

Responses from P129 Draft Report Consultation

Consultation issued 22 August 2003

Representations were received from the following parties:

No	Company	File Number	No. BSC Parties Represented	No. Non-Parties Represented
1.	British Energy	P129_DR_001	3	0
2.	Barclays Capital	P129_DR_002	1	0
3.	Edison Mission	P129_DR_003	1	0
4.	YEDL & NEDL	P129_DR_004	2	0
5.	NGT	P129_DR_005	1	0
6.	Powergen	P129_DR_006	14	0
7.	Aquila Networks	P129_DR_007	1	0
8.	Western Power Distribution	P129_DR_008	2	0
9.	Entergy-Koch Trading Europe Ltd	P129_DR_009	1	0
10.	British Gas Trading	P129_DR_010	1	0
11.	BP	P129_DR_011	2	0
12.	Scottish and Southern (late response)	P129_DR_012	4	0

P129_DR_001 – British Energy

Respondent:	<i>Rachel Lockley</i>
No. of BSC Parties Represented	3
BSC Parties Represented	British Energy Power and Energy Trading, Eggborough Power Ltd, British Energy Generation Ltd
No. of Non BSC Parties Represented	0
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 agree with the Panel’s views on P129 and the provisional recommendation to the Authority contained in the draft Modification Report that P129 should not be made? Please give rationale.	Yes	We believe that the proposal if implemented will complicate the governance arrangements and increase market uncertainty. While the panel would be able to make determinations where a ‘substantial majority’ of its members are in agreement the right of appeal would mean that the Authority would continue to have the final say in many cases. In all other cases, including for urgent cases, the Authority would continue as now to make the determinations. This modification will potentially therefore result in greater delays, uncertainty and reduce efficiency. Consequently, we consider it would not better facilitate Applicable Objective (d) as

Q	Question	Response	Rationale
			compared with the current baseline.
2.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P129? Please give rationale.	Yes / No	N/A
3.	Are there any further comments on P129 that you wish to make?	Yes / No	N/A

P129_DR_002 – Barclays Capital

Respondent:	Barclays Capital
No. of BSC Parties Represented	1
BSC Parties Represented	Barclays Capital
No. of Non BSC Parties Represented	None
Non BSC Parties represented	None
Role of Respondent	Trader

Q	Question	Response	Rationale
1.	Do you agree with the Panel's views on P129 and the provisional recommendation to the Authority contained in the draft Modification Report that P129 should not be made? Please give rationale.	Yes	The proposal has not demonstrated any benefit in facilitating the achievement of the applicable BSC objectives. It has fundamental problems in respect of the current licence conditions placed on NGC and is internally inconsistent in trying to have representative constituencies while maintaining the independence of Panel members.
2.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P129? Please give rationale.	Yes	It seems appropriate to link the proposal to existing scheduled dates for Panel Elections.
3.	Are there any further comments on P129 that you wish to make?	No	

P129_DR_003 – Edison Mission

Respondent:	<i>Edison Mission Energy</i>
No. of BSC Parties Represented	One
BSC Parties Represented	<i>First Hydro Company</i>
No. of Non BSC Parties Represented	None
Non BSC Parties represented	
Role of Respondent	<i>Generator</i>

Q	Question	Response	Rationale
1.	Do you agree with the Panel’s views on P129 and the provisional recommendation to the Authority contained in the draft Modification Report that P129 should not be made? Please give rationale.	Yes	Agree with the majority view of the GSMG listed on page 11 of mod report – the mod increases the risk and uncertainty in the market.
2.	Do you agree with the Panel’s provisional recommendation concerning the Implementation Date for P129? Please give rationale.	Yes	
3.	Are there any further comments on P129 that you wish to make?	No	

P129_DR_004 – YEDL & NEDL

Respondent:	<i>Ann Penford</i>
No. of BSC Parties Represented	2
BSC Parties Represented	YEDL and NEDL
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>Party Agent</i>

