

Report Phase Consultation Responses

P330 'Allowing ELEXON to tender for the Uniform Network Code Gas Performance Assurance Framework Administrator (PAFA) role'

This Report Phase Consultation was issued on 19 April 2016, with responses invited by 3 May 2016.



Phase

[Initial Written Assessment](#)[Definition Procedure](#)[Assessment Procedure](#)[Report Phase](#)[Implementation](#)

Consultation Respondents

Respondent	No. of Parties/Non-Parties Represented	Role(s) Represented
E.ON Energy Solutions	1/0	Supplier
First Utility	1/0	Supplier
ScottishPower	3/0	Generator, Supplier, Non Physical Trader
Brookfield Utilities	2/0	Distributor
British Gas	1/0	Supplier
Npower Ltd	1/1	Supplier, Supplier Agent
EDF Energy	7/0	Generator, Supplier, ECVNA, MVRNA
Drax	1/0	Generator

P330
Report Phase Consultation
Responses

5 May 2016

Version 1.0

Page 1 of 13

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Question 1: Do you agree with the Panel's initial majority recommendation that P330 should be rejected?

Summary

Yes	No	Other
3	4	1

Responses

Respondent	Response	Rationale
E.ON Energy Solutions	No	<p>The decision of the Panel is an opportunity missed.</p> <p>P330 is an enabling modification, so that a bid could be made and we remain of the view that Elexon participation would greatly enhance the procurement process. Elexon clearly has the right skills and capabilities along with experience to have a positive impact on gas performance arrangements in the future.</p> <p>We do not accept the Panels view that core BSC service would be adversely impacted by such a bid. If a bid were to proceed, a ring fenced team could be set up to prepare and manage the bid process, without adversely impacting day to day operations for Elexon.</p> <p>Additionally, if the modification were to proceed and an Elexon bid is submitted, this could potentially lead towards the first steps towards a dual fuel Performance Assurance Framework, from which future synergies and efficiency savings may be of benefit to all Parties.</p>
First Utility	Yes	<p>First Utility agrees with the Panel's initial majority recommendation to reject P330. We agree both with the views of the Workgroup minority (highlighted in the Assessment Procedure Consultation) and that of the Panel, that P330 would not better facilitate applicable BSC objective (d). Implementing this modification will not in itself improve the efficiency of the balancing and settlement arrangements as there is no certain benefit arising under the BSC for BSC Parties – as noted in the report, 'the defrayment of costs can only be realised if Elexon is successful in its bid, while any costs incurred in an unsuccessful bid would be shared amongst parties'.</p> <p>Moreover though, we are concerned around the potential impact on the delivery of core BSC activities should a bid be put forward. We agree with Panel members comments that Elexon's resource is already strained and bidding for other work would exacerbate this by taking critical resource away. Whilst we appreciate that additional resource would likely be brought in to fill any gap, withdrawing the 'best resource</p>

Respondent	Response	Rationale
		<p>available away from normal BSC work' may impact delivery.</p> <p>Whilst P330 would leave the decision to the Elexon Board as to whether to submit a tender, if then successful, it is suggested that risks in performance could be managed through the use of KPIs. However as noted by Panel members, these are not mandatory under P330 and there is still a lack of effective means to hold the Board to account: P324 and P325 are ongoing.</p> <p>For these reasons, we support the Panel's initial majority recommendation to reject P330. Furthermore given the potential of the gas PAFA tender to be delayed due to the progression of Project Nexus, this would also allow for time to progress P324 and P325 – conclusion of which may help to facilitate / alleviate some of the current concerns around managing core BSC activity performance risk associated with P330, should such a modification be raised again. Additionally it may also be appropriate to consider the impact of potential changes to industry code governance that will be announced in June 2016 when the Competition and Markets Authority issues its final report on its investigation into the energy market.</p>
ScottishPower	No	<p>ScottishPower notes that the BSC Panel's initial recommendation is in opposition to the recommendation of the workgroup. For clarification ScottishPower would like to highlight that the Gas PAFA sits outside of Project Nexus and is not a linked deliverable to the project. Project Nexus is a re-development of Xoserve's central systems, bringing site specific reconciliation to the whole market, rather than just for sites with an estimated Annual Quantity (similar to an Estimated Annual Consumption (EAC)) of 73,200 kWh. The PAFA will look to assure Uniform Network Code Parties affecting settlement performance under the new Nexus arrangements, once they become operational, but will also have the opportunity to look at the existing arrangements, in particular if Project Nexus is delayed.</p> <p>It is also worth noting that it will be Xoserve who would be the procuring party, with a Performance Assurance Committee (PAC) of Shippers and Gas Distribution Companies aiding in the procurement process. Xoserve is owned jointly by all of the Large Gas Transporters, not National Grid alone.</p> <p>ScottishPower sees that the Panel were concerned with the £100k cap on bid costs included within the proposal. ScottishPower placed this cap in the proposal to ease concerns of some of the workgroup that BSC Parties could be exposed to unlimited costs for any bid. However ScottishPower, along with a number of workgroup</p>

