

MODIFICATION REPORT for Modification Proposal P206 'Publication of BSC Panel Election Results'

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Date of Issue:	20/12/06	Document Reference:	P206RR
Reason for Issue:	For Authority Decision	Version Number:	1.0

This document has been distributed in accordance with Section F2.1.10 of the Balancing and Settlement Code.²

Proposed Modification P206 seeks to amend the Code such that BSCCo would be required to disclose the following aggregated information in relation to the results of elections for Industry Panel Members: the total number of voting papers submitted, the number of votes received by each named candidate (in total and in each round), and the qualifying number of votes required for election in each round. Currently, BSCCo is prohibited by the Code from disclosing any of this voting information. Details of the 2006 election results would be disclosed retrospectively. The names of voting Parties and details of their individual votes would not be disclosed.

Alternative Modification P206 seeks to publish the same information as the Proposed Modification, but without retrospective implementation (i.e. details of the 2006 election results would not be disclosed).

BSC PANEL'S RECOMMENDATIONS

Having considered and taken into due account the contents of the P206 draft Modification Report, the BSC Panel recommends:

- **that Proposed Modification P206 should not be made;**
- **that Alternative Modification P206 should be made;**
- **an Implementation Date for both the Proposed and Alternative Modifications of 5 Working Days following an Authority decision; and**
- **the proposed text for modifying the Code, as set out in the Modification Report.**

¹ ELEXON Ltd fulfils the role of the Balancing and Settlement Code Company ('BSCCo').

² The current version of the Code can be found at <http://www.elexon.co.uk/bscrelateddocs/BSC/default.aspx>

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SUMMARY OF IMPACTED PARTIES AND DOCUMENTS

As far as the Modification Group has been able to assess, the following parties/documents would be impacted by P206.

Please note that this table represents a summary of the full impact assessment results contained in Appendix 4.

Parties	Sections of the BSC	Code Subsidiary Documents
Distribution System Operators <input type="checkbox"/>	A <input type="checkbox"/>	BSC Procedures <input type="checkbox"/>
Generators <input checked="" type="checkbox"/>	B <input checked="" type="checkbox"/>	Codes of Practice <input type="checkbox"/>
Interconnectors <input checked="" type="checkbox"/>	C <input type="checkbox"/>	BSC Service Descriptions <input type="checkbox"/>
Licence Exemptable Generators <input checked="" type="checkbox"/>	D <input type="checkbox"/>	Party Service Lines <input type="checkbox"/>
Non-Physical Traders <input checked="" type="checkbox"/>	E <input type="checkbox"/>	Data Catalogues <input type="checkbox"/>
Suppliers <input checked="" type="checkbox"/>	F <input type="checkbox"/>	Communication Requirements Documents <input type="checkbox"/>
Transmission Company <input type="checkbox"/>	G <input type="checkbox"/>	Reporting Catalogue <input type="checkbox"/>
Party Agents	H <input type="checkbox"/>	Core Industry Documents
Data Aggregators <input type="checkbox"/>	I <input type="checkbox"/>	Ancillary Services Agreement <input type="checkbox"/>
Data Collectors <input type="checkbox"/>	J <input type="checkbox"/>	British Grid Systems Agreement <input type="checkbox"/>
Meter Administrators <input type="checkbox"/>	K <input type="checkbox"/>	Data Transfer Services Agreement <input type="checkbox"/>
Meter Operator Agents <input type="checkbox"/>	L <input type="checkbox"/>	Distribution Codes <input type="checkbox"/>
ECVNA <input type="checkbox"/>	M <input type="checkbox"/>	Distribution Connection Agreements <input type="checkbox"/>
MVRNA <input type="checkbox"/>	N <input type="checkbox"/>	Distribution Use of System Agreements <input type="checkbox"/>
BSC Agents	O <input type="checkbox"/>	Grid Code <input type="checkbox"/>
SAA <input type="checkbox"/>	P <input type="checkbox"/>	Master Registration Agreement <input type="checkbox"/>
FAA <input type="checkbox"/>	Q <input type="checkbox"/>	Supplemental Agreements <input type="checkbox"/>
BMRA <input type="checkbox"/>	R <input type="checkbox"/>	Use of Interconnector Agreement <input type="checkbox"/>
ECVAA <input type="checkbox"/>	S <input type="checkbox"/>	BSCCo
CDCA <input type="checkbox"/>	T <input type="checkbox"/>	Internal Working Procedures <input checked="" type="checkbox"/>
TAA <input type="checkbox"/>	U <input type="checkbox"/>	BSC Panel/Panel Committees
CRA <input type="checkbox"/>	V <input type="checkbox"/>	Working Practices <input checked="" type="checkbox"/>
SVAA <input type="checkbox"/>	W <input type="checkbox"/>	Other
Teleswitch Agent <input type="checkbox"/>	X <input type="checkbox"/>	Market Index Data Provider <input type="checkbox"/>
BSC Auditor <input type="checkbox"/>		Market Index Definition Statement <input type="checkbox"/>
Profile Administrator <input type="checkbox"/>		System Operator-Transmission Owner Code <input type="checkbox"/>
Certification Agent <input type="checkbox"/>		Transmission Licence <input type="checkbox"/>
Other Agents		
Supplier Meter Registration Agent <input type="checkbox"/>		
Unmetered Supplies Operator <input type="checkbox"/>		
Data Transfer Service Provider <input type="checkbox"/>		

