

Report Phase Consultation Responses



Phase

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

P309 'Facility to enable BSC Parties to select either replacement contract notifications or additional contract notifications'

This Report Phase Consultation was issued on 16 January 2015, with responses invited by 3 February 2015.

Consultation Respondents

Respondent	No. of Parties/Non-Parties Represented	Role(s) Represented
Centrica	11/0	Generator, Supplier
E.ON	7/0	Generator, Supplier, Interconnector User, Non-Physical Trader
GDF Suez Energy	6/2	Generator, Non-Physical Trader, ECVNA, MVRNA
ScottishPower	9/0	Generator, Supplier, Distributor, Non-Physical Trader, ECVNA, MVRNA, Supplier Agent

Question 1: Do you agree with the Panel's initial unanimous recommendation that P309 Proposed Modification does not better facilitate the Applicable BSC Objectives and should therefore be rejected?

Summary

Yes	No	Neutral/No Comment	Other
4	0	0	0

Responses

Respondent	Response	Rationale
Centrica	Yes	<p>We agree with the Panel's initial view that P309 Proposed is detrimental to BSC objectives (c) and (d) and should be rejected.</p> <p>Retrospective application of rules in general is unhelpful to competition due to the systemic uncertainty it creates. Further, in this particular case, the retrospective element of P309 would only appear to benefit the proposer – no industry wide benefit or consumer benefit arises. These factors make P309 incompatible with objective (c).</p> <p>We also believe there is a negative impact on objective (d), albeit for slightly different reasons than the Panel has put forward. Leaving aside retrospectivity, P309's prospective benefits must exceed the implementation costs and the execution risks of the change for it to be worthwhile. We are not persuaded there is a genuine problem with the existing ECVN arrangements – and note that similar sentiments were expressed by a number of assessment consultation respondents. In our view, the £71k / £75.5k implementation costs and execution risks are not outweighed by P309's purported benefits. P309 would reduce the efficiency of the BSC arrangements, even without the retrospective element – thus working against objective (d). Taking the retrospective element into account as well, P309 Proposed is substantially worse than the baseline arrangements.</p>
E.ON	Yes	<p>We agree with the Workgroup and Panel that retrospective application suggested by P309 Proposed would be negative under BSC Objectives C and D. Introducing uncertainty into the BSC arrangements is inefficient and unhelpful to competition and can only be justified if there is a</p>

Respondent	Response	Rationale
		<p>clear case in accordance with the Authority's guidance for retrospection. We do not believe that this applies here; rather, the retrospective element of P309 Proposed would outweigh any positive impact that prospective implementation might have. Assessment Consultation responses suggested that the Proposer would be the only party to take advantage of this proposal; back-dating a rule change to a certain date for the benefit of one party who made a mistake that others managed to avoid, and at a cost to all parties, would be anticompetitive.</p>
GDF Suez Energy	Yes	<p>The rationale below is unchanged from the Assessment Procedure consultation.</p> <p>Here the Ofgem criteria on retrospection are relevant. Whilst we do agree that the losses incurred by the Proposer of this modification on 13-14 May 2014 were material, we do not believe that the other criteria are fulfilled. In particular:</p> <p>i) The loss was not directly attributable to central arrangements – these were working and processing ECVNs correctly at the time of the error, which was due to a change being made to the Proposer's systems.</p> <p>ii) The circumstances could have been reasonably foreseen. Any change to a participant's ECVN submission system should be fully tested and validated before implementation (GDF Suez Energy has experience of making significant changes to its notification systems in 2012). During implementation there should be ongoing verification of what is happening in order to cease/reverse implementation if it is not working to plan. The experience of 13 years since NETA was implemented and of previous errors should be enough to make any participant have a reasonable expectation that things may go wrong.</p> <p>iii) Retrospective action was not flagged. To the contrary, the previous experience of modification P37 (past notification errors) in 2002-2003, including the rigour with which claims were investigated, the low success rate, and the high losses (all against the background of a new trading environment) all point to an extremely low likelihood of any retrospective action being taken on notification errors after 13 years of NETA experience.</p>

Respondent	Response	Rationale
		<p>Note also, that unlike the Alternative solution, we do not believe that the proposed solution complies with Objective (c). This is for two reasons:</p> <p>i) An attempt to correct one BSC party's error, whilst others have had to endure highly significant costs for their own errors over the past few years without having any means to correct notification errors, will be contrary to effective competition.</p> <p>The effect of a retrospective change could have disastrous effects on some parties if they agree to a change in the ECVNA status without fully understanding what the rule changes could do to the notified positions.</p>
ScottishPower	Yes	<p>When assessing the proposed modification, we have split it into two distinct elements. There is the technical aspect of the change, introducing a new flag to the process, and there is the retrospective application of this solution.</p> <p>The technical element is a pragmatic way of avoiding inadvertent mistakes occurring in the future, increasing certainty and reducing risk, especially to smaller Parties who may not be able to withstand large imbalance shocks. This reduction in risk can only be better for Objective c. There is a weaker argument for benefits under Objective d, in that there is an anticipated reduction in central activity around defaults and disputes.</p> <p>The retrospective element, however does not better achieve any of the Objectives. This is not only due to the uncertainty generated by retrospective changes in general. The time-limited nature of the retrospective window means that the proposed solution does, in effect, limit this solution to being only applicable to the Proposer. Any Party finding themselves in a similar situation in the future would not be able to avail themselves of the same relief. This distinct targeting of the solution at one Party is highly anti-competitive.</p> <p>We believe that the detrimental effects of the solution far outweigh the positive effects, and as such the Proposed Modification is not better than the baseline.</p>

Question 2: Do you agree with the Panel's initial unanimous recommendation that P309 Alternative Modification does better facilitate the Applicable BSC Objectives and should therefore be approved?

