

## P289 Consultation Responses

Report Phase Consultation issued on 21 December 2012

We received responses from the following Parties

Company	No BSC Parties/Non-Parties Represented	Role of Parties/non-Parties represented
Electricity North West Limited	1/0	Distributor
Haven Power Ltd	1/0	Supplier
SmartestEnergy Limited	1/0	Supplier/Trader/Consolidator
E.On	5/7	Supplier/HHDC/ NHHDC
TMA Data Management Ltd	0/1	NHHDC/NHHDA/HHDC/HHDA
National Grid	1/0	Transmission Company
Total Gas and Power Ltd	1/0	Supplier/trader/interconnector user
Noble Clean Fuels Ltd	1/0	Trader/ Interconnector
EDF Energy	10/0	Generator/Supplier/ Party Agent/ Consolidator/ Exemptable Generator /Trader
Waters Wye Associates	0/1	Regulatory support to some BSC Parties
Drax Power Limited	1/0	Generator
Eggborough Power Limited	1/0	Generator
SSE plc	11/0	Supplier/Generator/Trader/Consolidator/Distributor
Centrica	11/0	Generator/trader/supplier/BSC party
Energy UK	0/1	Trade Association response on behalf of members who are BSC Signatories
RWE npower	9/0	Supplier/Trader/Consolidator/Party Agents
IBM UK Ltd for and on behalf of the ScottishPower Group	7/0	Supplier/Generator/Trader/Consolidator/Exemptable Generator/distributor

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 initial recommendation that P289 should be approved?

### Summary

Yes	No	Neutral/Other
5	12	-

### Responses

Respondent	Response	Rationale
Electricity North West Limited	Yes	<p>Whilst this is a subsidiary model rather than a contract model we believe that this does better facilitates objective D. It is recognised that the benefit will mainly be achieved by winning the bid, but there is some justification in supporting the view that a potential reduction in DCC costs may be attained due to more competition from such a respected organisation.</p>
Haven Power Ltd	No	<p>We feel that this modification risks detriment to several of the Applicable BSC Objectives. We see a risk with Objective (a) as we feel that there is a high possibility of existing staff being seconded to the new activities; insufficient ring fencing will lead to a drain of skills and focus from the existing activity that would impact on the efficient discharge of these.</p> <p>We agree with the comment from one of the workgroup participants that this could also be detrimental to objective (c) as we feel it does introduce a risk to the overall standard of the BSC service. Also setting a precedent where commercial activities can be funded by an imposed mandate could have a detrimental impact on (c) as it is yet another cost consideration to act as a disincentive to smaller prospective market participants, who could find themselves funding commercial activities of the BSCCo with little input into their oversight or direct benefit.</p> <p>We see a detrimental impact with regards to objective (d) as we do not understand how allowing mandatory funding for commercial activities better facilitates efficiency in the implementation and administration of the balancing and settlement arrangements. If the money proves insufficient then BSC Parties will be left deciding whether to accept the £600k loss, or extend credit; this can hardly be considered particularly efficient.</p> <p>Funding is being offered in circumstances which would not occur commercially (if we were to fund a tender</p>

