

## P251 Consultation Responses

Consultation issued on 15 April 2010

We received responses from the following Parties

Company	No BSC Parties / Non-Parties Represented	Role of Parties/non-Parties represented
Gemserv	<b>0/1</b>	MRASCo
RWE npower	<b>10/0</b>	Supplier/Generator/ Trader / Consolidator / Exemptable Generator / Party Agent
Scottish and Southern Energy	<b>9/0</b>	Supplier / Generator / Trader / Consolidator / Exemptible Generator
Accenture (UK) Ltd. (for and on behalf of ScottishPower)	<b>7/0</b>	Supplier / Generator / Trader / Consolidator / Exemptible Generator / Distributor
EDF Energy	<b>13/0</b>	Supplier/Generator/Trader/Consolidator/Exemptable Generator/Party Agent/Distributors
E.ON UK	<b>6/0</b>	Supplier / Generator / Trader / Consolidator / Exemptable 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 majority view that the Proposed Modification should be rejected?

### Summary

Yes	No	Neutral/Other
5	1	0

### Responses

Respondent	Response	Rationale
Gemserv	Yes	The complexity of the system could be a disincentive for BSC Parties.
RWE npower	Yes	RWE npower does not believe that there is currently any evidence to suggest that the proposed modification would provide the benefits that have been stated by the proposer when compared to the existing voting arrangements.
Scottish and Southern Energy	Yes	<p>We agree with the Panel recommendation that the Proposed P251 Modification be rejected.</p> <p>We concur with the view of the majority of the Panel that:-</p> <ul style="list-style-type: none"> <li>i) The new election process proposed is not better than the one in place;</li> <li>ii) The new election process proposed is different and may be even more complex than the current one;</li> <li>iii) Neither the Proposed nor the Alternative Modification better facilitates any of the BSC Applicable Objectives; and</li> <li>iv) Both the Modification Group and we struggled to see the issue this Modification is trying to address.</li> </ul> <p>Furthermore, in our view, the suggested defect does not, in our view, exist. Therefore P251 would not better facilitate Applicable BSC Objectives (c) or (d).</p>
Accenture (UK) Ltd. (for and on behalf of ScottishPower)	Yes	We believe that the Proposed Modification does not better facilitate the BSC Objectives. We believe that there is a neutral effect on Objectives (a), (b) and (c). On Objective (d), the Proposed process is marginally more complex and burdensome a process for ELEXON to administer, and so will have a slight negative effect on the efficiency of their administration of the election process in particular and the BSC in general.
EDF Energy	Yes	EDF Energy supports the Panel's majority view that the proposed modification does not better meet the BSC objectives and should therefore be rejected. It has been identified that there a significant number of BSC parties that do not for some reason participate in the

Respondent	Response	Rationale
		<p>BSC Panel election process. The key question in respect of both BSC objectives (c) &amp; (d) is whether the original proposal will encourage greater participation in the BSC election process. We are currently not convinced that it is the existing election process that is the cause of parties not engaging in BSC elections and therefore do not consider the proposal is better than the baseline. Indeed this view is supported by the feedback received by Elexon from participants at the recent Cross-Codes Electricity Forum in that changing how parties vote or how these votes are counted would make very little difference to their participation in the election process. It was universally believed that the fundamental issue was lack of education on the process and a feeling of disfranchisement from the Panel. It was suggested that more publicity about the elections, or the candidates that stand, would engage smaller parties better than tweaking the election process.</p> <p>Furthermore, there is no evidence that there exists organised tactical block voting by a number of trading party groups that could have the potential to deter particularly smaller parties from participating in the BSC process. Individual participants are simply incentivised to vote in a manner which best suits their desired preferences for appointed Panel Members.</p>
E.ON	No	<p>The Draft Mod Report statement that "The new election process proposed is not better than the one in place" (0.1 Section 8 p 17 'Panel discussions') seems insupportable though seems stated as fact. Indeed that statement is not backed up. This section goes on to state:</p> <p>"One Panel member noted that in current system, the vote is counted and not transferred. The intention is to give the remaining voters a chance to have their votes contributed to election of a candidate, which is considered to be a fair process. However, transferring votes seems odd in the STV system. For example, those voters casting 1<sup>st</sup> preferences with the majority in the 1<sup>st</sup> stage, still gain a second chance to vote for a second candidate by transferring the surplus votes from the first elected candidate."</p> <p>Firstly, as per the fourth bullet point below it is hardly fair that some papers have all 3 of their choices counted (and given equal full weighting), while only the first choice is counted from other papers, i.e. effectively the former paper is counted 3 times and may see all 3 choices elected, giving it 3 times the weighting given to those papers counted only once and seeing only one choice elected. Allowing some papers to be counted more than once in this way is equivalent to having a First Past the Post system where some voters are given only one voting paper but others three.</p> <p>Secondly, under STV those who have cast '1<sup>st</sup> preferences with the majority in the 1<sup>st</sup> stage' do not 'gain a second chance to vote for a second candidate'. Only the <i>proportion</i> of their vote, if any, that is surplus is transferred, so in total they get 1.0 vote, the same as everybody else. This argument is really in favour of</p>

