could then see that new company then “buy” the BSC staff and systems, etc. from the BSC parties. The modification would therefore have to alter to allow for the sale of the BSC service to another company. The end result would be a model more like CUSC, where NGC own the systems and contract.</p> <p>Extra Governance – the modification could be altered to allow the same effect, but a special governance process to make sure that the BSC parties get not only protected today, but have an obligation to secure their interests for the future.</p>
Ecotricity	No	We believe that the solution proposed in P284 is appropriate and sensible and do not believe that there is a better solution.
Scottish Power	No	-
Drax Power Limited	Maybe	We believe that the original (proposed) modification may require greater ‘checks and balances’ surrounding how and when decisions to outsource BSC services are made. Clarity and assurances on the issues discussed in this response relating to transparency and industry consultation must be established.
EDF Energy	Yes	<p>As mentioned above, we suggest that the workgroup consider recommending a more proactive stakeholder engagement plan by the BSCCo Board. This includes requiring the Board to provide a copy of the contract (redacted where appropriate) to enable BSC parties to fully assess the benefits/risks.</p> <p>We also recommend that the workgroup consider whether any major changes are coming through and how the timetable for the expected change coincides with the potential restructuring timetable.</p> <p>The workgroup should also consider whether New Elexon should be prohibited from outsourcing core BSC activities. We want to ensure that if this modification goes through and New Elexon becomes the BSC Services Manager, existing expertise is not lost by the decision to</p>

Respondent	Response	Rationale
		<p>subcontract certain elements of the services currently offered, at least during the early years. Similarly, we would like to better understand to what extent the BSC Services Manager can sub-contract as any potential efficiency gains could be lost by over-contracting.</p> <p>Ofgem's pre-requisite condition (4) states that Elexon's BSC role should not give it any undue competitive advantage in a contestable activity. We take this to mean that new activities taken on by New Elexon will not be able to use existing Elexon systems. However, without knowing whether this is the intention, as a BSC party, we cannot fully understand our risk exposure. We would like the workgroup to consider Ofgem's pre-requisite conditions and highlight potential provisions which need to be included in the contract to ensure that adequate safeguards are put in place.</p>
EnAppSys Ltd	No	This is a reasonable model to pursue given the time constraints. The devil is in the detail of the implementation.
SSE plc	Yes	<p>Ideally, an initial contract or at least HoT should be developed in parallel with the provisions to remove current restrictions and the current expedited timetable should be abandoned. Whilst recognising that this may result in a missed opportunity for New ELEXON with regard to SMART DCC role, this is not BSC Parties primary concern. BSC Parties interests are best served by developing a balanced solution that on one the hand dilutes and removes protections currently afforded to them directly through the BSC (thus allowing ELEXON to diversify) but on the other hand retains equivalent protections through a strong, enforceable and terminable services contract.</p> <p>Notwithstanding the above, in any event the solution should provide for more specific and stronger obligations in the legal text to comply and deliver upon the pre-requisite conditions outlined by Ofgem in its open letter of 30th April 2012, to allow BSC Parties to gain some legal assurance that the ensuing Contract development will be obliged to meet these conditions.</p> <p>Additionally, SSE does not feel that the decision to award the BSC Services Contract should solely lie with the Board, particularly given that there is no certainty about whether P281 modification will be approved or not and regardless the implementation date following decision may be too late to make the decision to place the contract. It is not entirely clear to SSE whose best interests the Board should be serving in reaching this</p>

