

## P251 Consultation Responses

Consultation issued on 9 March 2010

What stage is this document in the process?

01 Initial Written Assessment

02 Definition Procedure

03 Assessment Procedure

04 Report Phase

We received responses from the following Parties

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

Question 1: The Group remains neutral that P251 would better facilitate Applicable BSC Objectives (c) and (d). Do you agree?

### Summary

Yes	No	Neutral/Other
4	2	0

### Responses

Respondent	Response	Rationale
RWE npower	Yes	RWE npower do not have any evidence, at present, to

Respondent	Response	Rationale
		suggest that the current voting arrangements are not working properly and as such cannot see how introducing a new Single Transferable Vote (STV) process of voting will better facilitate the relevant Applicable BSC Objectives.
Centrica	Yes	Centrica believes that the Proposed Modification would address the identified defect and result in a fairer and more reflective election process for the voting population. This would have marginal but positive benefits for competition and the efficient administration of the BSC arrangements (c) and (d). Centrica notes that it appears that there were four attending Modification Group member's casting views against objectives and two provided arguments for the Proposed Modification under objectives (c) and (d). This would appear to be a split view as opposed to a neutral view (which would indicate a recommendation for rejection).
SAIC Ltd. (for and on behalf of ScottishPower)	No	We believe that the Proposed Modification, by a very small margin, 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	It has been identified that there is a significant number of BSC parties that do not for some reason participate in the BSC Panel election process. The key question in respect of both BSC objectives (c) & (d) is whether the original proposal will encourage greater participation in the BSC election process. EDF Energy is currently not convinced that it is the existing election process that is the cause of parties not engaging in BSC elections and therefore at this stage do not consider the proposal is better than the baseline.
Scottish and Southern Energy	Yes	The suggested defect does not, in our view, exist. Therefore P251 would not better facilitate Applicable BSC Objectives (c) or (d).
E.ON UK	No	We believe that P251 would better facilitate Applicable BSC Objectives (c) and (d).  Objective (c) is better facilitated as changing the voting system so that the Industry Panel membership more proportionately reflects the expertise voted for would better ensure a balance of relevant experience amongst Panel members. The Panel makes recommendations to the Authority on modifications that can have significant impacts on Parties, and whether these companies can appeal the decision made by the Authority depends whether or not the Authority decision was in line with that made by the Panel. Consequently it is particularly important that the Panel Industry membership is a fair reflection of all voters' wishes. Minority views must be

Respondent	Response	Rationale
		<p>counted but should not be overly reflected in the industry membership of the Panel and potentially votes cast. The current system that discards the second preference votes of those whose first choice is elected in the first round but counts both first and second preferences from the remaining papers in the next round can give these papers undue influence and mean that a strong majority for one or two candidates, whether from small or large Parties, may perversely leave the majority of industry Panel members being decided by a smaller number of voting papers in the next rounds. Changing the current voting process to Single Transferable Voting would avoid this while ensuring that minority wishes were still reflected.</p> <p>Objective (d) would also be better facilitated by P251. Adopting a standard election methodology, removing the disincentive of excluding some papers and the related incentive for such tactical voting should further increase engagement with Code administration. Single Transferable Voting is a standard well respected methodology as recommended by the Electoral Reform Society and widely used by members of the public to decide 'multi-winner' elections (e.g. the boards of charities such as Amnesty International). Removing the current system with its complication of setting aside some voting papers and adopting STV would make the election process more straightforward. It would be more efficient, simpler for users so less likely to lead to wasted votes if Parties do not consider the current complexity, also more likely to lead to true preferences being expressed from those that do, allowing Parties to indicate their real preferences without having to weigh up the likelihood of their voting paper being a) wasted if it is surplus to requirements for a successful candidate b) if for a successful candidate then excluded from the following round whether it was a surplus vote or not; c) potentially completely wasted if voting for one or two candidates with no chance of election. Further engagement from Parties would be encouraged through the improved accessibility and transparency of this process as well as impact on outcomes. Hopefully the fairer and more straightforward the election process seems to Parties the more they may engage with not only elections but potentially the modification process as a whole.</p>

Question 2: Do you agree with the defects of the current election process identified by the Group? For example: Do you consider it to be too complex? Does it encourage tactical voting?

