

Modification proposal:	<b>Balancing and Settlement Code (BSC) : Revision of the election process for BSC Panel Industry Members (P251)</b>		
Decision:	The Authority <sup>1</sup> has decided to reject this proposal		
Target audience:	National Grid Electricity Transmission Plc (NGET), Parties to the BSC and other interested parties		
Date of publication:	16 June 2010	Implementation Date:	n/a

## Background to the modification proposal

The BSC Panel has overall responsibility for administering the BSC, including making recommendations on BSC modifications to the Authority. The Panel includes five industry members who are elected by BSC Trading Parties every two years. Elections are held if more than five suitable candidates are nominated by Trading Parties. Industry members are not to be representative of any particular industry constituency. Instead, they must act impartially to further the Panel Objectives<sup>2</sup>. The aim of the Panel elections is to achieve an appropriate balance of industry expertise on the Panel. The Panel chair can appoint a sixth industry member if the five elected members do not provide an appropriate balance of industry expertise.

Trading Parties or Trading Party groups (in the case of a Trading Party with affiliates) have up to two votes in Panel elections, one for each Energy Account they hold. For example, a Trading Party group which has generation and supplier interests may cast one vote for its Production (generation) Energy Account and one for its Consumption (supplier) Energy Account. The existing voting rules for electing industry Panel members are set out in full in the BSC<sup>3</sup>. In the most recent elections in 2008, 59 votes were cast out of a possible 308<sup>4</sup>.

The current method used to elect industry members is through a preference voting system. Each Trading Party or Trading Party group submitting a voting paper(s) must indicate a first preference for one of the nominated candidates and may (but is not obliged to) also indicate a second and/or third preference for up to two other nominated candidates. After the voting period closes, votes are counted and candidates elected according to the number of preference votes they have received.

In the first round, candidates achieving or exceeding a qualifying total based on their first preference votes are elected. The qualifying total (Q) is calculated as  $Q=(T/N)+1$ , where T is the total number of first preference votes in all voting papers and N is the number of industry members to be elected. If five members are not elected after the first round, a second round is held where the voting papers with first preferences for candidates elected in the first round are discounted. The qualifying total is adjusted to  $(T'/N')+1$  where T' is the number of first and second preference votes in all remaining voting papers and N' is the total number of industry members still to be elected. If vacancies still remain after the second round, there is a third voting round. There is a further

<sup>1</sup> The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

<sup>2</sup> Section B 1.2 of the BSC.

<sup>3</sup> Annex B-2 of the BSC.

<sup>4</sup> Ellexon noted during assessment of P251 that 308 possible votes could have been cast. The 2008 Panel election results are available on the Ellexon website: [www.ellexon.co.uk](http://www.ellexon.co.uk).

adjustment to the qualifying total and first, second and third preference votes in 'unused' voting papers, i.e. those not already used to elect a candidate, are counted.

If there are still vacancies after three voting rounds, a further voting round(s) takes place when all voting papers including those discarded in the second and third rounds are counted and candidates ranked according to first preference votes, i.e. discarded votes become transferable between remaining candidates. Candidates with the most first preferences are elected until all vacancies are filled. In the event of a tie on first preferences, those candidates' second preference votes are counted. If there are still vacancies and candidates are tied in terms of number of votes, there is the potential for the election of candidates by the drawing of lots.

In summary, the current voting system discounts the voting papers (for the second and third voting rounds) of parties whose preferred candidates have been elected. The discounting of parties' votes and the way that qualifying totals for each round are calculated can mean that a further round of voting after the third round is required to elect a candidate(s) and could lead to election of a candidate by the drawing of lots.

### **The modification proposal**

E.ON UK raised P251 in February 2010. The proposer suggested that the adoption of a different electoral system, the Single Transferable Voting (STV) system, for Panel elections would better facilitate the BSC Applicable Objectives. In the proposer's view, there are a number of defects with the current election system for industry members:

- Since votes do not transfer between candidates in early voting rounds, how the qualifying total is calculated for each voting round means that some or all industry members could be elected in the further voting round, possibly by drawing of lots
- Third preference votes are discarded in the further voting round(s) for candidates with matching numbers of first and second preferences, when they could help determine the outcome
- A candidate with some first preference votes but few second preference votes could be elected instead of a candidate with fewer first preference, but more second preference, votes
- The current system could encourage tactical voting to influence the outcome

The STV system would set a quota (a defined share of votes) which a successful candidate would need to achieve or exceed, calculated as  $T/(N+1)$  where T is the total number of valid votes cast and N is the number of seats to be filled. This quota would set a lower threshold for success than the current qualifying total. Surplus first preference votes and second and/or third preference votes of successful candidates and candidates with little chance of election would be redistributed proportionately to other candidates in subsequent voting rounds to elect candidates who met the quota.

In the proposer's view, the transfer of surplus preference votes to other candidates in a proportionate manner would remove the risk that a minority of votes decides the outcome of elections, thereby removing barriers to greater participation in the election process and better facilitating BSC Applicable Objective (c). The proposer also thought that the administration of an election under STV would be no more complex than currently and that, with potentially more participation, Panel elections would represent greater value for money and be more efficient, better facilitating Applicable Objective (d).