Respondent	Response	Rationale
		<p>internally we would expect to have visibility of strategies and business plans prior to giving any funding.). This goes against good business practice and cannot be considered to be anything other than detrimental to this objective. The success of the BSCCo is by no means guaranteed and a lot of the benefits that have been spoken about by Panel are contingent on the BSCCo bid being successful are simply not tangible (all these benefits have been listed as "potential"). Given that these benefits appear to be based on more "of a feeling", rather than hard commercial facts and that the visibility of this process so far has been limited we do not consider it outweighs the burdens that this modification poses and the precedents it sets.</p> <p>There is also the question of perception and we feel that objective (e) needs to be considered in light of any competition law implications. Although we cannot offer a legal view, we consider it important that one is obtained as we feel there may be an issue with a dominant market participant with a mandatory funding pool competing with commercial organisations that have had to make their own commercial arrangements and would have to pay back the monies or account for the loss.</p>
SmartestEnergy Limited	Yes	<p>We believe there will be a benefit of ELEXON becoming the DCC Licensee in the form of transferable expertise, cross-issues with the BSC, efficiency savings and offsetting BSC costs with DCC dividends and these potential benefits outweigh the cost of a DCC bid, and we also agree that BSCCo's participation as DCC candidate adds competitive pressure to the process, which ultimately will better impact BSC Parties.</p>
E.On	No	<p>There is no defect in the BSC that this modification addresses. P284 was the industry's preferred solution to the outsourcing of BSC activities by an unfettered Elexon in the future. Nothing prevents the BSC from putting in place a commercial contract between Elexon and the BSC Co today that will allow Elexon to go ahead with its expansion plans without risk to BSC parties, or requiring them to provide any initial funding for Elexon's expansion.</p> <p>The contract model enabled by P284 completely protects BSC parties from the risks of Elexon's proposed diversification by ensuring that settlement services would continue to be delivered to an agreed</p>

Respondent	Response	Rationale
		<p>contractualised standard, at a cost that is defined and controlled by the BSC Co, which would benefit from an assurance regime to incentivise Elexon to ensure that the BSC delivery was not put at risk. Given the unique situation that the BSC is in, that parties cannot underfund the BSC arrangements, the protection afforded to BSC parties by BSC Co not being permitted to undertake other work recognises that such "open cheque book arrangements" come with limitations, and because of that BSC parties have a right to a more protective regime. If Elexon wish to diversify, and that is something we do support in principle, BSC parties have a right to continue to enjoy risk-free BSC arrangements, which the contract model guarantees, but which a subsidiary model cannot.</p> <p>The benefits Elexon claim will come to BSC parties from the diversification come whether the mechanism of expansion is via a contractual framework or by a subsidiary model. The majority of the benefit seems to derive from a sharing of overheads and services by both companies - which are currently funded entirely by BSC parties. The contract model whilst introducing an element of profit into the BSC arrangements also gives the BSC parties assurance that there will be true business separation between the new Elexon business and BSC Co, as ensuring that the business has sufficient resources to deliver it's contractual arrangements would sit with the Elexon management, and therefore they bear the risk of where to apportion their resources, with parties having a remedy against Elexon for failure. Elexon will have to divert resources to establish the new DCC Co and it is likely that those resources will come from BSC Co, and whilst the Elexon is well intentioned in its aspiration to ensure that the BSC Co is fully reimbursed for resources it uses, unless there is complete and robust ring fencing around BSC Co, there is likely to be increased costs on BSC parties for the ring fencing mechanisms and the assurance that needs to be put in place to prevent any cross subsidy, as well as to monitor and charge DCC Co for the resources it uses and to ensure that BSC Co is fully repaid. This comes at an additional cost to BSC parties.</p> <p>The assessment of this modification was undertaken in a very rushed way and relied heavily on the assessments for the issue 40 and P284 solutions, so whilst the DCC Co will be a separate legal entity with all the rights and powers of a separate corporation, no consideration was given to some of the wider issues -</p>

