

P247 Consultation Responses

Consultation issued on 12 March 2010

We received responses from the following Parties

Company	No BSC Parties / Non-Parties Represented	Role of Parties/non-Parties represented
Centrica	10/0	Supplier / Generator / Trader
SAIC Ltd. (for and on behalf of ScottishPower)	7/0	Supplier / Generator / Trader / Consolidator / Exemptible Generator / Distributor
E.ON UK	6/0	Supplier / Generator / Trader / Consolidator / Exemptible Generator
RWE npower	10/0	Supplier/Generator/ Trader / Consolidator / Exemptible Generator / Party Agent
EDF Energy	13/0	Supplier/Generator/Trader/Consolidator/Exemptible Generator/Party Agent/Distributors
Scottish and Southern Energy	9/0	Supplier / Generator / Trader / Consolidator / Exemptible Generator

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 agree with the Panel's view that the Proposed Modification should be rejected?

Summary

Yes	No	Neutral/Other
5	1	0

Responses

Respondent	Response	Rationale
Centrica	Yes	Centrica supports the view of the Panel for the reasons outlined in the report.
SAIC Ltd. (for and on behalf of ScottishPower)	Yes	Whilst there are several worthy suggestions in the Proposed Modification, there is an overriding concern that only allowing the Proposer to address the Panel to argue their case will arguably discriminate against an alternative viewpoint.
E.ON UK	No	<p>The Proposed Modification is as suggested by the Code Administrators Working Group report which states: 'The group considered that it would be appropriate for the proposer to be entitled to attend the relevant panel meeting in order to advocate their proposal before the panel decide whether or not to recommend implementation'.</p> <p>This is also true of the Code Administration Code of Practice. It must be remembered that the burden of proof lies with the proposer to demonstrate that their proposal would be an improvement on the baseline, whereas those in favour of the status quo have no need to advocate it. A proposer/proposer's representative might choose not to attend a BSC Panel meeting. However giving them the right to speak briefly at the Panel if they wish when a decision is to be made on their proposal seems a sensible safeguard to ensure that they are guaranteed a few minutes to speak and explain e.g. why they had or had not incorporated any group suggestions into the original proposal. Although the ELEXON staff might attempt this, as they are there to relay the Group's view it would avoid any risk of misrepresentation if the proposer's motives are explained by the proposer themselves. The Chair could always halt any over enthusiastic repetition of a proposer's initial proposal to the Panel. If a proposer did not have the right to speak at those Panels where a decision is to be made, we would hope that if proposers feel the need to clarify any points after the relevant Change Analyst has spoken, the Chair would not refuse any reasonable request from them to speak.</p>
RWE npower	Yes	The principle of the proposed modification is to improve the modifications process. Giving one party the right to address the Panel is an unnecessary element when BSSCo will provide a report to the Panel. Under the proposed arrangements "ownership" of a modification transfers from the owner to the Modification group at the report stage. It would be

Respondent	Response	Rationale
		inappropriate for a member of the group to address the Panel, when the Report should contain relevant information about the development of a proposed modification.
EDF Energy	Yes	The proposed modification proposal if implemented would provide a right to the proposer to address the Panel. We consider a right provided to one party only introduces an element of discrimination into the BSC. Providing an explicit right to the proposer only may lead to the Panel obtaining an unbalanced view of the merits of their proposal compared to any other potential alternative solution developed by the modification group. Consequently, overall we consider the proposal does not better meet BSC objective (c) or (d).
Scottish and Southern Energy	Yes	<p>We set out our detailed arguments in our response to the Assessment Consultation as to why we believe that P247 Original does not better achieve the Applicable BSC Objectives.</p> <p>For the sake of brevity we do not repeat these detailed arguments here, rather the reader should refer to them as they form part of the P247 documentation.</p> <p>We therefore agree with the Panel's view that the P247 Original Modification should be rejected as it fails to better achieve the Applicable BSC Objectives.</p>

Question 2: Do you agree with the Panel's view that the Alternative Modification should be approved?