Respondent	Response	Rationale
		<p>members, believe that this cap is an unrealistic amount of what Elexon would spend on any bid activity. It was however felt by some members as an acceptable level of costs and in addressing the possible unfettered liability question. It was also chosen as it avoided setting a more realistic cap level, which could provide insight to other bidders of what resources Elexon were deploying in any bid submission.</p> <p>The BSC Panel clearly have a number of concerns about the Elexon resources and, in their view, think that the P330 proposal would exacerbate an already constrained situation at Elexon. ScottishPower countered these points in the workgroup meetings, in that any issue of Elexon's resources and their ability to undertake the functions of the BSC is a matter for the Elexon Board, aside of P330. We are therefore concerned if this has been a primary driver in the decision of the Panel, as this is a matter for Elexon more generally and should be raised and resolved through corporate governance, rather than through a specific change proposal.</p> <p>Similarly a Panel member had a concern that although P330 referenced KPIs as a means of mitigating risks that these were not defined. ScottishPower does not believe that this is required within the proposal, but is a matter to be considered as business as usual through Elexon's existing governance arrangements.</p> <p>ScottishPower continues to believe that P330 facilitates Relevant Objective (d). If Elexon are successful in winning the PAFA work, then any margin made on the service will be able to be used to defray the costs of the electricity settlement to BSC Parties. Furthermore ScottishPower believes that as the market is moving to dual fuel arrangements, for example through the proposed centralisation of registration, that this would be the first industry driven initiative to bring processes under one entity. ScottishPower see this as allowing for a common understanding to be developed between the gas and electricity market and practices and synergies to be delivered, which could achieve cost efficiencies and customer benefits. With Elexon operating the gas market arrangements it would also allow for best practice to be identified and established and potentially improve the electricity arrangements. It would also appear to accord with the proposals from the CMA in respect of industry central delivery bodies.</p> <p>By allowing Elexon to bid for the gas PAFA work it will, for the first time, present an opportunity to market test Elexon, to understand if they offer value for money in the electricity</p>

Respondent	Response	Rationale
		<p>arrangements.</p> <p>ScottishPower also concurs with the Consumer Panel Member who believed that Elexon could either win the bid for the gas PAFA, or positively impact the bid process by participation even if it is unsuccessful. Additionally ScottishPower believes that Elexon should consider any tools and techniques that are developed in the gas market, irrespective of whether they become the administrator, as the gas arrangements are being newly created by the PAC/PAFA and should draw on best practice.</p>
Brookfield Utilities	Yes	<p>We agree with the Panel's recommendation that P330 should be rejected.</p> <p>The funding principles which have been proposed by this modification mean that parties will be funding a tender exercise for an activity that is entirely outside of the scope of their licence and the legislation which governs that licensable activity. We do not believe that it is fair on parties to be required to fund something which is outside the scope of their licence and may be of no relevance to their organisation. Furthermore we do not believe that is reasonable to expect these parties to bear the entirety of the risk associated with this modification.</p> <p>None of the Applicable BSC Objectives bear any relation to this activity and none of these objectives will be better facilitated by the introduction of this modification. The Applicable BSC Objectives relate, in their entirety, to the operation of electricity systems and compliance with the associated regulations. We are unable to support this modification and we do not believe that its implementation will be able to better achieve the objectives as listed. We believe that adding costs to suppliers over which they have no control or visibility of recovery may also be damaging to competition in the supply of electricity and therefore we believe that the modification, whilst neutral through its irrelevance to most of the objectives, may have a detrimental impact of objective (c). We also believe that implementation is detrimental to objective (d) as imposing costs on the BSC parties that do not relate to the management and administration of balancing and settlement arrangements lessens the effectiveness, efficiency and cost reflectiveness of such administration.</p>
British Gas	No	<p>British Gas believes that P330 would better facilitate Applicable Objective 'D' as we stated in our Assessment Consultation Response. We believe that allowing Elexon to tender for the Gas PAFA role may potentially allow Elexon to become more efficient in fulfilling 2 PAFA roles.</p> <p>This is only the case if Elexon are able guarantee the</p>