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		<p>such as the impact on the employees of BSC Co. Will the employees of BSC Co (Elexon) become employees of DCC Co, or will they remain on their exiting employment arrangements. Will they be subcontracted in some way to DCC Co on a rate card type arrangement? If that is the case, are there any other impacts in terms of employment costs the BSC Co will incur for effectively providing resources to a new DCC Co.</p> <p>In terms of the solution, the declaring of a dividend cannot be guaranteed by anything in the BSC or in a Shareholder Agreement. The Board of DCC Co alone have the right to declare a dividend or not, and its board cannot be compelled to do so. A Shareholder Agreement may well set out the basis of how surpluses should be treated, however, if the DCC Co board choose to set money aside for potential future liabilities, or spend money on its business/staff then the BSC Co will not be able to overturn such a decision and as such there is no certainty of dividends being paid to the BSC Co.</p> <p>DCC Bid costs auditing - I'm not clear from the report who has oversight of the Elexon Statutory Audit. Will this be as BSC Co and as such be made available to the BSC Panel (and therefore BSC Parties) or will this be BSC Co's Board (and as such not transparent)?</p> <p>The BSC Co Board do not seem to listening to the wishes of BSC parties who have expressed through numerous channels (the Issue 40/P284 Modification/Ofgem's Report commissioned of Richard Morse) how they wish to see Elexon diversification progressed, it is worrying and disappointing that the Board have rejected the proposals supported by the industry and approved by Ofgem, who are fully appreciative of the impact of moving the BSC arrangements to include a profit element in the future, clearly believing the recent modification to enable the contract model to be introduced affords them better protection than this proposal. Given that the Board are not unanimous in their support for this proposal, as well as the industry having a clear preference for the contract model, it is alarming that we seem to be rushing to develop a solution the industry doesn't want because the Board (who aren't the elected representative of those funding the BSC) do not feel they have to listen to the clearly expressed wishes of the very parties they should be serving and protecting.</p>

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		<p>Finally, in terms of the money already spent on DCC bid preparation work, when the modification was presented to the Panel and then subsequently at the workgroup Elexon were asked for details of the money already spent on Elexon diversification proposals because there was concern about the figures being quoted in the proposals. Legal advice has been sought and paid for by the BSC, mods and issues have been worked on both in Elexon in preparation for mods to be raised and by Elexon and the industry during the development of the proposals put forward to assist Elexon's aspirations. The workgroup have not seen any reconciliation of the £300,000 Elexon advise has been used in it's pre-bid preparation so far.</p> <p>Elexon claim that the modification better facilitates the BSC objectives because by their participation in the bidding process ensures a better DCC as they will be the only organisation who are concerned with the smooth operation of the DCC &amp; settlement processes. We contend that the participation by Elexon in the Smart Programme was to ensure this and that the BSC parties funded Elexon's participation in SMIP to ensure nothing in the DCC would create problems for settlement, and irrespective of who bids for the DCC, Elexon's participation in SMIP was critical and we can't rely on their involvement in the bidding process to ensure that we get a robust DCC.</p> <p>Elexon suggest that because there is a surplus in the current budget that BSC parties will not be called on to provide cash for their bid for the DCC, however, that money and the resources paid for by BSC parties equates to a significant cost saving that parties should have expected to be returned to them, or at the very least reduce their funding shares for the coming year - on that basis more than half a million pounds of parties money is being diverted for non BSC activities which BSC parties are being compelled to fund, and could face having to write off in the event that Elexon are unsuccessful.</p>
TMA Data Management Ltd	Yes	We do not think that P289 better facilitate BSC Objective d, benefits would only arise if the bid were successful. However as the potential benefits outweigh the potential risks, we agree that P289 should be approved.
National Grid	No	National Grid considers that P289 should not be approved because expansion of ELEXON within the BSC is neither consistent with the provisions of its

Respondent	Response	Rationale
		<p>transmission licence as currently drafted, nor would it better facilitate the Applicable BSC Objectives. The reasons for our view are detailed below.</p> <p>Standard Condition C3 of National Grid Electricity Transmission (NGET) licence requires NGET to have in force the BSC and provides high level requirements of the balancing and settlement arrangements that need to be established within the BSC. Paragraph 2 of C3 describes these balancing and settlement arrangements which, in broad terms, cover determination and allocation of flows of electricity (including flow changes as a result of bid-offer acceptances) and subsequent settlement of financial obligations of the BSC Parties.</p> <p>Under the BSC, the principal role of BSCCo is “the proper, effective and efficient implementation of the Code” (BSC Section C, paragraph 1.2.1) and this role is consistent with the balancing and settlement arrangements outlined in Condition C3. The only exception to this is the operation of the Warm Homes Discount scheme undertaken by the BSCCo, established by the Secretary of State under section 11 of the Energy Act 2010; this required a change to the NGET licence (Condition C3 paragraphs 1e(iv) and 1A) and the BSC to allow BSCCo or its subsidiary to perform an activity which is not related to the balancing and settlement arrangements.</p> <p>National Grid recognises Elexon’s aspirations to perform non-BSC roles such as becoming the Data Communications Company (DCC) and has supported this aspiration by raising P284 which was subsequently approved by the Authority. P284 also ensured that the principal role of BSCCo and its subsidiaries to efficiently deliver the balancing and settlements arrangements remained intact.</p> <p>Unlike P284, P289 allows BSCCo to establish a subsidiary (DCCCo) to carry out non-BSC activities within the BSC. National Grid considers that any BSC Modification that diverts the focus and resources of BSCCo or any of its subsidiaries away from the BSC activities could adversely impact the Applicable BSC Objective (d) of “promoting efficiency in the implementation and administration of the balancing and settlement arrangements”. In National Grid’s view, any ring-fencing between BSCCo’s BSC activities and DCCCo’s non-BSC activities could be difficult to enforce and, in any case, is unlikely to be better than the current baseline which requires no such ring-</p>



