

Responses from P161 Assessment Consultation

Consultation issued 10 March 2004

Response Deadline 19 March 2004

Representations were received from the following parties:

No	Company	File Number	BSC Parties	Non-Parties
1.	Scottish Power	P161_AR_001	6	0
2.	Innogy	P161_AR_002	10	0
3.	Midlands Electricity	P161_AR_003	1	0
4.	Scottish and Southern	P161_AR_004	5	0
5.	National Grid	P161_AR_005	1	0
6.	Ecotricity	P161_AR_006	1	0
7.	EDF Energy	P161_AR_007	9	0
8.	British Energy	P161_AR_008	3	0
9.	BizzEnergy	P161_AR_009	1	0
10.	British Gas Trading	P161_AR_010	1	0
11.	Powergen	P161_AR_011	14	0
Total			52	0

P161_AR_001 – Scottish Power

Respondent:	<i>John W Russell (SAIC Ltd)</i>
No. of BSC Parties Represented	<i>6</i>
BSC Parties Represented	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant). Scottish Power UK plc; ScottishPower Energy Management Ltd; Scottish Power Generation Ltd; ScottishPower Energy Retail Ltd; SP transmission Ltd; SP Manweb PLC.</i>
No. of Non BSC Parties Represented	<i>0</i>
Non BSC Parties represented	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
Role of Respondent	<i>Supplier/Generator/ Trader / Consolidator / Exemptable Generator / Party Agent</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P161 would better facilitate achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i>	No	<i>Given that the present Board's size and structure was believed to represent the most efficient model for this type of organisation, the argument that increasing its size now would further objective D has not, in our view, been proven. Neither, in our view, has the claim that appointing executive directors to the BSCCo Board would increase competition in the generation, supply, sale or purchase of electricity (i.e. objective C) been adequately demonstrated.</i>
2.	Do you believe that any of the potential Alternative Modifications identified by the GSMG would better facilitate achievement of the Applicable BSC Objectives	a. No	<i>See response to Q.1</i>

Q	Question	Response	Rationale
	as compared to the Proposed Modification: a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale, state objectives, and <u>indicate preferred option</u> (if any)</i>	b. No	<i>See response to Q.1</i>
		c. No	<i>See response to Q.1</i>
3.	Do you believe that the potential Alternative Modifications identified by the GSMG would better facilitate achievement of the Applicable BSC Objectives as compared to the current Code baseline: a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale and <u>indicate preferred option</u> (if any)</i>	a. No	<i>See response to Q.1</i>
		b. No	<i>See response to Q.1</i>
		c. No	<i>See response to Q.1</i>
4.	Do you believe that there are any alternative solutions that the GSMG has not identified and that should be considered? <i>Please give rationale</i>	No	

Q	Question	Response	Rationale
5.	<p>It has been suggested that executive input into Board business and an executive presence at Board meetings would provide benefits in terms of communication (between BSCCo Executive and the Board) and scrutiny (of BSCCo by non-executive directors). In your opinion:</p> <p>a. To what extent would these benefits be delivered by requiring the relevant BSCCo executives to attend all Board meetings?</p> <p>b. To what extent would these benefits be delivered by making the relevant BSCCo executives Directors of the Board?</p> <p><i>Please give rationale</i></p>	<p>a. Fully</p>	<p><i>The ability to communicate the Board's views to the executives would be facilitated. This communication would be a minuted as an instruction to an employee.</i></p> <p><i>The Board would be able to ask for and to scrutinise reports from these executives. Their content, inclusions and omissions, would then be subject to questioning by the Board.</i></p>
		<p>b. Partially</p>	<p><i>As directors, the executives would have a right to be present, to speak and to vote at Board meetings. However, as employees they can be required to attend by the Board, their contracts of employment guaranteeing compliance with reporting requirements.</i></p>
6.	<p>Do you agree with the GSMG that the most appropriate second BSCCo executive to add to the Board (i.e. in addition to the Chief Executive) would be one holding a commercially and financially orientated role?</p> <p><i>Please give rationale</i></p>	<p>Yes</p>	<p><i>Whilst we do not consider it necessary to appoint any executives to the Board, were the proposal to be implemented, appointing an executive with a commercial and financially orientated role would further fit with the best practice model for commercially oriented companies.</i></p>
7.	<p>Do you believe that an appropriate balance between executive and non-executive views would be achieved under:</p> <p>a. The Proposed Modification?</p> <p>b. Restricted Voting Rights for Executive Directors (i.e. Option 1)?</p> <p>c. Weighted Voting Rights for Industry Directors (i.e.</p>	<p>a. Yes</p>	<p><i>There would still be a majority of non-executive members.</i></p>
		<p>b. Yes</p>	<p><i>There would still be a majority of non-executive members.</i></p>
		<p>c. Yes</p>	<p><i>There would still be a majority of non-executive members.</i></p>

Q	Question	Response	Rationale
	Option 2)? d. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i>	d. Yes	<i>There would still be a majority of non-executive members.</i>
8.	Do you believe that an appropriate balance between industry and non-industry views would be achieved under: a. The Proposed Modification? b. Restricted Voting Rights for Executive Directors (i.e. Option 1)? c. Weighted Voting Rights for Industry Directors (i.e. Option 2)? d. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i>	a. No	<i>The balance of two industry / two independent members would be lost. As the chair appoints the two independent members, this alternative would introduce a potential conflict of interest.</i>
		b. Yes	<i>This would maintain the current balance when it came to decision making.</i>
		c. No	<i>Adherence to a board structure that provides for one member, one vote, would be preferable to this alternative, which would result in an inappropriate level of power being vested in specific board members and contravene currently recognised best practice.</i>
		d. No	<i>While this would maintain the current balance between industry/non-industry views, the appropriateness of creating such a distinct group may be questionable with regard to its adherence to the principles established within the Combined Code on Corporate Governance. The main principles of Board Balance, as set out in Section A3 of the Combined Code, makes it quite clear that a board must not be structured in such a way that any small group of individuals can then dominate the board's decision making.</i>

Q	Question	Response	Rationale
9.	Do you believe that the Proposed Modification would introduce a potential conflict of roles for executive directors (i.e. between their role as managers and their role as directors)? <i>Please give rationale</i>	Yes	<i>In effect, these managers would be asked to identify their own budgetary requirements and then approve them.</i>
10.	If you believe that the Proposed Modification would introduce a conflict of roles for executive directors (i.e. between their role as managers and their role as directors), do you believe that under the potential Alternative Modifications identified by the GSMG that conflict would be avoided: a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i> <i>(NB: If you believe the Proposed Modification would not introduce a conflict of roles, and hence that this question is not relevant, please answer "Not Applicable" to this question)</i>	a. No	<i>Although the alternative proposal might help militate against the effects of such a conflict, it would not remove the potential for its occurrence.</i>
		b. No	<i>No the potential for conflict would remain as the executives would be free to exercise their voting rights at board meetings.</i>
		c. No	<i>No the potential for conflict would remain as the executives would be free to exercise their voting rights at board meetings.</i>
11.	Do you believe that the Board structure proposed under P161 would be appropriate for a non-profit company such as BSCCo? <i>Please give rationale</i>	No	<i>The cost recovery dimension renders ELEXON quite different to most other non-profit organisations and places budgetary control at the centre of this issue. While such a structure may be appropriate for many non-profit organisations it is not appropriate for BSCCo.</i>
12.	Do you believe that the Board structures of any of the potential Alternative Modifications identified by the	a. No	

Q	Question	Response	Rationale
	<p>GSMG would be appropriate for a Non-Profit company such as BSCCo?</p> <p>a. Restricted Voting Rights for Executive Directors (i.e. Option 1)?</p> <p>b. Weighted Voting Rights for Industry Directors (i.e. Option 2)?</p> <p>c. Additional Industry Directors (i.e. Option 3)?</p> <p><i>Please give rationale</i></p>	b. No	
		c. No	
13.	<p>Do you agree with the Code rights and obligations of the proposed executive directors as established by the GSMG (see Section 7)?</p> <p><i>Please give rationale</i></p>	Dependent	<p><i>This will depend on which, if any, of the proposal or alternative proposals, are adopted. The section on voting rights must be modified to reflect the specific requirements of weighted or restricted voting rights, should they be approved. However, in all other aspects, the Code rights are acceptable.</i></p>
14.	<p>Are there any further comments on P161 that you wish to make?</p>	Yes	<p><i>ScottishPower does not believe that, within the cost recovery structure of the current funding arrangements, the devolution of greater financial control to BSCCo employees would serve the best interests of the code.</i></p>

P161_AR_002 – Innogy

Respondent:	<i>Name</i>
No. of BSC Parties Represented	<i>10</i>
BSC Parties Represented	<i>RWE Trading; RWE Innogy; Innogy Co gen Ltd; Innogy Co gen Trading Ltd; npower northern Ltd; npower northern supply Ltd; npower Yorkshire Ltd; npower Yorkshire supply Ltd; npower Ltd; npower direct Ltd</i>
No. of Non BSC Parties Represented	
Non BSC Parties represented	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
Role of Respondent	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state ¹)</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P161 would better facilitate achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i>	Yes / No	Although the modification purports to bring the structure of the BSCCo Board in line with best practice, it is not obvious that it better achieves the BSC Objectives. It is not apparent why the present structure was originally put in place and what shortcomings have been identified.
2.	Do you believe that any of the potential Alternative Modifications identified by the GSMG would better facilitate achievement of the Applicable BSC Objectives as compared to the Proposed Modification: a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? b. Weighted Voting Rights for Industry Directors (i.e.	a. Yes	This option may provide a safeguard in the sensitive area of potential conflict of roles for the executive directors.
		b. No	As all directors have a fiduciary obligation to act in the best interest of the company, it is not obvious why the votes of one group of directors should have greater weighting than others.

Q	Question	Response	Rationale
	Option 2)? c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale, state objectives, and <u>indicate preferred option</u> (if any)</i>	c. Yes	If the concern is to maintain the current ratio of industry/non industry directors, the addition of more director(s) would seem a relatively cost effective way of achieving this.
3.	Do you believe that the potential Alternative Modifications identified by the GSMG would better facilitate achievement of the Applicable BSC Objectives as compared to the current Code baseline : a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale and <u>indicate preferred option</u> (if any)</i>	a. Yes / No	See answer to question 1 above.
		b. Yes / No	
		c.	
4.	Do you believe that there are any alternative solutions that the GSMG has not identified and that should be considered? <i>Please give rationale</i>	No	
5.	It has been suggested that executive input into Board business and an executive presence at Board meetings would provide benefits in terms of communication (between BSCCo Executive and the Board) and scrutiny (of BSCCo by non-executive directors). In your opinion: a. To what extent would these benefits be delivered by	a. Not at all / Partially / Fully	The input should be the same regardless of the status of the attendees.