1 DESCRIPTION OF MODIFICATION

This section outlines the solutions for the Proposed Modification and Alternative Modification, as developed by the P206 Modification Group ('the Group') during the Assessment Procedure.

For a full description of the original Modification Proposal as submitted by E.ON UK Plc ('the Proposer'), and the background to the proposal, please refer to the P206 Initial Written Assessment (IWA).

1.1 Proposed Modification

The Balancing and Settlement Code ('the Code') would be amended such that BSCCo would be required to disclose the following information regarding the voting in the elections for Industry Panel Members, including any ad-hoc elections for the replacement of Panel Members who resign part-way through their term of office:

- The total number of voting papers received;
- The total number of 1st, 2nd, and 3rd preference votes received by each candidate over all voting papers (i.e. prior to voting rounds);
- The number of remaining voting papers (T) and remaining Panel vacancies (N) in each round (and hence the qualifying total in each round); and
- The number of relevant preference votes for each candidate in the remaining voting papers in each voting round.

This information would be published at an aggregated level for each named candidate, and the names and votes of individual voting Parties would not be published.

The Proposed Modification would be implemented such that the voting information described above would be retrospectively disclosed for the 2006 Panel elections.

1.2 Alternative Modification

The Alternative Modification developed by the Group is identical to the Proposed Modification, except that it would not be implemented retrospectively – i.e. voting information for the 2006 Panel elections would not be disclosed.

Under the Alternative Modification, the first set of voting information to be published would therefore be either the results of the 2008 Panel election, or any ad-hoc election held to replace a resigning Industry Panel Member between the implementation of P206 and the full 2008 election.

2 AREAS RAISED BY THE TERMS OF REFERENCE

The following areas were considered by the Modification Group during the Assessment Procedure for P206:

- The principle of disclosing the proposed voting information;
- Any relevant election process precedents of other governance arrangements;
- Any relevant previous views of the Authority and/or industry regarding the disclosure of voting information;
- The precise information to be disclosed under P206;
- The implications of the proposed retrospective implementation;
- Any implications for confidentiality resulting from the disclosure of the proposed voting information;

- Whether P206 should apply to 'ad hoc' elections for replacement Panel Members;
- Any potential impact on Panel Members, election participation and voting behaviour; and
- The relevance of specific Applicable BSC Objectives to governance changes.

These issues are discussed in the Assessment Report contained in Appendix 3, and are not covered further here.

