

P226 Report Phase Consultation Responses

Consultation Issued on 15 December 2009

Representations were received from the following parties

No	Company	File number	No BSC Parties Represented	No Non-Parties Represented
1.	Centrica	P226_dMR_01	10	0
2.	InterGen UK Ltd	P226_dMR_02	3	0
3.	E.ON UK	P226_dMR_03	8	0
4.	EDF Energy	P226_dMR_04	9	0
5.	Drax Power Ltd.	P226_dMR_05	1	0
6.	SAIC Ltd. (for and on behalf of ScottishPower)	P226_dMR_06	7	0
7.	Scottish and Southern Energy	P226_dMR_07	7	0
8.	Uskmouth Power Limited	P226_dMR_08	1	0

Question 1: Do you agree with the Panel's provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P226 should not be made?

Summary

Yes	No	Neutral/Other
4	4	-

Responses

Respondent	Response	Rationale
Centrica	Yes	<p>P226 Proposed would be detrimental to BSC Objectives (c) and (d). Having the information on both the BMRS and the EA and SEPA websites would require additional effort on the part of parties to verify the information before relying upon it. Uncertainty of information would be detrimental to competition.</p> <p>Additionally, BSC parties should not be required to publish information that they are not responsible for providing. Having such requirements within the BSC do not provide for fair and appealing arrangements that</p>

Respondent	Response	Rationale
		<p>facilitate new entry. Therefore P226 would again be detrimental to competition.</p> <p>There would also be ongoing administrative costs for Elexon to verify and validate information prior to this being published. This would appear to involve some manual element before forwarding on to the central systems for publication. This would be detrimental to the efficient administration of the arrangements and thus be detrimental to BSC Objective (d).</p>
InterGen UK Ltd	No	<p>InterGen does not agree with the panel's recommendation that Mod P226 should not be made. The modification sets out to increase transparency in the market by publishing all relevant information relating to LCPD data in a single area making it easily identifiable and accessible by all. Transparency and ease of access to data is one of the barriers deterring new entrants from the market and InterGen supports all initiatives which aim to reduce these barriers. The pooling of data in a single location is similar to the exercise undertaken by National Grid earlier this year when centralising key energy data in an easily accessible fashion and the same exercise should be undertaken for LCPD data.</p>
E.ON UK	No	<p>By publishing updates to emission limits for the largest LCP on the industry BMRS site, P226 Proposed would improve transparency and accessibility of LCP data. Parties' access to data would not be limited as now to the timescales and format of an external website where different links publish some data monthly, some quarterly (and industry is dependent on the willingness and feasibility of the Environment Agency resource to consider and progress any adjustments). Publishing in one clear source on the BMRS would also reduce the delay between plant reporting and data being published, bringing this over a week closer to month end. (Whereas the EA advise they cannot improve timeliness unless plants report earlier, which P226 does not require). In addition, the new reporting requirement for derogation applications would remove the current asymmetry of information favouring the applicant, and give all Parties the earliest possible notification of any FGD breakdown. This would promote effective competition by improving the prospect of all Parties making well-informed assessments of the market.</p>
EDF Energy	No	<p>EDF Energy strongly supports increases in transparency of key market information, and supports also the publication of information in a form that is accessible to new entrants so as to reduce their data search costs. There is certainly a "gap" in this area at present as the EA website does not contain any links to pages that refer to the derogation. A press release was sent out in November carrying a link to this isolated page which no longer works : http://www.environment-agency.gov.uk/business/444304/1765106/1765136/1765221/1765582/2025670/?lang=e&version=1&</p>