Q	Question	Response	Rationale
1.	Do you agree with the Panel's views on P129 and the provisional recommendation to the Authority contained in the draft Modification Report that P129 should not be made? Please give rationale.	Yes	BSC objectives are narrower in scope than those of the Authority This means that by moving the decision making, away from the Authority the Panel will not be able to take account of LDSO Licence obligations. This would unduly discriminate against LDSO's who are obligated through their licence to be a party to the BSC. We believe this new regime would open up the scope for an abuse of power.
2.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P129?	No	

Q	Question	Response	Rationale
	Please give rationale.		
3.	Are there any further comments on P129 that you wish to make?	No	

P129_DR_005 – NGT

Respondent:	<i>Name</i> Clare Talbot
No. of BSC Parties Represented	One
BSC Parties Represented	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant).</i> National Grid
No. of Non BSC Parties Represented	None
Non BSC Parties represented	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i> None
Role of Respondent	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state)</i> BSC Party

Q	Question	Response	Rationale
1.	Do you agree with the Panel’s views on P129 and the provisional recommendation to the Authority contained in the draft Modification Report that P129 should not be made? Please give rationale.	Yes	We agree with the Panel’s views on P129 and the provisional recommendation that the modification should not be made. As outlined in our previous consultation response, we do not believe that the proposal better facilitates applicable objective d) for a timely more efficient decision-making process when compared to the existing governance arrangements.
2.	Do you agree with the Panel’s provisional recommendation concerning the Implementation Date for P129? Please give rationale.	Yes	In the event that the Authority determines that P129 should be made, we agree with the proposed implementation timetable to allow for the necessary arrangements to be put in place for the revised process on the

Q	Question	Response	Rationale
			basis of the existing timetable for biannual elections.
3.	Are there any further comments on P129 that you wish to make?	No	

P129_DR_006 – Powergen

Respondent:	Powergen UK plc
No. of BSC Parties Represented	14
BSC Parties Represented	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
No. of Non BSC Parties Represented	0
Non BSC Parties represented	
Role of Respondent	Supplier, Generator, Trader and Exemptable Generator

Q	Question	Response	Rationale
1.	Do you agree with the Panel's views on P129 and the provisional recommendation to the Authority contained in the draft Modification Report that P129 should not be made? Please give rationale.	No	In our view P129 represents a viable model not only for the future Governance of the E&W BSC and ultimately the GB BSC. Its purpose is to facilitate 'lighter-touch' regulation and greater involvement of all key stakeholders in the modification decision making process. We remain convinced that it perfectly feasible for a Panel that represents a diversity of stakeholder views to make the majority of decisions to approve or reject modification proposals. At the P129 modification group meeting on 9 th July we asked Elexon to determine how many of the past Panel recommendations were made on a 'substantial majority' basis. Elexon declined to carry out this work because of they anticipated difficulty in collating data on notification recommendations and decisions. We therefore decided to carry out this work instead. It was our intention to present this at a later modification group, but unfortunately this was cancelled following the Modification Group's decision to curtail further work on P129.

			<p>We established that as of 21 August 2003 of the 102 determinations made by Ofgem since Go-live, <u>at least</u> 59% (60 of 102) had been subject to a 'substantial majority' Panel recommendation. This rose to close to 95% (16 of 17) if one considers determinations from P101 onwards. Where it was not possible to deduce from the Panel minutes that a 'substantial majority' recommendation had been made, this was recorded as a 'smaller majority' recommendation – thus our figures are likely to understate the number of actual 'substantial majority' recommendations made.</p> <p>Since Go-live some 86% of <u>all</u> Panel recommendations have been upheld by Ofgem, with a similar proportion of 'substantial majority' recommendations upheld. Over time however Panel recommendations and Ofgem decisions seem to have become increasingly aligned. Post P101 there is 100% agreement. A full breakdown of our analysis is attached.</p> <p>Although this analysis relates to the current regime and Panel determination behaviour may well change if P129 were to be implemented, the most recent data does in our view offer us a good indication that perhaps over 90% of modification decisions could be made by a Panel. Contrary to the assertions of some respondents, we believe this will speed up the decision making process and will enhance the efficiency in the administration of the balancing and settlement arrangements. We would urge the Panel to reconsider its initial recommendation in the light of this additional information and would request that Annex 1 (attached) is incorporated into the Final Modification Report.</p>
2.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P129? Please give rationale.	No	We see no reason why the benefits of this proposal should be delayed simply to give elected Panel members under the 'old rules' a two year tenure. We suggest that 1 May 2006 is changed to 1 May 2005.