3 IMPLEMENTATION APPROACH AND COSTS

Please note that the costs of the Proposed and Alternative Modifications are identical, and are shown in the tables below.

P206 MODIFICATION IMPLEMENTATION COSTS³

		Stand Alone Cost	Incremental Cost	Tolerance
Total Demand Led Implementation Cost		Nil	Nil	N/A
ELEXON Implementation Resource Cost		4 man days £880	4 man days £880	+/- 5%
Total Implementation Cost		£880	£880	+/- 5%

P206 ONGOING SUPPORT AND MAINTENANCE COSTS

	Stand Alone Cost	Incremental Cost	Tolerance
Service Provider Operation Cost	Nil	Nil	N/A
Service Provider Maintenance Cost	Nil	Nil	N/A
ELEXON Operational Cost	Nil	Nil	N/A

No impact of P206 has been identified on BSC Agents, Party Agents or the Transmission Company. P206 would have no direct impact on BSC Parties, except in the sense that aggregated information relating to eligible Parties' votes in Panel elections would be anonymously made available to all Parties.

a) BSCCo Impact

There will be minor impacts on BSCCo through the requirement to publish the appropriate information and to update local working instructions and industry guidance notes.

³ An explanation of the cost terms used in this section can be found on the BSC Website at the following link:
http://www.elexon.co.uk/documents/Change_and_Implementation/Modifications_Process_-_Related_Documents/Clarification_of_Costs_in_Modification_Procedure_Reports.pdf

The impact is the same for both the Proposed and Alternative Modifications, though in the case of the Alternative Modification information would not need to be published until the next Panel election has taken place.

4 RATIONALE FOR MODIFICATION GROUP'S RECOMMENDATIONS TO THE PANEL

This section summarises the recommendations of the Modification Group, as detailed in the Assessment Report in Appendix 3.

4.1 Assessment of Proposed Modification Against Applicable BSC Objectives

The **MAJORITY** view of the Modification Group was that the Proposed Modification **WOULD NOT** better facilitate the achievement of **Applicable BSC Objective (c)** when compared to the current Code baseline. The following arguments were expressed by these members in support of this view:

- The retrospective element of the Proposed Modification would, if implemented, create uncertainty in the BSC governance arrangements, which would undermine the confidence of participants in the arrangements and thus have a negative impact on competition;
- This negative impact would outweigh any prospective benefits of the Proposed Modification;
- Approval of the Proposed Modification would set an undesirable precedent in relation to the use of a retrospective implementation approach; and
- The potential for legal challenge of retrospective disclosure of voting information would create additional uncertainty.

The **MINORITY** view of the Proposer was that the Proposed Modification **WOULD** better facilitate the achievement of **Applicable BSC Objective (c)** when compared to the current Code baseline, for the following reasons:

- The Proposed Modification would increase the transparency of the Panel election process, making the governance arrangements more open, which would strengthen the confidence of participants in the arrangements and thus improve competition;
- Parties would be better able to evaluate the Panel election process, which could result in improvements which would increase confidence in the arrangements, thus promoting competition;
- Parties would be better able to assess the merits of any changes proposed in future to the Panel election process or governance arrangements, which could result in improvements which would increase confidence in the arrangements, thus promoting competition; and
- Retrospective implementation of the Proposed Modification would mean that the improved ability of Parties to evaluate the Panel election process, and any consequent benefits, would be achieved relatively promptly.

The Group agreed that the Proposed Modification would have a neutral impact on Applicable BSC Objectives (a), (b) and (d).

4.2 Assessment of Alternative Modification Against Applicable BSC Objectives

a) Alternative Modification Compared With Proposed Modification

The **MAJORITY** view of the Modification Group was that the Alternative Modification **WOULD** better facilitate the achievement of **Applicable BSC Objective (c)** when compared to the Proposed Modification, for the following reason:

- The non-retrospective implementation of the Alternative Modification would maintain the confidence of participants in the BSC governance arrangements, and thus have a positive impact on competition compared to the Proposed Modification.