Respondent	Response	Rationale
		<p>- that page, whilst it existed, had said "<i>Should National Grid request that a plant under Article 5(1) that is not operating or intending to operate, to operate for local or national security of supply issues, then it is expected that those hours operated would not count against the Article 5(1) allowance</i>". This statement does not appear on any current EA website and nor does any other similar one. There is thus no information in any current published source that would support the suggestion made in National Grid's winter outlook report that LCPD opted-out plant is being granted extra hours (over the 20,000 cumulative limit) whenever a NISM is called, and neither is it possible for market observers or participants who do not operate this category of plant to assess whether the extra hours are granted in respect of a whole day where a NISM is called or a subset of that day, and whether the granting holds firm where a NISM notice is declared and then later, as is often the case, rescinded as forecast margins for the period in question improve. Generally speaking the EA website is difficult to navigate and access to public domain information on this area has been difficult with some data items remaining unavailable, period.</p> <p>EDF Energy has considered carefully the modification group's conclusion that the modification would give almost no benefit as all this category of information is available elsewhere. Currently this belief that this category of information is available elsewhere, is erroneous. The modification group also asserts that the information in question is "not market critical" (as listed under "drawbacks" on page 4 of its report)</p> <p>- This is questionable : there has been much debate nationally, both publicly and within the industry, on whether there will be adequate generation capacity during the years from 2013 onwards, with recent reports from such as Professor Fells arguing that there will not, and that there will be power cuts. The professional organisation for our sector, the IET, is advertising a seminar on 13th May entitled, "<u>When will the lights go out ?</u>". Investors have the keenest possible interest in whether or not the rules for LCPD opted-out plant at present, and indeed for LCPD opted-in plant from 2016, are in any way being, or likely to be, "bent" or softened to allow increased running, as this critically affects the likely income of new peaking and any other generation plant. To say, therefore, that the data is "not market critical", does not seem quite right.</p> <p>It is certainly true (as also listed in the report under "drawbacks") that any new process that imposes new obligations on parties should be well-considered before implementation, as our market is already an unusually complex and heavily-regulated one in which to operate.</p> <p>The matter is not totally clear in that it is not the case that the passing by Ofgem of a BSC modification can in fact be used to compel the EA, and SEPA (which has almost no transparency at all in this area), to publish details which are presently not published, such as the</p>

Respondent	Response	Rationale
		<p>circumstances under which opted-out plant are being granted extra, "free" (uncounted) running hours. The EA and SEPA are not BSC signatories ; however, the passing by Ofgem of the modification would certainly add to the pressure on them to publish the relevant information.</p> <p>We do feel that the cited costs of implementation of this modification appear excessive.</p> <p>Taking all of the above considerations into account, we consider that the modification should be passed and that this would better meet the applicable BSC objectives, than baseline</p>
Drax Power Ltd.	Yes	<p>Modification P226 has heightened the industry's awareness of the need for a change in the way in which relevant agencies release LCPD related data. As a result, Ofgem have conducted discussions with the Environment Agency and agreed a procedure for informing the industry when new derogation information is available; this is a very positive step forward, although further work is required to ensure ease of access to good quality LCPD data for the industry as a whole.</p> <p>Drax believes that such work should be conducted via a more appropriate forum, such as the Joint Environmental Programme (JEP). Such an approach would ensure that the correct industry expertise, including that of the relevant environmental agencies (EA and SEPA), would be involved in amending the current processes at the source of the defect.</p>
SAIC Ltd. (for and on behalf of ScottishPower)	Yes	<p>ScottishPower agree that the Proposed Modification should not be made.</p> <p>We do not believe that the Proposed Modification will better facilitate the BSC Objectives. Mainly this stems from our belief that none of the LCPD data is market critical. This information is already, in the main, freely available on either the Environment Agency or the Scottish Environmental Protection Agency websites, or from other industry sources. The data is mostly historical, and can only be used as a very crude aid to predicting market activity. The costs seem to be large, and far outweigh any of the miniscule benefits. Recent improvements in the provision of data via the EA website and Ofgem have negated more of the suggested benefits. The EA are also looking to improve their information delivery through engagement with JEP.</p> <p>In conclusion, we believe that the detrimental effects on Objective D from the implementation and ongoing operational costs outweigh the benefits highlighted under Objectives C and B.</p>
Scottish and Southern	Yes	<p>We agree with the Panel's provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P226 SHOULD NOT be made. We agree with the views expressed by</p>