### Summary

Yes	No	Neutral/Other
1	3	2

### Responses

Respondent	Response	Rationale
RWE npower	Yes and No	On the one hand we do not consider that the current voting arrangements are too complex but concede that it is possible for tactical voting to take place, however, we have no evidence to suggest that this has happened. Further, isn't it possible for other forms of tactical voting to be employed under the STV system, for example only providing a first preference vote?
Centrica	-	Centrica believes that the current election process may provide perverse incentive to not vote for a perceived popular candidate in order to increase the chance that a second choice is additionally elected. This could therefore potentially distort the voting process. The purpose of the election process should be to fairly and accurately reflect the views of the voting population. The current process can result in a poorly supported candidate being elected ahead of another candidate who has greater support from the voting population.
SAIC Ltd. (for and on behalf of ScottishPower)	No	Whilst we agree that on first glance the current process is complex, we find it no more complex to understand than the Proposed process, and while we see no evidence of tactical voting occurring, we feel that the scope for tactical voting could be increased under the Proposed system. While it is clear from the work done by the group that a <b>different</b> outcome would have been achieved in the 2008 elections using the Proposed system, it has not been made clear that this would have been a <b>better</b> outcome. We do not agree with the Proposer that it is wrong for a candidate with more "lower" preference votes to lose out to a candidate with fewer "higher" preference votes. That would be the case if all votes were treated equally, but they are not. The whole point is that the votes express a preference, and it is entirely correct that a first preference vote outweighs any number of second or third preference votes – you can't have it both ways. To go down that road would mean setting arbitrary limits on, for example, how many second preference votes were equal to a first preference vote. It makes the preference system pointless.
EDF Energy	No	The current election process appears to be overly complex. However, it is uncertain to what degree this

Respondent	Response	Rationale
		<p>complexity is directly affecting the level of participation in the election process. Notwithstanding this, there appears to be no justifiable reason why this complexity exists.</p> <p>We do not consider that the current process actually encourages tactical voting. Individual participants are simply incentivised to vote in a manner which best suits their desired preferences for appointed Panel Members. Further, 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.</p>
Scottish and Southern Energy	No	<p>We do not consider the current voting arrangements to be complex.</p> <p>However, we do find the suggested P251 voting process, in comparison to the Baseline, to be highly complex.</p> <p>We do not believe that the Baseline encourages tactical voting.</p>
E.ON UK	Yes	<p>As per our answer to question one, the current voting process adds unnecessary complexity for voters and clearly encourages Parties who have read the rules properly to vote tactically, i.e. potentially not for the candidate they really prefer. This is incentivised by two aspects of the current process, firstly the exclusion of papers from round 2 if the 1st stated preference was elected in round 1, and from round 3 if the 1st or 2nd preference was elected in round 1 or 2. Secondly from the 1<sup>st</sup> and 2<sup>nd</sup> preferences of remaining papers being counted in round 2, 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> in round 3, i.e. counting 2 or 3 preferences from these papers whereas the papers excluded from these rounds would have only had their 1<sup>st</sup>/1<sup>st</sup> and 2<sup>nd</sup> preferences considered. Thus e.g. a paper electing a candidate in round one would only elect one seat, but a paper that did not under rounds one or two could however influence the election of up to three candidates in round three. Under the current process voting Parties should be mindful that a vote for a candidate likely to be popular would be wasted if that person exceeded the total votes required, as all these papers would be excluded from the next round rather than the surplus vote transferred proportionately. Parties might waste their vote if they had not given this issue the consideration it requires at present. If they did consider it, as per our answer to question one, if a Party assumed that their true first preference might have a high chance of election from others' votes, they might then choose to vote elsewhere to ensure that their vote is not wasted. This would mean that if several Parties acted in such a manner the candidate in question might actually not be elected. Similarly a Party might choose instead to cast their 1st and possibly 2nd preference votes for the 'least worst' of the candidates, in the not unwarranted hope that this might increase their chances of at least influencing the election of other Panel members rather than potentially being wasted in an excess vote for one candidate.</p>

Question 3: The Group explore the election mechanism of the baseline, proposed solution and the potential alternatives. Among all these solutions, which one do you think would encourage greater participation in the panel election (including the number of nominees)?

