

## Assessment Consultation Responses: P281 'Change of BSCCo Board of Directors & Chairman'

**Consultation issued on 3 May 2012**

We received responses from the following Parties

Company	No BSC Parties / Non-Parties Represented	Role of Parties/non-Parties represented
National Grid	1/0	System Operator
Electricity North West Limited	1/0	Distributor
Drax Power Limited	1/0	Generator
British Gas	1/0	Supplier
E.ON	5/7	Supplier, DC And MOP
RWE npower	10/0	Supplier/Generator/Trader/ Consolidator/Exemptable Generator/Part Agent
IBM UK Ltd for and on behalf of the ScottishPower Group	7/0	Supplier/Generator/Trader/ Consolidator/Exemptable Generator/distributor
EDF Energy	10/0	Supplier/Party Agent/ Consolidator/Generator/ Exemptable Generator/ Trader

What stage is this document in the process?

01 Initial Written Assessment

02 Definition Procedure

03 Assessment Procedure

04 Report Phase

Question 1: Do you believe P281 Proposed would help to achieve the Applicable BSC Objectives compared with the current baseline?

**Summary**

Yes	No	Neutral/Other
4	4	-

**Responses**

Respondent	Response	Rationale
National Grid	No	<p><i>(d) promoting efficiency in the implementation and administration of the balancing and settlement arrangements</i></p> <p>The Proposed Modification which restricts the Board membership to suppliers and generators could introduce a risk to Board independence and impartiality. Furthermore, if the Proposed Modification aims to better represent the BSC Parties on the Board, it is unlikely to be representative of all the Parties because of inherent restriction on Board membership. The Proposed Modification is therefore unlikely to promote efficiency in the implementation and administration of the balancing and settlement arrangements.</p>
Electricity North West Limited	No	<p>Electricity North West does not agree with P281 proposed solution and believe that the the BSCCo Panel and Board should remain independent and impartial inclusive on non executive (non industry) directors and in line with good corporate governance, in order to achieve the current objectives efficiently and economically, not discriminating between the different BSC Parties and their agents, and there is transparency in the decisions made with regards to the Code that can be independently challenged.</p>
Drax Power Limited	No	<p>We believe the Proposed solution would be neutral against BSC applicable objectives a, b and c. The Proposed solution is negative against applicable objective d in our opinion. The main deficiency of the Proposed solution relates to the use of industry constituencies to elect Board Members. Whilst we sympathise with the intentions of the Proposer i.e. to make BSCCo more responsive to the needs of its 'owners' (BSC Parties), we do not believe the use of constituencies will promote the efficient operation of the balancing and settlement arrangements. Board Members will (and should) be expected to act independently to ensure the efficient operation of BSCCo. However, Board Members explicitly elected under industry constituencies cannot be expected to perform their tasks in an independent manner. Such Members are likely to act as „delegates“ representing the</p>

Respondent	Response	Rationale
		<p>interests of their industry constituencies. The risk of this is that the interests of different industry constituencies will conflict with the objective of maintaining efficient balancing and settlement arrangements. Moreover, there is a risk that the use of constituencies will limit the „talent pool“ from which able potential Board Members might be chosen. Overall, we believe that the objectives of the Proposer have the potential to be better met under the Alternative solution. However, we believe that some amendments to the Alternative solution should be made to improve its quality (our suggestions are detailed in answer to Question 8).</p>
British Gas	Yes	<p>d) promoting efficiency in the implementation and administration of the balancing and settlement arrangements</p> <p>We agree with the proposer that the proposal will enhance the corporate governance arrangements for BSCCo, by ensuring the Board are better able to reflect the views of BSC Parties in their decisions. Elexon will become more accountable for the services that they provide to BSC Parties.</p>
E.ON	Yes	<p>The proposal will enhance the corporate governance arrangements for BSCCo allowing parties to have a more active say in management and oversight of BSCCo. By ensuring the Board are better able to reflect the views of BSC Parties in their decisions, Elexon will become more accountable for the services that they provide to BSC Parties. Efficiency in the implementation and of the balancing and settlement arrangements will be promoted through the better alignment of the balancing and settlement processes with those of BSC Parties.</p> <p>Without this change there is a risk that inefficiencies will arise as Elexon seeks to pursue new business opportunities within an unsatisfactory governance framework. By providing appropriate safeguards particularly in relation to the management of BSCCo resources, budget, setting and business planning this proposal will provide greater confidence to BSC Parties that the changes that are necessary to allow Elexon to diversify its activities can be progressed without adversely affecting the existing BSC arrangements.</p>
RWE npower	Yes	<p>The proposal would provide funding Parties transparent process to determine membership of the BSCCo Board and help ensure that the Board are better able to reflect the opinions of BSC Parties in their decisions. Selecting Board members with experience of the energy industry and the BSC arrangements would provide Parties with</p>