Respondent	Response	Rationale
<p>Energy</p>		<p>the Modification Group and the Panel that P226 (Original) does not better meet the applicable BSC objectives when compared with the current BSC.</p> <p>In addition to this we are also mindful that P226 (Original) is discriminatory. As noted in section 6 (page 12) of the consultation document there are examples of discrimination arising with this (and the Alternative) proposal.</p> <p>We are grateful to the Authority and the UK Government (DTI, now DECC) for reminding the industry (in their joint letter of 17th April 2007 to the CUSC Panel regarding CAP147) about the concept of 'due discrimination' where they helpfully note that "... <i>no discrimination arises where like situations are treated differently provided that the difference in treatment can be objectively justified</i>".</p> <p>For the avoidance of doubt, we can find no objective justification detailed in the P226 Report for the examples of discrimination that would arise if P226 (Original or Alternative) were to be implemented.</p> <p>In addition to this joint letter (to the CUSC Panel) we are also aware of the Authority's view, expressed in its discussion of matters of discrimination relating to the (UNC) Mod 116 Appeal (during the summer of 2007) to the Competition Commission, where the Authority stated, in its 'Summary of Case' at paragraph 11, that "<i>the fact that two categories of persons are different in some respects cannot make it right to treat them differently in every respect. The question must always be whether the differences between them are sufficiently material to justify the particular difference in treatment</i>".</p> <p>For the avoidance of doubt, we can find no information whatsoever, in the P226 Report, as to whether the differences, between the various categories of BSC Parties, are sufficiently material to justify the particular differences in treatment that would arise if P226 (Original or Alternative) were to be implemented.</p> <p>Furthermore, in its (UNC) Mod 116 Appeal the Authority referred to the 'Carson v Secretary of State' case (2005) the judgement for which indicates, at paragraph 61, that where there is a difference in treatment that the Court would need to determine "<i>did the difference in treatment have an objective and reasonable justification: in other words, did it pursue a legitimate aim and did the differential treatment bear a reasonable relationship of proportionality to the aim sought to be achieved?</i>".</p> <p>Again, for the avoidance of doubt, we can find nothing, in the P226 Report, which addresses (let alone satisfies) this 'Carson v Secretary of</p>

Respondent	Response	Rationale
		<p>State' test.</p> <p>The overarching point is that P226 (Original or Alternative) is seeking to put different obligations on different BMUs that are all subject to the same LCPD obligations. There are at least five such, separate, illustrations of this which we list below (as a footnote) for completeness.</p> <p>[Footnote to Question 1- examples of discrimination]</p> <p>First, P226 would only apply to a sub-set (in the order of, at a maximum, the circa 91 relevant GB LCPD Units identified by Elexon) of the many hundreds of BM Units. Thus, for example, the third item listed in the P226 Proposal ("the cumulative operating hours from 1st January 2008 to date for each LCP[D] Unit") would only be a BSC requirement placed upon the sub-set whilst all other BM Units would not be burdened with this obligation (despite, on the face of it, being perfectly capable of providing such data).</p> <p>Second, the intention (according to the P226 proposal) is that of that sub-set (of circa 91 LCPD units) it only applies to "those larger generators exporting on a regular basis". This clearly treats differently (i) larger v smaller BSC exporting generators and (ii) larger BSC exporting generators v larger BSC importing generators (where, in both the case of (i) and (ii), the LCPD applies to all the BSC Parties mentioned).</p> <p>Third, in a similar vein to the second point above, of that sub-set of circa 91 P226 would only apply to generation and not demand BM Units. It is true that there are numerous examples where the BSC treats Demand and Generation BMU differently. However, we understand that during its examination of the circa 91 relevant GB LCPD Units (prepared by Elexon) the Working Group identified that a number of these 91 units were trading through Demand BMUs. Thus you could have two similar sized/fuelled, but separately owned, sites each with an LCPD unit (and required by the environmental authority to each report information) but whilst one is a 'generation' BMU (for the purposes of the BSC) the other is a 'demand' BMU. It is not clear to us why this difference in treatment should arise in this case.</p> <p>Fourth, of that circa 91 sub-set various elements of the proposal would only apply to 'Opted In', rather than 'Opted Out' as well, BM Units. For example, the eighth item listed in the P226 Proposal ("the latest emission limits for each Opted in LCP" BM Unit) would only be required to be provided by 'Opted In' BM Units within the sub-set (despite, on the face of it, 'Opted Out' BM Units being perfectly capable of providing such data).</p> <p>Fifth, of that sub-set of circa 91, it would only apply to Transmission connected and not embedded BM Units. As with the third point above, it is the case that the BSC already differentiates between embedded and T connected in terms of embedded benefits. However, as noted (under the third point above) where two similar sized/fuelled, but separately owned, sites exist (one T connected the other not) then it is has not</p>