Respondent	Response	Rationale
		<p>maintenance of their current core BSC function performance. If the Electricity arrangements are adversely impacted then we believe that this modification will have a negative effect on the current baseline.</p> <p>A key part of P330 is that the BSC Board would consider if the role is appropriate for Elexon to tender for. The BSC Board will be able to make an informed decision only once the scope of the PAFA and the details for the tender are released. If the BSC Board decides to tender for the role then we would expect the Board to ensure that current Core BSC services were maintained if successful in the bid.</p>
Npower Ltd	No	<p>RWEnpower believes that modification P330 fulfils relevant Objective (d). The energy market is moving towards Dual Fuel solutions for both processes and Governance. A common understanding of both Electricity and Gas Performance Assurance techniques develops synergies and efficiencies to deliver cost effective solutions for all parties. Developing these allows for knowledge and experience to be used across both sectors for the benefit of BSC Parties and ultimately customers where a significant proportion of these, are users of both fuels.</p> <p>We note that many concerns raised around this modification relate to the potential distraction of Elexon resources whilst bidding for this role and that this could lead to a disruption in the quality of BSC core service delivery. This modification is purely to enable a bid for this work and should not be concerned with these issues. The performance and delivery of BSC core service is a matter for the Elexon Board. Any issues regarding Elexon's performance should not be resolved through this modification and neither should this proposal be restricted by any party's perception of current performance or potential future performance. RWEnpower can see no reason why effective management should not resolve all of these issues.</p> <p>We believe strongly that the expertise and experience developed by Elexon with the Electricity Performance Assurance Framework should be enabled to be shared across both the Gas and Electricity markets. Costs for this can be defrayed by any margin achieved and further efficiency can be derived.</p>
EDF Energy	Yes/No	<p>We acknowledge that within the confines of the BSC Objectives it is difficult to justify the potential cost and risk to BSC Parties of the proposal. However, the potential unrecoverable cost is small, equivalent to less than 0.0002 £/MWh on BSCCo charges on production or consumption volumes. We think there are wider benefits for the electricity and gas markets as a whole, and many BSC</p>

Respondent	Response	Rationale
		Parties also active in the gas markets could benefit from increased competition in the procurement and delivery of performance assurance in the gas market.
Drax	Yes	<p>We agree with the Panel that P330 should be rejected. We do not believe that a valid defect in the BSC has been identified by the P330 Proposer and it therefore does not provide a benefit against the baseline. Elexon was created to manage the BSC and a move away from these core activities is not in its current remit. There is a risk that the quality in delivery of core BSC activities, which are already strained, may drop if Elexon resource is used to work on a bid for the Gas PAFA role without procuring additional expertise, which would come at a cost to BSC parties. Further, if Elexon were to be granted the UNC Gas PAFA role, resources may be used preferentially to support the PAFA responsibilities ahead of core (not for profit) BSC activities, detrimentally affecting BSC parties. As such, P330 could result in scenarios that detrimentally effect the Applicable BSC Objective (ABO) (d).</p> <p>The P330 Proposer has stated that sharing the fixed costs of Elexon across the Gas PAFA service allows costs to BSC parties to be defrayed. However, the Assessment Procedure Consultation document does not provide sufficient analysis to prove that this would be the case. Further, the simplicity of the gas market arrangements when compared to the electricity market arrangements have been cited as an opportunity for Elexon, if granted the UNC Gas PAFA role, to identify and implement changes to better the electricity arrangements in the future. However, the argument industry has put forward to date is that the gas market is too simplified and needs a more robust set of arrangements to be put in place. In addition, the Proposer asserted that in bidding for the Gas PAFA work, BSC parties may get an insight into the competitiveness and efficiencies of Elexon in delivering their existing obligations. Currently, there is a yearly audit process which means that any inefficiencies should be addressed. As a result, the benefits of P330 in this regard are unlikely to be material.</p> <p>Furthermore, we believe placing resource into the PAFA bid will remove resource from core BSC activities, which are already stretched meeting day to day activities and ongoing projects. In addition, we believe that the cap value of £100,000 is too high with respect to the potential return of around £300,000. As such, the potential risks/rewards do not appear to stack up.</p>