Respondent	Response	Rationale
		<p>greater assurance in the BSC arrangements. We believe the proposal would better facilitate BSC Objective (d) promoting efficiency in the implementation and administration of the balancing and settlement arrangements.</p>
<p>IBM UK Ltd for Scottish Power</p>	<p>No</p>	<p>ScottishPower agree that BSC parties should have a greater say in the activities of the BSCCo. After all its whole existence is for the operation of the BSC and is funded so by BSC parties. However, ScottishPower believe that P281 Proposed would not better facilitate the achievement of the Applicable BSC Objectives compared with the current baseline on the basis that:-</p> <ul style="list-style-type: none"> <li>• While the constituency elected members should act independently, they nonetheless would be perceived by the market as associated to and representative of the corresponding constituency. As highlighted by the Workgroup, 'P281 Proposed would introduce a risk to Board independence and impartiality'. The move away from the current ethos of totally independence and gave power of influence only to generators and suppliers as well as facilitating potential undue influence of any individual party would be detrimental to Objective (c) - competition. The argument for P281 Proposed is further eroded with the current baseline now containing an industry selected chair (approved by Ofgem rather than selected by Ofgem) which should minimise the previous incidence when Board decision (on non- BSC business) was carried against industry members' opposition.</li> <li>• The additional election process with increased complexity would also detriment Objective (d) – administration efficiency.</li> </ul>
<p>EDF Energy</p>	<p>Yes</p>	<p>On balance, we think BSC objective (d) relating to efficient delivery of the BSC could be better met, as described below, by giving individuals with direct industry experience more influence over the approaches taken by BSCCo in delivering the BSC.</p> <p>Increasing the influence of industry participants and the transparency of Board proceedings, and better aligning the interests of BSCCo with those of the industry it supports, should allow more efficient delivery of the BSC.</p> <p>In principle, the existing Board structure when combined with BSC Panel approval of overall strategy should allow the impacts on BSC Parties to be considered in Board decisions and Elexon activity. However, recent events have highlighted some tensions between the ambitions of</p>

Respondent	Response	Rationale
		<p>BSCCo and the expectation of the BSC Panel and some BSC Parties. An increased presence of Board members chosen by BSC Parties might help to manage such tensions more effectively in future.</p> <p>BSCCo provides a very specialised service, tightly constrained by the BSC itself. The service is directly funded by BSC Parties, and has a direct impact on their own internal activities and systems. Most of the costs of delivering the BSC as a whole, and managing any changes, lie with BSC Parties themselves, and not in the central administrative body. Increased industry influence could help to efficiently align the interests of BSCCo itself and those of the parties it supports, and on whom it places costs both directly and indirectly through its own activities. It could also help to keep BSCCo properly focussed on its responsibilities under the BSC.</p> <p>However, we have some concerns that reduction in the number of non-industry members might reduce the ability of the Board to consider issues in a wider business context than just the electricity industry, and could reduce the counterbalance to potential vested interest of groups of industry participants.</p> <p>The BSC sets out rules for the measurement and allocation of energy between BSC Parties, and the settlement of differences between outturn volumes and volumes contracted bilaterally with other parties or with National Grid as System Operator. BSCCo manages central systems to assist this process, but most of the impact and cost of adhering to the obligations set out in the BSC, and implementing changes to them, lies with BSC Parties themselves. BSC Parties have no choice but to use a single central administrator. Central administrators might be better able to monitor and improve the delivery of central processes, but in the absence of natural competition might tend to favour approaches which maximise their role without fully considering impacts on participants. Individually, industry participants might tend to favour approaches which give individual advantage, but collectively should be able to form a consensus view on the best way of delivering the obligations in the BSC.</p>

Question 2: Do you believe P281 Alternative would help to achieve the Applicable BSC Objectives compared with the current baseline?