The **MINORITY** view of the Proposer was that the Alternative Modification **WOULD NOT** better facilitate the achievement of Applicable BSC Objective (c) when compared to the Proposed Modification, for the following reason:

- The non-retrospective implementation of the Alternative Modification would mean the improved ability of Parties to evaluate, and test the robustness of, the Panel election process – and any consequent benefits – would be achieved relatively slowly.

b) Alternative Modification Compared with Existing Code Baseline

The **UNANIMOUS** view of the Modification Group was that the Alternative Modification **WOULD** better facilitate the achievement of **Applicable BSC Objective (c)** when compared to the current Code baseline, for the following reasons:

- The Alternative Modification would increase the transparency of the Panel election process, making the governance arrangements more open, which would strengthen the confidence of participants in the arrangements and thus improve competition;
- Parties would be better able to evaluate the Panel election process, increasing confidence in the arrangements and thus promoting competition; and
- Parties would be better able to assess the merits of any proposed changes to the Panel election process or governance arrangements, increasing confidence in the arrangements and thus promoting competition.

The Proposer, whilst believing that the retrospection of the Proposed Modification would allow a more timely delivery of the benefits associated with P206, acknowledged that the Alternative Modification would prospectively address the defect identified by the Modification Proposal for future Panel elections – and believed that the Alternative would therefore better facilitate the achievement of Applicable BSC Objective (c) compared with the existing Code baseline.

The Group agreed that the Alternative Modification would have a neutral impact on Applicable BSC Objectives (a), (b) and (d).

4.3 Implementation Date

The Group considered whether a retrospective Implementation Date (potentially aligned with the submission date of the Modification Proposal as suggested by the Proposer) was required for the Proposed Modification, and noted that this would not allow BSCCo an implementation lead time between the Authority decision and the publication of the 2006 election data in which to prepare the information. It also considered that Parties who were not aware of the Implementation Date might not realise that the 2006 data was to be published, unless this was specifically stated in the legal text. In addition, since the submission date of the proposal fell part-way through the voting in the 2006 elections, it considered that there could be some confusion as to

whether votes submitted prior to the raising of P206 would be published. The Group therefore agreed with BSCCo's legal view that the clearest and most efficient method of delivering the retrospective intention of the Proposed Modification would be to explicitly state within the legal text that the 2006 election results would be published. The Group noted that, under this approach, a retrospective Implementation Date would not be required – and that the same Implementation Date could therefore be used for both the Proposed and Alternative Modifications.

The Modification Group therefore agreed the following recommended implementation approach for P206:

- An Implementation Date for the Proposed Modification of 5 Working Days following an Authority decision; and
- An Implementation Date for the Alternative Modification of 5 Working Days following an Authority decision.

In the case that the Proposed Modification is approved, voting information for the 2006 election would be published on the Implementation Date (i.e. 5 Working Days after the Authority decision).

4.4 Legal Text

The Modification Group reviewed the text and agreed that it delivers the solutions developed by the Group for the Proposed and Alternative Modifications.

The Group agreed that if the Proposed Modification were to be implemented, it was preferable that the retrospective disclosure of the 2006 Panel elections should be effected through a specific clause in the legal text, rather than through a retrospective Implementation Date. The Proposed Modification legal text therefore explicitly states that the 2006 voting data would be published on the P206 Implementation Date.

5 RATIONALE FOR PANEL'S RECOMMENDATIONS TO THE AUTHORITY

5.1 Panel's Consideration of Assessment Report

The Panel considered the P206 Assessment Report at its meeting on 9 November 2006. This section summarises the Panel's discussions in formulating its provisional recommendation for inclusion in the draft Modification Report. Details of the Report Phase consultation responses, the Panel's discussion of the responses and its final recommendation to the Authority can be found in Sections 5.2, 5.3 and 5.4 respectively.