Q	Question	Response	Rationale
	requiring the relevant BSCCo executives to attend all Board meetings? b. To what extent would these benefits be delivered by making the relevant BSCCo executives Directors of the Board? <i>Please give rationale</i>	b. Not at all / Partially / Fully	The input should be the same regardless of the status of the attendees.
6.	Do you agree with the GSMG that the most appropriate second BSCCo executive to add to the Board (i.e. in addition to the Chief Executive) would be one holding a commercially and financially orientated role? <i>Please give rationale</i>	Yes	If there were a requirement for executives to be added, it would seem that one holding a senior commercial and financial position within Elexon would possess the most appropriate skills and hold the possess the right level of responsibility.
7.	Do you believe that an appropriate balance between executive and non-executive views would be achieved under:	a. / No	See answer to question 1 above
	a. The Proposed Modification?	b. Yes	See answer to question 1 above
	b. Restricted Voting Rights for Executive Directors (i.e. Option 1)?	c. No	See answer to question 1 above
	c. Weighted Voting Rights for Industry Directors (i.e. Option 2)?	d. Yes	See answer to question 1 above
8.	Do you believe that an appropriate balance between industry and non-industry views would be achieved under:	a. No	See answer to question 1 above
	a. The Proposed Modification?	b. Yes	See answer to question 1 above

Q	Question	Response	Rationale
	Option 1)? c. Weighted Voting Rights for Industry Directors (i.e. Option 2)? d. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i>	c. No	See answer to question 1 above
		d. Yes	See answer to question 1 above
9.	Do you believe that the Proposed Modification would introduce a potential conflict of roles for executive directors (i.e. between their role as managers and their role as directors)? <i>Please give rationale</i>	Yes / No	It should not, but it may have been this concern that resulted in the present structure of the BSC Board.
10.	If you believe that the Proposed Modification would introduce a conflict of roles for executive directors (i.e. between their role as managers and their role as directors), do you believe that under the potential Alternative Modifications identified by the GSMG that conflict would be avoided: a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i> <i>(NB: If you believe the Proposed Modification would not introduce a conflict of roles, and hence that this question is not relevant, please answer "Not Applicable" to this question)</i>	a. Yes / No / Not Applicable	
		b. Yes / No / Not Applicable	
		c. Yes / No / Not Applicable	

Q	Question	Response	Rationale
11.	Do you believe that the Board structure proposed under P161 would be appropriate for a non-profit company such as BSCCo? <i>Please give rationale</i>	Yes / No	The test is not it's appropriateness, but whether the proposed modification better achieves the applicable BSC objectives.
12.	Do you believe that the Board structures of any of the potential Alternative Modifications identified by the GSMG would be appropriate for a Non-Profit company such as BSCCo? a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i>	a. Yes / No	See answer to Question 11
		b. Yes / No	See answer to Question 11
		c. Yes / No	See answer to Question 11
13.	Do you agree with the Code rights and obligations of the proposed executive directors as established by the GSMG (see Section 7)? <i>Please give rationale</i>	Yes	
14.	Are there any further comments on P161 that you wish to make?	No	

P161_AR_003 – Midlands Electricity

Good Morning,

Midlands Electricity (formally Aquila Networks) would like to return a response of 'No Comment' to P161 - Assessment Consultation.

Regards,

Deborah Hayward
Distribution Support Office &
Deregulation Control Group
Midlands Electricity

P161_AR_004 – Scottish and Southern

Dear Sirs,

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

In relation to the fourteen questions contained within your note of 10th March 2004, and the associated Assessment Consultation for P161, we have the following comments to make:-

Q1 Do you believe Proposed Modification P161 would better facilitate achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).

No. The case has fundamentally not been made by the Proposer, Elexon or the GSMG.

The justification for the Modification notes that a review (a full copy of which, we note, has not been provided to BSC Parties - why not?) the terms of reference for which have not been made available to BSC Parties, has "concluded that the present arrangements do not fit any best practice model, [and] are un-commercial".

It was our understanding that BSCCo is a not-for-profit organisation, so therefore it is "un-commercial", based on the definition of "commercial" (in the Concise Oxford Dictionary, 9th Edition) as being; "1, of engaged in, or concerned with, commerce 2 having profit as a primary aim rather than artistic etc. value; philistine".

Given this (not-for-profit basis) we note that the opening line of Section 1, part A "The Board - Main Principle" of the "Combined Code on Corporate Governance" which states that "The board's role is to provide entrepreneurial leadership of the company". A not-for-profit organisation is not "entrepreneurial".

The justification goes onto say that in addition to "un-commercial", the current arrangements "constrict communication and understanding between the Board and the Executive team". This we find, fundamentally, to be flawed. We can see absolutely no reason as to why having the two positions proposed (i.e. the Chief Executive and the Commercial & Financial Director) formal as members of the Board (i.e. Board Directors) as opposed to required to attend in

person (i.e. Attendees) will improve communication and understanding. In both cases the two positions proposed will be physically sitting in the same room, taking part in the deliberations etc., yet the Proposer suggests if they do this as Board Directors they somehow communicate better and have a better understanding than if they were Attendees.

Furthermore, in respect of the reference to the "Combined Code on Corporate Governance" in the justification for the Modification it is our understanding that this Combined Code is aimed, as guidance only, at those companies who are listed on the Stock Exchange, and that:-

- a) compliance with the Combined Code is not mandatory on any company (it being based; as noted on page 1, paragraph 4, of the Combined Code; on a 'comply or explain' basis which permits even the largest Company in the UK to have a wholly non-executive Board structure, akin to that used by BSCCo, if it wishes and which, of itself, does not breach the Combined Code); and
- b) the Combined Code is not applicable to all companies in the UK, irrespective of size or function; i.e. it does not 'apply' to small, unlisted, not-for-profit companies; it being noted, on page 2, paragraph 6, of the Combined Code, that "smaller listed companies, in particular those new to listing, may judge that some of the provisions are disproportionate or less relevant in their case. Some of the provisions do not apply to companies below FTSE 350".

In addition, in regard to the assertion by the Proposer that P161 would better achieve BSC Objective (d) "through a reduction in the costs and an increase in the efficiency of BSCCo" we find this to be totally unproven and unjustified. The comment, from Elexon, in section 8.1.2 of the Consultation Document, that "the non-executive directors could be significantly more empowered, through a better appreciation of how the business is being run, to challenge the plans, performance and costs of BSCCo" is also totally unproven and unjustified.

As was indicated at the February Panel meeting the hurdle that neither the Proposer, or Elexon, has been able to prove, or justify, is why having the two proposed positions attending the Board as Directors, as opposed to Attendees, is 'better' (in any quantifiable way) or that it results in "a reduction in the costs and an increase in the efficiency of BSCCo".

As to the suggested bullet point benefits alluded to in section 8.1.2 of the Consultation Document, we find these to be weak, unproven and unjustified in any quantifiable sense. How exactly, for example, is succession planning for BSCCo better facilitated by this Modification that could not be achieved by having the two positions proposed as Attendees? Equally, how exactly, for example, would non-executive Directors be more effective in the challenging of BSCCo that could not be achieved by having the two positions proposed as Attendees?

A supplementary rationale for why this Proposed Modification should not be made is clearly laid out in section 8.1.1 of the Consultation Document.

Finally we note the statement from the Authority and DTI, contained in section 3.2 of the Consultation Document, that "The fact that the Board will be non-executive, and include representatives of those paying BSCCo fees, should reassure participants that there will be sufficient transparency, scrutiny and control of costs." The logical conclusion from this is that a Board that is not 'non-executive' (by virtue of having executive members, all be it in a minority) will not be sufficiently transparent or provide the scrutiny and control of costs required and cannot, therefore, be said to better facilitate achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).

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

Q2 Do you believe that any of the potential Alternative Modifications identified by the GSMG would better facilitate achievement of the Applicable BSC Objectives as compared to the Proposed Modification:

- a. **Restricted Voting Rights for Executive Directors (i.e. Option 1)?** No
- b. **Weighted Voting Rights for Industry Directors (i.e. Option 2)?** No
- c. **Additional Industry Directors (i.e. Option 3)?** No

Please give rationale, state objectives, and indicate preferred option (if any).

Yes, Option 4, for the reasons outlined in our response to Q1 above. We note that there are "no legal restrictions on prohibiting executive directors from voting".

Q3 Do you believe that the potential Alternative Modifications identified by the GSMG would better facilitate achievement of the Applicable BSC Objectives as compared to the current Code baseline:

- a. **Restricted Voting Rights for Executive Directors (i.e. Option 1)?** No
- b. **Weighted Voting Rights for Industry Directors (i.e. Option 2)?** No
- c. **Additional Industry Directors (i.e. Option 3)?** No

Please give rationale and indicate preferred option (if any).

No. For the reasons outlined in our response to Q1 above.

Q4 Do you believe that there are any alternative solutions that the GSMG has not identified and that should be considered? Please give rationale.

No.

Q5 It has been suggested that executive input into Board business and an executive presence at Board meetings would provide benefits in terms of communication (between BSCCo Executive and the Board) and scrutiny (of BSCCo by non-executive directors). In your opinion:

a. To what extent would these benefits be delivered by requiring the relevant BSCCo executives to attend all Board meetings? Whilst we question if the 'benefits' quantifiably exist, if they do then we see no reason why they cannot be 'Fully' achieved by (a).

b. To what extent would these benefits be delivered by making the relevant BSCCo executives Directors of the Board? Whilst we question if the 'benefits' quantifiably exist, if they do then we see no reason why they cannot be 'Fully' achieved by (a). Please give rationale

For the reasons outlined in our response to Q1 above.

Q6 Do you agree with the GSMG that the most appropriate second BSCCo executive to add to the Board (i.e. in addition to the Chief Executive) would be one holding a commercially and financially orientated role? Please give rationale.

As an Attendees Yes, as a Board Director, No. For the reasons outlined in our response to Q1 above.

Q7 Do you believe that an appropriate balance between executive and non-executive views would be achieved under:

a. The Proposed Modification? No

b. Restricted Voting Rights for Executive Directors (i.e. Option 1)? No

c. Weighted Voting Rights for Industry Directors (i.e. Option 2)? No

d. Additional Industry Directors (i.e. Option 3)? No

Please give rationale.

For the reasons outlined in our response to Q1 above.

Q8 Do you believe that an appropriate balance between industry and non-industry views would be achieved under:

- a. The Proposed Modification? No**
- b. Restricted Voting Rights for Executive Directors (i.e. Option 1)? No**
- c. Weighted Voting Rights for Industry Directors (i.e. Option 2)? No**
- d. Additional Industry Directors (i.e. Option 3)? No**

Please give rationale.

For the reasons outlined in our response to Q1 above.

Q9 Do you believe that the Proposed Modification would introduce a potential conflict of roles for executive directors (i.e. between their role as managers and their role as directors)? Please give rationale.

Yes. For the reasons outlined in our response to Q1 above.

Q10 If you believe that the Proposed Modification would introduce a conflict of roles for executive directors (i.e. between their role as managers and their role as directors), do you believe that under the potential Alternative Modifications identified by the GSMG that conflict would be avoided:

- a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? No**
- b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? No**
- c. Additional Industry Directors (i.e. Option 3)? No**

Please give rationale (NB: If you believe the Proposed Modification would not introduce a conflict of roles, and hence that this question is not relevant, please answer "Not Applicable" to this question).

Option 4 would go some way to addressing the 'conflict of interest' concern. We note that there are "no legal restrictions on prohibiting executive directors from voting".

Q11 Do you believe that the Board structure proposed under P161 would be appropriate for a non-profit company such as BSCCo? Please give rationale.

No. For the reasons outlined in our response to Q1 above.