**Summary**

Yes	No	Neutral/Other
4	3	1

**Responses**

Respondent	Response	Rationale
National Grid	Yes	<p><i>(d) promoting efficiency in the implementation and administration of the balancing and settlement arrangements</i></p> <p>The Alternative Modification allows the BSC Parties to provide greater input into the selection process for Board members and also retains impartial industry oversight via the Panel (e.g. candidate veto). Furthermore, it also incorporates established best practice in corporate governance (e.g. nominations committee). The Alternative Modification could therefore promote efficiency in the implementation and administration of the balancing and settlement arrangements.</p>
Electricity North West Limited	No	<p>Electricity North West does not agree with P281 Alternative solution and believe that the BSCCo Panel and Board should remain independent and impartial inclusive on non executive directors and in line with good corporate governance, in order to achieve the current objectives efficiently and economically, not discriminating between the different BSC Parties and their agents, and there is transparency in the decisions made with regards to the Code that can be independently challenged.</p>
Drax Power Limited	Maybe	<p>We believe that the Alternative solution could potentially better meet Applicable BSC Objective d, (the solution would be neutral against the other Objectives). However, we suggest making three amendments to the Alternative to improve the quality of the solution (please see our answer to Question 8). Assuming positive amendments are made, The Alternative solution should better empower BSC parties to influence the selection of a competent Board. It should also result in the establishment of a Board that is more receptive to the needs of BSC Parties, ensuring its decisions and operation is generally not contrary to the requirements of BSC Parties. Moreover, it should also result in a Board which contains all the necessary competencies required to oversee an important business. These improvements will be achieved through the creation of an accessible and transparent Nomination Committee and</p>

Respondent	Response	Rationale
		appointments process. Providing BSC Parties with the ultimate power to dismiss the Board will also help achieve the improvements noted above.
British Gas	No	We do not believe the alternative proposal would better facilitate the Applicable BSC objectives as it would appear to add additional complexity to the solution, and would not necessarily improve accountability to BSC parties. Constituency elections of Board members would improve accountability and further objective d) of the code.
E.ON	Yes	As for question 1
RWE npower	Yes	The alternative proposal would give Parties greater assurance in the make up of the BSCCo Board and in the method employed for making appointments to the Board. We believe the proposal would better facilitate BSC Objective (d) promoting efficiency in the implementation and administration of the balancing and settlement arrangements.
IBM UK Ltd for Scottish Power	Yes	ScottishPower acknowledge the problem and issue with BSC Panel members also acting as BSCCo Board members and agree that P281 Alternative would resolve this. We also note that P281 Alternative is in line with best practice processes and would deliver increased transparency and greater opportunity for all BSC Party involvement. We therefore believe that P281 Alternative provides the BSCCo and the industry an alternative process in selecting board members with industry background while retaining the independence philosophy of BSC governance. This combines with an industry selected chair; greater involvement by all BSC parties on the composition of the BSCCo Board and increased transparent process should give the market comfort that the operations and performance of the BSC remain paramount and BSCCo's primary priority. This would better facilitate the achievement of Objective (c) - competition. The increase in costs in remunerations and selection activities would be detrimental to Objection (d) – administration efficiency, but this is more than offset by the benefit from Objective (c).
EDF Energy	No	The alternative proposal could potentially reduce the influence of BSC parties, who are the main stakeholders. Recognizing that BSCCo is effectively a monopoly provider, we think the alternative might give overall outcomes that are less efficient in delivering the BSC and so not better meet BSC Objective (d), as described below.  Although it is a common approach for a board to approve