Question 2: Do you agree with the Panel that the redlined changes to the BSC deliver the intention of P330?

Summary

Yes	No	Other
7	-	1

Responses

Respondent	Response	Rationale
E.ON Energy Solutions	Yes	-
First Utility	Yes	-
ScottishPower	Yes	The legal text allows for a cap to be placed on the costs that Elexon are able to incur in respect of any bid that they develop in response to the gas PAFA tender process. In addition on an on-going basis it allows for reporting to the Panel of the costs incurred. The text also creates the PAFACo, which will facilitate the loan arrangement between BSCCo and PAFACo, allowing monies to be repaid to BSC Parties, should Elexon be successful in tendering for the PAFA role.
Brookfield Utilities	Yes	Notwithstanding our above concerns we agree that the redlined drafting would deliver the intent of this modification.
British Gas	Yes	-
Npower Ltd	Yes	-
EDF Energy	Yes/No	<p>Yes, as far as we can tell, but we make some observations on the legal text below, and improvement are possible:</p> <ol style="list-style-type: none"> 1. Annex X-1: The definition ""PAFACo"": means a company duly incorporated in England and Wales ;" does not capture the principle of this being a company created specifically to fulfil a particular purpose. It would be better to define it in terms of a subsidiary of BSCCo with the specific purpose of tendering for and, if successful, fulfilling the PAFA role. For example, "PAFACo: means a company [which is an affiliate of ELEXON Limited] acting in the capacity of a performance assurance provider under the Uniform Network Code". 2. Use of the term PAFA in relation to UNC performance assurance could create misunderstanding alongside the existing BSC Performance Assurance activities. Unless Elexon intends to spin off its existing BSC Performance

Respondent	Response	Rationale
		<p>Assurance activities into this new company (which does not seem to be the intention), it would avoid potential misunderstanding if the role was named, for example, UNCPAFA, or Gas PAFA.</p> <p>3. A "PAFACo Board" would be created, which appears to be different from the Board (which we assume to be the Board of Directors of BSCCo, or the BSCCo Board) which creates it. Note the BSC also has a Performance Assurance Board, which is explicitly described where reference is made to it. It might be opportune to start being more explicit about "the Board" as being the BSCCo Board where appropriate, noting that the term Board is also used in relation to the Board of agent companies qualified under the BSC Performance Assurance Framework.</p> <p>4. Proposed Annex C-1 paragraph C2.3.6 allows the Board "in its absolute discretion, [to] resolve to write off any loan or credit provided to PAFACo for PAFA Tender Costs which relates to an unsuccessful PAFA Tender exercise", up to a specified limit. Under what circumstances might the Board chose not to write off the loan or credit, and what would the consequences be?</p> <p>5. The composition of the PAFACo Board would be dictated by BSC Section C7.5, and this might conflict with provisions for appointments in proposed Annex C-1.</p> <p>Some references:</p> <p>BSC Section C:</p> <p>"7.5.1 Subject to paragraph 7.5.1A [dormant companies], the board of directors of each Subsidiary of BSCCo shall at all times comprise the persons who are for the time being Directors of BSCCo, and the company secretary of such Subsidiary shall be the person who is for the time being company secretary of BSCCo."</p> <p>"7.5.3 Subject to paragraph 4.6.1, the person who is for the time being Chief Executive of BSCCo shall act as chief executive of each Subsidiary of BSCCo, under such terms of reference as the board of directors of such Subsidiary may determine.</p> <p>7.5.4 Each director of a Subsidiary shall be entitled to be reimbursed by BSCCo for the reasonable costs and expenses (including travel and accommodation costs) properly incurred by such director in attending meetings or otherwise in the conduct of the business of the board of directors of the Subsidiary and not otherwise reimbursed</p>