## Responses

Respondent	Response	Rationale
RWE npower	-	All mechanisms discussed have their strengths and weaknesses and as such we do not believe that in themselves any one of the processes would encourage a greater participation over any of the others. It is possible however, that if a party feels that the current arrangements result in their vote not being counted in some way that they would naturally tend towards a process that would ensure that their vote was taken into account , but this has not been the RWE npower experience to-date.
Centrica	Potential Alternative 1	Centrica prefers potential Alternative 1. This is better than the proposed as it should not be possible for more candidates to be elected than for which there are positions. It would therefore have a small advantage in terms of objective (d). Alternative 2 would have an advantage of being simpler but we do not believe on balance this would address the defect identified. It would therefore be less likely to accurately reflect the views of the voting population. Alternative 3 would be worse for the reasons outlined by the Group.
SAIC Ltd. (for and on behalf of ScottishPower)		We think that there is an underlying problem with Panel elections relating to participation that neither the Proposed or Alternative(s) solutions will fix. We don't believe that there is anything specifically in these proposals which will encourage Parties to vote. Certainly the process could be simplified to the level of Alternative 2, but there are problems with a straight "first past the post" system, not least of which is that with such a small electorate, what if everyone votes for one candidate?
EDF Energy		An appropriate election process needs to be simple, transparent, inclusive, efficient and deliver results that represent the views of the majority. EDF Energy considers the baseline and the modification proposal for single transferable voting (STV) to be unnecessarily complex for a Panel election that consistently has a small number of nominees. We do not believe that an STV election process would in itself deliver greater levels of engagement by BSC parties than that which exists now. Of the alternatives presented in the assessment consultation the first past the post methodology would potentially meet the objectives set out above particularly in respect of its simplicity.
Scottish and		The Baseline

Respondent	Response	Rationale
Southern Energy		
E.ON UK	-	<p>The baseline does not encourage participation either through putting forward a nominee or voting in the election. As votes are non-transferable any nominee would have to be confident of getting a high number of first and/or second preference votes, and also that these would come from people not likely to have put someone with similar experience as their first/second choice, owing to the fact that if the other person was elected in the first/second round any papers featuring both candidates would not be counted in the second and third/third round.</p> <p>Participation in the vote is also discouraged, by the complexity of the 'if the 1<sup>st</sup> preference candidate is elected in round 1 the paper is excluded from round 2, 1<sup>st</sup> or 2<sup>nd</sup> preference in round 1 or 2 then the paper is excluded from round 3' methodology and the consequences of this. Changing the voting system to Single Transferable Voting (whether with a quota of <math>T/(N+1)</math> as per the Proposed or a slightly different calculation as per an Alternative) would give greater incentive for Parties to both nominate candidates and vote in the elections, as candidates could be confident that voting would be in accordance with Parties' true wishes rather than cast with consideration for the idiosyncrasies of the current method.</p> <p>As far as the potential Alternatives go, like the Proposed 1) i) or ii) would be an improvement on the baseline. 2) and 3) do not seem to be.</p> <p>We are not sure where <u>Alternative 1) i)</u>, STV with a quota of <math>(T/(N+1))+0.1</math> is currently used, and it does not appear to be suggested as a standard 'quota' calculation in the literature. But if votes are transferred to 2 dp might be of merit.</p> <p>(The group has not yet discussed the impact of rounding up or down, research indicates that it is usual for the Electoral Reform Society/P251 suggested quota to be rounded up, whereas Droop rounded down. For some numbers of course though this will not make a difference There are also suggestions of ignoring any dp past 2 and adding 0.01 when transferrals do not result in an integer – the Group needs to consider all these options).</p> <p><u>Alternative 1), ii)</u>, STV with the 'Droop' quota of <math>(T/(N+1))+1</math>, makes sense following the logic that no more candidates should be able to meet the quota than there are seats to fill. So to elect 1 person they must achieve 50% + 1, 2 people 33.33% + 1, 3 people 25% + 1, 4 people 20% + 1, hence 5 people each need 16.67% + 1 (versus P251 Proposed 16.67% only – however, rounding must be decided on whichever quota calculation is judged best. E.g. if 60 votes, P251 10.00, Droop 10.60 - rounded down to 10.00)?</p> <p><u>Alternative 2)</u>, First Past the Post (FPTP), i.e. electing the candidates with the most votes even if they have</p>