Respondent	Response	Rationale
		<p>new members itself, using a committee or otherwise, we think the BSC arrangements are sufficiently different that this is not a suitable approach for BSCCo. Most company board decisions usually have primary impact on the company itself and its shareholders, with competition for customers at stake. In the case of BSCCo, much of the impact of decisions can be directly felt by the companies it serves, who are not customers that have any other choice.</p> <p>Rejection of nominated individuals by the BSC Panel, as suggested for the alternative, could be difficult in practice, and potentially divisive. A periodic transparent elective process, as under the proposal, avoids this potentially divisive direct rejection.</p> <p>The last paragraphs on page 16 of the consultation suggest the Panel can veto candidates' appointment to the Board. However, alternative proposal legal text at sections B6.2.9 and C4.1 suggest that removal or veto of ratification of new candidates can only be made in very limited circumstances of the candidate not meeting specific criteria. This appears to give a veto to the BSC Panel only on due process.</p> <p>The initial composition of the Board could have a long term influence on its future composition and on the future of BSCCo and its impact on BSC Parties. It does not seem appropriate that the starting point could have such a significant potential long term future impact.</p> <p>Although it would be non-discriminatory to pay all individual Board Members including those paid directly or indirectly by BSC Parties, we think such an arrangement should be subjected to further assessment before being considered for approval. It would set a precedent for all manner of work performed by employees of industry parties in support of the collective arrangements.</p> <p>The alternative does not appear to address the defect stated in the proposal, that the Board might take decisions that are not supported by the majority of BSC parties and other stakeholders affected by those decisions. This in itself is not necessarily a defect, but the potential consequence of overall inefficient management of the BSC arrangements, by not taking full consideration of the costs and impacts which fall mainly within BSC Parties, could be. Either way, the alternative does not appear to directly address the defect, and so does not appear to be a valid alternative. (Extract from proposal: "The current BSCCo Board arrangements can allow the non industry Non- Executive Directors and the</p>



Respondent	Response	Rationale
		Chairman and to carry Board decisions against the will of industry Non-Executive Directors members. This means Elexon resources can be used, budgets set and expenditure incurred even though such decisions may not be widely supported by BSC Parties and other affected stakeholders. Should Elexon be permitted to diversify its activities, it will become even more important to establish a BSCCo Board that is able to safeguard the interests of BSC Parties that fund the BSC arrangements.”)

Question 3: Do you believe P281 Alternative would help to achieve of the Applicable BSC Objectives compared with the Proposed Modification?

### Summary

Yes	No	Neutral/Other
3	3	2

### Responses

Respondent	Response	Rationale
National Grid	Yes	Please see responses to Q1 and Q2.
Electricity North West Limited	N/A	-
Drax Power Limited	Maybe	The Alternative solution could, with further amendments, better meet the Applicable Objectives relative to the Proposed. The Proposed could not meet the Applicable Objectives in our view. Please see our answers to question 1 & 2 for the reasons underpinning our views.
British Gas	No	We believe the Proposed Modification would help better achieve the Applicable BSC objectives.  We do not think that the alternative will be as effective because the BSC parties, who have the greatest interest in the code being administered and implemented efficiently, would not directly influence the composition of the Board.
E.ON	No	There is a risk that the process for appointment of Board members under the alternative could appear to be lacking in transparency and that the industry will not be confident that they have the necessary safeguards to deal with the future changes to Elexon and the impacts on BSC parties.

Respondent	Response	Rationale
RWE npower	Yes	<p>We believe there is an underlying weakness in the proposed solution in that Board members are required to act independently, yet constituency voting implies that elected members are representing a particular group. The proposed solution also introduces difficulties around creating the required constituencies.</p> <p>The alternative solution would endorse a better Board structure, a transparent selection process, and uphold the independence principle of the balancing and settlement arrangements.</p>
IBM UK Ltd for Scottish Power	Yes	<p>ScottishPower believe P281 Alternative would better achieve the Applicable BSC Objectives compared with the Proposed Modification on the basis that:-</p> <ul style="list-style-type: none"> <li>• It retains the independence philosophy of the BSC and is in line with best practice processes. This combines with greater involvement by all BSC parties on the composition of the BSCCo Board and increased transparent process would give the market comfort that the Board would perform for the best benefit of the market rather than for certain participants or classes of participant and militates against situations where individual parties have undue influence. This would better facilitate the achievement of Objective (c) - competition.</li> <li>• The selection process would be less complex and therefore better facilitate the achievement of Objective (d) – administration efficiency, but the additional remuneration probably making this Objective neutral.</li> </ul>
EDF Energy	No	For the reasons given in response to questions 1 and 2, we think the proposal would better meet BSC Objective (d), but it is not clear that the alternative would.

Question 4: Do you agree with the proposed provisions for the industry constituencies and the determination of constituency membership?