5.1.1 Assessment Procedure Consultation Responses

The Panel noted the responses received to the P206 Assessment Procedure consultation, and that the majority of respondents were opposed to implementation of the Proposed Modification (due to its retrospection) and were in favour of the Alternative Modification.

Some Panel Members commented that they were surprised at the emotive arguments of some consultation respondents and Group members, for what they considered to be a minor process enhancement. However, one Panel Member stated that, whilst they were personally relaxed about the element of retrospection in the Proposed Modification, they acknowledged the force of opinion against it, and as such they were happy to support the Alternative Modification.

Some Panel Members disagreed with references made by some respondents to candidates 'lobbying' during elections, since Panel Members are elected as independent experts and not as representatives of particular Parties.

5.1.2 Applicable BSC Objectives

The Panel discussed at some length which Applicable BSC Objective(s) it was possible and appropriate to link with the perceived benefits and disbenefits of P206 Proposed and Alternative Modifications. The Panel agreed with the view of the Modification Group that, in general, it is difficult to link governance modifications to a specific Applicable BSC Objective. A Panel Member queried whether it would be useful to add another Applicable BSC Objective to the Transmission Licence, and commented that P206 does not appear to sit easily under any of the current Objectives. However, the Panel noted that it was necessary to consider P206 against the four existing Objectives.

One Panel Member stated that, while they considered that it was not necessarily wrong to use Objective (c),⁴ the link was not obvious. Other Panel Members stated that they found the link to Objective (c) unconvincing and did not, for example, agree that P206 would reduce barriers to entry. These Panel Members queried whether P206 would sit better under Objective (d).⁵ The Panel noted BSCCo's legal advice that Objective (d) as set out in the Transmission Licence has a narrow application to efficiency-savings or cost-savings in BSCCo's administration of the balancing and settlement arrangements, and that arguments around transparency of the arrangements are linked to market confidence and thereby to competition under Objective (c). The Panel noted that this was consistent with legal advice previously provided by BSCCo on the applicability of Objective (d); however, it requested that more detailed legal advice on the scope of the Applicable BSC Objectives be provided prior to the Panel's consideration of the P206 draft Modification Report at its meeting on 14 December 2006, including copies of the relevant Transmission Licence Conditions. Notwithstanding this discussion, the Panel was satisfied that it was able to express provisional views on the merits of P206 against the Applicable BSC Objectives.

a) Proposed Modification

The **MAJORITY** provisional view of the Panel was that the Proposed Modification **WOULD NOT** better facilitate the achievement of the Applicable BSC Objectives when compared to the current Code baseline, for the following reasons:

Applicable BSC Objective (c)

- These Panel Members noted the weight given to the concerns regarding retrospection by consultation respondents and the Modification Group and, acknowledging the expertise of the Modification Group and the thoroughness of its analysis, felt that in this context the feeling against retrospection was sufficient to convince them that there would be a negative impact on the Applicable BSC Objectives; and

Many of these Panel Members also commented that retrospection would not have been required if P206 had been raised prior to the start of the 2006 election.

The **MINORITY** provisional view of the Panel was that the Proposed Modification **WOULD** better facilitate the achievement of the Applicable BSC Objectives when compared to the current Code baseline, for the following reasons:

Applicable BSC Objective (c)

- These Panel Members believed that the Proposed Modification would increase the transparency of Panel election results and thereby lead to more open governance arrangements; and
- One of these Panel Members believed that retrospection was not a material concern in this case, and that waiting until the 2008 Panel election to realise the full benefits of P206 appeared wasteful. This Member did not agree with the majority view of the Modification Group that approval of the

⁴ Applicable BSC Objective (c) 'Promoting effective competition in the sale and purchase of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity'.

⁵ Applicable BSC Objective (d) 'Promoting efficiency in the implementation and administration of the balancing and settlement arrangements'.