Summary

Yes	No	Neutral/Other
5	1	0

Responses

Respondent	Response	Rationale
Centrica	Yes	Centrica supports the view of the Panel for the reasons outlined in the report.
SAIC Ltd. (for and on behalf of ScottishPower)	Yes	<p>The Alternative Modification provides the improvements to the applicable BSC Objectives as listed in the Proposed Modification without adding in the potential for introducing discrimination into the BSC by allowing the Proposer to address the Panel to argue their case (without giving the same status to any counterview).</p> <p>P247 allows for Modifications to be withdrawn (saving time for all concerned if the proposal is found to be unworkable) and for Modifications to be acquired by another Party (if they see merit in the original proposal and hence retain the associated analysis to</p>

Respondent	Response	Rationale
		that date). These new rules also align better with other industry bodies.
E.ON UK	Yes	The Proposed is preferable and in line with industry recommendations in the CAWG report and Code of Practice, as quoted in our answers to other questions. But either the Proposed or Alternative would be an improvement on the current situation, for the reasons expressed in the CAWG report, Code Administration Code of Practice, Modification Proposal, Group meetings, BSC Panel meetings, and Assessment Report.
RWE npower	Yes	The Alternative maintains the existing arrangements for the final stages of a Proposed Modification
EDF Energy	Yes	The alternative modification will introduce improvements to the existing BSC modification arrangements and would help to better achieve the applicable BSC objectives (c) & (d). These elements include the right of the proposer to maintain ownership of its proposal, to make refinements of the proposal through assessment and ultimately the right to withdraw a proposal. These improvements would introduce greater efficiency into the arrangements and also potentially encourage more engagement by Parties. Unlike the proposal the alternative does not introduce any element of discrimination as it does not propose any changes to the rights to address the Panel.
Scottish and Southern Energy	No	<p>We set out our arguments in our response to the Assessment Consultation as to why we believe that P247 Alternative does not better achieve the Applicable BSC Objectives.</p> <p>Whilst we welcome removal of the right to address to the Panel in the Alternative (compared to the Original) we do not agree with the 'Proposer Ownership' element in the Alternative (and the Original).</p> <p>We generally support the principle of the Proposer owning their Original Modification Proposal during the process.</p> <p>However, we have serious reservations regarding the ability (that P247 Original and Alternative appears to offer) for the Proposer to 'alter' their proposal very late in the process.</p> <p>This ability is outlined; on page 6 of the Assessment Consultation and page 3 of the Report Consultation;</p>

Respondent	Response	Rationale
		<p>as follows:-</p> <p>“The ability for the Proposer to vary the Proposed Modification solution would cease at the point just before the Modification Group makes its final recommendation against the Applicable BSC Objectives.”</p> <p>Our concern, in particular, is that this would allow a substantial change to an Original Modification Proposal to be raised after the Assessment Consultation phase without recourse to further industry (or Transmission Company) consultation (in terms of either the impact on them or assessing the proposed ‘alteration’).</p> <p>Whilst it is true that there would be a subsequent industry consultation this would only be at the Panel stage, and thus after the Original Modification Proposal and any Alternative had been finalised.</p> <p>Thus a Proposer, if P247 (Original or Alternative) were approved, would be tempted (if not encouraged?) to ‘withhold’ particularly contentious element(s) of their Original Modification Proposal when they initially submit it to Elexon.</p> <p>The Original would go through the Modification process and be subject to an Assessment Consultation. It might attract little adverse comment etc. Only at the final Modification Group meeting (called to vote etc., and conclude its work) might the Proposer ‘reveal’ the additional element(s).</p> <p>The Group would be then need to decide:-</p> <p>a) to proceed with their vote; or</p> <p>b) seek a time extension from the Panel / Ofgem in order to consider this ‘new’ development and undertake a further industry Assessment Consultation (including consideration of the likely impact).</p> <p>Whilst, in theory, option (b) is a possibility it must be recognised that in many cases time is of the essence and pressure would be on Elexon / the Modification Group / the Panel to not re-open the Modification to (i) further Modification Group assessment and (ii) further industry (and Transmission Company) consultation (in terms of either the impact on them or assessing the proposed ‘alteration’) as this could delay, perhaps by some months, the submission of the Final Modification Report to the Authority.</p> <p>In addition, this detrimental aspect could be further exacerbated where an Urgent Modification is raised.</p> <p>Thus an unintended consequence, if P247 (Original or</p>