### Summary

Yes	No	Neutral/Other
4	2	2

### Responses

Respondent	Response	Rationale
National Grid	Yes	Notwithstanding our view that the Proposed Modification is unlikely to achieve the BSC Applicable Objective, we

Respondent	Response	Rationale
		agree that the proposed provisions such as Trading Party Group level constituency membership, use of energy volumes which is consistent with the basis of funding shares methodology, and 5% threshold for small/large suppliers and generators are appropriate.
Electricity North West Limited	N/A	-
Drax Power Limited	No	Please see answer to question 1.
British Gas	Yes/No	We believe voting in the constituency elections should be weighted by market share as this model is consistent with other electricity code governance (i.e. DCUSA, MRA). This model of voting enables views of parties to have appropriate influence in elections commensurate with funding arrangements and the impact of decisions on those parties made by the Board.
E.ON	Yes	<p>We firmly believe that the Board should be made up solely of BSC parties who have relevant and current experience of the challenges faced by the suppliers and generators. The energy industry is changing rapidly and to ensure that the Settlement arrangements between suppliers and generators are fit for purpose requires board members who understand the evolving nature of energy market and are able to respond swiftly and set the strategy and budgets needed to support the changing industry.</p> <p>It is our believe that the industry is capable of more self determination than the current arrangements provide and that we can be trusted to democratically elect appropriately qualified individuals to fill the Board positions.</p>
RWE npower	Yes	This seems a reasonable approach to adopt.
IBM UK Ltd for Scottish Power	No	ScottishPower believe that the proposed constituencies provision in P281 Proposed move away from the current BSC principles by omitting full BSC parties involvement and giving power of influence only to generators and suppliers as well as facilitating potential due influence of any individual party. However, we agree that constituency membership determination provides a pragmatic approach to the solution of P281 Proposed.
EDF Energy	Yes	<p>Other permutations could be contemplated, but the constituencies proposed seem pragmatic.</p> <p>Further consideration is required (e.g. at proposed legal text C-1 section 2) as to the classification of a party as a</p>

Respondent	Response	Rationale
		generator or a Supplier, and its threshold share, when allocating to a constituency. For example, a party's funding share might be made up of volumes transferred by Metered Volume Reallocation from production accounts (mostly generation) and consumption accounts (mostly supply), but combined for the purpose of Main Funding Share for a party that might not be a generator or a supplier itself. A licensed Supplier can have considerable licence-exempt generation. Should the sign of the volumes making up funding share be considered? What about interconnector users and traders, who are also directly impacted by the BSC arrangements, and contribute to funding of BSCCo in funding shares and/or by specified charges?

Question 5: Do you have any views on the approach to the replacement of a Board member who has not completed their full three year term on the Board (i.e. mid-term appointment)?

### Summary

Yes	No	Neutral/Other
4	2	2

### Responses

Respondent	Response	Rationale
National Grid	Yes	National Grid considers that the Chairman should have the power and flexibility to replace Board member in mid-term. For example, if only one member needs to be replaced just before the elections are due, the Chairman could decide not to replace the member; on the other hand, if more than one member needs to be replaced and there is substantial period left prior to the next election, the Chairman could utilise alternatives (e.g. interim appointment or ad hoc election) to replace the member(s).
Electricity North West Limited	N/A	-
Drax Power Limited	No	N/A
British Gas	Yes/No	We agree that any Board member who does not complete their three year term should be replaced as the discretion of the Chair.
E.ON	Yes	To appoint an interim board member to serve until the next election, that member to be selected from the pool

Respondent	Response	Rationale
		of candidates who stood at the previous election in that category, providing they are willing to be appointed.
RWE npower	Yes	We concur that the possible options are somewhat limited given the proposed solution of appointment by elections and the need to adopt a staggered election cycle. Allowing the Chairman to use their discretion appears a practical way forward, though any decision should be fully justified.
IBM UK Ltd for Scottish Power	Yes	ScottishPower believe that due to the involved and dependency election process, mid-term appointment should be avoided as much as possible. However the Board needs to function effectively and efficiency and the Chair may be the only person to advise on this. We therefore agree that the Chair should decide which options to take, but after consulting the BSC Panel.
EDF Energy	No	The options provisionally suggested would provide flexibility in practice.