Respondent	Response	Rationale
		been justified as to why P226 (Original or Alternative) should only apply to one and not the other.
Uskmouth Power Limited	No	We believe that the view of the modification group represents the views of those companies with derogations under the LCPD. While we appreciate why they wish to keep changes to their derogations from the market, we do not believe that the current process for information release is serving the interests of the market (notably the efficient operation of the market) and the BSC could provide a route to improve the information flow.

Question 2: Do you agree with the Panel's provisional recommendation to the Authority contained in the draft Modification Report that Alternative Modification P226 should not be made?

Summary

Yes	No	Neutral/Other
4	4	-

Responses

Respondent	Response	Rationale
Centrica	Yes	For the same reasons outlined in question 1 above.
InterGen UK Ltd	No	InterGen does not agree with the panel's recommendation that Alternative Mod P226 should not be made. The modification sets out to increase transparency in the market by publishing all relevant information relating to LCPD data in a single area making it easily identifiable and accessible by all. Transparency and ease of access to data is one of the barriers deterring new entrants from the market and InterGen supports all initiatives which aim to reduce these barriers. The pooling of data in a single location is similar to the exercise undertaken by National Grid earlier this year when centralising key energy data in an easily accessible fashion and the same exercise should be undertaken for LCPD data.
E.ON UK	No	Though not as comprehensive as the Proposed, P226 Alternative would also improve LCP reporting. By focusing only on the most critical information, on changes to derogations from the LCPD, and the new requirement to notify the market of applications/notifications for derogations, it would also have been more cost-effective.
EDF Energy	No	For the reasons given for P226 (main), we also consider that P226 (alternative) should be passed and that this would better meet the

Respondent	Response	Rationale
		<p>applicable BSC objectives, than baseline.</p> <p>By comparison against P226 (main), the modification report indicates no difference in implementation cost. P 226 (alternative) omits a small number of data items namely, the register of relevant BM Units, the status of each of them (opted-out, opted-in under NERP or under ELV), the summary of allowances bought and sold, and the latest emissions limits for each opted-in genset. Now, <u>this</u> subset of data does indeed exist elsewhere, but given the benefits in publishing the other data also listed in P226 (alternative), and given the fact that there is no extra implementation or operational cost shown for P226 (alternative), given finally the advantages of having all the data in easy to use form in one place, we consider P226 (original) preferable to P226 (alternative), although we do consider that P226 (alternative) has merit over baseline against the applicable.</p>
Drax Power Ltd.	Yes	<p>Please see our answer to Q1. Drax believes that the alternative solution would be more appropriate than the original proposal, although we feel that the underlying issues would be better addressed via a more appropriate forum.</p>
SAIC Ltd. (for and on behalf of ScottishPower)	Yes	<p>ScottishPower agree that the Alternative Modification also should not be made.</p> <p>We do not believe that the Alternative Modification will better facilitate the BSC Objectives. Mainly this stems from our belief that none of the LCPD data is market critical. This information is already, in the main, freely available on either the Environment Agency or the Scottish Environmental Protection Agency websites, or from other industry sources. The data is mostly historical, and can only be used as a very crude aid to predicting market activity. The costs seem to be large, and far outweigh any of the miniscule benefits. Recent improvements in the provision of data via the EA website and Ofgem have negated more of the suggested benefits. The EA are also looking to improve their information delivery through engagement with JEP.</p> <p>In conclusion, we believe that the detrimental effects on Objective D from the implementation and ongoing operational costs outweigh the benefits highlighted under Objectives C and B.</p>
Scottish and Southern Energy	Yes	<p>We agree with the Panel's provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P226 SHOULD NOT be made. We agree with the views expressed by the Modification Group and the Panel that P226 (Alternative) does not better meet the applicable BSC objectives when compared with the current BSC.</p> <p>In addition to this we are also mindful that P226 (Alternative) is discriminatory for the reasons we have detailed in our response to Q1 above (which we do not repeat here, but which should be read as being part of our response to this Question 2, as well as Question 1 above).</p>