Respondent	Response	Rationale
		<p>fencing.</p> <p>Condition C3 of NGET's licence states that the BSC is a document "designed so that the balancing and settlement arrangements facilitate achievement of the objectives<sup>1</sup>...". As stated above, P289 is unlikely to facilitate Applicable BSC Objective (d) which means that it is likely to adversely impact the Applicable BSC Objective (a) of "the efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence".</p> <p>National Grid considers that a modification such as P289 is not within the scope of the balancing and settlement arrangements as currently set out in NGET's licence for the BSC. Whilst National Grid may not be supportive of any licence obligations which are not related to its core activities, we consider that P289 would require a change to NGET's licence (similar to the one for Warm Homes Discount scheme) to allow BSCCo or its subsidiaries to carry out non-BSC activities.</p> <p>NGET is also concerned that BSCCo being permitted to write-off loans made to DCCCo for DCC Tender Costs (discussed further in response to Q3 below) would directly go against the Applicable BSC Objectives referred to above.</p> <p><u>Timescales for NGET Licence Change:</u></p> <p>The EU Third Energy Package requires Member States to ensure that national regulatory authorities can take autonomous decisions and that suitable mechanisms exist for a party affected by a decision of a national regulatory authority to appeal that decision to a body independent of the parties involved and of government. The government implemented these requirements<sup>2</sup> in late 2011 by amending the Electricity and Gas Acts to introduce a process for all types of licence condition under which the Authority has the power to direct licence changes following a statutory consultation period. This power is subject to a right of appeal to the Competition Commission which extends beyond just the licensee affected.</p> <p>The timescales associated with these requirements can be summarised as follows:</p> <ul style="list-style-type: none"> <li>• Statutory consultation period, not less than 28</li> </ul>

<sup>1</sup> The 5 objectives in NGET's licence are the same as the Applicable BSC Objectives.

<sup>2</sup> The Electricity and Gas (Internal Market) Regulations 2011:  
<http://www.legislation.gov.uk/uksi/2011/2704/made>



Respondent	Response	Rationale
		<p>days;</p> <ul style="list-style-type: none"> <li>• Period for Ofgem to consider responses and direct licence modification, unspecified;</li> <li>• Appeal period following direction of licence modification, 20 working days;</li> <li>• Period between direction of licence modification and licence modification coming into effect (if not suspended by competition Commission), not less than 56 days.</li> </ul> <p>From the above information, it can be observed that the timescale for a licence change is at least 84 days.</p>
Total Gas and Power Ltd	No	<p>As a supplier Total Gas and Power Ltd (TGP) will be interacting with the SEC and DCC. We fully support DECC's competitive tender for these roles. We very much hope that they will result in a body that provides high quality services to its users in an efficient and cost effective manner.</p> <p>Our reason for responding to this modification is not that we wish to stop any party from participating in the DCC process, but we have concerns about the way this modification has been treated. It is our understanding that the BSC, following P284, would allow Elexon to participate in the DCC process with the approval of the BSCCo Board. We do not know the details of why the Board has not agreed, but we assume it is because they did not believe that the interests of BSC parties could be protected, along the lines outlined by Ofgem.</p> <p>As a BSC party, given the above, we are worried that the Panel has therefore raised a modification to allow Elexon's participation via an alternative route. We were not aware that the Panel had the ability to raise such modifications, as our reading of the BSC is that their powers do not allow changes that are outside the scope of the BSC, which the DCC is.</p> <p>TGP can also not understand the "expedited" process that has been used, which seems to have hindered the ability of Elexon to follow the BSC modification processes. Were we or any other BSC party to raise a modification, without it having urgent status, can we to expect such a process to be allowed? The modification process is designed to allow for an inclusive, transparent development of the BSC with only urgent modifications following an expedited route with the agreement of Ofgem. This does not appear to have been an urgent modification.</p>