### Question 6: Do you agree with the proposed implementation approach for P281 Proposed?

#### Summary

Yes	No	Neutral/Other
5	1	2

#### Responses

Respondent	Response	Rationale
National Grid	Yes	-
Electricity North West Limited	N/A	-
Drax Power Limited	No	We do not support the Proposed solution for the reasons provided in answer to question 1.
British Gas	Yes/No	We do not have any strong views on this.
E.ON	Yes	As soon as the modification is approved, the process to elect new board members should begin.  We have no preference for which category of board member should have a shortened term.
RWE npower	Yes	As both a Supplier and Generator we are comfortable with either the Supplier or Generator Board members

Respondent	Response	Rationale
		having an initial shortened term of two years.
IBM UK Ltd for Scottish Power	Yes	ScottishPower agree that Board election should be conducted as soon as possible but coincide with Panel election if possible. However, there is also the issue with early termination of appointment of existing non-industry Board members. In term of which industry constituency Board members should have an initial shortened term of two years, ScottishPower are neutral to this, but one way to resolve this could be to choose whichever constituency group has less party members.
EDF Energy	Yes	A short implementation period would support the transitional arrangement linked to forthcoming Panel Elections. This would give BSC Parties more influence over the future role and composition of BSCCo if other changes concerning its structure, proposed separately, are progressed.

## Question 7: Would implementation of P281 Proposed impact you?

### Summary

Yes	No	Neutral/Other
2	2	4

### Responses

Respondent	Response	Rationale
National Grid	No	-
Electricity North West Limited	N/A	-
Drax Power Limited	Yes	Yes, but the direct impacts will be immaterial.
British Gas	Yes/No	We do not believe we would be directly impacted by this change.
E.ON	Yes/No	The impact on BSC parties should be minimal and affect us no more than a normal panel election process would.
RWE npower	Yes	We will participate in the election process for both the Large Supplier and Large Generator constituencies. However, impacts are minimal in terms of resource and we will pick up a proportion of central costs based on our funding share.
IBM UK Ltd for Scottish	No	-

Respondent	Response	Rationale
Power		
EDF Energy	Yes/No	There would be no direct impact, only the consequential impact on the future direction of BSCCo as it affects us.

Question 8: Do you believe that there are any alternative solutions that the Workgroup has not identified that they should consider?

### Summary

Yes	No	Neutral/Other
3	4	1

### Responses

Respondent	Response	Rationale
National Grid	No	-
Electricity North West Limited	N/A	-
Drax Power Limited	Yes	<p>We do not believe that a brand new solution needs to be developed, but we do consider that improvements to the Alternative solution should be made. We suggest that three amendments should be made to the Alternative solution. We believe these changes would improve the solution by better empowering BSC parties to contribute to the establishment and operation of a BSCCo Board which will ensure the efficient operation of BSCCo and, ultimately, the balancing and settlement arrangements.</p> <ol style="list-style-type: none"> <li><b>Nomination Committee membership</b> – we believe the proposed membership of the Nomination Committee is too narrow. In addition to the Chair and one or more Board Members, the Committee should provide for direct industry representation. Therefore, rather than relying on advisory input from Panel members we suggest that one or two industry panel members sit on the Nomination Committee. This should ensure that priorities of the industry are fully taken into account as part of the nomination process.</li> <li><b>The Nomination Committee Terms of Reference</b> – we believe that the Terms of Reference should be subject to wider BSC party consultation rather than just Panel oversight. This should better ensure that the skills and competencies of the Board reflect adequately the priorities of BSC parties.</li> <li><b>Dismissal of the Board</b> – To ensure that BSCCo</li> </ol>

Respondent	Response	Rationale
		Board does not act in a manner diametrically opposed to the interests of BSC Parties, we believe that BSC parties should have the ultimate power to dismiss the Board (and thus require its reappointment). A vote to dismiss the Board could be triggered at the BSCCo AGM if a BSC Party threshold is met (say 10% of BSC parties vote in favour of a no confidence vote). The vote would then be carried if a majority of BSC parties voted in favour of dismissal. The threat of dismissal should ensure against Board actions that have no widespread industry support.
British Gas	Yes	<p>The purpose of raising this modification is to ensure that the Board is made up of members who Parties that fund the BSC arrangements can be confident will understand and fully consider the implications of its decisions for the wider industry. We believe that this would be better achieved by increasing the number of elected Board members to six. The make up would be as follows:</p> <ul style="list-style-type: none"> <li>2 Large Supplier Board Members;</li> <li>1 Small Supplier Board Member;</li> <li>2 Large Generator Board Members; and</li> <li>1 Small Generator Board Member.</li> </ul> <p>This would ensure that the views and concerns of BSC parties as a whole would be better reflected in the make up of the Board. This would also provide additional flexibility should issues occur with Board attendance.</p>
E.ON	No	-
RWE npower	No	-
IBM UK Ltd for Scottish Power	No	-
EDF Energy	Yes	Other permutations of Board makeup and selection process could be considered, but we have no firm alternatives at this time. We think two potential alternatives considered by the workgroup are preferable to the alternative suggested in the consultation, and more likely to gain acceptance by all parties and the regulator: Simple addition of another industry Board Member by industry Panel Members, or addition of two industry members as proposed, but retaining existing non-industry members.