Respondent	Response	Rationale
		<p>Alternative) were to be implemented, is that Proposers would be actively encouraged to withhold details of their proposed change until moments before the Modification Group held their final vote. This we believe would be detrimental to BSC Applicable Objective (d) in particular.</p> <p>We would also point out that a Proposer is not duty bound to raise their Modification Proposal without consideration; either by themselves and / or the wider industry; of the associated matters that might arise. For example, if a Proposer is unsure of the details etc., they could raise an Issue and have the detail explored in greater depth such that when they choose to raise their Modification Proposal the relevant matters could have been bottomed out.</p> <p>Finally, we note the comments, on page 6 of the Assessment Consultation, that the P247 Modification Group considers this risk "is similar to the risk under the current process that a Modification Group can develop an Alternative Modification at a late stage". We do not agree with this. It is highly unlikely that a Modification Group would deliberately delay raising an Alternative Modification until their final vote meeting. The Elexon process is designed to ensure that Alternative Modifications (and candidates for Alternatives) are (i) identified early on in the process and (ii) consulted on early in the process.</p> <p>The P247 Alternative, whilst removing the 'Addressing the Panel' element of P247 Original, retains the 'Proposer Ownership' element which, in our view, does not better achieve, in particular, Applicable BSC Objective (d).</p> <p>We therefore disagree with the Panel view that the P247 Alternative Modification should be approved.</p>

Question 3: Do you agree with the Panel's view that the Alternative Modification is better than the Proposed Modification?

Summary

Yes	No	Neutral/Other
5	1	0

Responses

Respondent	Response	Rationale
Centrica	Yes	Centrica supports the view of the Panel for the reasons outlined in the report.

Respondent	Response	Rationale
SAIC Ltd. (for and on behalf of ScottishPower)	Yes	Please see response to Question 2
E.ON UK	No	<p>As per our answers to previous questions we believe the Proposed Modification would make most sense under a 'proposer owns' model, and is what the CAWG report and Code Administration Code of Practice suggest.</p> <p>'Report to Panel...The proposer will be entitled to attend the panel meeting and put forward views on the appropriate way forward....Panel Recommendation...Modification Proposers will be entitled to attend and speak at panel meetings.'</p> <p>(Code Administration Code of Practice v0.8, p14).</p>
RWE npower	Yes	See above
EDF Energy	Yes	Reasons outlined above.
Scottish and Southern Energy	Yes	<p>Whilst we can see why, on initial examination, allowing the Proposer the unfettered ability to address the Panel might appear to have some merit we believe, on reflection, that this is a retrograde step.</p> <p>The Proposer already has an inbuilt advantage, by virtue of raising the Original Modification Proposal, to clearly set out its position (which includes an initial presentation to the Panel). This would be further enhanced, if P247 (Original or Alternative) is implemented, in terms of being able to change the details of their Original Modification Proposal at the last possible moment and, in particular, after the Assessment Consultation with its associated impact assessment.</p> <p>The Proposer, like all BSC Parties, is permitted to set out, in writing, its response to the Modification Group (and Panel) consultation(s).</p> <p>Allowing the Proposer (alone) the unfettered right to address the Panel when Elexon presents the Assessment Report (to the Panel) would give them a wholly unfair advantage which is out of all proportion to what is merited.</p> <p>The Proposer could, for example, use the time afforded by this right to present (i) a distorted view of the counter arguments & / or the Alternative and (ii) a distorted view of the attributes etc., of their Original Modification Proposal.</p> <p>Whilst Elexon would be present, they are not as knowledgeable or familiar with the details of the issues at hand to appreciate the implications of the distortions being made by the Proposer.</p>

Respondent	Response	Rationale
		<p>Finally, it is against natural justice that <u>only</u> the views in support of an Original Modification Proposal can be heard before the Panel with no ability for counter views to be given.</p> <p>If the suggestion is that these are 'present' via the written responses to the Assessment Consultation it must be recognised that with P247 (Original or Alternative) these responses from industry would be totally devoid of any comments on the (substantial?) changes that the Proposer would (with P247 Original or Alternative) be able to raise at the last moment.</p> <p>Thus no (or very limited) industry counter views to the Original Modification Proposal (as amended by the Proposer at the final Modification Group meeting) would be given to the Panel prior to its deliberations. This places the Proposer in a position of unfair advantage that discriminates against other BSC Parties.</p> <p>This we believe would be detrimental to BSC Applicable Objectives (a) and (d) in particular.</p> <p>The P247 Alternative, by removing the 'Addressing the Panel' element of P247 Original, is when compared with the Original better. However, when compared with the baseline the Alternative is not better (as it retains the 'Proposer Ownership' element).</p>

Question 4: Do you agree with the Panel's suggested Implementation Date of 10 Working Days after an Authority decision?