Respondent	Response	Rationale
		<p>In reading the documents we are further concerned that potential alternative modifications have been raised and not given due consideration. It is our understanding that the BSC modification process specifically allows for the consideration of alternatives during the Assessment process. We are unclear why this process has not been followed, and which process in fact this modification is following.</p> <p>Finally, TGP cannot see how this modification can better facilitate the BSC objectives when the DCC is not relevant to the BSC. We have noted above, we are supportive of the competitive DCC selection process, but that will have no impact on the level of competition in the generation and supply of electricity (objective c).</p>
Noble Clean Fuels Ltd	No	<p>As a non-physical party Noble Clean Fuels Ltd (Noble) has no direct interest in the DCC, its ownership or its operation. We do not believe that it is relevant to the BSC, nor to BSC parties such as ourselves. We cannot see how this was a legitimate modification for the Panel to raise under the terms of the BSC, as it does not directly relate to BSC business.</p> <p>The modification cannot better facilitate the relevant objectives as the objectives all relate to the interactions in the wholesale market and the operation of the TO. The DCC may have no direct interaction with the BSC and it will not impact the level of competition in either the wholesale or retail markets.</p> <p>Noble therefore does not believe that the modification better fulfils the relevant objectives and it should not be made.</p> <p>The Panel should also not suggest approval of a modification that has not followed the change process in the code and would appear to be against the TO's licence requirements, which are explicitly referred to in the BSC. It is the process surrounding this modification that is of greatest concern to us.</p>
EDF Energy	Yes	<p>Objective (d), promoting efficiency in the implementation and administration of the balancing and settlement arrangements, is relevant to the consideration of P289.</p> <p>If Elexon is successful in the DCC tender, then BSC Parties are likely to benefit from potential dividends from DCCCo. This would offset BSC costs, delivering further potential cost efficiency in operation of the BSC. We envisage there would be potential synergy</p>

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		<p>benefits - not only "defrayment" of office overheads, but potential joint/shared use of limited expert resources within BSCCo and in party organisations. The assessment report makes reference to potential savings of £1m/year (page 18), and we would welcome more information on this estimate.</p> <p>It has been argued that the benefits of P289 will only materialise in the event that Elexon succeeds in the tender. However, P289 could also be viewed as creating an opportunity for the BSCCo Board to deliver greater value for BSC Parties and therefore equally capable of delivering benefits against relevant objective (d).</p> <p>For clarity our support of this modification should not be construed as support for Elexon to be the DCC. EDF Energy does not have a preferred DCC bidder; there is insufficient information to form such a preference. Our main objective is to ensure settlement processes continue to operate effectively, without disruption or difficulties that could affect consumers.</p> <p>Note: see additional comments under Q8 regarding transmission licence.</p>
Waters Wye Associates	No	<p>This is the first time since NETA go-live in 2001 that I have felt that as a "industry expert" I need to put on record my serious concerns with the way a modification has been handled, and thus the reasons why I do not believe that the Panel should recommend the modification is made, nor Ofgem accept it.</p> <p>The BSC sets out the procedure for changing the terms of this contract. Sitting at the heart of the GB electricity market, the BSC is fundamental to the way the GB power market operates. Setting aside whether BSC Parties believe Elexon should be in the competition to be DCC, there is a fundamental principle that all proposed changes to the BSC should be treated on standard terms that facilitate wide consultation, in an open and transparent fashion. As well as the BSC modification rules, Ofgem's CACOP of 2010 was further designed to encourage good governance.</p> <p>To summarise these Governance issues:</p> <p>1) The Panel can only raise Modifications to the BSC under a set of specified circumstances as set out in (BSC) Section F 2.1.1(d).</p>