Respondent	Response	Rationale
		<p>STV and against the present system where those papers that go through to round 2 get two chances, round 3, 3 chances.</p> <p>The current system means that:</p> <ul style="list-style-type: none"> <li>• Voting Parties must remember that if they contribute to a candidate's election in round one, their paper(s) will be excluded from round two and three, even if that candidate achieved more votes than required for election. Any such papers will be included in the inevitable Further round, but as this counts first preferences only, seconds only in the event of a tie, such papers are unlikely to have an impact in this round. Thus voting for a candidate likely to be popular may well be a waste of your vote and lead to your paper(s) only influencing the election of one candidate. Parties may not realise this, or if they do, be encouraged to give their first choice(s) to another candidate, risking that the true first choice of many Parties might not be elected if several Parties took this course. Moving to Single Transferable Voting would remove these issues as voters would know that if their vote was surplus to requirements, it would be transferred proportionately to their second choice candidate.</li> <li>• Likewise a vote cast for an unpopular candidate may currently be wasted, disadvantaging those voters who prefer such candidates, but this would not happen under STV as such votes would be transferred to these papers' next choice candidates in the rounds of elect, transfer, exclude, transfer that STV involves.</li> <li>• The current exclusion of some papers from the second and third rounds can result in the perverse situation of a majority of papers determining only one or two Panel places in the first and/or second rounds while a far fewer number of remaining papers determine three or four candidates., i.e. a disproportionate result. STV would give a more proportionate outcome.</li> <li>• In such a situation not only may the majority of papers only determine the minority of places and vice versa, but those papers favouring candidates successful in an earlier round would have had only one or at most two of their choices taken into account, whereas a paper that goes through to round 3 would have all its three choices counted, given equal weighting and potentially all three elected in that round. Counting all 3 choices on some papers but only 1 from others does not seem a feature of a fair voting system.</li> <li>• If the current inevitable Further round results in a tie on first and second choices, presently third choices are overlooked and the election decided by chance. This is counterintuitive and</li> </ul>

Respondent	Response	Rationale
		<p>would negatively impact engagement with the election process by those Parties who made the effort to express these preferences. As previously identified slight differences in only a few of the 59 papers cast in the 2008 election would have caused this situation to arise and 2 of the 5 industry members being decided by chance for no apparent benefit.</p> <p>Recent debate around the possibility for a hung parliament suggests that election methodologies are likely to be of ongoing interest and subject to further scrutiny this year. That two of the main three political Parties have included a move towards Single Transferable Voting in their General Election manifesto highlights that it is widely regarded as the fairest method for producing an outcome that best reflects the wishes of the electorate. (Labour promising to hold a referendum on moving to preferential voting via the Alternative vote, based on the single-winner outcome of the STV system. STV itself applying to, and as the Electoral Reform Society highlight, widely judged preferable for multi-winner elections such as the BSC Panel). To progress such a change in the BSC Panel election system this year seems highly desirable to further efforts to achieve best practice in Code Administration, even more so given the shortcomings inherent in the present system.</p> <p>The fact that no Parties may have complained about the outcome of past elections or decisions made by the current Panel is no reason to stick with the present flawed methodology for electing industry members, that could clearly be improved. The current system is not a standard voting methodology, appearing particular to the BSC and having various fundamental shortcomings as above. It would be a responsible, positive forward-thinking move towards best practice to switch to a standard, well recognised and more robust STV voting system, instead of the present biased and complicated arrangements. Particularly, it would seem sensible and timely to do so now with moves towards greater self governance in Code Administration and the likelihood of greater scrutiny of the Panel and legitimacy of its decisions from Parties, the Authority and other interested bodies.</p>