Respondent	Response	Rationale
		<p>decision. One would think BSC Parties, given the pre-requisite conditions set out by Ofgem, and this is an protection that should be factored into the obligations within the Legal Text. We believe that the Board should be compelled through the solution to establish an Expert Group to develop the detailed terms of the Contract and ensuing management process to ensure that the protections envisaged and required are delivered. The Expert Group should be principally but not wholly constituted of BSC Parties, whose interests must take primacy in diversifying Elexon.</p>
E.ON UK	Possible	<p>A limited discussion took place on the potential alternative of mandating the contractual mechanism for the future arrangements, and some interesting points were raised during that discussion, however, given the pressure being put on the group to meet the aggressive timeline of this modification those potential concerns with the alternative weren't worked through sufficiently to see if they could be overcome and an alternative progressed.</p>
Centrica	No	<p>Given the speed at which P284 is being progressed, we do not believe alternatives are available.</p> <p>In principle, we believe P284 could be improved if measures were developed to secure the necessary preconditions to further objective d) (as set out in our response to Question 1.) However, the time, effort and cost associated with developing these measures have to be considered in the context of the benefits that might realistically be achieved versus the status quo.</p> <p>We also believe that a number of practical issues may arise which have not as yet been considered in the P284 consultation process. For example, who would own Elexon in the event that it was separated from BSCCo.</p> <p>Any changes to BSCCo's/Elexon's structure need to be able to demonstrate clear benefits to BSC parties.</p>
National Grid	No	-



## Question 5: Do you believe that it is better to enable or require BSCCo to outsource BSC activities?

### Summary

Enable	Require	Neutral/Other
10	3	0

### Responses

Respondent	Response	Rationale
RWE npower	Enable	<p>To "require" BSCCo to outsource BSC activities would be too restrictive and could possibly lead to a greater cost when compared to those BSC services which could be performed more cost effectively 'in house'.</p> <p>To "enable" BSCCo to outsource BSC activities allows greater flexibility for some BSC services to be provided 'in house', though the market should be tested for more cost effective options.</p>
Smartest Energy Ltd	Require	<p>The 'Elexon report final', published by Ofgem draws a comparison on the MRASCo/Gemserv example. In this scenario, Gemserv is outsourced and therefore able to provide benefit to other areas of the Industry. Whilst MRASCo retains overall governance as the 'parent' company, Gemserv is a separate legal entity in its own right and there is no risk of crossed focus. The most appropriate option in our opinion would be a that a requirement to outsource BSC activities is implemented, thereby preserving the current levels of focus and service, and ensuring that Industry wellbeing and stakeholders continues to be the main focus of the BSC's activities. Without this measure in place, then long-term we risk the governance arrangements and responsibilities in relation to the BSC may become blurred.</p>
Electricity North West Limited	Enable	<p>To reduce the risk of a monopoly service provider making unreasonable demands for the BSC activities it makes sense to allow BSCCo to bring the BSC activities in-house or keep them in house if that is more cost efficient and benefits the BSC parties and agents.</p>
Eggborough Power Limited	Enable	<p>Enable allows the Elexon thin model and a decision by BSC parties to outsource nothing. However, the whole process for reaching such decisions needs some consideration. The existing BSC governance would allow the current Elexon CEO, who we assume may become the new Elexon CEO, to be party to a decision in which he may have a personal financial gain. This proposal is potentially significant change to the way the market functions are parties need a greater say over how any</p>

Respondent	Response	Rationale
		outsourcing is achieved and structured.
Ecotricity	Enable	We do not believe that it is necessary to require BSCCo to outsource BSC activities; but where such activities are contracted out clear and enforceable service levels must be agreed.
Scottish Power	Require	We believe P284 should not be restricted to being an 'enabling' Modification, but should instead require the BSCCo to outsource a set of services to be defined by the BSC Panel in consultation with BSC Parties, to an external service provider (the BSC Services Manager). It should further require that these services be subject to regular revision, at intervals of not more than three years, and that the BSC Service Manager contract be subject to recomplete within a similar timeframe. We also believe that, while the relevant contract award should be at the discretion of the BSCCo Board, the BSC Panel should retain a right of veto, to provide additional protection and assurance to BSC Parties.
Drax Power Limited	Enable	<p>We believe that it is better to enable, rather than require, BSCCo to outsource all or part of the BSC activities covered by the Service Description. To ensure the efficient delivery of the BSC arrangements under the Proposed Modification, it will be important for BSCCo to have the ability to undertake activities in house or outsource these activities, whichever is most efficient (assuming a given standard of service is maintained).</p> <p>Removing the ability for BSCCo to perform tasks in house will likely result in the sub-optimal delivery of the BSC arrangements. To ensure that the „correct level“ of outsourcing is undertaken, transparency of the decision making process and industry consultation (as identified above) will be required.</p>
EDF Energy	Enable	Under P284, it is optional for BSCCo to outsource some or all BSC services to a service provider (BSC Services Manager). We believe that the 'enabling' approach is preferable as it provides flexibility.
EnAppSys Ltd	Enable	We believe that BSCCo should retain the ability to bring services in-house if necessary to act as an incentive on New Elexon and any other provider of services to deliver. There is no reason to restrict BSCCo to force it to outsource. Whilst BSCCo will probably not want to directly run services long-term there may be a need to bring a service in house for a short time as it is taken away from one provider and assigned to another.
SSE plc	Enable	BSCCo must retain the maximum level of flexibility in