Respondent	Response	Rationale
		<p>As the DCC has no direct relationship with the BSC, and may or may not interact with it, I cannot see how the terms of the BSC allows the Panel to raise a Modification that did not relate to the BSC. As a result of Parties sharing this view, Elexon seem to have been unable to find a BSC Signatory to sponsor P289 and therefore had to ask the Panel to do so, even though it is not clear that it was appropriate, according to Section F 2.1.1(d), for them to do so. Parties have seen no legal advice to the effect that this modification was valid.</p> <p>2) Elexon asked for a highly expedited process for this Modification.</p> <p>This resulted in a process that is undefined being followed with little chance for Parties to take part in the consultation process. There is an urgency process, but this was not an urgent modification. Where people did provide comments, as I did on 19th and 21 December, these comments could not be discussed and have been accepted/rejected by Elexon and not the BSC Parties. Other Parties may be in a similar position.</p> <p>Since NETA go-live the BSC has had two processes for progressing Modification proposals: standard or urgent. While certain stages in the process can be avoided for standard modifications, if a modification is not treated as urgent it should be treated as standard. Parties need to understand what the process for change is so they can monitor it, especially if they are smaller parties, and participate as required.</p> <p>BSC Parties were told about P289 being submitted to Assessment stage via an email after close of play on Friday 14th December, with the Workgroup meeting taking place on the following business day, Monday 17th December. As a group member I had seen no papers prior to the meeting. I certainly had no time to canvass views or think about alternatives.</p> <p>At the ad hoc Panel meeting on 20th December, which I attended, a report was given back to the Panel, but papers were not circulated to Panel members prior to the meeting. This put the Panel in a position of signing off legal text they had not reviewed. This calls into question the wording of Q3 below.</p> <p>3) The expedited process has not, in my view, complied with all the stages required by the BSC.</p> <p>There has been no consideration of alternatives,</p>

Respondent	Response	Rationale
		<p>though they were raised after the meeting I see no way they could have been raised in the process. My clients did not have time to consider the Assessment report between Friday night and Monday morning, discuss internally and contact workgroup members to raise them. This is acceptable for an urgent modification but not a standard one.</p> <p>The alternative I raised was not in the Elexon presentation to the Panel and as far as I know was never even sent to the workgroup for views. It was received by Elexon prior to their e-mail circulating the Drax alternative, which was also raised after the meeting.</p> <p>CACOP, Principle 7, states: "Code Administrators will facilitate alternative solutions to issues being developed to the same degree as an original solution". It goes on: "Any process for considering a suggested Modification to a code will allow for alternative solutions to be developed and fully assessed during the Modification lifecycle."</p> <p>The Workgroup report sent back to the Panel should also consider (according to Section F 2.6.6(a)) the impacts on the Transmission Company taking account of the impact on its ability to meet its licence obligations (2.8.1(a)). This is meant to be done "after appropriate consultation with the Workgroup".</p> <p>With respect to the matter covered by 2.6.6(a) and 2.8.1(a) concerning consulting with the Workgroup this was not done. Though the workgroup asked for the Elexon legal view on this point, which was not provided.</p> <p>With respect to the matter covered by 2.8.1(a) the Transmission Company representative also told the Panel at the 20th December meeting that they believed that P289 was not consistent with their licence. The Workgroup had requested Elexon's legal view on this and National Grid's, but Elexon had not provided their view and National Grid had not had time (between the 13th December and 17th December) to fully consider it before the Workgroup concluded and only raised the issues at the 20th December Panel meeting.</p> <p>At the Panel meeting on 20th December, the Panel voted not to send the report to consultation. The Chair then continued the debate asking for a new vote later, which had altered to send the report out. I can see not part of the code that says the Panel should</p>