Q12 Do you believe that the Board structures of any of the potential Alternative Modifications identified by the GSMG would be appropriate for a Non-Profit company such as BSCCo?

a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? No

b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? No

c. Additional Industry Directors (i.e. Option 3)? No

Please give rationale.

Yes, Option 4, for the reasons outlined in our response to Q1 above. We note that there are "no legal restrictions on prohibiting executive directors from voting".

Q13 Do you agree with the Code rights and obligations of the proposed executive directors as established by the GSMG (see Section 7)?

Please give rationale.

No. We note there is no detail provided for the [*] in Table A 'Removal' "by NGT as 'Shareholder'*".

Q14 Are there any further comments on P161 that you wish to make?

Nothing further at this time.

Regards

Garth Graham
Scottish and Southern Energy plc

P161_AR_005 - National Grid

Respondent:	Kevin Rendell (National Grid Transco)
No. of BSC Parties Represented	1
BSC Parties Represented	National Grid Company
No. of Non BSC Parties Represented	0
Non BSC Parties represented	
Role of Respondent	Transmission System Operator

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P161 would better facilitate achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i>	Yes	National Grid believes that the proposed modification will better facilitate the Applicable BSC Objectives (d) and (c). The inclusion of 2 Executive Directors as part of the Elexon Board (The Board) will increase the efficient and coordinated operation of Elexon’s role in the administration of the Balancing and Settlement Code (Objective d). Furthermore, increased financial scrutiny and budgetary control of Elexon expenditure will result from the creation of an Executive Finance Director role on the Board. This is likely to lead to a reduction in expenditure that will, in turn, result in a reduction in industry costs and reduced financial barriers to entry that could increase competition within the industry (Objective c).

Q	Question	Response	Rationale
2.	<p>Do you believe that any of the potential Alternative Modifications identified by the GSMG would better facilitate achievement of the Applicable BSC Objectives as compared to the Proposed Modification:</p> <ul style="list-style-type: none"> a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <p><i>Please give rationale, state objectives, and <u>indicate preferred option</u> (if any)</i></p>	<p>a. No</p>	<p>National Grid does not believe that, when compared to the original modification, the alternative as described in Option 1 would better facilitate the Applicable BSC Objectives.</p> <p>By restricting the voting rights of Executive Directors in relation to Board business associated with the BSCCo Budget, it would become difficult for the Board as a whole to take accountability for any financial failings of the Company. National Grid recognises that if a restriction of voting rights was imposed upon Executive Board Members, that it would seem reasonable that they would seek to obtain legal exemption from accountability for associated issues. In National Grid’s view, it would be better to have Elexon executives, who are responsible for the day to day running and financial control within the company, as part of the Board facing the full and additional accountability for financial governance that comes with Board membership.</p> <p>Without full membership of the Board (including rights to vote on financial matters) Elexon executives will only have responsibilities pertaining to their specific role within the organisation. By making them full Board members, Executives have wider and more far reaching responsibilities in relation to the budgetary control and operation of the Company. National Grid believes that Elexon executives should be subject to as great a level of accountability for the financial control of the Company as possible. This is best achieved through their full involvement in all Board matters as full Executive members of the BSCCo Board.</p> <p>It should be noted that Non-Executive Directors would still be in the majority should two Executive Directors be introduced as part of this modification.</p>

Q	Question	Response	Rationale
		<p>b. No</p>	<p>National Grid does not believe that, when compared to the original modification, the alternative as described in Option 2 would better facilitate the Applicable BSC Objectives.</p> <p>It is not clear how providing Board members, taken from the industry, with extra votes improves the efficient administration of the Balancing and Settlement arrangements. The benefit of having Directors from a range of different backgrounds (Industry, Elexon and Independent) on the Board is that they each bring a different set of skills, experiences and perspectives to help inform decisions taken by the Board. Giving Industry Board Members extra votes does nothing to increase the views or perspectives that contribute to Board debate. Considering that all Board Directors have a legal obligation to act in the interests of BSCCo rather than any industry sector, other Board, or other organisation that they happen to represent when not on BSCCo Board business, nothing can be gained by having weighted voting rights for certain Board Members depending upon their backgrounds.</p> <p>Each Board member is equally and legally accountable for the decisions and actions taken by the Board. It is not clear why some members should have a greater influence upon those decisions?</p>

Q	Question	Response	Rationale
		c. No	<p>National Grid does not believe that, when compared to the original modification, the alternative as described in Option 3 would better facilitate the Applicable BSC Objectives.</p> <p>When the Board was originally conceived, it was envisaged that the Panel would in fact be the Board. It was decided that the Panel was too large to enable efficient discharge of the duties of the Board and as such the present structure was developed. By adding further Industry members to the Board, as well as the two proposed Executive Director positions, there is a risk that the efficiency of Board decision making is negatively impacted.</p> <p>National Grid also recognises the potential difficulties in finding further Industry Panel members willing and able to undertake a role as a Board Member.</p> <p>Of all of the alternative modification proposals, National Grid believes that Option 3 better achieves the objectives of the modification when compared to options 1 and 2. Option 3 still introduces two Executive Director Roles to the Board and the benefits associated with this are fully achieved. The introduction of a third and possibly fourth Industry Director would provide the Board with a greater range of perspectives upon which to base its decisions. If the benefit of these extra views and perspectives is considered to outweigh the increased cost and risk of reduced Board efficiency resulting from further increases to Board size (over and above that originally proposed by the modification), then National Grid would support this alternative. National Grid is not convinced, based upon the arguments presented, that the benefits of this Option outweigh the associated increase in costs and potential reduction in efficiency.</p>

Q	Question	Response	Rationale
3.	<p>Do you believe that the potential Alternative Modifications identified by the GSMG would better facilitate achievement of the Applicable BSC Objectives as compared to the current Code baseline:</p> <p>a. Restricted Voting Rights for Executive Directors (i.e. Option 1)?</p> <p>b. Weighted Voting Rights for Industry Directors (i.e. Option 2)?</p> <p>c. Additional Industry Directors (i.e. Option 3)?</p> <p><i>Please give rationale and indicate preferred option (if any)</i></p>	<p>a. Yes – with qualification</p>	<p>National Grid believes that alternative (a) (Option 1) does better facilitate the Applicable BSC Objectives when compared to the existing baseline. The introduction of Executive Directors, even with restricted voting rights, is a step forward from the current position, and will inevitably result in some of the benefits that the full proposal contains.</p> <p>It should be noted that National Grid believes that the benefits of the original modification are significantly impaired through the restriction of voting rights and thus accountability for financial decisions taken by the Board.</p>
		<p>b. Yes – with qualification</p>	<p>National Grid believes that alternative (b) (Option 2) does better facilitate the Applicable BSC Objectives when compared to the existing baseline. All of the benefits of the original modification resulting from the introduction of Executive Directors are achieved. However, by weighting Industry Board Member votes the alignment of Board structure with best practice is not achieved.</p>
		<p>c. Yes – with qualification</p>	<p>National Grid believes that alternative (c) (Option 3) does better facilitate the Applicable BSC Objectives when compared to the existing baseline. The introduction of two Executive Directors and an additional Industry Non-Executive Director achieves all of the objectives and stated benefits of the original modification. It is uncertain whether the expansion of the Board membership, to the extent proposed under Option 3, would impair the efficiency</p>

Q	Question	Response	Rationale
4.	<p>Do you believe that there are any alternative solutions that the GSMG has not identified and that should be considered?</p> <p><i>Please give rationale</i></p>	No	
5.	<p>It has been suggested that executive input into Board business and an executive presence at Board meetings would provide benefits in terms of communication (between BSCCo Executive and the Board) and scrutiny (of BSCCo by non-executive directors). In your opinion:</p> <p>a. To what extent would these benefits be delivered by requiring the relevant BSCCo executives to attend all Board meetings?</p> <p>b. To what extent would these benefits be delivered by making the relevant BSCCo executives Directors of the Board?</p> <p><i>Please give rationale</i></p>	a. Partially	<p>Requiring Senior BSCCo Executive attendance at all Board meetings would improve communication between the Board and the company (National Grid believes that an invite to attend Board Meetings is already extended to some Executives). Executives would have a better understanding and thus be better able to communicate the intent of Board directives and underlying messages that came out of Board meetings. Greater understanding would allow those Executives to manage company issues in the way the Board intended.</p> <p>However, mere attendance at Board meetings would only bring some of the benefits introduced by approval of the original modification.</p> <p>As attendees, Company Executives would have no rights to speak at meetings and would be there to observe and respond to questions raised by full Board members.</p> <p>As Senior Executives they would be attending the Board in their capacity as Head of a given department or function within the company. Their views are unlikely to be sought on issues impacting upon areas outside of the responsibilities defined by their role.</p> <p>As individuals responsible for specific functions, with no overarching responsibility for other parts of the business or requirement to act in the wider interests of the company, as mere attendees, Executives will be more inclined to take a parochial view, defending their own departments actions and interests even if this is at the cost of the wider good.</p>

Q	Question	Response	Rationale
		<p>b. Fully</p>	<p>By appointing two Executive Directors to the Board, those Directors will be involved in the decision making of, and be accountable for the decisions made by, the Board. They will have had the right to engage in full discussion and debate prior to the decision being made by the Board. They will thus fully understand the logic and rational of such decisions and will be in the best position to communicate, not only the decision but the underlying rationale for the decision, to the wider company. Decisions impacting upon the operation and running of the Company will have been taken with the involvement of those responsible for the operation and day to day running of the Company. As Board members Executives will have a legal duty to take a view that looks at the interests of the wider company rather than just at the interests of the department or function that their role within the company dictates. By being full Board members, Executive Directors will be able to oversee projects and initiatives that cut across structural and organisational boundaries. Their role as full Board members will enable them to communicate the required outputs to those involved in such projects with authority and a full understanding of what the Board want. They will also have a responsibility to feed back to the other members of the Board an impartial and unbiased view of the findings of any such project. Without being full Board members there would be a tendency for Executives to report back to the Board in a manner that reflected their department in a positive light.</p>

Q	Question	Response	Rationale
6.	<p>Do you agree with the GSMG that the most appropriate second BSCCo executive to add to the Board (i.e. in addition to the Chief Executive) would be one holding a commercially and financially orientated role?</p> <p><i>Please give rationale</i></p>	Yes	<p>National Grid believes that the second BSCCo Executive to be added to the Board should be the most senior financial post holder within the company. The modification is predicated upon bringing the BSCCo Board in line with best practice. To appoint Executive Directors without including a Finance Director on the Board would not be in line with best practice.</p> <p>Furthermore, the modification aims to increase the scrutiny and visibility of budgetary control within the Company. National Grid believes that the most appropriate addition to the Board to enable this increased financial control would be the most senior financial post holder within the company.</p>
7.	<p>Do you believe that an appropriate balance between executive and non-executive views would be achieved under:</p> <p>a. The Proposed Modification?</p> <p>b. Restricted Voting Rights for Executive Directors (i.e. Option 1)?</p> <p>c. Weighted Voting Rights for Industry Directors (i.e. Option 2)?</p> <p>d. Additional Industry Directors (i.e. Option 3)?</p> <p><i>Please give rationale</i></p>	a. Yes	<p>The proposed modification will still result in a majority of the Board being made up of Non-Executive Directors. This is appropriate for a company such as Elexon. Best Practice indicates that a Board constitution should be made up of a mixture of Executive and Non-Executive Directors. This modification clearly results in such a Board make up.</p> <p>As all Directors have a legal responsibility to act in the interests of the Company (Elexon), National Grid does not believe that the balance between Industry and Other Directors should be of great concern. The different perspectives held by Board members from different backgrounds will still exist following appointment of two Executive Directors.</p>