Respondent	Response	Rationale
		<p>under paragraph 4.4.1.</p> <p>7.5.5 No director of a Subsidiary shall be entitled (in that capacity) to be paid any remuneration or benefits other than his costs and expenses in accordance with paragraph 7.5.4."</p> <p>BSC Section X:</p> <p>""Board"": means the board of Directors of BSCCo;"</p> <p>Transmission Licence Condition C3:"</p> <p>"1B. The licensee shall establish a Balancing and Settlement Code Company (BSCCo) to provide and procure facilities, resources and services required for the proper, effective and efficient implementation of the BSC."</p> <p>"1D. The BSC may include provisions allowing the BSCCo or any affiliate of the BSCCo to undertake activities other than those referred to in paragraphs 1, 1A and 1B above, subject to Authority consent."</p>
Drax	Yes	These seem sensible.

Question 3: Do you agree with the Panel's recommended Implementation Date?

Summary

Yes	No	Other
8	-	-

Responses

Respondent	Response	Rationale
E.ON Energy Solutions	Yes	-
First Utility	Yes	-
ScottishPower	Yes	To be able to bid for the PAFA work, it is imperative that the BSC is amended as soon as possible, following Ofgem's decision (should this be positive), to allow Elexon to be able to enter into the PAFA tender process. ScottishPower therefore agrees that the 5 Working Days is a sufficient timeframe to allow this to happen.
Brookfield Utilities	Yes	Although we have highlighted concerns with the modification itself and do not support the modification we agree with the modification date in order for this modification to fulfil its intent.
British Gas	Yes	We believe that an implementation date of 5WDs following Authority approval is appropriate.
Npower Ltd	Yes	-
EDF Energy	Yes	Prompt implementation is necessary for the proposal to be effective.
Drax	Yes	This seems sensible.

Question 4: Do you have any further comments on P330?

Summary

Yes	No
2	6

Responses

Respondent	Response	Rationale
E.ON Energy Solutions	Yes	We believe progression of this modification would have a positive impact, by providing the opportunity for Elexon to expand and use its vast experience and knowledge of Performance Assurance in another area of the industry. A successful bid has potential to provide additional opportunities such as bench marking existing performance and applying learning across fuels for the benefit of all Parties.
First Utility	No	N/A
ScottishPower	No	N/A
Brookfield Utilities	No	N/A
British Gas	No	N/A
Npower Ltd	No	N/A
EDF Energy	Yes	<p>We note concerns about tender costs and the risk that BSC parties will foot the bill for an unsuccessful tender. We note that potential benefits, either of increased competition in the procurement of provision of gas performance assurance, or of more effective delivery of gas performance assurance, are of limited or no benefit to BSC parties not involved in the gas market. Those parties will only benefit from potential improvements in electricity performance assurance learned from gas arrangements.</p> <p>Page 7 of the Report Phase Consultation documents says "There is a working assumption under the UNC that the procurement for the gas PAFA, if MOD506 is approved by Ofgem, will be under the current Official Journal of the European Union (OJEU) procurement threshold value (£350k)." The £100k cap on BSCCo tender preparation costs seems significant compared to this total cost of a procured service. We note that the BSC requirement for ring-fencing and statutory audit of the tender preparation cost may increase tendering costs. We also note the costs of the existing BSC Performance Assurance process is around £3m/year (page 17 of modification report); that electricity assurance includes external audit of parties</p>

Respondent	Response	Rationale
		<p>themselves, which is not the case for gas, and Elexon believe the processes for electricity are much more complicated than those expected for gas.</p> <p>The consultation suggests apparently without doubt that if BSCCo limited decided to proceed with a tender to provide the service then tender preparation costs would be borne by BSCCo parties, recoverable over time only if the tender were successful. However, the legal text hints that a loan provided by BSCCo would not necessarily be written off if the tender is unsuccessful, although it is not clear who else amounts owing could be recovered from other than BSCCo and hence BSC Parties.</p>
Drax	No	N/A