Summary

Yes	No	Neutral/No Comment	Other
3	1	0	0

Responses

Respondent	Response	Rationale
Centrica	No	In order for the P309 Alternative to be better than the baseline, the prospective benefits must exceed the implementation costs and the execution risks of the change for it to be worthwhile. We are not persuaded there is a genuine problem with the existing ECVN arrangements – and note that similar sentiments were expressed by a number of assessment consultation respondents. In our view, the £71k implementation costs and execution risks of the P309 Alternative are not outweighed by the purported benefit. The P309 Alternative would still reduce the efficiency of the BSC arrangements, thus working against objective (d).
E.ON	Yes	Prospective application of this proposal might be worthwhile in providing a safeguard for parties, particularly new market participants, so in making processes more 'foolproof' P309 Alternative should better support Objective C to promote competition. Associated costs of £71k are not prohibitive and the change would help to minimise risk, albeit by increasing complexity of the arrangements, thus additionally we see P309 Alternative as marginally positive under Objective D.
GDF Suez Energy	Yes	We agree that the Alternative solution does reduce one aspect of the potential risks relating to erroneous ECVNs and so will comply with Objective (c), the promotion of competition. Objective (d), the promotion of efficiency, is also facilitated in that the notification process is made clearer to participants. We believe that the solution is neutral against the other BSC objectives.
ScottishPower	Yes	The Alternative Modification is identical to the Proposed, except for the removal of the retrospective element. As such, it does not suffer from those detrimental effects on the BSC

Respondent	Response	Rationale
		Objectives that the Proposed does. The Alternative will have a positive effect on Objectives c and (to a lesser extent) d.

Question 3: Do you agree with the Panel's initial unanimous recommendation that P309 Alternative Modification is better than P309 Proposed Modification?

Summary

Yes	No	Neutral/No Comment	Other
4	0	0	0

Responses

Respondent	Response	Rationale
Centrica	Yes	The P309 Alternative is superior to P309 Proposed because it removes the harmful retrospective element. However, as stated in our response to Question 2, the P309 Alternative still has an overall negative impact, as the implementation costs and execution risks are not outweighed by the purported benefit.
E.ON	Yes	For the reasons stated we agree that retrospective application is undesirable under Objectives C and D, but prospective application from the next BSC release under the Alternative could have some positive impact under Objectives C and D.
GDF Suez Energy	Yes	The rationale below is unchanged from the Assessment Procedure consultation We agree that the Alternative solution is better than the Proposed. We believe that allowing some parties to retrospectively correct erroneous ECVNs, whilst others have incurred significant costs and not had any opportunity to make corrections since Past Notification Errors were processed some 11 years ago, is contrary to the promotion of effective competition.
ScottishPower	Yes	The retrospective element of the Proposed means that it is not better than the Alternative.

Question 4: Do you agree with the Panel's initial unanimous view that the redlined changes to the BSC deliver the intention of the P309 Proposed and Alternative solutions?

Summary

Yes	No	Neutral/No Comment	Other
3	0	1	0

Responses

Respondent	Response	Rationale
Centrica	No comment	-
E.ON	Yes	-
GDF Suez Energy	Yes	The problems with the legal text that were included in text originally proposed in the Assessment Procedure consultation have now been addressed, such that the new text does deliver the intention.
ScottishPower	Yes	The documentation changes have been reviewed several times by the workgroup, and we feel that the changes indicated will deliver the intentions of the Modifications.

Question 5: Do you agree with the Panel's recommended Implementation Date?

Summary

Yes	No	Neutral/No Comment	Other
4	0	0	0

Responses

Respondent	Response	Rationale
Centrica	Yes	For the avoidance of doubt, we do not support P309 Original or Alternative, even though the proposed implementation dates appear feasible.
E.ON	Yes	In the next BSC release is appropriate, whether 5 Nov 15 or 26 Feb 16.
GDF Suez Energy	Yes	There is no reason to delay implementation beyond what is required for ECVAA systems development, since any changes to participants' systems are optional.
ScottishPower	Yes	-

Question 6: Do you have any further comments on P309?

Summary

Yes	No
1	3

Responses

Respondent	Response	Rationale
Centrica	No	No comment.
E.ON	No	-
GDF Suez Energy		Should the modification be approved (either Proposed or Alternative) and participants wish to change the type of ECVN that an existing ECVNA is authorised to make, they should be aware that historical notifications (particularly open-ended but zero volume notifications) could have an unwanted effect on the validity of notifications made after change in ECVNA type.
ScottishPower	No	-