Q	Question	Response	Rationale
		b. No	<p>By restricting voting rights of Executive Directors in relation to Financial decisions, the balance of views would be upset when compared to non-financial related Board decisions.</p> <p>National Grid believes that it is important that Executive Directors face the same accountability for financial control, as do other Directors. By limiting their involvement in Financial decisions, Executive Directors may abdicate their responsibilities in relation to such decisions. One of the main thrusts of this modification is the increased financial control and accountability that it affords. This would fail to be achieved should Executive Directors be excluded from financial related decisions.</p>
		c. Yes	<p>As all Directors have a legal responsibility to act in the interests of the Company (Elexon), National Grid does not believe that the balance between Industry and Other Directors should be of great concern. The different perspectives held by Board members from different backgrounds will still exist following appointment of two Executive Directors.</p> <p>Weighting voting rights for Directors drawn from the wider Industry will have no beneficial effect over and above that achieved by the original modification. National Grid would not expect the weighting of voting rites for Non-Executive Directors from a wider Industry background to have an impact upon the decisions taken by the Board. All Directors, irrespective of background have a legal responsibility to act in the interests of the company (Elexon).</p>

Q	Question	Response	Rationale
		d. Yes	<p>As all Directors have a legal responsibility to act in the interests of the Company (Elexon), National Grid does not believe that the balance between Industry and Other Directors should be of great concern. The different perspectives held by Board members from different backgrounds will still exist following appointment of two Executive Directors.</p> <p>The introduction of additional Industry Directors will potentially increase the range of views and opinions that contribute to Board debate, which, if managed efficiently, can only be a good thing.</p> <p>All Directors have a legal responsibility to act in the interests of the Company (Elexon) irrespective of any other positions that they hold. As a result of this obligation, National Grid do not expect the Board to be divided based upon whether they are from a wider Industry background or from Elexon. Adding further Industry Directors to the BSCCo Board simply because they are from a wider Industry background is unlikely to make a difference to the decisions taken by the Board.</p>
8.	<p>Do you believe that an appropriate balance between industry and non-industry views would be achieved under:</p> <p>a. The Proposed Modification?</p> <p>b. Restricted Voting Rights for Executive Directors (i.e. Option 1)?</p> <p>c. Weighted Voting Rights for Industry Directors (i.e. Option 2)?</p> <p>d. Additional Industry Directors (i.e. Option 3)?</p> <p><i>Please give rationale</i></p>	a. Yes	See response to Question 7a
		b. Yes	See response to Question 7b
		c. Yes	See response to Question 7c
		d. Yes	See response to Question 7d

Q	Question	Response	Rationale
9.	<p>Do you believe that the Proposed Modification would introduce a potential conflict of roles for executive directors (i.e. between their role as managers and their role as directors)?</p> <p><i>Please give rationale</i></p>	No	<p>All Boards that contain Executive Directors require those Directors to act in the interests of the wider company irrespective of their roles and responsibilities as managers. If it is felt that Executive Directors are acting in a self interested manner, it is the responsibility of the Non-Executive Directors to act as a check to their self interest.</p> <p>The proposed modification maintains a majority of Non-Executive Directors on the Board such that, even if Executive Directors were to ignore their legal obligations as Board members, self-interested views could not prevail.</p>
10.	<p>If you believe that the Proposed Modification would introduce a conflict of roles for executive directors (i.e. between their role as managers and their role as directors), do you believe that under the potential Alternative Modifications identified by the GSMG that conflict would</p>	a. Not Applicable	
		b. Not Applicable	

Q	Question	Response	Rationale
	be avoided: a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i> <i>(NB: If you believe the Proposed Modification would not introduce a conflict of roles, and hence that this question is not relevant, please answer "Not Applicable" to this question)</i>	c. Not Applicable	
11.	Do you believe that the Board structure proposed under P161 would be appropriate for a non-profit company such as BSCCo? <i>Please give rationale</i>	Yes	The examples provided within the Consultation Report and the extract from the Saxton Bamfylde Hever Report support the view that a Board structure containing a mixture of Executive and Non-Executive Directors is appropriate for a non-profit making organisation such as Elexon.
12.	Do you believe that the Board structures of any of the potential Alternative Modifications identified by the GSMG would be appropriate for a Non-Profit company such as BSCCo? a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? b. Weighted Voting Rights for Industry Directors (i.e. Option 2)?	a. Yes	National Grid believes that the Board structure, as proposed under Options 1, 2 and 3 (a, b and c) would all be appropriate for a non-profit making organisation, but would be no better or more appropriate than the structure proposed by the original modification.
		b. Yes	See above

Q	Question	Response	Rationale
	c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i>	c. Yes	See above
13.	Do you agree with the Code rights and obligations of the proposed executive directors as established by the GSMG (see Section 7)? <i>Please give rationale</i>	Yes	National Grid believes that the rights and obligations of the proposed Executive Directors, as established by the GSMG, are wholly appropriate and consistent with the provisions in place for existing Non-Executive Directors and best practice within other organisations.
14.	Are there any further comments on P161 that you wish to make?	No	

P161_AR_006 – Ecotricity

Respondent:	<i>Philip Catherall on behalf of Ecotricity</i>
No. of BSC Parties Represented	
BSC Parties Represented	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant).</i>
No. of Non BSC Parties Represented	
Non BSC Parties represented	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
Role of Respondent	<i>Generator</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P161 would better facilitate achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i>	No	Whilst not perfect, the current arrangement works well in practice.
2.	Do you believe that any of the potential Alternative Modifications identified by the GSMG would better facilitate achievement of the Applicable BSC Objectives as compared to the Proposed Modification : a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale, state objectives, and indicate preferred option (if any)</i>	a. No	It does not demonstrate any benefits over the existing structure
		b. No	As above.
		c. No	As above. Also difficulty in finding industry directors who have the time and inclination to spend on this role.

Q	Question	Response	Rationale
3.	<p>Do you believe that the potential Alternative Modifications identified by the GSMG would better facilitate achievement of the Applicable BSC Objectives as compared to the current Code baseline:</p> <p>a. Restricted Voting Rights for Executive Directors (i.e. Option 1)?</p> <p>b. Weighted Voting Rights for Industry Directors (i.e. Option 2)?</p> <p>c. Additional Industry Directors (i.e. Option 3)?</p> <p><i>Please give rationale and <u>indicate preferred option</u> (if any)</i></p>	a. No	The current structure works. Don't change what works for the sake of change.
		b. No	As above
		c. No	As above
4.	<p>Do you believe that there are any alternative solutions that the GSMG has not identified and that should be considered?</p> <p><i>Please give rationale</i></p>	No	
5.	<p>It has been suggested that executive input into Board business and an executive presence at Board meetings would provide benefits in terms of communication (between BSCCo Executive and the Board) and scrutiny (of BSCCo by non-executive directors). In your opinion:</p> <p>a. To what extent would these benefits be delivered by requiring the relevant BSCCo executives to attend all Board meetings?</p> <p>b. To what extent would these benefits be delivered by making the relevant BSCCo executives Directors of the Board?</p> <p><i>Please give rationale</i></p>	a. This would cover this issue	Anything to do with Elexon or board performance would have to be discussed with the executives not present
		b. Not at all	This would just lead to conflicts of interest.

Q	Question	Response	Rationale
6.	Do you agree with the GSMG that the most appropriate second BSCCo executive to add to the Board (i.e. in addition to the Chief Executive) would be one holding a commercially and financially orientated role? <i>Please give rationale</i>	No	You are making the assumption that there will be an addition to the board. See above
7.	Do you believe that an appropriate balance between executive and non-executive views would be achieved under: a. The Proposed Modification? b. Restricted Voting Rights for Executive Directors (i.e. Option 1)? c. Weighted Voting Rights for Industry Directors (i.e. Option 2)? d. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i>	a. No	Don't fix what is not broken.
		b. No	As above.
		c. No	As above.
		d. No	As above.
8.	Do you believe that an appropriate balance between industry and non-industry views would be achieved under: a. The Proposed Modification? b. Restricted Voting Rights for Executive Directors (i.e. Option 1)? c. Weighted Voting Rights for Industry Directors (i.e. Option 2)? d. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i>	a. No	The proposed change would not bring any benefits for the users of the electricity balancing and settlements system.
		b. No	As above.
		c. No	As above.
		d. No	As above.

Q	Question	Response	Rationale
9.	Do you believe that the Proposed Modification would introduce a potential conflict of roles for executive directors (i.e. between their role as managers and their role as directors)? <i>Please give rationale</i>	Yes	
10.	If you believe that the Proposed Modification would introduce a conflict of roles for executive directors (i.e. between their role as managers and their role as directors), do you believe that under the potential Alternative Modifications identified by the GSMG that conflict would be avoided:	a. No	This may make things slightly better, but the best option is not to make the change at all.
	a. Restricted Voting Rights for Executive Directors (i.e. Option 1)?	b. No	This may make things slightly better, but the best option is not to make the change at all.
	b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i> <i>(NB: If you believe the Proposed Modification would not introduce a conflict of roles, and hence that this question is not relevant, please answer "Not Applicable" to this question)</i>	c. No	This may make things slightly better, but the best option is not to make the change at all.
11.	Do you believe that the Board structure proposed under P161 would be appropriate for a non-profit company such as BSCCo? <i>Please give rationale</i>	No	The board and management of a non-profit making company charged with a governance role will have different goals and objectives. The change proposal will lead to conflict within the structure
12.	Do you believe that the Board structures of any of the potential Alternative Modifications identified by the	a. No	As above.

Q	Question	Response	Rationale
	GSMG would be appropriate for a Non-Profit company such as BSCCo?	b. No	As above.
	a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i>	c. No	As above.
13.	Do you agree with the Code rights and obligations of the proposed executive directors as established by the GSMG (see Section 7)? <i>Please give rationale</i>	No	
14.	Are there any further comments on P161 that you wish to make?	Yes	There are no benefits to the industry as a whole from the proposed change. One member (NGC) should not be bringing forward proposals to make changes which just serve to increase the role of Elexon executive directors.