3.	Are there any further comments on P129 that you wish to make?	Yes	<p>We offer a number of further observations which may assist the Panel and Ofgem in their deliberations:</p> <p>P129 was syndicated amongst a large number of industry stakeholders before it was submitted. However it was a mistake on our part to not include DNOs in these discussions. Nevertheless we hope the subsequent inclusion of an appeals process for Panel decisions should address their concerns, and we trust the DNO Panel Member is now in a position to offer his support for this refined version of P129.</p> <p>P129 was proposed as a package and although many respondents supported aspects of the proposal they were unwilling to support the complete package. It would have been interesting to see what respondents views would have been if the two elements "Change to Panel Determination Process" and "Change to Panel Election Procedures" had been proposed separately. Powergen would not wish to change the former element without a simultaneous reform of the later. Why you may ask?</p> <p>Unlike other important industry codes such as the Network Code, CUSC and the Grid Code, where employees from <u>some</u> of the larger organisations (such as Centrica, SP, SSE, LE Innogy and Powergen) are amongst those that get elected to each Panel, such persons are conspicuous by their absence from the BSC Panel. This outcome is not surprising given the current 'two votes per trading party group concept' used for BSC Panel elections gives smaller players disproportionate voting power. Over time however, election outcomes could change if further consolidation in the market reduces the number of votes available to be cast. The constituency model advocated under P129 would of course offer <u>all</u> industry stakeholders whether large or small the opportunity to have their views reflected by a newly constituted Panel.</p>
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<p>4.</p>	<p>Are there any further comments on P129 that you wish to make? (continued)</p>	<p>Without a proposal (such as P129) to give the Panel real decision making powers, Panel recommendations may be increasingly viewed as superfluous and it might ultimately be better to simply limit the Panel's powers to the management of the modification process (in a similar way to the gas Network Code). There may however, be other ways in which the status of Panel decisions could be enhanced. One option, (which we suggested to the DTI in its recent consultation on the transparency and accountability of the industry code modification process), would be to allow an appeal of an Ofgem decision only where such a decision was contrary to a 'substantial majority' recommendation of the Panel.</p> <p>Some parties, who were previously supportive of P129 appeared to change their position because they thought it may compromise the case for an appeals mechanism for Ofgem modification decisions. Although we believe P129 provides a more robust decision process that encourages greater consensus and hence will more frequently 'get decisions right first time', we do not see it as a substitute for appeals to Ofgem decisions. It is a complementary proposal. If the DTI were to introduce an appeals process we would envisage Panel/Ofgem decisions, would be sent direct to the Appeals body and there would no longer be a need for Panel decisions to be first appealed to Ofgem. One might expect this change to be incorporated into any modification designed to facilitate the introduction of a (DTI) modification appeals mechanism.</p> <p>Overall respondents were opposed to P129. This should not in any way be viewed as an endorsement or vindication of the current BSC governance arrangements. In our view the modification process remains cumbersome, costly and unnecessarily bureaucratic and we trust that, whatever decision the Authority makes they will reflect this sentiment in their decision letter.</p> <p>As a major contributor to Elexon's coffers we shall continue to seek improvements in efficiency and effectiveness of the code modification process.</p>
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Annex 1

Analysis of Panel Recommendations to Support Assessment of Modification Proposal P129 (as at 21 August 2003)

Scope:

The aim of this brief study was to determine the number of Panel recommendations made on a 'substantial majority' basis and the proportion of such decisions that are ultimately upheld by the Authority. Changes in the number of substantial majority recommendations reached and decisions upheld by the Authority over time have also been investigated. 102 modification determinations have so far been examined and the results can be found below.