Respondent	Response	Rationale
		<p>vote multiple times on the same issue.</p> <p>c) There are changes within the P289 proposal that Elexon has been unable to account for.</p> <p>The costs of the proposal have varied, without the Parties seeing any business plans. There has been no cost benefit analysis and the legal text has also altered without explicit consultation with any BSC Parties. This all looks at best underhand.</p> <p>In light of all these comments, irrelevant of the merits or otherwise of the modification, the Panel should not recommend approval and Ofgem should likewise either send the modification back or reject it.</p>
Drax Power Limited	No	<p>We do not believe that P289 should be approved. In our opinion P289 is detrimental to the facilitation of Applicable BSC Objectives c) and d) and we discuss our views on the Modification with reference to these Objectives below:</p> <p><b>Objective c)</b></p> <p>Mandatory funding for non-BSC related activities is likely to have a detrimental impact on effective competition as the required funding represents another cost consideration for smaller prospective market entrants. This could act as a disincentive to market participation as smaller prospective market entrants will be funding non-BSC related activities with limited oversight of the commercial venture (the DCC).</p> <p><b>Objective d)</b></p> <p>We believe that P289 is detrimental to the facilitation of Objective d) for two main reasons:</p> <p>Firstly, we believe that there is a significant risk that standards of service for BSC activities will be adversely affected as BSC resources are likely to be inefficiently diverted to DCC related activities. We believe this situation is likely as ring fencing measures have not been sufficiently developed to protect BSC assets which are necessary to efficiently discharge BSC activities.</p> <p>Secondly, we do not accept that allowing mandatory funding of non-BSC related activities can facilitate efficiency in the implementation and administration of the balancing arrangements. The Modification proposes that funding be offered in a manner which bears no resemblance to normal commercial practice. Under normal business practice there is an expectation that well justified business plans and</p>

Respondent	Response	Rationale
		<p>strategies are given prior to any approval to spend funds.</p> <p>The Modification also encourages the possibility of the bizarre situation where if the (capped) funding proves insufficient then BSC Parties will be left to consider whether to accept a loss on their investment or to further extend the funding. When contemplating the potential for this situation, the industry should consider the course of P289 over the last month.</p> <p>The original P289 Modification, which the BSC Panel was asked to raise at December's Panel meeting, quoted a loan value of £300k (capped) for <i>third party</i> (external) costs associated with Elexon's DCC and SEC bidding activities. No figure was quoted for internal costs. Panel discussion revealed that the total loan could be double this figure when internal costs are taken into account, i.e. £600k. However, P289 has been amended to cover DCC bidding activities only. A further Modification has since been raised (P290) that would allow Elexon to take part in the SEC bidding process. This Modification requests additional funding for <i>third party</i> (external) costs, to the tune of £50k. No figure has been provided for internal costs and it is not clear whether internal costs would be covered by the loan detailed in P289, i.e. will further funding be required above the £650k quoted to date.</p> <p>We consider that BSCCo activities are delivered to a good standard at present providing numerous benefits to the industry and ultimately consumers. However, this standard of service is not guaranteed and is placed at risk by the proposed Modification. It is argued that these risks are outweighed by the benefits to parties which will materialise in the form of lower BSC charges. Unfortunately, these benefits are highly uncertain and cannot be accurately quantified. Given the lack of a persuasive business case to justify taking the risks discussed above we consider that the risks must outweigh the potential benefits.</p> <p>In addition to the points above, we believe it is worth noting that simply increasing the number of potential bidders in a tendering exercise will not necessarily provide any benefits to BSC parties or wider stakeholders. Such a view misunderstands the competitive process and its potential benefits. There is the possibility that 'artificially' increasing the number of bidders by allowing mandatory funding arrangements will distort the tendering process and misallocate resources. Such mandatory funding is</p>