P161_AR_007 – EDF Energy

Respondent:	Tony Dicicco (EDF Energy)
No. of BSC Parties Represented	9
BSC Parties Represented	EDF Energy Networks (EPN) plc; EDF Energy Networks (LPN) plc EDF Energy Networks (SPN) plc; EDF Energy (Sutton Bridge Power) EDF Energy (Cottam Power) Ltd; EDF Energy (West Burton Power) Ltd; EDF Energy plc; London Energy plc; Seeboard Energy Limited
No. of Non BSC Parties Represented	0
Non BSC Parties represented	N/A
Role of Respondent	Supplier/Generator/ Trader

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P161 would better facilitate achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i>	No	We understand the argument made by the consultant's report that it would be a move towards best practice to introduce the two Executive roles to the BSCCo Board. However, we believe that this can be tempered by the understanding that BSCCo is a not-for-profit organisation. In addition, those same people already attend the Board and provide the necessary scrutiny, guidance and advice. We are concerned about the conflicts that could arise when, for example, BSCCo want their expenditure plans approving. We do not think it worthwhile getting into the complexity of prescribing various classes of voting for which the Executive members would be excluded / included. On balance we are unable to conclude that the proposal

Q	Question	Response	Rationale
			would better facilitate the BSC Objectives (c) or (d).
2.	<p>Do you believe that any of the potential Alternative Modifications identified by the GSMG would better facilitate achievement of the Applicable BSC Objectives as compared to the Proposed Modification:</p> <p>a. Restricted Voting Rights for Executive Directors (i.e. Option 1)?</p> <p>b. Weighted Voting Rights for Industry Directors (i.e. Option 2)?</p> <p>c. Additional Industry Directors (i.e. Option 3)?</p> <p><i>Please give rationale, state objectives, and <u>indicate preferred option</u> (if any)</i></p>	No	If the decision is made to put the extra Directors onto the Board then they should have equal status and hence be able to vote. Restricting their voting rights helps to address our concerns, but then we don't believe that this Modification would achieve anything worthwhile.
		No	The complexity is not justified.
		No	The Original Modification Proposal maintained an adequate majority of Non-Executive Directors. We would agree that further Non-Executive Directors would mitigate our concerns over voting power, but if may also have a detrimental impact, in terms of the efficiency of meetings.
3.	<p>Do you believe that the potential Alternative Modifications identified by the GSMG would better facilitate achievement of the Applicable BSC Objectives as compared to the current Code baseline:</p> <p>a. Restricted Voting Rights for Executive Directors (i.e. Option 1)?</p> <p>b. Weighted Voting Rights for Industry Directors (i.e. Option 2)?</p> <p>c. Additional Industry Directors (i.e. Option 3)?</p> <p><i>Please give rationale and <u>indicate preferred option</u> (if any)</i></p>	No	We are unable to conclude that the potential Alternatives will better facilitate the achievement of the BSC Objectives when compared to the original baseline.
		No	We are unable to conclude that the potential Alternatives will better facilitate the achievement of the BSC Objectives when compared to the original baseline.
		No	We are unable to conclude that the potential Alternatives will better facilitate the achievement of the BSC Objectives when compared to the original baseline.
4.	Do you believe that there are any alternative solutions that the GSMG has not identified and that should be	Yes	As a further variation of Option 3, there could be one additional Industry Director and one additional

Q	Question	Response	Rationale
	considered? <i>Please give rationale</i>		Independent Director added to redress the balance.
5.	It has been suggested that executive input into Board business and an executive presence at Board meetings would provide benefits in terms of communication (between BSCCo Executive and the Board) and scrutiny (of BSCCo by non-executive directors). In your opinion: a. To what extent would these benefits be delivered by requiring the relevant BSCCo executives to attend all Board meetings? b. To what extent would these benefits be delivered by making the relevant BSCCo executives Directors of the Board? <i>Please give rationale</i>	a. Fully	We do not follow the argument that the introduction of Executive Directors will enhance communication beyond the present arrangement, where we see it as essential that the appropriate BSCCo Executives are in attendance at BSCCo Board Meetings.
		b. Fully	In terms of communication, we see no difference or advantage if the individuals were Executive Board members.
6.	Do you agree with the GSMG that the most appropriate second BSCCo executive to add to the Board (i.e. in addition to the Chief Executive) would be one holding a commercially and financially orientated role? <i>Please give rationale</i>	Yes	If the decision was made to include the two extra Directors.
7.	Do you believe that an appropriate balance between executive and non-executive views would be achieved under: a. The Proposed Modification? b. Restricted Voting Rights for Executive Directors (i.e. Option 1)? c. Weighted Voting Rights for Industry Directors (i.e. Option 2)?	a. No	The balance may still be appropriate, but it is certainly weakened away from the Non-Exec control of the present model and therefore we do not favour it.
		b. Yes	This would be an improvement, but as expressed above, we do not favour this added complexity.
		c. No	The balance may still be appropriate, but we really do not want to see such added complexity.

Q	Question	Response	Rationale
	d. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i>	d. Yes	This would help to redress the balance back towards the present model. But see our answer at 2c. above.
8.	Do you believe that an appropriate balance between industry and non-industry views would be achieved under:	a. No	The balance may still be appropriate, but it is certainly weakened away from the Industry view of the present model and therefore we do not favour it.
	a. The Proposed Modification?	b. Yes	More so than the Proposed Modification, but we believe the balance should stay as it is.
	b. Restricted Voting Rights for Executive Directors (i.e. Option 1)?	c. No	Inappropriate
	c. Weighted Voting Rights for Industry Directors (i.e. Option 2)?	d. Yes	More so than the Proposed Modification, but we believe the balance should stay as it is.
	d. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i>		
9.	Do you believe that the Proposed Modification would introduce a potential conflict of roles for executive directors (i.e. between their role as managers and their role as directors)? <i>Please give rationale</i>	Yes	As Executive Directors they would be primarily answerable to the Shareholder. This may introduce new conflicts.
10.	If you believe that the Proposed Modification would introduce a conflict of roles for executive directors (i.e. between their role as managers and their role as directors), do you believe that under the potential Alternative Modifications identified by the GSMG that conflict would be avoided:	a. Yes	This places those Directors back into those previous positions for those situations when conflicts of interest could arise.
	a. Restricted Voting Rights for Executive Directors (i.e.	b. No	In our view, voting for their own proposals would be inappropriate. Restricted Voting Rights should overcome the conflicts of interest. But we do not favour this added complexity.

Q	Question	Response	Rationale
	Option 1)? b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i> <i>(NB: If you believe the Proposed Modification would not introduce a conflict of roles, and hence that this question is not relevant, please answer "Not Applicable" to this question)</i>	c. No	The conflicts would still be present.
11.	Do you believe that the Board structure proposed under P161 would be appropriate for a non-profit company such as BSCCo? <i>Please give rationale</i>	No	We are content with the present model.
12.	Do you believe that the Board structures of any of the potential Alternative Modifications identified by the GSMG would be appropriate for a Non-Profit company such as BSCCo? a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i>	a. Yes	But there is no advantage over the present arrangements.
		b. No	Too complex.
		c. Yes	Yes, it may be appropriate; it offers no advantage over the present arrangements.
13.	Do you agree with the Code rights and obligations of the proposed executive directors as established by the GSMG (see Section 7)? <i>Please give rationale</i>	Yes	These are appropriate and consistent with the non-executive directors.
14.	Are there any further comments on P161 that you wish	No	

Q	Question	Response	Rationale
	to make?		

P161_AR_008 – British Energy

Respondent:	<i>Rachel Lockley</i>
No. of BSC Parties Represented	<i>3</i>
BSC Parties Represented	British Energy Power and Energy Trading; British Energy Generation; Eggborough Power Ltd
No. of Non BSC Parties Represented	
Non BSC Parties represented	
Role of Respondent	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state²)</i>

Q	Question	Response¹	Rationale
1.	Do you believe Proposed Modification P161 would better facilitate achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i>	No	BE do not support this modification. We believe that this modification will lead to a "conflict of role" for executive directors who are charged with both presenting the case for a policy and plan and challenging and scrutinising it. We believe that industry directors should be added to the board as they are better placed to do what is best for the industry. Elexon employees should be providing sufficient information to their board under the current governance arrangements.
2.	Do you believe that any of the potential Alternative Modifications identified by the GSMG would better facilitate achievement of the Applicable BSC Objectives as compared to the Proposed Modification : a. Restricted Voting Rights for Executive Directors (i.e. Option 1)?	a. No	We do not believe that any additional executive roles should be filled by employees of ELEXON as it will lead to a conflict of role.

² Delete as appropriate – please do not use strikethrough, this is to make it easier to analyse the responses

Q	Question	Response ¹	Rationale
	b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale, state objectives, and <u>indicate preferred option</u> (if any)</i>	b. No	We do not believe that any additional executive roles should be filled by employees of ELEXON as it will lead to a conflict of role.
		c. Yes	We believe that this is a better solution as it addresses the concerns of the proposer and does not lead to any conflict of interest, which an employee of ELEXON may have.
3.	Do you believe that the potential Alternative Modifications identified by the GSMG would better facilitate achievement of the Applicable BSC Objectives as compared to the current Code baseline : a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale and <u>indicate preferred option</u> (if any)</i>	a. Yes / No	We do not believe that any additional executive roles should be filled by employees of ELEXON as it will lead to a conflict of role
	a. Restricted Voting Rights for Executive Directors (i.e. Option 1)?	b. Yes / No	We do not believe that any additional executive roles should be filled by employees of ELEXON as it will lead to a conflict of role.
	b. Weighted Voting Rights for Industry Directors (i.e. Option 2)?	c. Yes	We believe that the addition of industry directors would add experience and increased knowledge to the Board. It would also go far in balancing out the number of industry and Independent members.
4.	Do you believe that there are any alternative solutions that the GSMG has not identified and that should be considered? <i>Please give rationale</i>	No	

Q	Question	Response ¹	Rationale
5.	<p>It has been suggested that executive input into Board business and an executive presence at Board meetings would provide benefits in terms of communication (between BSCCo Executive and the Board) and scrutiny (of BSCCo by non-executive directors). In your opinion:</p> <p>a. To what extent would these benefits be delivered by requiring the relevant BSCCo executives to attend all Board meetings?</p> <p>b. To what extent would these benefits be delivered by making the relevant BSCCo executives Directors of the Board?</p> <p><i>Please give rationale</i></p>	a. Fully	By requiring relevant BSCCo executives to attend all Board Meetings this will mean that the Board will remain fully informed of all relevant information. We do not believe that by making these executives, directors that they will have any additional information to present to the Board.
		b. Not at all	We do not believe that by making these executives, directors that they will have any additional information to present to the Board than they currently do.
6.	<p>Do you agree with the GSMG that the most appropriate second BSCCo executive to add to the Board (i.e. in addition to the Chief Executive) would be one holding a commercially and financially orientated role?</p> <p><i>Please give rationale</i></p>	Yes / No	
7.	<p>Do you believe that an appropriate balance between executive and non-executive views would be achieved under:</p> <p>a. The Proposed Modification?</p> <p>b. Restricted Voting Rights for Executive Directors (i.e. Option 1)?</p> <p>c. Weighted Voting Rights for Industry Directors (i.e. Option 2)?</p> <p>d. Additional Industry Directors (i.e. Option 3)?</p>	a. No	We do not believe that any additional executive roles should be filled by employees of ELEXON as it will lead to a conflict of role.
		b. No	We do not believe that any additional executive roles should be filled by employees of ELEXON as it will lead to a conflict of role.
		c. No	We do not believe that any additional executive roles should be filled by employees of ELEXON as it will lead to a conflict of role.