Summary

Yes	No	Neutral/Other
6	0	0

Responses

Respondent	Response	Rationale
Centrica	Yes	This appears sensible.
SAIC Ltd. (for and on behalf of ScottishPower)	Yes	10 Working Days allows more time for industry members to plan for implementation of the new Modification.
E.ON UK	Yes	P247 should be implemented as soon as possible.

Respondent	Response	Rationale
RWE npower	Yes	There are no system changes required to implement this Modification.
EDF Energy	Yes	-
Scottish and Southern Energy	Yes	<p>We note the comments on page 12 of the Report Phase Consultation Document. As we raised the matter of the ten Working Days (compared to an earlier suggestion of five Working Days) we fully support the proposed implementation.</p> <p>With respect to P247 only applying to Modification Proposals raised after the P247 Implementation Date, we agree with this also. In our view retrospectively applying P247 to Modification Proposals in process would be a wholly retrograde, disproportionate and discriminatory step</p>

Question 5: Do you agree that the legal text delivers the intention of the Proposed Modification?

Summary

Yes	No	Neutral/Other
5	1	0

Responses

Respondent	Response	Rationale
Centrica	Yes	-
SAIC Ltd. (for and on behalf of ScottishPower)	Yes	-
E.ON UK	Yes	It appears appropriate.
RWE npower	Yes	-
EDF Energy	Yes	-
Scottish and Southern Energy	No	With respect to the Legal Text, should the reference in 2.1.1.2B(b) be to "12:00 noon" rather than "12:00" to avoid confusion with midnight?

Question 6: Do you agree that the legal text delivers the intention of the Alternative Modification?

Summary

Yes	No	Neutral/Other
5	1	0

Responses

Respondent	Response	Rationale
Centrica	Yes	-
SAIC Ltd. (for and on behalf of ScottishPower)	Yes	-
E.ON UK	Yes	It appears appropriate.
RWE npower	Yes	-
EDF Energy	Yes	-
Scottish and Southern Energy	No	See our comments under Q5 above.

Question 7: Do you have any further comments on P247?

Responses

Respondent	Comments
Centrica	No
SAIC Ltd. (for and on behalf of ScottishPower)	The request from the Modification proposer concerning the ability to address the Panel still seems to be reasonable, especially if this was to correct factual errors or highlight any subtle nuances that might have been missed. This is distinct from having the right to address the Panel.
E.ON UK	No
RWE npower	No
EDF Energy	No
Scottish and Southern Energy	We note the comments on page 14 of the Report Phase Consultation Document with respect to the role of 'Elexon as the Proposer's Representative'.

Respondent	Comments
	<p>We do not believe it is appropriate for Elexon to cease acting as an impartial Chair of a Modification Group and take on the role of representing (and thus advocating) a Modification Proposal raised by a BSC Party.</p> <p>As we have noted in our response to the Assessment Consultation, Elexon lacks the subject knowledge / familiarity, when compared with other Modification Group members. This hinders, if not totally prevents, Elexon credibly representing (and thus advocating for a change) a BSC Party.</p> <p>Elexon's role is to facilitate the change process, not to advocate for change.</p> <p>If Elexon believes they can take on this role (of representing a BSC Party) then it should cease to (i) chair the Modification Group meeting(s); and (ii) write the Modification documentation etc., as it is no longer impartial.</p> <p>We note the comments on page 14 of the Report Phase Consultation Document with respect to 'Comments from the floor'.</p> <p>As we noted in our comments under Q3 above, the exercising of any ability to address the Panel needs to be tempered by the need to avoid (a) discrimination arising whereby a counter view is not heard and (b) a distorted view of the Alternative and the attributes etc., of the Original Modification Proposal being given if the Proposer is called to speak</p>