Respondent	Response	Rationale
		<p>not achieved a certain quota, would be simplest to administer and for voters to understand. However these advantages are outweighed by the disadvantages.</p> <p>As has been frequently identified with elections for Members of Parliament, FPTP with no 'quota' threshold means that a candidate can be elected even though the majority of the electorate did not support them (e.g. in 2005 George Galloway elected despite receiving only 18.4 per cent of the constituency votes). Where an election is for more than one place, under FPTP all votes for unsuccessful candidates would be wasted and the election of successful candidates could be disproportionate. The more candidates there are the more this could be an issue; the Group have been advised that there have been up to ten candidates for BSC Panel industry members in the past. But even with 6 candidates this could be the case. (In the 2008 election if the sole votes had been cast the same way as the first preference votes were – impossible to know - this would not have changed the outcome. But this would have meant 79.7% of the vote determining 3 seats, 16.9% the other 2 (with 3.4% wasted)). This could easily be more extreme, e.g. if 5 Parties voted slightly differently 88.3 % could have determined 3 seats, 8.3%, 2, with the same % wasted). If voting was more extreme with strong majorities for one or two candidates the majority of votes might determine only 1 or 2 of the places available and the smaller numbers of papers remaining, 4 or 3 of the places. Conversely if votes were more evenly spread a high % would be wasted (if 60 papers up to 9 i.e. 16.7%).</p> <p>In practice voting for 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> preferences can be viewed as less onerous than deciding on one candidate only, with anyone who genuinely only supports one candidate still having the option to vote for them alone. Giving the voter options is preferable as allowing them one choice only would restrict Parties' choices considerably without reducing any incentive (if there is one) for organised 'block' voting. This potential Alternative would mean that voting Parties would only be able to indicate a preference for 1 candidate rather than up to 6 (or 3 if P252 is approved). Although the Party might be happy with the remaining candidates elected less engagement with the elections and potentially modifications process could be expected.</p> <p><u>Alternative 3)</u>, STV but compulsory for Parties to express 3 preferences, would be unhelpful. It would not reduce the incentive for 'tactical' voting any more than the Proposed or Alternative 1), but forcing Parties to express 3 preferences when they may genuinely only support one or two candidates would discourage participation potentially at the expense of these candidates.</p>

Question 4: Will the proposed/alternative solutions change the way you vote? For example: preferences, use of second vote etc.

### Summary

Yes	No	Neutral/Other
1	4	1

### Responses

Respondent	Response	Rationale
RWE npower	No	It is not anticipated that any changes to the voting arrangements will affect the way in which RWE npower will cast its votes at an election..
Centrica	-	-
SAIC Ltd. (for and on behalf of ScottishPower)	No	Obviously if Alternative 2 were implemented then the voting system would be changing, however in a system where three preferences are to be expressed then, no, it is unlikely that we would change our voting practice.
EDF Energy	No	EDF Energy will continue to fully participate in the BSC election process and vote in a manner that best suits our desired preference(s) for appointed Panel Members
Scottish and Southern Energy	Yes	Both the proposed and alternative would change the way we vote as it would be more confusing than the Baseline.
E.ON UK	No	We have always given 1 <sup>st</sup> 2 <sup>nd</sup> and 3 <sup>rd</sup> preferences and utilised the voting papers for both our Production and Consumption Accounts.