Methodology:

The Panel recommendations were obtained from the final modification reports on the Elexon website. The Ofgem decisions were also obtained from the Authority decision letters. These decisions were then checked against the modification progress charts held within Elexon's progress reports web page to ensure accuracy. Due to the manual process of collating data slight errors may have been introduced.

In order to compile a representative chart it has been necessary to show only those modifications which have received a determination from the Authority. Those modifications which have not yet received a determination, or have been withdrawn, are not shown on the chart. The modifications have been placed in groups of ten, with the actual numbers of decisions shown. This should give the most accurate reflection of decision making and also provide a general historical perspective.

It is important to note that where it was not possible to deduce from Panel minutes that a 'substantial majority recommendation had be reached, this was recorded as a 'smaller' majority recommendation – thus figures are likely to understate the number of actual 'substantial majority ' recommendations made. This is particularly the case for earlier modification proposals where the actual number of votes cast was not recorded.

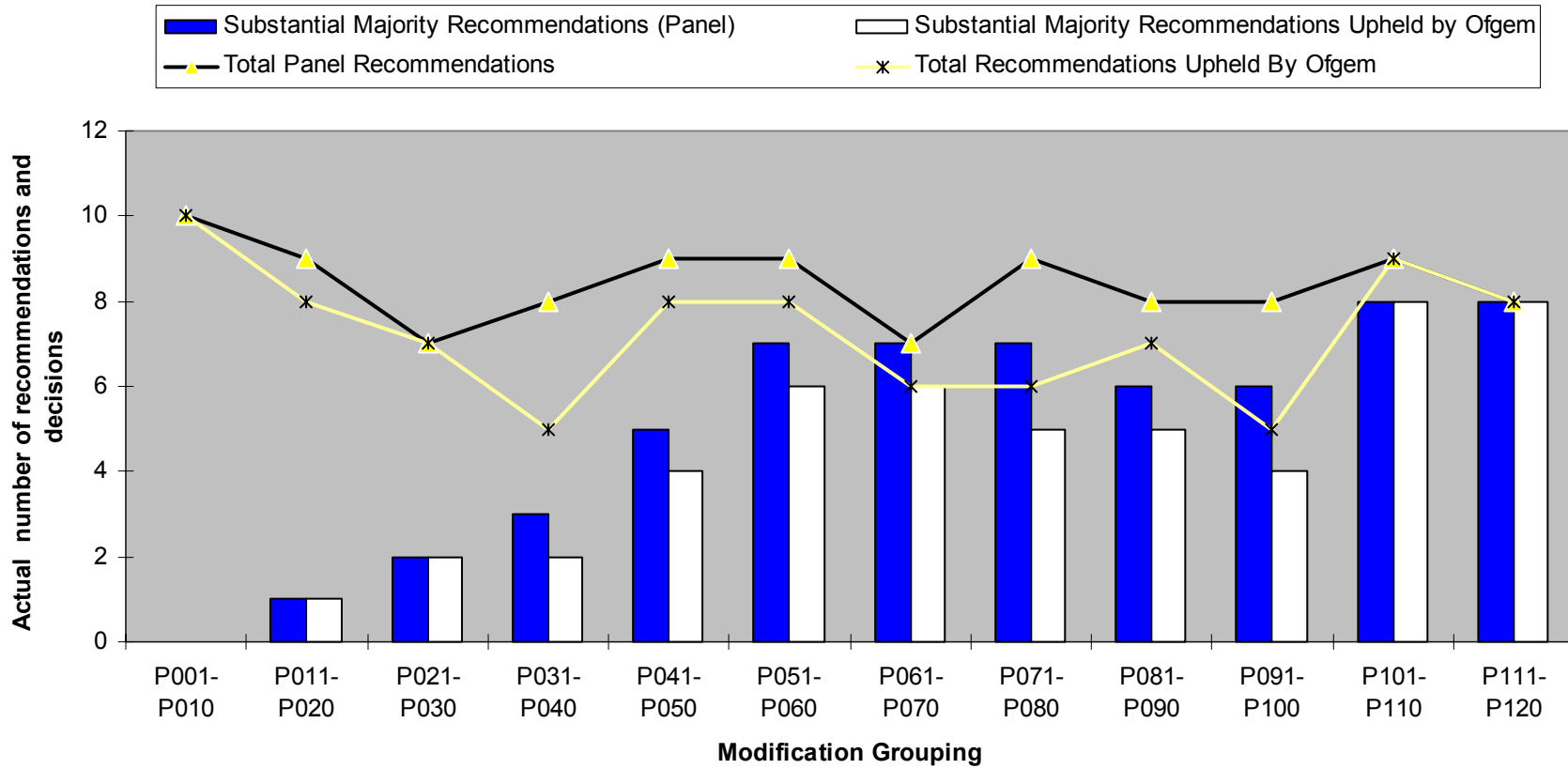
Results:

Out of the 102 modification decisions, 86% of the Panel's recommendations have been upheld by Ofgem. The Panel were able to make 60 recommendations that could be classed as substantial majority/unanimous decisions and of these 85% were upheld.

The chart below reveals what appear to be the two key trends from the available data.

- 1) The number of 'substantial majority' recommendations made by the Panel are increasing, whilst the number of 'smaller majority' recommendations made by the Panel are decreasing. Close to 95% of post P101 modification decisions were made on a 'substantial majority' basis.
- 2) Recently, the Authority has increasingly upheld the Panel's recommendation. This fact is highlighted with the 100% alignment in Panel and Authority determinations since P101.

Panel recommendations compared to Ofgem final decisions



P129_DR_007 – Aquila Networks

Aquila Networks PLC would like to return a response of 'No Comment' to P129 Consultation on draft Modification Report.

Regards,

Deborah Hayward
Distribution Support Office &
Deregulation Control Group
Aquila Networks plc

P129_DR_008 – Western Power Distribution

Respondent:	Graham Smith
No. of BSC Parties Represented	2
BSC Parties Represented	Western Power Distribution South Wales) and Western Power Distribution (south West)
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)</i>

Q	Question	Response	Rationale
1.	Do you agree with the Panel's views on P129 and the provisional recommendation to the Authority contained in the draft Modification Report that P129 should not be made? Please give rationale.	Yes	We strongly support the Panel's view, as we do not consider this modification is of any benefit.
2.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P129? Please give rationale.	Yes	
3.	Are there any further comments on P129 that you wish to make?	No	

P129_DR_009 - Entergy-Koch Trading Europe Ltd

Respondent:	<i>Name</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>Trader)</i>

Q	Question	Response	Rationale
1.	Do you agree with the Panel's views on P129 and the provisional recommendation to the Authority contained in the draft Modification Report that P129 should not be made? Please give rationale.	Yes	<p>We consider that the Panel's views and the provisional recommendation are correct with respect to P129.</p> <p>The effective removal of independent regulatory decision making for many modification proposals is a retrograde step that would be detrimental to promoting effective competition in the generation, sale, purchase and supply of electricity. Further, implementing P129 would hinder continued industry reform in the England and Wales market and is counter to the principles of having an independent</p>

		<p>regulator as envisaged in the European electricity directive</p> <p>There is no optimal number of constituency classes as modification proposals ought to be assessed on the relevant arguments, rather than by votes from constituent blocks. We consider that it is not possible to reconcile constituent structures with a requirement for impartiality. Further, it is far easier to ensure impartiality in panel considerations when an independent regulator is responsible for decisions.</p> <p>It is difficult to see how the panel could make decisions without considering Ofgem's wider objectives, given that these wider objectives are statutory requirements. However, it would make no sense trying to adjust the BSC objectives to align with Ofgem's wider objectives, as BSC parties do not have the expertise or the relevant public policy experience to consider the broader Government framework.</p> <p>The development of a workable appeals mechanism is also problematic. An open approach would provide more confidence</p>
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			<p>in the policy outcomes at the cost of certainty and speed for the specific policy under consideration, and possibly other live modifications.</p> <p>Finally, it is not clear whether Ofgem has the ability to delegate its legislated authority to the panel. During the MALC considerations, it was clear that Ofgem's authority could not be delegated even from an appeals perspective, so it would be difficult to see how legislated decision making processes could be offered out to a party not subject to the primary legislation.</p>
2.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P129? Please give rationale.		No comment
3.	Are there any further comments on P129 that you wish to make?		No, see response to question 1.