Proposed Modification would set an undesirable precedent regarding retrospective changes, since they noted that the Authority has previously stated that it considers the merits of retrospection on a case-by-case basis.

b) Alternative Modification

The **MAJORITY** provisional view of the Panel was that the Alternative Modification **WOULD** better facilitate the achievement of the Applicable BSC Objectives when compared to both the Proposed Modification and the existing Code baseline, for the following reasons:

Applicable BSC Objective (c)

- The non-retrospective implementation of the Alternative Modification would mean that the concerns caused by the retrospection of the Proposed Modification were eliminated; and
- One Panel Member stated that they supported the Alternative Modification on the grounds of increased transparency – but that they had not been swayed by many of the industry arguments, and did not believe that P206 would deliver any benefits to Panel Members in fulfilling their role.

The **MINORITY** provisional view of two Panel Members was that the Alternative Modification **SHOULD NOT** be made. One of these Panel Members believed that the Alternative would not better facilitate the achievement of the Applicable BSC Objectives compared with the Proposed Modification, since it would delay the realisation of the benefits of P206 until the next Panel election. The other Panel Member voted against both the Proposed and Alternative Modification since, although they believed that there would be a marginal benefit from P206, they stated that they were unable to fit it against any of the existing Applicable BSC Objectives.

In addition, two Panel Members, who had voted in favour of the recommendation that the Proposed Modification should be made, abstained from voting on the Alternative Modification. Although these Members believed that the Proposed Modification would better facilitate the achievement of the Applicable BSC Objectives compared with the Alternative Modification, they did not wish to vote against the recommendation that the Alternative should be made – as they believed that the Alternative Modification would better facilitate the achievement of the Applicable BSC Objectives compared with the existing Code baseline.

c) Provisional recommendation to the Authority

The Panel therefore agreed a **MAJORITY** provisional recommendation to the Authority that:

- The Proposed Modification **SHOULD NOT** be made; and that
- The Alternative Modification **SHOULD** be made.

5.1.3 Implementation Date

The Panel provisionally agreed with the Modification Group's recommendation regarding the Implementation Date for P206 Proposed and Alternative Modifications.

5.1.4 Legal Text

The Panel reviewed the draft legal text for the P206 Proposed and Alternative Modifications.

A Panel Member queried whether P206 applied to elections held to replace Panel Members who resigned part-way through their term of office, and whether this was reflected in the legal text. BSCCo confirmed that P206 would apply to such elections, and that this is specified in paragraph 1.3.2 of the Annex B-2 legal drafting for both the Proposed and Alternative Modifications.

Two Panel Members queried whether it was intended to disclose the names of candidates with the aggregated voting data for each candidate, since they had believed that the results would be disclosed in an anonymous format similar to the hypothetical worked example provided by BSCCo within the Assessment Report. BSCCo confirmed that it was the intent of P206 to publish the aggregated voting data and attribute it to named candidates, and that this had been the understanding of the Modification Group during its assessment of P206. The Panel requested that the draft legal texts be reviewed to determine whether they were clear in this respect, especially in the use of the word 'candidate' – and if necessary that the legal text be redrafted in order to ensure it was apparent that the names of candidates were required to be disclosed. Subject to this confirmation, the Panel provisionally agreed the draft legal text for the Proposed and Alternative Modifications. Following the Panel meeting, BSCCo confirmed its view that it is correct to interpret the word 'candidate' in the draft legal text as meaning a 'named candidate', since such an interpretation is consistent with the use of the term elsewhere within the existing provisions of Annex B-2 of the Code. No changes were therefore made to the draft legal text from the version provided in the Assessment Report.

5.2 Results of Report Phase Consultation

Six responses (representing 42 Parties) were received to the P206 Report Phase consultation.

A summary of the consultation responses is provided in the table below (bracketed numbers represent the number of Parties represented by respondents).