Respondent	Response	Rationale
Uskmouth Power Limited	No	<p>While less information would be forthcoming under the alternative, we believe that is better than the current baseline. There are significant amounts of data that the BSC requires parties to tell them, PNs, etc., all of which impact the way that their counter parties view the operation of the market. Improving and increasing the release of data on emissions limits changes can only help the market operate more efficiently.</p> <p>While the data is available it is not all held in one place and the updates are sporadic and not well communicated to the right people – i.e. the traders. The EA seems to have underestimated the importance of this data to the operation of the market. In fact, given the current nuclear outages and potential gas supply issues, it is vital for the market to have a clear idea how much capacity the coal plants on derogations can deliver. There must also be an impact on NGC when looking at plant margins and planning short and longer term operations.</p> <p>The information will not only help with the immediate issues being faced by the market, but will also signal to developers when this old coal plant is likely to cease operation. Offering more efficient investment signals to them will help ensure that new plant comes on line in time to meet falling plant margins as the older coal plants shut.</p>

Question 3: Do you believe that there would be issues/problems associated with obtaining the relevant LCPD data?

Summary

Yes	No	Neutral/Other
3	3	2

Responses

Respondent	Response	Rationale
Centrica		Centrica does not currently have LCPD plant and cannot comment on the issues or problems associated with specifically obtaining the LCPD data from its source. However, regardless of the ease in obtaining the information, we do not support BSC parties having obligations to provide data they do not own as we believe this would set an undesirable precedent.
InterGen UK Ltd	No	InterGen believes all relevant data is already being supplied, this mod simply makes it easier to access and analyse.
E.ON UK	No	There should be no problems for any sites included within scope of P226; this data is already submitted to the relevant Agency by these sites under their environmental permits. (Embedded sites where in a few instances it is possible that a BMU might be registered and

Respondent	Response	Rationale
		operated by separate companies having been excluded from scope). Copying the BMRA on email notifications of data already submitted and any derogations/applications for derogations should be straightforward.
EDF Energy	Unlikely but not impossible	<p>The EA, as we explained in the first part of our reply to question 1, omits some market-critical data (such as the precise circumstances under which it is granting "free hours") entirely from its website. SEPA has a lamentable lack of transparency (even against the EA) on these matters as they relate to Scotch gensets.</p> <p>Intuitively, if modification P226, or failing that P226 (alternative), were to be passed, this would put a very strong moral pressure onto the EA and SEPA to provide the relevant data in the form required by Elexon, even in respect of those data that the EA and SEPA do not presently publish.</p>
Drax Power Ltd.	Yes	Whilst Ofgem have taken action to ensure there is a notification service regarding derogations, this is only the first step of the process to improve access to information. JEP intend to work with the relevant agencies in order to improve information flow and ease of access to market critical data.
SAIC Ltd. (for and on behalf of ScottishPower)	Yes	We agree with the group that where the generation is not run by the company which has control over the entire LCPD site (e.g. a third party generator as part of a larger industrial site / refinery etc) that there may be contractual and legal problems associated with provision of that data to ELEXON via the generator. In this and similar situations it would not be appropriate to penalise that Party.
Scottish and Southern Energy	Yes	<p>In looking at the relevant LCPD data currently provided (by BM Parties and non BM Parties) to the relevant agency the Proposer, the Modification Group and Elexon have only taken account of the arrangements as regards the Environment Agency. They have not taken account of the arrangements as regards the Scottish Environmental Protection Agency.</p> <p>We understand that in the Working Group discussions it was noted that the information required to be submitted by the EA and SEPA was different in a number of respects including:-</p> <p>a) what data items they each require to be reported on; b) the formatting of the submission; and c) the frequency of reporting.</p> <p>For example, whilst EA seeks monthly reporting of some information (which dovetails with the requirements proposed with P226) SEPA requires quarterly reporting (which would be outside of the timescales proposed to be imposed under P226) for similar information.</p> <p>This deficiency means that the proposed solution (with both P226</p>