Respondent	Response	Rationale
		<p>determining how to most efficiently discharge its responsibilities. The most efficient means of delivering certain responsibilities in the future may be through retained management within BSCCo and therefore it is valuable to maintain this option. Additionally, retaining the option for BSCCo to deliver insourced services maintains a minimum cost benchmark against which outsourced prices can be evaluated, thus providing useful information in determining whether value for money is being realised from the BSC Services Manager. This in turn maintains a mild incentive on service providers to offer realistic prices.</p>
E.ON UK	Require	<p>I support Elexon's aspiration to be a more diverse service provider and to use its expertise, developed in managing the settlement arrangements over many years, for the benefit of the developing energy industry. To do this, Elexon need to be agile and unfettered by restrictions in the BSC, but at the same time, because of the requirements on BSC parties to underwrite the BSC operation fully, there needs to be a formal separation of BSC Co from Elexon. From the BSC's perspective, competition in agent services has delivered benefits to the BSC - mostly. We have also seen the same benefits realised in other code administration and service delivery, and while it might be challenging to put the contractual arrangements in place, I believe that a future world where BSC services are delivered under contractual commercial arrangements will be beneficial for BSC parties, but also for Elexon and DECC/Ofgem too as it will give them more choice for future awards of work that become needed with the changing energy world.</p>
Centrica	Enable	<p>In principle, it would be better for BSCCo to have the option to provide BSC services in house. The availability of an alternative to outsourcing could act as some form of competitive pressure on the BSC services manager. As such, enabling outsourcing is better than requiring it (especially against a backdrop of weak competition).</p> <p>However, in practical terms, the distinction may be of little relevance if the BSCCo Board transfers the key BSCCo assets to the new BSC services manager. Such a move would make it infeasible for BSCCo to take services back in house at reasonable cost, and remove the credible threat of doing so in the event of poor performance from the incumbent BSC services manager.</p> <p>The enabling provision would only be credible if BSCCo retained the BSCCo assets, and developed mechanisms for leasing assets to the BSC services manager on a time</p>

Respondent	Response	Rationale
		limited basis in the event that it chose to contract out. However, the time, effort and cost associated with developing such arrangements have to be considered against the benefits that contracting might realistically achieve versus the status quo.
National Grid	Enable	National Grid considers that the optional (rather than mandatory) outsourcing of the BSC activities gives BSCCo the flexibility to cater for future uncertainty; for example, if the outsourced activities are not being delivered efficiently, BSCCo has the option to perform these activities in-house.

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

### Summary

Yes	No
7	6

### Responses

Respondent	Response	Rationale
RWE npower	Yes	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.
Smartest Energy Ltd	Yes	In theory, this consultation proposes a logical way forward to separate the activities and allow the BSCCo to become more commercially focused. However, as this is a significant change which is likely to impact, or at least interest all BSC parties in some way, then clearly further detailed information will be required in order for us to provide a fully objective view.
Electricity North West Limited	No	-
Eggborough Power Limited	Yes	Eggborough is not against contracting out as a principle, but as we said in our response to the Ofgem consultation there needs to be careful consideration given to the way a new structure is managed. We are extremely disappointed about how this process is being taken forward. There are substantial changes going on in the market and smaller parties, such as ourselves, cannot give due consideration to such an important change in