Q	Question	Response ¹	Rationale
	<i>Please give rationale</i>	d. Yes	Additional industry directors would bring additional information to Board Meetings and be better placed to scrutinise any policies and plans.
8.	Do you believe that an appropriate balance between industry and non-industry views would be achieved under: a. The Proposed Modification? b. Restricted Voting Rights for Executive Directors (i.e. Option 1)? c. Weighted Voting Rights for Industry Directors (i.e. Option 2)? d. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i>	a. No	We do not believe that any additional executive roles should be filled by employees of ELEXON as it will lead to a conflict of role.
		b. No	We do not believe that any additional executive roles should be filled by employees of ELEXON as it will lead to a conflict of role.
		c. No	We do not believe that any additional executive roles should be filled by employees of ELEXON as it will lead to a conflict of role.
		d. Yes	The addition of industry directors would encapsulate aspects from all areas of the industry.
9.	Do you believe that the Proposed Modification would introduce a potential conflict of roles for executive directors (i.e. between their role as managers and their role as directors)? <i>Please give rationale</i>	Yes	
10.	If you believe that the Proposed Modification would introduce a conflict of roles for executive directors (i.e. between their role as managers and their role as directors), do you believe that under the potential Alternative Modifications identified by the GSMG that conflict would be avoided:	a. No	We do not believe that any additional executive roles should be filled by employees of ELEXON as it will lead to a conflict of role.
		b. No	We do not believe that any additional executive roles should be filled by employees of ELEXON as it will lead to a conflict of role.

Q	Question	Response ¹	Rationale
	a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i> <i>(NB: If you believe the Proposed Modification would not introduce a conflict of roles, and hence that this question is not relevant, please answer "Not Applicable" to this question)</i>	c. Yes	The addition of industry directors would encapsulate aspects from all areas of the industry.
11.	Do you believe that the Board structure proposed under P161 would be appropriate for a non-profit company such as BSCCo? <i>Please give rationale</i>	No	We do not believe that any additional executive roles should be filled by employees of ELEXON as it will lead to a conflict of role.
12.	Do you believe that the Board structures of any of the potential Alternative Modifications identified by the GSMG would be appropriate for a Non-Profit company such as BSCCo? a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i>	a. No	We do not believe that any additional executive roles should be filled by employees of ELEXON as it will lead to a conflict of role.
		b. No	We do not believe that any additional executive roles should be filled by employees of ELEXON as it will lead to a conflict of role.
		c. Yes	The addition of industry board members would bring more experience and information to the Board.
13.	Do you agree with the Code rights and obligations of the proposed executive directors as established by the GSMG (see Section 7)? <i>Please give rationale</i>	No	We do not believe that any additional executive roles should be filled by employees of ELEXON as it will lead to a conflict of role.

Q	Question	Response ¹	Rationale
14.	Are there any further comments on P161 that you wish to make?	No	

P161_AR_009 – BizzEnergy

Respondent:	<i>Keith Munday BizzEnergy</i>
No. of BSC Parties Represented	<i>1</i>
BSC Parties Represented	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant).</i>
No. of Non BSC Parties Represented	
Non BSC Parties represented	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
Role of Respondent	<i>Supplier</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P161 would better facilitate achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i>	No	Elexon is a service provider under the Code. The Board has been specifically constituted to provide independent oversight of it. The proposed change would confuse these roles with a significant loss of efficiency under BSC operations.
2.	Do you believe that any of the potential Alternative Modifications identified by the GSMG would better facilitate achievement of the Applicable BSC Objectives as compared to the Proposed Modification : a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale, state objectives, and <u>indicate preferred option</u> (if any)</i>	a. No	It diminishes the deficiencies of the proposal but is not better than the status quo.
		b. No	As above.
		c. No	It has not been demonstrated that there is anything deficient with the current Board structure.

Q	Question	Response	Rationale
3.	<p>Do you believe that the potential Alternative Modifications identified by the GSMG would better facilitate achievement of the Applicable BSC Objectives as compared to the current Code baseline:</p> <p>a. Restricted Voting Rights for Executive Directors (i.e. Option 1)?</p> <p>b. Weighted Voting Rights for Industry Directors (i.e. Option 2)?</p> <p>c. Additional Industry Directors (i.e. Option 3)?</p> <p><i>Please give rationale and <u>indicate preferred option</u> (if any)</i></p>	a. No	See 2 (a)
		b. No	See 2 (b)
		c. No	See 2 (c)
4.	<p>Do you believe that there are any alternative solutions that the GSMG has not identified and that should be considered?</p> <p><i>Please give rationale</i></p>	No	
5.	<p>It has been suggested that executive input into Board business and an executive presence at Board meetings would provide benefits in terms of communication (between BSCCo Executive and the Board) and scrutiny (of BSCCo by non-executive directors). In your opinion:</p> <p>a. To what extent would these benefits be delivered by requiring the relevant BSCCo executives to attend all Board meetings?</p> <p>b. To what extent would these benefits be delivered by making the relevant BSCCo executives Directors of the Board?</p> <p><i>Please give rationale</i></p>	a. Fully	The proviso here is that the Board should retain the right to discuss matters privately that directly concerned performance of Elexon and its personnel.
		b. Not at all	Lines of communication would be confused because the Elexon personnel would be under conflicting objectives.

Q	Question	Response	Rationale
6.	Do you agree with the GSMG that the most appropriate second BSCCo executive to add to the Board (i.e. in addition to the Chief Executive) would be one holding a commercially and financially orientated role? <i>Please give rationale</i>	N/a	Given the remarks above, we do not consider this appropriate. If it were simply a matter of attendance the CFO would be the most logical second choice.
7.	Do you believe that an appropriate balance between executive and non-executive views would be achieved under: a. The Proposed Modification? b. Restricted Voting Rights for Executive Directors (i.e. Option 1)? c. Weighted Voting Rights for Industry Directors (i.e. Option 2)? d. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i>	a. No	There is nothing deficient with the current structure.
		b. No	As above.
		c. No	As above.
		d. No	As above.
8.	Do you believe that an appropriate balance between industry and non-industry views would be achieved under: a. The Proposed Modification? b. Restricted Voting Rights for Executive Directors (i.e. Option 1)? c. Weighted Voting Rights for Industry Directors (i.e. Option 2)? d. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i>	a. No	Change along the proposed lines would distort the balance achieved under the current arrangements.
		b. No	Change along the proposed lines would distort the balance achieved under the current arrangements.
		c. No	Change along the proposed lines would distort the balance achieved under the current arrangements.
		d. No	Change along the proposed lines would distort the balance achieved under the current arrangements.

Q	Question	Response	Rationale
9.	Do you believe that the Proposed Modification would introduce a potential conflict of roles for executive directors (i.e. between their role as managers and their role as directors)? <i>Please give rationale</i>	Yes	Board governance has been specially crafted for a not for profit entity, and reflecting the unique position of Elexon relative to its shareholder.
10.	If you believe that the Proposed Modification would introduce a conflict of roles for executive directors (i.e. between their role as managers and their role as directors), do you believe that under the potential Alternative Modifications identified by the GSMG that conflict would be avoided:	a. No	The deficiencies inherent with P161 would be mitigated.
	a. Restricted Voting Rights for Executive Directors (i.e. Option 1)?	b. No	The deficiencies inherent with P161 would be mitigated.
	b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i> <i>(NB: If you believe the Proposed Modification would not introduce a conflict of roles, and hence that this question is not relevant, please answer "Not Applicable" to this question)</i>	c. No	The deficiencies inherent with P161 would be mitigated.
11.	Do you believe that the Board structure proposed under P161 would be appropriate for a non-profit company such as BSCCo? <i>Please give rationale</i>	No	There should be a clear separation between the Board and management.
12.	Do you believe that the Board structures of any of the potential Alternative Modifications identified by the	a. No	As above.

Q	Question	Response	Rationale
	GSMG would be appropriate for a Non-Profit company such as BSCCo?	b. No	As above.
	a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i>	c. No	As above.
13.	Do you agree with the Code rights and obligations of the proposed executive directors as established by the GSMG (see Section 7)? <i>Please give rationale</i>	No	We do not consider that a case for change has been made.
14.	Are there any further comments on P161 that you wish to make?	Yes	We do not consider that a case for change has been made. We also consider it inappropriate for NGC to bring forward changes that impact on BSC governance.

P161_010 – British Gas Trading

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

Q	Question	Response	Rationale
1.	<p>Do you believe Proposed Modification P161 would better facilitate achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i></p>	No	<p>BGT do not believe the proposed modification better facilitates the Applicable BSC Objectives. BGT are unsure why the shortcomings identified by Saxton Bamfleyde Hever (the report) can not be resolved within the current governance structure. BGT believe that there is insufficient justification for change and therefore BGT do not believe that P161 will better facilitate efficiency in the administration of the BSC.</p> <p>BGT also note the extract from the consultation document, subsection 3.2 explains the Ofgem/DTI rationale for creating the current board structure. The extract states</p> <p>“The fact that the Board will be non-executive, and include representatives of those paying BSCCo fees, should reassure participants that there will be sufficient transparency, scrutiny and control of costs.”</p>

Q	Question	Response	Rationale
			<p>BGT is concerned that the proposed structure will dilute the executive/non executive split as compared against the current board structure. Furthermore it will also dilute the industry/non industry representation. This appears to have been a key consideration when the current board structure was agreed. BGT agree with the original rationale and believe it is essential that the stakeholders who fund BSCCo have sufficient transparency, scrutiny and control of costs. Whilst BGT do not believe that the proposed structure would diminish the level of transparency provided, BGT believe it could reduce the scrutiny and control of costs that is provided under the current structure.</p>
2.	<p>Do you believe that any of the potential Alternative Modifications identified by the GSMG would better facilitate achievement of the Applicable BSC Objectives as compared to the Proposed Modification:</p> <ul style="list-style-type: none"> a. Restricted Voting Rights for Executive Directors (i.e. Option 1)? b. Weighted Voting Rights for Industry Directors (i.e. Option 2)? c. Additional Industry Directors (i.e. Option 3)? <p><i>Please give rationale, state objectives, and <u>indicate preferred option</u> (if any)</i></p>	a. Yes	<p>BGT believes Alternative (a) is better than the original modification. BGT believes restricted voting rights for executive directors addresses the main concern that BGT has in respect of accountability and control of costs. However the consultation is fairly limited in terms of details on how the alternative would work. BGT believes the proposal would need to be 'worked up' prior to it being presented to the BSC Panel with a recommendation.</p> <p>Whilst BGT concurs with the modification group that the alternative is better than the original, BGT is unconvinced that any of the alternatives will better facilitate the Applicable BSC Objectives. Despite the reservations, BGT has a preference for Option A.</p>

Q	Question	Response	Rationale
		b. Yes	<p>BGT agrees with the modification group that Alternative (b) is preferable to the original modification. On the positive side providing Industry Directors with weighted voting rights will ensure that the current balance of industry representation on the board is maintained. However BGT is concerned that the practice of weighted voting is a relatively unusual and the impact of this would need to be fully considered by the modification group.</p> <p>BGT has the same concerns with this option as with the previous alternative in that only a high level view has been provided. This would need to be further developed before it was presented to the BSC Panel.</p>
		c. Yes	<p>BGT also believes Alternative (c) is an improvement on the original modification. This provides an alternative method of maintaining the balance between industry and non-industry representation.</p> <p>However BGT does note the potential problems associated with this option. The problems include additional costs that would be incurred due to the expanded membership. The second problem relates to the limited number of potential candidates that could be selected to sit on the board. The industry board members are selected from the industry panel members. If none of the remaining industry elected panel members wanted to sit on the board, a new selection process would need to be developed.</p>