During assessment of the modification proposal, the modification group developed an Alternative which would adjust the STV quota to  $(T/(N+1)) + 0.01$ . The modification

group considered that adding '0.01' would remove a potential risk of more candidates meeting the quota than the number of seats to be filled by using a slightly higher quota threshold. A majority of the group thought the Alternative would be better than the modification proposal by dealing more effectively with the identified risk. However, overall, a majority of the group did not consider that either the modification proposal or the Alternative better facilitates any of the Applicable Objectives.

### **BSC Panel<sup>5</sup> recommendation**

The BSC Panel considered the draft Final Modification Report at its meeting on 13 May 2010. The Panel agreed by a majority that neither the modification proposal nor the Alternative better facilitates any of the BSC Applicable Objectives. The Panel also considered by a majority that the Alternative is not better than the modification proposal. Details of the Panel's views appear in the Final Modification Report.

### **The Authority's decision**

The Authority has considered the issues raised by the modification proposal and the Final Modification Report dated 17 May 2010. The Authority has considered and taken into account the responses to Elexon's<sup>6</sup> consultation on the modification proposal which are attached to the FMR<sup>7</sup>.

The Authority has concluded that implementation of either the modification proposal or the Alternative will **not** better facilitate achievement of the Applicable Objectives of the BSC<sup>8</sup>.

### **Reasons for the Authority's decision**

*Is there a defect to address?*

The aim of Panel elections is to elect five industry members who can provide an appropriate balance of industry expertise on the Panel, adjusted only where the Panel chair appoints a sixth industry member when insufficient balance in expertise is identified. The Panel has a critical role to play in the industry and it is very important that the election processes are effective.

We note that some modification group members, a number of respondents and Panel members were unclear whether there is a defect to address. In particular, the proposer's views regarding the lack of participation by BSC parties in Panel elections, the complexity of the current voting process and the potential for tactical voting were challenged.

We note the views of a modification group member that one purpose of Panel elections is to ensure that Trading Parties have one industry Panel member who they can identify as having been elected by them. Identifying with a particular industry member allows Trading Parties to relay their views to the Panel, albeit Panel members must act impartially. While we note that this is the likely outcome from the current voting system, this in itself does not appear to be a defect.

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<sup>5</sup> The BSC Panel is established and constituted pursuant and in accordance with Section B of the BSC.

<sup>6</sup> The role and powers, functions and responsibilities of Elexon are set out in Section C of the BSC.

<sup>7</sup> BSC modification proposals, modification reports and representations are available on the Elexon website.

<sup>8</sup> As set out in Standard Condition C3(3) of NGET's Transmission Licence, see:

[http://epr.ofgem.gov.uk/document\\_fetch.php?documentid=4151](http://epr.ofgem.gov.uk/document_fetch.php?documentid=4151)

We note that only 59 votes were cast out of 308 possible votes in the 2008 elections. This statistic indicates either a high degree of apathy amongst Trading Parties or lack of knowledge about Panel elections. Feedback from the Cross-Codes Electricity Forum suggested that parties' lack of participation is as likely to be due to a lack of understanding and education about the current Panel election process and that this would not necessarily change with a different voting system. Therefore, addressing apathy or lack of knowledge is not one that a change in the voting system by itself can address.

In any case, there was no evidence presented that the STV system would be materially less complex to administer and therefore more efficient than the current voting system or easier for parties to understand. Some respondents, modification group members and Panel members suggested that the STV system may be more complex, not less, due to the transfer of preference votes in every voting round. In our view, the STV system would not be less complex to administer.

It is not clear whether tactical voting is more likely under the existing electoral system. No evidence was presented that tactical voting has taken place in previous Panel elections or whether such voting, if carried out within the rules, would cast doubt on the election results. We note the difference highlighted by the modification group between tactical voting and organised 'block' voting. The former is a legitimate tactic if practised within the election rules. The latter may raise concerns about the legitimacy of Panel election results but proof would be needed of 'block' voting. We consider that there is a lack of evidence that greater participation in elections or the removal or minimising of 'block' voting are issues that can be addressed by a change to the voting system.

We welcome Elexon's commitment, made during the assessment of the modification proposal, to raise awareness regarding the forthcoming 2010 Panel elections in order to increase participation. We also note that some Panel members were supportive of the formation of an Issues Group to undertake a wider enquiry into the subject of Panel elections and the future make-up of the Panel. While this is a matter for the code arrangements, we welcome the commitment of the Panel and Elexon to encourage a wider discussion of the issues raised.

#### *Assessment against the Applicable Objectives*

We do not consider that there is clear evidence that the current voting system produces a Panel with an inappropriate balance in industry expertise. We do not consider that, based on the assessment of the modification proposal, a defect in the BSC has been clearly identified. Therefore we consider that neither P251 nor the Alternative better facilitates any of the BSC Applicable Objectives. At best, the evidence suggests that the modification proposal and Alternative are neutral against all the Applicable Objectives.

#### **Decision notice**

The Authority has concluded that implementation of modification proposal BSC P251: 'Revision of the election process for BSC Panel Industry Members' or its Alternative will not better facilitate the achievement of the Applicable Objectives of the BSC.

**Mark Cox**

**Associate Partner, Transmission and Governance**

Signed on behalf of the Authority and authorised for that purpose