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

**Summary**

Yes	No	Neutral/Other
5	1	0

**Responses**

Respondent	Response	Rationale
Gemserv	Yes	The Proposed Solution is robust enough to prevent 'wasted' votes.
RWE npower	Yes	See explanation to question 1 above.
Scottish and Southern Energy	Yes	<p>We agree with the Panel recommendation that the P251 Alternative Modification be rejected.</p> <p>As noted in our response to Q1 above, we concur with the view of the majority of the Panel that:-</p> <ul style="list-style-type: none"> <li>i) The new election process proposed is not better than the one in place;</li> <li>ii) The new election process proposed is different and may be even more complex than the current one;</li> <li>iii) Neither the Proposed nor the Alternative Modification better facilitates any of the BSC Applicable Objectives; and</li> <li>iv) Both the Modification Group and we struggled to see the issue this Modification is trying to address.</li> </ul> <p>We also agree with the Panel that the P251 Alternative Modification is not better than the Proposed Modification, because they are equally complex</p> <p>Furthermore, in our view, the suggested defect does not, in our view, exist. Therefore P251 would not better facilitate Applicable BSC Objectives (c) or (d).</p>
Accenture (UK) Ltd. (for and on behalf of ScottishPower)	Yes	The Alternative Modification, while better than the Proposed, suffers from the Proposed's major problems, and should therefore be rejected.
EDF Energy	Yes	The views expressed above in respect of the original proposal equally apply to the alternative.
E.ON	No	The arguments in favour of implementing the Proposed apply equally to the Alternative, with a minor change to the quota calculation making the Alternative probably preferable to the original.

Question 3: Do you agree with the Panel's majority view that the Alternative Modification is not better than the Proposed Modification?

## Summary

Yes	No	Neutral/Other
3	3	0

## Responses

Respondent	Response	Rationale
Gemserv	Yes	See Answer 2
RWE npower	Yes	Neither the proposed nor the alternative modification better facilitate any of the BSC Applicable Objectives. The alternative appears to cater for a voting scenario where a larger number of successful candidates is achieved than there are places for, but it is unclear how likely this situation is given the number of seats, candidates and votes that would be cast in a genuine BSC Panel election process.
Scottish and Southern Energy	Yes	For the reasons set out in Q2 above.
Accenture (UK) Ltd. (for and on behalf of ScottishPower)	No	-
EDF Energy	No	The alternative is equally as complex as the proposed modification. However, it does attempt to provide additional security by preventing more candidates than there are seats to fill being able to meet the quota and therefore may be a marginally better proposal than the original.
E.ON	No	It is unclear why the Panel thought this. At the Panel meeting 08/04/10 the Alternative appeared to be dismissed with little discussion. The Draft Mod Report statement (0.1 Section 8 p 17) that "the Panel felt the Alternative Modification is not better than the Proposed Modification, because they are equally complex" does not acknowledge, let alone assess the difference between the two. This implies that at least this aspect of the Proposed and the Alternative has not been given due consideration.

Question 4: Do you agree with the Panel's suggested Implementation Date:

- On 24 June 2010 if an Authority decision is received on or before 16 June 2010; or
- 5 Working Days following an Authority decision?