Q	Question	Response	Rationale
5.	<p>It has been suggested that executive input into Board business and an executive presence at Board meetings would provide benefits in terms of communication (between BSCCo Executive and the Board) and scrutiny (of BSCCo by non-executive directors). In your opinion:</p> <p>a. To what extent would these benefits be delivered by requiring the relevant BSCCo executives to attend all Board meetings?</p> <p>b. To what extent would these benefits be delivered by making the relevant BSCCo executives Directors of the Board?</p> <p><i>Please give rationale</i></p>	a. Fully	<p>BGT understand that due to the disconnect that has been identified the Executive team now have an open invite to the Board meetings. Furthermore BGT believe that the open invitation is being utilised by the Executive team when it is appropriate. BGT is unsure how appointing 2 Executive Directors can further enhance communications between the Board and Executive. Especially when 1 of the proposed Executive Directors already sits on the board as an attendee (Chief Executive) and the Chief Finance Officer (CFO) has an open invitation.</p>
		b. Partially	<p>BGT note the suggested benefits derived from appointing 2 Executive Directors and the enhanced scrutiny that would result. BGT acknowledge the responsibility under law that the 2 Directors would have as members of the Board and the suggestion that enhanced scrutiny would result. BGT believe there may be some merit in these arguments and BGT is supportive of what the modification is trying to achieve which is to deliver greater financial and operational control of the BSC.</p> <p>However BGT is unsure why these benefits could not be achieved under the current governance model. If the Executive team is attending Board meetings, BGT would expect the Board to fully engage those closest to the operational activities of the BSC (the executive) in their discussions. The Executive team attending the meetings as attendees should ensure that there is an appropriate level of scrutiny of BSCCo by non-executive Directors.</p>
6.	Do you agree with the GSMG that the most appropriate	Yes	The modification is predicated on the basis of increasing greater

Q	Question	Response	Rationale
	<p>second BSCCo executive to add to the Board (i.e. in addition to the Chief Executive) would be one holding a commercially and financially orientated role?</p> <p><i>Please give rationale</i></p>		<p>financial scrutiny of BSCCo operations. It would appear perverse to appoint a member of the Executive team other than the CFO. Therefore BGT concurs with the view of the modification group that the additional position (if created) should be filled by the CFO.</p>
7.	<p>Do you believe that an appropriate balance between executive and non-executive views would be achieved under:</p> <p>a. The Proposed Modification?</p> <p>b. Restricted Voting Rights for Executive Directors (i.e. Option 1)?</p> <p>c. Weighted Voting Rights for Industry Directors (i.e. Option 2)?</p> <p>d. Additional Industry Directors (i.e. Option 3)?</p> <p><i>Please give rationale</i></p>	<p>a. No</p> <p>b. Yes</p> <p>c. Yes</p> <p>d. Yes</p>	<p>The board structure proposed by P161 fundamentally changes the balance between the executive and non-executive board members. BGT do not believe that an appropriate balance of views could be achieved under the proposed modification.</p> <p>BGT believes a structure with restricted voting may provide an appropriate balance between executive and non-executive views. However this is dependent upon the scope of the restriction and the scope of the board's decision-making powers</p>
8.	<p>Do you believe that an appropriate balance between industry and non-industry views would be achieved under:</p> <p>a. The Proposed Modification?</p> <p>b. Restricted Voting Rights for Executive Directors (i.e. Option 1)?</p> <p>c. Weighted Voting Rights for Industry Directors (i.e. Option 2)?</p> <p>d. Additional Industry Directors (i.e. Option 3)?</p>	<p>a. No</p>	<p>BGT is concerned that the views of industry representation on the board would be substantially diluted under the proposed modification. As BSC Parties fund BSCCo, BGT believe it is essential that board members with industry knowledge/expertise feed into and provide an industry perspective on all discussions at board level, especially those relating to budgets.</p> <p>BGT also has concerns about the lack of accountability that exists under the current structure. BGT believe the level of</p>

Q	Question	Response	Rationale
	<i>Please give rationale</i>		accountability would be further reduced by the proposed structure.
		b. Yes/No	This model also dilutes the views of industry representatives, however the scale and importance of that dilution depends upon the restriction on voting rights. Without fully understanding the responsibilities and the scale of the voting of the Board it is difficult to state how appropriate the change is. BGT's primary concern is the ability of the executive directors to vote on the approval of the budget. BGT's concerns about the reduction in accountability also exist under this model.
		c. Yes	This option maintains the balance that is present under the current structure. However from a good governance perspective BGT is unsure of the desirability of providing additional weighting to the votes of industry representatives.
		d. Yes	BGT believe this option would provide an appropriate balance of views. However BGT is concerned about the problems identified in the response to question 2 (c).
9.	Do you believe that the Proposed Modification would introduce a potential conflict of roles for executive directors (i.e. between their role as managers and their role as directors)? <i>Please give rationale</i>	Yes	BGT believes that the proposed modification does introduce a potential conflict of roles. BGT also notes the section of the Higgs report that highlights concerns about this conflict. This suggests that the counter argument expressed by ELEXON in the documentation referencing the statutory duty of directors to scrutinise may be undermined.
10.	If you believe that the Proposed Modification would introduce a conflict of roles for executive directors (i.e. between their role as managers and their role as directors), do you believe that under the potential	a. Yes	If the restricted voting rights were implemented on the basis of executive members of the board being excluded from voting on the annual budget and remuneration committee, no conflict of interests would exist.

Q	Question	Response	Rationale
	<p>Alternative Modifications identified by the GSMG that conflict would be avoided:</p> <p>a. Restricted Voting Rights for Executive Directors (i.e. Option 1)?</p> <p>b. Weighted Voting Rights for Industry Directors (i.e. Option 2)?</p> <p>c. Additional Industry Directors (i.e. Option 3)?</p> <p><i>Please give rationale</i> <i>(NB: If you believe the Proposed Modification would not introduce a conflict of roles, and hence that this question is not relevant, please answer "Not Applicable" to this question)</i></p>	b. No	Under this option, the executive directors on the board would still have a vote on the annual budget and potentially remuneration committee, which may create a conflict of interest. The effect of which may be countered by the additional voting rights of the Industry Directors but a conflict may still exist.
		c. No	Under this option, the executive directors on the board would still have a vote on the annual budget and potentially the remuneration committee then a conflict of interest may exist. The effect of which may be countered by the additional voting rights of the Industry Directors but a conflict may still exist.
11.	<p>Do you believe that the Board structure proposed under P161 would be appropriate for a non-profit company such as BSCCo?</p> <p><i>Please give rationale</i></p>	No	BGT does not support the original modification and has a number of concerns about the proposed structure. Due to the concerns expressed previously BGT do not believe the structure is appropriate for BSCCo.
12.	<p>Do you believe that the Board structures of any of the potential Alternative Modifications identified by the GSMG would be appropriate for a Non-Profit company such as BSCCo?</p> <p>a. Restricted Voting Rights for Executive Directors (i.e. Option 1)?</p> <p>b. Weighted Voting Rights for Industry Directors (i.e. Option 2)?</p> <p>c. Additional Industry Directors (i.e. Option 3)?</p> <p><i>Please give rationale</i></p>	a. Potentially	BGT believes a structure with restricted voting rights may be appropriate for BSCCo. This is dependent upon the scope of the restriction and the scope of the board's decision-making powers.
		b. No	On the basis of the concerns expressed previously.
		c. No	On the basis of the concerns expressed previously.
13.	<p>Do you agree with the Code rights and obligations of the proposed executive directors as established by the</p>	Yes	BGT agree with the proposed obligations, rights and processes as detailed in section 7 of the consultation document.

Q	Question	Response	Rationale
	GSMG (see Section 7)? <i>Please give rationale</i>		
14.	Are there any further comments on P161 that you wish to make?	No	

P161_AR_011 – Powergen

Respondent:	<i>Powergen</i>
No. of BSC Parties Represented	<i>14</i>
BSC Parties Represented	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant). Powergen UK plc, Powergen Retail Limited, Cottam Development Centre Limited, TXU Europe Drakelow Limited, TXU Europe Ironbridge Limited, TXU Europe High Marnham Limited, Midlands Gas Limited, Western Gas Limited, TXU Europe (AHG) Limited, TXU Europe (AH Online) Limited, Citigen (London) Limited, Severn Trent Energy Limited (known as TXU Europe (AHST) Limited), TXU Europe (AHGD) Limited and Ownlabel Energy</i>
No. of Non BSC Parties Represented	<i>0</i>
Non BSC Parties represented	<i>0</i>
Role of Respondent	Supplier, Generator, Trader and Exemptable Generator

Q	Question	Response	Rationale
----------	-----------------	-----------------	------------------

Q	Question	Response	Rationale
1.	<p>Do you believe Proposed Modification P161 would better facilitate achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i></p>	<p>No</p>	<p>Powergen welcome the stated aims of the proposed modification. Improved communication and commercial challenge within the BSCCo would indeed be beneficial. However we are unconvinced that the benefits cannot be achieved under the current Board structure. Furthermore we are concerned that the change in the balance of the Board will be detrimental to the decision making process. We believe that the perspective of stakeholders acts as the principle driver to ensure the efficiencies to be gained from commercial challenge. Where additional commercial input is required we would expect the CEO and Financial Director of ELEXON to attend meetings and assist the Board to the best of their ability. It is our understanding that since the report by Saxton Bamfylde Hever this has become standard practice. Whilst welcoming these improvements we question whether further value can be assured by altering the structure of the Board.</p> <p>The original Board structure deliberately excluded executives. We cannot accept the argument that the omission of executives from the code was merely an oversight. Section C.4 of the code not only confirms how the Board should be comprised but also expressly prohibits the Chief Executive from being a Director. The intention of such provisions could only have been to provide assurance as to the level of transparency and neutrality of the Board. This view is supported by the Ofgem/Dti conclusions document which followed the consultation on the design of NETA...</p> <p><i>"The fact that the board will be non-executive, and include representatives of those paying BSCCo fees, should reassure</i></p>

Q	Question	Response	Rationale
			<p><i>participants that there will be sufficient transparency, scrutiny and control of costs” (Ofgem/Dti Conclusions Document)</i></p> <p>The logical assumption must be that adding executive Directors will dilute the input of those Directors with an industry perspective and as a result, lessen the assurance which had been enshrined under the original Board structure. A reduction in assurance could damage confidence in the operation of BSCCo and would therefore have a negative effect on Objective ‘C’.</p> <p>The unique nature of the BSCCo only serves to heighten our concerns about the potential for conflict of interest. In a standard commercial organisation the Board are ultimately accountable to their shareholders. In the case of ELEXON, the only shareholder is NGC who (as signatories of the BSC) are restricted from interfering with the BSCCo except under express provisions in the BSC. Such provisions do not include the removal of Board members and as such the ELEXON Board is effectively accountable only to itself. However participants can take comfort that the CEO along with other ELEXON employees are accountable to the Board. Currently this acts as a vital mechanism to ensure that the BSCCo maintain an appropriate structure which safeguards accountability. Ultimately under the proposed modification this safeguard would be lost. We therefore consider the proposed structure to be inappropriate for the BSCCo.</p>
2.	Do you believe that any of the potential Alternative Modifications identified by the GSMG would better facilitate achievement of the Applicable BSC Objectives as compared	a. Yes	This would limit the potential conflict of interest on certain financial matters and as such it would better achieve the applicable BSC objective compared to the proposed modification.