Q	Consultation question	Yes	No	Neutral
1.	Do you agree with the Panel's provisional recommendation to the Authority contained in the draft Modification Report that the Proposed Modification should not be made?	4 (30)	1 (11)	1 (1)
2.	Do you agree with the Panel's provisional recommendation to the Authority contained in the draft Modification Report that the Alternative Modification should be made?	5 (41)	0	1 (1)
3.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P206?	6 (42)	0	0
4.	Do you agree with the Panel's view that the legal text provided in the draft Modification Report delivers the solution agreed by the Modification Group?	6 (42)	0	0

The Report Phase consultation responses contained no new arguments in addition to those previously expressed during the Assessment Procedure, though some respondents took the opportunity to reiterate or enlarge upon their arguments.

A majority of respondents agreed with the Panel's provisional recommendation that the Proposed Modification should not be made, because they believed its retrospection would not be appropriate. The Proposer disagreed, and believed that it would be more beneficial to implement greater transparency retrospectively rather than wait until the next Panel election.

A majority of respondents agreed with the Panel's provisional recommendation that the Alternative Modification should be made, because it would increase the transparency of Panel elections. The Proposer disagreed, and believed that (whilst the Alternative was an appropriate compromise) the Proposed Modification was superior since it would deliver transparency benefits sooner. Another respondent stated that they believed the Alternative to be an improvement on the current Code baseline, but that it is difficult to connect governance related Modification Proposals to the Applicable BSC Objectives. This respondent suggested that in light of this difficulty it might be beneficial to review the Objectives to better facilitate governance changes.

Not all respondents referred to a specific Applicable BSC Objective in support of their views. However, those that did believed that Applicable BSC Objective (c) was the most relevant Objective to P206.

All of the respondents agreed with the P206 Implementation Date provisionally recommended by the Panel. One respondent noted that the Implementation Date was achievable and seemed reasonable, and in the case of the Alternative Modification it would be a while before it became operationally relevant (i.e. before it was necessary to disclose any election information, since the next full Panel election will not be held till 2008). However, it should be noted that, if required, an interim election for a Panel member may occur before a full election.

All respondents agreed with the Panel's view that the legal text provided in the draft Modification Report delivered the solution agreed by the Modification Group. The Proposer stated that the confirmation that the word 'Candidate' indicated a named candidate was welcome, and has clarified with BSCCo that this was the intent of the modification. No changes were therefore made to the legal text as a result of the Report Phase consultation.

The Proposer's response noted the belief that any further governance proposals would be facilitated by the acknowledgement in the Panel's discussions of the emotive nature of governance proposals, and the difficulty of connecting such proposals to the Applicable BSC Objectives.

Full copies of the consultation responses can be found in Appendix 4.

5.3 Panel's Consideration of Draft Modification Report

5.3.1 Report Phase Consultation Responses

A Panel Member noted that he now believed that the case for retrospection was not as strong as he had previously thought and that, recognising the weight of opinion against retrospection, he had reconsidered his position and would vote for a recommendation to reject the Proposed Modification and Approve the Alternative.

5.3.2 Applicable BSC Objectives

The Panel noted the ELEXON legal advice regarding the relevance of the various Applicable BSC Objectives to P206, which concluded that the arguments made should be considered under Objective (c). The Panel discussed the legal advice, which was reiterated by BSCCo at the meeting, and a Panel Member suggested it may be worthwhile to seek clarification from Ofgem; however the Panel agreed that it was not necessary to delay P206 and that consideration of the P206 arguments under Objective (c) would be consistent with legal advice and with the discussions of the P206 Modification Group.

A Group Member commented that, whilst it was a valid statement, the previously noted point that retrospection would not have been required if P206 had been raised prior to the start of the 2006 election does not constitute an argument against the Proposed Modification.

5.3.3 Implementation Date

The Panel's views in relation to the Implementation Date did not change.

5.3.4 Legal Text

No changes were made to the legal text following the Report Phase consultation.