Question 9: Do you believe that under the Alternative the number of Board members should be limited to four (in addition to the chairman)?

**Summary**

Yes	No	Neutral/Other
4	1	3

**Responses**

Respondent	Response	Rationale
National Grid	Yes	To date, the current Board structure with four directors appears to have worked well and there does not seem to be any reason to change it.
Electricity North West Limited	N/A	-
Drax Power Limited	Maybe	We agree that there should be a limit on the number of Board Members to ensure that the Board operates in an efficient manner. However, we believe the maximum limit would need to increase if there is to be Executive Membership on the Board. For example if one executive position was made available on the Board, the maximum number of Board Members would increase to 5 (4 non-executive members and 1 executive member).
British Gas	No	As per our response to question 8 we believe the number of elected Board members should be increased to 6 and made up as indicated in our response to question 8.
E.ON	Yes	The functions and powers of the BSC Board do not require a large body with diverse responsibilities. In the future if the Elexon diversify, the Board will have responsibility only for the delivery of the BSC services and some of the activities they currently oversee will fall away as the staff and other resources move into different organisations.
RWE npower	Yes	Given the powers, functions and responsibilities of BSCCo set out in the BSC it seems appropriate that these can be managed through a Board structure containing no more than four members (in addition to the chairman). Limiting the number of Board members seems a sensible approach to ensure that the Board does not become unnecessarily large and less efficient.
IBM UK Ltd for Scottish Power	Yes	The duties of the BSCCo Board are relatively restricted compared with other corporations and are not likely to change significantly. ScottishPower believe that the original Ofgem/DTI rationale on the current 4 plus 1 number still applies and worked well over the last 10

Respondent	Response	Rationale
		years, and do not see any case for changing this limit.
EDF Energy	Yes/No	Four seems a pragmatic number for the reasons given in the consultation. This could be reviewed in future by a further modification proposal if anyone considered it necessary.

Question 10: Do you believe that the Alternative should contain provision for executive directors on the Board, and do you have any views on the approach such provision should take?

### Summary

Yes	No	Neutral/Other
2	5	1

### Responses

Respondent	Response	Rationale
National Grid	No	Appointment of executive directors is likely to increase costs. To date, the current Board structure with only non-executive directors appears to have worked well and there does not seem to be any reason to change it.
Electricity North West Limited	N/A	-
Drax Power Limited	Yes	We agree that provision should be made for Executive presence on the Board but this should be limited to one place to mitigate any Principal-Agent type problems arising. An Executive position might be expected to improve communication between the Non-Executive and Executive Members and contribute to a more efficiently run BSCCo.
British Gas	Yes	Whilst we do not support the Alternative we do believe that provision for executive directors should be included to enable appropriate skills and expertise to be added where required.
E.ON	No	I don't believe there is a requirement for the Board to contain any executive directors, particularly given the proposed changes for Elexon to diversify, and given that the preferred approach is of a "contract model", this would create the perverse situation of the service provider being involved in selecting the service provider.
RWE npower	No	We believe that the current arrangements whereby all members of the Board are non-executive directors should remain in place. We would however welcome further

Respondent	Response	Rationale
		discussion by the Workgroup on this issue.
IBM UK Ltd for Scottish Power	No	ScottishPower believe that the duties of the BSCCo Board are quite restricted compared with other corporations with its prime role being monitoring and control of the activities, costs and performance of the BSCCo. With no expected significant change in its duties and in view of previous modification (P161) assessment and the Authority decision on similar issue, we do not see a case for executive directors to be on the Board. Furthermore, ScottishPower believe that this provision was not mentioned or discussed by the Workgroup as it is out of scope of P281 and do not understand why this question is consulted.
EDF Energy	No	For the time being, we think the separation between BSCCo's operational management and the broader policy set by the Panel and Board for delivery of the BSC should remain.