Respondent	Response	Rationale
		Original and Alternative) would place an undue burden upon BM Parties with LCPD Units located in Scotland when compared with those BM Parties with LCPD Units located in England & Wales. This discriminatory treatment has not been justified.
Uskmouth Power Limited	No	<p>We think the report has totally missed the point about discrimination. This is not unduly discriminatory as all of the emissions limits on plants can be found out, but it is only the opted-out plant that has limited running. On the demand point, it is not the demand sites that are impacting the market, as they are not active players. Likewise with embedded plant, we can see no plants in the position to have this impact on the market that are embedded.</p> <p>In terms of requiring plant operators to provide the data, this is no different to many of the other requirements they have. They should all be actively monitoring their own positions so should have the data easily to hand.</p> <p>There is however a problem currently for all players getting up to date data.</p>

Question 4: Do you agree with the Panel's provisional recommendation concerning the Implementation Date(s) for P226?

Summary

Yes	No	Neutral/Other
7	1	

Responses

Respondent	Response	Rationale
Centrica	Yes	-
InterGen UK Ltd	Yes	InterGen agrees with the recommendation for implementation by 25 June 2009 however every effort should be made to move this forward.
E.ON UK	No	3 months after the BSC Panel decision would be plenty for Parties to comply with, sooner would be preferable to best capture any extensions of derogations under Article 5(1).
EDF Energy	Yes	The feasible dates have clearly been considered by Elexon professional staff and discussed at the modification group.
Drax Power	Yes	Should either the original or alternative modification be approved, the implementation dates appear reasonable.

Respondent	Response	Rationale
Ltd.		
SAIC Ltd. (for and on behalf of ScottishPower)	Yes	We agree with the implementation timescales as delivery of data is in line with the current process, and as we already carry out required analysis there will be minimal updates to our internal documentation.
Scottish and Southern Energy	Yes	Notwithstanding our belief that P226 (Original or Alternative) should not be implemented, if this is to occur then the approach suggested in section 5 of the consultation document appears a pragmatic way forward. However, we would also note the point made in the Working Group discussion that the proposed implementation date for P226 indicates that information on derogations are highly likely to be irrelevant by that time.
Uskmouth Power Limited	Yes	It is a shame that it cannot be quicker and we would certainly favour a manual solution.

Question 5: Do you agree with the Panel's view that the legal text provided in the draft Modification Report delivers the solution agreed by the Modification Group?

Summary

Yes	No	Neutral/Other
8		

Responses

Respondent	Response	Rationale
Centrica	Yes	-
InterGen UK Ltd	Yes	-
E.ON UK	Yes	It appears appropriate.
EDF Energy	Yes	-
Drax Power Ltd.	Yes	The draft legal text appears sensible.
SAIC Ltd. (for and on behalf	Yes	The legal text is appropriate for the modification.

Respondent	Response	Rationale
of ScottishPower)		
Scottish and Southern Energy	Yes	The legal text provided in the draft Modification Report does appear to deliver the solution agreed by the Modification Group. However, the legal text provided in the draft Modification Report does not appear to deliver the solution suggested in the Proposal.
Uskmouth Power Limited	Yes	-

Question 6: Are there any further comments on P226 that you wish to make?

Responses

Respondent	Response	Rationale
Centrica	No	-
InterGen UK Ltd	Yes	InterGen recommends Modification P226 should be made.
E.ON UK	No	-
EDF Energy	No	-
Drax Power Ltd.	No	-
SAIC Ltd. (for and on behalf of ScottishPower)	No	-
Scottish and Southern Energy	Yes	We note the recent developments (since the raising of P226 in September) by the Environment Agency to improve the procedures and timeliness of data publication of the information sought by this proposal. We welcome this and believe that action has taken place in the appropriate place (i.e. not the BSC). It would seem that in addition to the reasons we have outlined above this makes the need for this P226 change redundant.
Uskmouth Power Limited	No	-