P129_DR_010 – British Gas Trading

Re: Modification Proposal P129 – Changes to Panel Determination Process and Panel Election Procedures

Thank you for the opportunity of responding to this draft modification report considering Modification Proposal P129. British Gas Trading (BGT) do not believe this Modification Proposal will better facilitate Applicable BSC Objective (d). The proposal will not shorten the decision making process on the more contentious modification proposals and will introduce a two tier decision making process. BGT concur with the Panel's provisional recommendation rejecting this modification proposal.

Yours faithfully

Mark Manley
Contract Manager

P129_DR_011 – BP

Respondent:	<i>Name</i>
No. of BSC Parties Represented	2
BSC Parties Represented	BP Gas Marketing Ltd, Great Yarmouth Power Ltd
No. of Non BSC Parties Represented	0
Non BSC Parties represented	-
Role of Respondent	<i>(Generator/ Trader)</i>

Q	Question	Response	Rationale
1.	Do you agree with the Panel's views on P129 and the provisional recommendation to the Authority contained in the draft Modification Report that P129 should not be made? Please give rationale.	Yes	Supportive of Panel's rationale
2.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P129? Please give rationale.	Yes	Supportive of Panel's rationale
3.	Are there any further comments on P129 that you wish to make?	No	N/A

P129_DR_012 – Scottish and Southern (late response)

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

In relation to the three questions listed in the Consultation Paper, contained within your note of 22nd August 2003 concerning Modification Proposals P129, we have the following comments to make:-

Q1 Do you agree with the Panel's views on P129 and the provisional recommendation to the Authority contained in the draft Modification Report that P129 should not be made? Please give rationale.

Yes, we agree with the proposed BSC Panel recommendation to the Authority that this Modification Proposal P129 should not be made.

We believe that the current arrangements better meet the Applicable BSC Objectives than Modification Proposal P129.

We note the comments in Section 1.1 of the Initial Written Assessment, dated 6th June 2003, that "if the Panel were to make determinations instead of recommendations, as proposed by P129, then the constitution of the Panel is of primary concern. In light of this, the Proposer has proposed revisions to the Panel election procedure for Panel Members". We believe that the first 'question' posed by the Proposer is should the Panel make determinations, this then leads onto the second 'question' posed by the Proposer is that if the Panel does make determinations then the composition of the Panel needs to be changed. It is our contention that the answer to the first 'question' (of allowing the Panel to make determinations) is that this should not happen and it therefore follows that the second 'question' does not arise; i.e. if the Panel is not making determinations then there is no need to amend the Panel composition by virtue of the introduction of a constituency class arrangement, as outlined in Modification Proposal P129.

Furthermore, as noted in Section 2.2 of the Consultation Document dated 11th July, "the GSMG concluded that they were undecided as to whether or not the Proposal to allow the Panel decision making powers for Modification Proposals would in practice significantly cut down the time it takes for determinations to be made". In the light of this it is hard to agree that this change will improve on the status quo, and therefore better achieve the Applicable BSC Objectives.

Q2 Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P129? Please give rationale.

If the Modification Proposal P129 is approved, we agree with the proposed BSC Panel recommendation on the timing for the Implementation Date, as outlined in the Modification Report.

Q3 Are there any further comments on P129 that you wish to make?

Nothing further at this time.

Regards

Garth Graham
Scottish & Southern Energy plc