Question 5: The Group recommend the implementation date to be 5 WDs after the Authority's decision (if a decision is made before 14<sup>th</sup> June 2010) or otherwise the next available release, do you agree with this approach?

### Summary

Yes	No	Neutral/Other
5	1	0

### Responses

Respondent	Response	Rationale
RWE npower	Yes	It is not anticipated that any changes to the voting arrangements will affect the way in which RWE npower will cast its votes at an election.
Centrica	Yes	Whilst not opposed to an implementation dates 5 days

Respondent	Response	Rationale
		after an Authority decision, Centrica believes that a standard of 10 working days should be applied to non-urgent changes. This would be consistent with other BSC modifications and other Codes.
SAIC Ltd. (for and on behalf of ScottishPower)	Yes	As there is no system change (beyond perhaps a new spreadsheet for ELEXON to calculate votes) it makes sense for a short implementation timescale, assuming that there is sufficient time to apprise Parties of any changes.
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. Furthermore, we note that the assessment timescales for this modification is aimed at providing the Authority with the ability to make a decision before the next election process commences in June/July. Subject to other responses received to this consultation, we are concerned that a real understanding of the reasons why certain parties are not engaging in the election process will not be obtained within the tight timescales. Without this information it will undoubtedly be difficult to assess whether any changes to the current baseline are likely to better meet the BSC objectives (c) or (d).
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.
E.ON UK	Yes	-

## Question 6: Are there alternative solutions that the Modification Group has not identified, that they should consider?

### Summary

Yes	No	Neutral/Other
1	4	0

### Responses

Respondent	Response	Rationale
RWE npower	No	A lot of consideration has already been given to the subject, there are no other alternatives that we can think of that need to be considered.
Centrica	No	-
SAIC Ltd. (for and on behalf of ScottishPower)	No	-
EDF Energy	Yes	The potential alternative 2 (reduced election mechanism) may need to be modified in order to address the situation where a tie occurs for the last remaining seat(s). One possible solution would be to allow for preferences to be stipulated and these only used in some form to attempt to address tied situations.
Scottish and Southern Energy		See Q7 below.
E.ON UK	No	-

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

### Responses

Respondent	Comments
RWE npower	No further comments to make.
Centrica	No
SAIC Ltd. (for and on behalf of ScottishPower)	We question the speed at which this Modification is progressing. There is a serious worry that this Modification is being rushed in, in time for the upcoming Panel elections. This leaves a very compressed consultation process which does not afford the Modification group time to fully analyse and compare Alternatives. The initial process prior to NETA go-live took approx 6 months to decide upon the current system, whereas Industry are being pushed into making (or not) a fairly major change to the way the elections process works in only 2 months (effectively only 2 meetings). There is a real concern that we make a decision which we regret after the fact. This is a voting process which has been in place since 2001 and has worked. The last election was in 2008 – if there was a concern over the process then surely it would have been possible to raise a Modification in the past 18 months to allow for a fuller consultation period. Although STV is

Respondent	Comments
	<p>recommended by the ERS, we await their views on whether it is appropriate in elections of this size. It might be appropriate for elections with many hundreds (or hundreds of thousands) of voters, but the turnout at the last election was only 59 votes. Certainly there is an issue around the number of votes cast by Parties (in that some cast one and others two votes) but that could be addressed through Proposed Modification P252.</p>
EDF Energy	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 our view the simplest approach would be to total up the number of votes cast 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 also is the simplest election for people to understand.</p>
E.ON UK	Whatever the methodology, the modification group should also confirm how filling vacancies between elections should take place.