5.4 Panel's Final Recommendation to the Authority

On the basis of the above discussions, the Panel therefore agreed a **MAJORITY** recommendation to the Authority that:

- The Proposed Modification **SHOULD NOT** be made; and that
- The Alternative Modification **SHOULD** be made.

The Panel agreed the following recommended implementation approach for P206:

- An Implementation Date for the Proposed Modification of 5 Working Days following an Authority decision.
- An Implementation Date for the Alternative Modification of 5 Working Days following an Authority decision.

The Panel agreed the legal text for modifying the Code in respect of the Proposed Modification and Alternative Modification, as provided in Appendix 1.

6 TERMS USED IN THIS DOCUMENT

Other acronyms and defined terms take the meanings defined in Section X of the Code.

Acronym/Term	Definition
Preference Vote	First, second or third preference among candidates, indicated on a voting paper.
trading party group	A Trading Party and every Affiliate of that Trading Party.
Industry Panel Member	A Panel Member appointed pursuant to Section B2.2 of the Code.

7 DOCUMENT CONTROL

7.1 Authorities

Version	Date	Author	Reviewer	Reason for Review
0.1	14/11/06	Dean Riddell	Kathryn Coffin	For technical review
0.2	17/11/06	Dean Riddell	David Jones	For peer review
0.3	20/11/06	Dean Riddell	BSC Parties and other interested parties	For consultation
0.4	01/12/06	Dean Riddell	Kathryn Coffin	For technical review
0.5	04/12/06	Dean Riddell	David Jones	For quality review
0.6	14/12/06	Change Delivery	BSC Panel	For Panel decision
1.0	20/12/06	BSC Panel	Ofgem	For Authority decision

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APPENDIX 1: LEGAL TEXT

Legal text for the Proposed Modification is attached as a separate document, Attachment 1A.

Legal text for the Alternative Modification is attached as a separate document, Attachment 1B.

APPENDIX 2: PROCESS FOLLOWED

Copies of all documents referred to in the table below can be found on the BSC Website at: [ELEXON - Modification Proposal P206](#).

Date	Event
03/08/06	Modification Proposal raised by E.ON UK Plc
14/09/06	IWA presented to the Panel
18/09/06	First Assessment Procedure Modification Group meeting held
29/09/06	Request for Transmission Company analysis issued
29/09/06	Request for BSCCo impact assessment issued
29/09/06	Assessment Procedure consultation issued
13/10/06	Transmission Company analysis returned
13/10/06	BSCCo impact assessment returned
13/10/06	Assessment Procedure consultation responses returned
17/10/06	Second Assessment Procedure Modification Group meeting held
09/11/06	Assessment Report presented to the Panel
20/11/06	Draft Modification Report issued for industry consultation
27/11/06	Report Phase consultation responses returned
14/12/06	Draft Modification Report presented to the Panel
20/12/06	Final Modification Report issued to the Authority for decision

ESTIMATED COSTS OF PROGRESSING MODIFICATION PROPOSAL⁶

Meeting Cost	£1,000
Legal/Expert Cost	Nil
Impact Assessment Cost	Nil
ELEXON Resource	35 man days £6,550

Please note that the cost estimates above are unchanged from those presented in the P206 IWA and Assessment Report.

APPENDIX 3: ASSESSMENT REPORT

The P206 Assessment Report is attached as a separate document, Attachment 3.

The Assessment Report includes:

- The conclusions of the Modification Group regarding the areas set out in the P206 Terms of Reference;
- Details of the Group's membership;
- The full results of the Assessment Procedure impact assessment; and
- Full copies of all responses to the Assessment Procedure consultation.

APPENDIX 4: REPORT PHASE CONSULTATION RESPONSES

Full copies of the consultation responses are attached as a separate document, Attachment 2.

⁶ Clarification of the meanings of the cost terms in this appendix can be found on the BSC Website at the following link:
http://www.elexon.co.uk/documents/Change_and_Implementation/Modifications_Process_-_Related_Documents/Clarification_of_Costs_in_Modification_Procedure_Reports.pdf