## Question 11: Do you agree with the proposed implementation approach for P281 Alternative?

### Summary

Yes	No	Neutral/Other
4	2	2

### Responses

Respondent	Response	Rationale
National Grid	Yes	-
Electricity North West Limited	No	See comments in answer to question 1
Drax Power Limited	Maybe	If the amendments we suggest are made to the Alternative solution we believe that the proposed implementation approach would be sound.
British Gas	Yes/No	We do not agree with the alternate
E.ON	Yes	-
RWE npower	Yes	-
IBM UK Ltd for Scottish Power	Yes	ScottishPower agree that the Nominations Committee should commence the process as soon as possible in accordance with its Terms of Reference and the P281 Alternative provisions, after taking into account the need

Respondent	Response	Rationale
		to preserve some continuity, experience and expertise on the Board. Presumably, initially, only the industry members are replaced, with existing non-industry Board members retained for continuity, which also avoids the issue with the early termination of appointment of existing non-industry Board members.
EDF Energy	No	In the absence of a firm transition process in the legal text, an implementation period greater than 10 days could be required to put in place all the required arrangements.

## Question 12: Would implementation of P281 Alternative impact you?

### Summary

Yes	No	Neutral/Other
3	2	3

### Responses

Respondent	Response	Rationale
National Grid	No	-
Electricity North West Limited	N/A	-
Drax Power Limited	Yes	Yes but the direct impacts would be very minor.
British Gas	Yes/No	We do not believe the implementation of the Alternate would directly impact us. However the Alternate does seem to over complicate the process and may add additional costs to the administration of the agreement which will indirectly impact all parties.
E.ON	Yes	We would expect BSC parties to have a role in the nominations process to ensure a transparent process.
RWE npower	Yes	We will pick up a proportion of central costs based on our funding share.
IBM UK Ltd for Scottish Power	No	-
EDF Energy	Yes/No	There would be no direct impact, only the consequential impact on the future direction of BSCCo as it affects us.

Question 13: Do you believe that Ofgem’s letter on potential ELEXON expansion contains anything relevant to P281 that has not been taken into account?

### Summary

Yes	No	Neutral/Other
-	6	2

### Responses

Respondent	Response	Rationale
National Grid	No	-
Electricity North West Limited	N/A	-
Drax Power Limited	No	No. We note that Ofgem are awaiting the Modification proposals with interest. No restrictions on the content of the Modifications have been made by Ofgem in the Open Letter.
British Gas	No	-
E.ON	No	-
RWE npower	No	-
IBM UK Ltd for Scottish Power	No	The solutions for P281 has taken into account potential Elexon expansion models as suggested in the Ofgem consultation and more than cover the current restricted arrangement in the Ofgem letter.
EDF Energy	Yes/No	-

Question 14: Do you have any further comments on P281?

### Summary

Yes	No
4	4

### Responses

Respondent	Response	Rationale
National Grid	Yes	It should be noted that, on 17 May 2012, National Grid has raised Modification Proposal P284 (Expansion of Elexon’s role via the ‘contract model’). However, no direct impact on P281 is envisaged.
Electricity North West	No	-

Respondent	Response	Rationale
Limited		
Drax Power Limited	Yes	The Working Group should take into account the interactions with the recently raised Modification Proposal P284 (Expansion of ELEXON's role via the 'contract model') to ensure the efficient progression of P281.
British Gas	No	-
E.ON	No	-
RWE npower	No	-
IBM UK Ltd for Scottish Power	Yes	For a formal, rigorous and transparent procedure in the appointment of new directors to the board and particularly with many of the key decisions placed upon the Nomination Committee, we suggest as part of the implementation of P281 Alternative, that the initial Terms of Reference should be consulted with the BSC parties and approved by the BSC Panel.
EDF Energy	Yes	<p>In proposed Annex C-1 Section 4, describing the simple majority voting process, what would happen in the case of a tie?</p> <p>With an even number of Board Members other than the Chairman, the result of any simple majority vote of the Board surely does not depend on whether the Chairman has a casting vote (as under the proposal) or an ordinary vote (as under the alternative).</p>