Respondent	Response	Rationale
		such rushed timeframes.
Ecotricity	No	-
Scottish Power	No	-
Drax Power Limited	No	-
EDF Energy	No	-
EnAppSys Ltd	Yes	<p>Our experience of this type of separation leads us to believe that the negotiation of the contract is the key step. It is better to start this contract negotiation process as soon as possible.</p> <p>There will be an information asymmetry between BSCCo and New Elexon in the negotiation of the contract. To ensure that the requirements of all participants in the market are met from the new arrangements, whether BSC parties or not, there will need to be significant consultation on the structure of the contract to ensure adequate transparency. In the process of creation of the contract attention should be paid to the conditions OFGEM set out in its letter of 30th April, 2012 i.e.:</p> <ol style="list-style-type: none"> <li>1. BSC Parties should benefit from any diversification;</li> <li>2. The arrangements should not place disproportionate risk on BSC Parties;</li> <li>3. Standards of service under the BSC should be maintained; and</li> <li>4. Elexon's BSC role should not give it any undue competitive advantage in a contestable activity.</li> </ol> <p>EnAppSys Ltd has key concerns about the structure of the contract which we would like to feed into the process. Our concerns are around the process of setting the cost of access to the data we consume, the intellectual property ownership of the data we consume and the impact of change to the delivery method of the data. If these aspects are not got right New Elexon could become a monopoly provider of data services at increasing cost to the market.</p>
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</p>

Respondent	Response	Rationale
		<p>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 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 could of ELEXON could make this decision without first having a fully formed contract developed that 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 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</p>

Respondent	Response	Rationale
		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 a we can foresee a multitude of conflicts of interest arising.
E.ON UK	Yes	The development of the BSC Service Description and the Contractual model must be more inclusive of BSC parties. Parties will be nervous of the risks that they might attract from these arrangements unless they are part of the debate, and that doesn't mean just sending out a document with a very short timescale for review and not being involved in the development. Above all BSC parties are asking for more transparency and to be engaged in this major change to the way BSC is delivered in the future.
Centrica	No	-
National Grid	Yes	<p>A key stated aim of P284 is to "Ensure that the risks and costs arising from New Elexon pursuing or undertaking non-BSC activities are not borne by the BSC Parties, including NGET". Although P284 is an enabling proposal, it envisages that any subsequent outsourcing will be in line with this aim.</p> <p>One area which may be impacted by the level and/or nature of outsourcing is the pensions costs , specifically related to Elexon employees who are active members of National Grid Electricity Group of the Electricity Supply Pension Scheme (NGEG). If all of these members transfer to New Elexon, i.e. BSCCo no longer employ any active members in NGEG, a section 75 debt liability will be triggered under the Pensions Act 1995. This liability could be of the order of c£15m . The calculation of the final figure, and subsequent demand for payment, is the sole responsibility of the Trustee on advice received from its scheme actuary.</p> <p>A section 75 debt does not crystallise and will not be triggered for so long as some NGEG members continue to be employed by BSCCo and remain active NGEG members. The debt would also not be triggered if BSCCo retained all assets (including members mentioned above) and leased them to New Elexon; the possibility of BSCCo leasing its assets to New Elexon has also been suggested by Ofgem in its open letter consultation on 'potential expansion of the role of Elexon' .</p> <p>In its response to Ofgem's open letter consultation regarding the level of asset retention in BSCCo, National</p>

Respondent	Response	Rationale
		<p>Grid has stated that:</p> <p>“Our general view on assets is that the BSCCo should retain sufficient assets to ensure that it can step in and ensure service continuity in the event of failure of the new service provider. This may mean, among other things, the retention of appropriate levels of staff by BSCCo; another advantage of this, if the staff who remain are active members of the NGET pension scheme, is that it will avoid triggering a potential debt/cost under the s75 statutory regulations Pension Act 1995 (as amended by PA2004).”</p> <p>In summary, National Grid would like to emphasise that (subject to approval of P284) any decision on the level and/or nature of outsourcing should ensure that the risks and costs arising from New Elexon pursuing or undertaking non-BSC activities are not borne by the BSC Parties, including NGET.</p>