## Summary

Yes	No	Neutral/Other
5	1	0

## Responses

Respondent	Response	Rationale
Gemserv	Yes	5 Working Days appears to be the standard for changes of this nature.
RWE npower	Yes	RWE npower agree with the Panel's decisions with regard to rejecting the proposals but if either the proposed solution or the alternative were to be successful their implementation would not impact RWE npower systems or processes and so on this basis we could agree with the suggested date.
Scottish and Southern Energy	No	With respect to implementation occurring, generically, five Working Days after an Authority decision we note that the CUSC allows for ten Business Days between Authority decision and implementation. We are mindful, especially at times of holidays (such as the summer holidays which start, in Scotland, in June) that if approved around the holiday period that a Code change might be approved and implemented whilst many parties are absent from work. For that reason we believe if Elexon are to go down the CUSC route of determining implementation X days after an Authority decision that X is set at ten, rather than five Working Days.
Accenture (UK) Ltd. (for and on behalf of ScottishPower)	Yes	-
EDF Energy	Yes	However, we do not consider that 5 WDs proposed for this modification proposal should in anyway set a precedent for future modification proposal implementation dates.
E.ON	Yes	P251 should be implemented as soon as possible.

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

Yes	No	Neutral/Other
5	0	1

## Responses

Respondent	Response	Rationale
Gemserv	Yes	The legal text captures the STV system mentioned in P251
RWE npower	Yes	If the proposal were to be successful the legal drafting would facilitate its implementation.
Scottish and Southern Energy	Yes	It appears to.
Accenture (UK) Ltd. (for and on behalf of ScottishPower)	Yes	-
EDF Energy	Yes	-
E.ON	See comment	A few typos and minor concerns as per previous communication with ELEXON lawyers, e.g. definition of V.

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

## Summary

Yes	No	Neutral/Other
5	0	1

## Responses

Respondent	Response	Rationale
Gemserv	Yes	It Adopts STV with a different value of quota.
RWE npower	Yes	If the alternative proposal were to be successful the legal drafting would facilitate its implementation.
Scottish and Southern Energy	Yes	It appears to.

Respondent	Response	Rationale
Accenture (UK) Ltd. (for and on behalf of ScottishPower)	Yes	-
EDF Energy	Yes	-
E.ON	See comment	As per answer to question 5.

## Question 7: Do you have any further comments on P251?

### Responses

Respondent	Comments
Gemserv	No
RWE npower	No
Scottish and Southern Energy	<p>The Electoral Reform Society arrangements that the Proposer relies upon in putting forward P251 is designed for elections with very large numbers of both (i) voter and (ii) votes cast; where tens or hundreds of thousands (if not millions) of voters exist and cast their votes and where, for example, a simple "+1" has little effect; i.e. 99,999 votes +1.</p> <p>However, with a BSC election (such as the last one) where only 59 votes are cast (or if P252 were implemented just 31 votes) the ERS approach is, in our view, fatally flawed.</p> <p>In reference to the comments from a Panel member regarding an Issue Group being established to consider the whole election process prior to 2012, we would, in principle, support such a move and request that it consider, amongst the options, a simple approach whereby the number of votes cast are totalled up and the top five Candidates (by the number of votes cast) would be duly elected to the Panel (with tied situations determined, as now, by lots). This is also the simplest election for people to understand.</p>
Accenture (UK) Ltd. (for and on behalf of ScottishPower)	No
EDF Energy	No
E.ON	We have been surprised and disappointed by the apparent apathy and lack of depth to discussions regarding P251. It seems strange that industry and the Panel would not wish to tighten procedures and seem content to stick with flawed current practice instead of taking a more progressive approach and improving this. With few

Respondent	Comments
	<p>candidates an outcome may well not be very different whether under the present system or STV, but this is not a reason to stick with the current flawed methodology.</p> <p>With increasing self governance that may put the Panel under greater scrutiny, ensuring the legitimacy of decisions could be advanced through adopting a more robust election system for the industry members. When Panel decisions on modifications that may have a large financial impact on Parties may affect Parties' ability to appeal Authority decisions, it is ever more important that the election reflects the wishes of the voting Parties and gives them confidence that the 'quality' of the Panel determinations reflects the spread of expertise voted for by all Parties.</p> <p>If P251 is not implemented an Issue Group following the Authority decision would still seem sensible. Although an Issue Group raised early/mid 2009 would have given more time to debate election issues, this modification could still be implemented for the 2010 election and to do so would be the most efficient outcome. Even if it is not in time for the 2010 voting, implementing P251 as promptly as possible would show that progress is being made towards best practice and possibly negate the need for an Issue Group.</p>