Q	Question	Response	Rationale
	<p>to the Proposed Modification:</p> <p>a. Restricted Voting Rights for Executive Directors (i.e. Option 1)?</p> <p>b. Weighted Voting Rights for Industry Directors (i.e. Option 2)?</p> <p>c. Additional Industry Directors (i.e. Option 3)?</p> <p><i>Please give rationale, state objectives, and <u>indicate preferred option</u> (if any)</i></p>	b. Yes	This would maintain the balance of the Board perspective and would therefore reflect the original intention to provide assurance to participants (as expressed by Ofgem/Dti). This option would also mitigate against the potential effects caused by conflict of interest.
		c. Yes	This option would also preserve the existing balance and provide assurance that the potential for conflict of interest is minimised. It must be noted that the conflict of interest problem does not arise under the current structure and although each of these alternatives help to alleviate concerns (to differing degrees), the creation of executive Board members is synonymous with the problem.
3.	<p>Do you believe that the potential Alternative Modifications identified by the GSMG would better facilitate achievement of the Applicable BSC Objectives as compared to the current Code baseline:</p> <p>a. Restricted Voting Rights for Executive Directors (i.e. Option 1)?</p> <p>b. Weighted Voting Rights for Industry Directors (i.e. Option 2)?</p> <p>c. Additional Industry Directors (i.e. Option 3)?</p> <p><i>Please give rationale and <u>indicate preferred option</u> (if any)</i></p>	a. No	The proposed modification introduces two significant areas of concern. Firstly, the change of balance with regard to Board perspective and secondly, the potential for conflict of interest. Although each of the alternatives alleviates one or both of these concerns (to differing degrees) we do not believe they better achieve the applicable BSC objectives compared to the current code baseline.
		b. No	See above (Q3 a) We prefer this option to (a)
		c. No	See above (Q3 a) We prefer this option to (a)
4.	Do you believe that there are any alternative solutions that the GSMG has not identified and that should be considered?	No	We believe that the solution does not necessarily require a modification. Improved communication and commercial challenge can already be facilitated via the attendance of relevant

Q	Question	Response	Rationale
	<i>Please give rationale</i>		executives at Board meetings.
5.	<p>It has been suggested that executive input into Board business and an executive presence at Board meetings would provide benefits in terms of communication (between BSCCo Executive and the Board) and scrutiny (of BSCCo by non-executive directors). In your opinion:</p> <p>a. To what extent would these benefits be delivered by requiring the relevant BSCCo executives to attend all Board meetings?</p> <p>b. To what extent would these benefits be delivered by making the relevant BSCCo executives Directors of the Board?</p> <p><i>Please give rationale</i></p>	<p>a. Fully</p> <p>b. Partially</p>	<p>It seems logical that by attending the Board meetings the communication between BSCCo Executive and the Board would be improved. This would allow the non-executives the opportunity seek advice from/question (where necessary) the ELEXON executive team. This should facilitate good communication, commercial challenge and accountability.</p> <p>We do not believe that there would be any additional benefits compared to the 'attendance only' suggestion. Arguably, the disruption of the current Board balance combined with the potential for conflict of interest would damage the commercial challenge and accountability.</p>
6.	<p>Do you agree with the GSMG that the most appropriate second BSCCo executive to add to the Board (i.e. in addition to the Chief Executive) would be one holding a commercially and financially orientated role?</p> <p><i>Please give rationale</i></p>	Yes	To appoint anyone other than an executive in a financially oriented role would be inconsistent with the main objective of the proposal i.e. enhanced commercial challenge.
7.	<p>Do you believe that an appropriate balance between executive and non-executive views would be achieved under:</p> <p>a. The Proposed Modification?</p> <p>b. Restricted Voting Rights for Executive Directors (i.e. Option 1)?</p> <p>c. Weighted Voting Rights for Industry Directors (i.e. Option 2)?</p> <p>d. Additional Industry Directors (i.e. Option 3)?</p>	a. No	<p>The balance under the proposed modification would be inconsistent with the original considerations behind the current Board structure, as indicated in the Ofgem/Dti conclusion document for the design of NETA...</p> <p><i>"The fact that the board will be non-executive, and include representatives of those paying BSCCo fees, should reassure participants that there will be sufficient transparency, scrutiny and control of costs"</i></p> <p>We believe that the appropriate balance should include executive</p>

Q	Question	Response	Rationale
	<i>Please give rationale</i>		assistance where requested by the Board, but should not include direct executive involvement in the role of the Board as a decision making body.
		b. No	Although the balance would be maintained on a small number of issues, the balance would be significantly skewed on many others. The current structure gives participants an assurance along the lines of that contemplated by Ofgem/Dti (see Q7 a). This alternative would result in a change of balance which would be detrimental to those assurances.
		c. Yes	The proposed modification does not seemingly wish to alter the current balance of the Board, merely improve communication and commercial challenge. If it is felt that this can only be achieved by including executive members on the Board it is imperative that the balance of perspective is retained. It would be inefficient and illogical to lose one of the Board's strengths in an attempt to improve its performance.
		d. Yes	See above (Q7 c)
8.	Do you believe that an appropriate balance between industry and non-industry views would be achieved under: a. The Proposed Modification? b. Restricted Voting Rights for Executive Directors (i.e. Option 1)? c. Weighted Voting Rights for Industry Directors (i.e. Option 2)? d. Additional Industry Directors (i.e. Option 3)? <i>Please give rationale</i>	a. No	Including executive members on the Board will inevitably dilute the influence of the industry perspective i.e. representatives of those paying BSCCo fees (as highlighted by Ofgem/Dti). At the beginning of NETA it was considered good governance to ensure that an appropriate level of those with an industry view were present on the Board. It would equally seem bad governance to allow that perspective to be watered down.
		b. No	Although the balance would be maintained on a small number of issues, the balance would be significantly skewed on many

Q	Question	Response	Rationale
			<p>others. The current structure gives participants an assurance along the lines of that contemplated by Ofgem/Dti (see Q7 a). This alternative would result in a change of balance which would be detrimental to those assurances.</p>
		c. Yes	<p>This alternative would ensure that the current balance is protected to a large extent. However, it could be argued that as the current Board structure prohibits executives, their inclusion on the Board necessarily alters the appropriate balance. Although we do not consider a change in the balance of the Board to be necessary, we feel that this alternative is preferable to the original proposal.</p>
		d. Yes	<p>See above (Q8 c)</p>
9.	<p>Do you believe that the Proposed Modification would introduce a potential conflict of roles for executive directors (i.e. between their role as managers and their role as directors)?</p> <p><i>Please give rationale</i></p>	Yes	<p>We have grave concerns about the potential for conflict of interest. The Higgs Report notes the inextricable relationship between Executive Directors and the potential for conflicts of interest...</p> <p><i>"There is a natural potential for conflict between the interests of executive management and shareholders in the case of director remuneration, or audit (where decisions on the financial results can have a direct impact on remuneration), or indeed a range of other instances. Although there is a legal duty on all directors to act in the best interest of the company, it has long been recognised that in itself this is insufficient to give full assurance that these potential conflicts will not impair objective board decision making".</i></p> <p>We do not believe that is appropriate for those responsible for the creation of documents such as the Business Strategy and the</p>

Q	Question	Response	Rationale
			Budget, to subsequently vote on their suitability for implementation. (See also final paragraph to Q1)
10.	<p>If you believe that the Proposed Modification would introduce a conflict of roles for executive directors (i.e. between their role as managers and their role as directors), do you believe that under the potential Alternative Modifications identified by the GSMG that conflict would be avoided:</p> <p>a. Restricted Voting Rights for Executive Directors (i.e. Option 1)?</p> <p>b. Weighted Voting Rights for Industry Directors (i.e. Option 2)?</p> <p>c. Additional Industry Directors (i.e. Option 3)?</p> <p><i>Please give rationale</i></p> <p><i>(NB: If you believe the Proposed Modification would not introduce a conflict of roles, and hence that this question is not relevant, please answer "Not Applicable" to this question)</i></p>	<p>a. Slightly reduced</p> <hr/> <p>b. reduced (more than a)</p> <hr/> <p>c. reduced (more than a, same as b)</p>	<p>This will potentially reduce the conflict of interest on a specific number of issues by removing the ability for an executive director to vote. However, there will remain the possibility that an executive director may have a conflict of interest concerned with a subject upon which they are entitled to vote. In such a circumstance the perspective of non-executives would be diluted and the Board's decision making process compromised.</p> <hr/> <p>This would maintain the current Board balance in terms of perspective and as such would mitigate against the risks posed by a conflict of interest. However, it must be noted that due to the presence of executive members on the board, the risk posed by conflict of interest would be omnipresent.</p> <hr/> <p>As above (see 10 b).</p> <p>All of the alternatives help to reduce the potential for conflict of interest when compared against the original proposal (to differing degrees).</p>
11.	<p>Do you believe that the Board structure proposed under P161 would be appropriate for a non-profit company such as BSCCo?</p> <p><i>Please give rationale</i></p>	No	<p>We do not believe that the proposed structure would be suitable for a non-profit company. Although we recognise that some non-profit organisations may include an executive element on the Board we cannot find any similar Board structures/arrangements. The unique nature of the BSCCo only serves to heighten our concerns about the potential for conflict of interest. In a standard commercial organisation the Board are ultimately accountable to</p>

Q	Question	Response	Rationale
			<p>their shareholders. In the case of ELEXON, the only shareholder is NGC who (as signatories of the BSC) are restricted from interfering with the BSCCo except under express provisions in the BSC. Such provisions do not include the removal of Board members and as such the ELEXON Board is effectively accountable only to itself. However participants can take comfort that the CEO along with other ELEXON employees are accountable to the Board. Currently this acts as a vital mechanism to ensure that the BSCCo maintain an appropriate structure which safeguards accountability. Ultimately under the proposed modification this safeguard would be lost. We therefore consider the proposed structure to be highly inappropriate for the BSCCo.</p>
12.	<p>Do you believe that the Board structures of any of the potential Alternative Modifications identified by the GSMG would be appropriate for a Non-Profit company such as BSCCo?</p> <p>a. Restricted Voting Rights for Executive Directors (i.e. Option 1)?</p> <p>b. Weighted Voting Rights for Industry Directors (i.e. Option 2)?</p> <p>c. Additional Industry Directors (i.e. Option 3)?</p> <p><i>Please give rationale</i></p>	<p>a. Potentially</p>	<p>BSCCo are a unique variation of a non-profit organisation. In the interests of protecting the assurances provided by the current Board structure we believe that this alternative would be preferable to the original proposal. However we remain to be convinced that this solution is better than the current baseline.</p>
		<p>b. Potentially</p>	<p>See above (Q12 a)</p>
		<p>c. Potentially</p>	<p>See above (Q12 a)</p>
13.	<p>Do you agree with the Code rights and obligations of the proposed executive directors as established by the GSMG (see Section 7)?</p> <p><i>Please give rationale</i></p>	<p>Yes/No</p>	<p>We are broadly supportive of the rights and obligations as identified by the GSMG in so far as they represent the intention of the proposed modification. However we do not believe that extending voting rights to executive members (without one of the</p>

Q	Question	Response	Rationale
			caveats provided in each of the alternatives) will better achieve the applicable objectives.
14.	Are there any further comments on P161 that you wish to make?	Yes	The issues raised by modification P161 have a potentially significant impact on the ongoing development of BSCCo. As such we feel that this modification may have benefited from a longer assessment period.