Respondent	Response	Rationale
		likely to confer an unfair commercial advantage for that entity to the disadvantage of commercial organisations which have made their own commercial arrangements and bear the risk of failing in the competition. DCCCo would not bear this risk; BSC Parties would.
Eggborough Power Limited	No	<p>Eggborough Power Ltd (EPL) does not believe that this modification should ever have been raised by the Panel. It does not relate to BSC activities and the Panel has gone outside its powers to put forward this proposal. We would be grateful if the Panel could explain how, under BSC Section F 2.1.1(d) the Panel believes it has such powers.</p> <p>There is no need for this modification as the BSC already allows for Elexon to become the DCC if the Board believes that the interests to the BSC Parties can be protected. The fact that the Board did not believe that BSC parties could be protected under the contract model, which had been favoured by the BSC parties, means that Elexon should not be able to participate in the DCC competition. By raising this modification the Panel (or was it Elexon?) appears to have been trying to work around the views of the Board and BSC parties, which is at best totally inappropriate.</p> <p>The modification cannot better facilitate the BSC Objectives as the DCC, nor its operation, has a direct relationship with the BSC. The BSC uses a discreet set of rules for the purposes of operating the wholesale electricity market in an economic and an efficient manner. It is free to alter its rules to take data from different meter types, directly or indirectly. The BSC parties may therefore choose to interact with the DCC in the future, but at the current time its operation is not relevant to the operation of the BSC and the processes it uses. We note that modifications such as P282 have already proposed using a greater degree of meter reading granularity for the purposes of settlement. However, the economics of that change look at best finely balanced and it seems unlikely to us that customers, nor the market, will move towards settling on far shorter timescales even if the data exists to do so. Smart meters are sold as being a tool for energy management not for settlement.</p> <p>We have read the report which draws a tenuous link between the competition for the DCC role and the efficiency of the market as a whole. EPL fully</p>

Respondent	Response	Rationale
		<p>supports: competitive tenders; competent service providers; value for money services; and fair competition. However, the suppliers who must interact with the DCC have ample incentives to ensure that its development does not undermine, but instead can enhance, the wholesale market, as well as their own energy businesses. One assumes that has a supplier been concerned about Elexon being the DCC they would have raised a modification themselves.</p> <p>The BSC applicable objective is also about competition in generation and supply, not in the provision of IT services, or anything else. The DCC role and who undertakes it entirely irrelevant for the meeting of the BSC objectives.</p> <p>National Grid, as the Transmission Company, also seems to have raised concerns with the modification. We understand that the working group did not receive the Elexon legal view and Grid had not had time to give it consideration. We have not taken legal advice, but we are of the view that generally Grid's roles should be limited to those required by its licence and it should certainly not be linked to commercial operations competing in other parts of the market.</p>
SSE plc	No	<p>SSE believe that this modification is neutral on objectives b), c) and e).</p> <p>SSE believe that the proposal is detrimental to objective a), based on the opinion reported in the Modification Report by the Transmission Company that it believed the proposal was inconsistent with its licence. SSE are concerned on this point that there appears to be a lack of publicly available information on why the Transmission Company concluded this, and do not believe that the Workgroup were provided this analysis in contravention to the requirements of Section F.</p> <p>SSE believe that the proposal is detrimental to objective d), and support the views against the proposal outlined by the Workgroup in its recommendation to the Panel to reject the proposal.</p> <p>Firstly, we are not sure that a defect exists, as modification proposal P284 previously approved by Ofgem, allows BSCCo to contract out its services to an entity that can bid for DCC, as long as it met certain conditions set out by Ofgem. The BSC Board declined to pursue this option, determining that a sufficiently robust business case could not be made. Elexon management have therefore been presented with the</p>

Respondent	Response	Rationale
		<p>option to diversify, but have failed to make a case. We are unconvinced that much has changed to allow a different outcome.</p> <p>Secondly, the realisation of benefits associated with this proposal is very uncertain, based upon an uncertain dividend, in turn dependent upon an uncertain revenue, in turn dependent upon an uncertain bid. The only certain outcome of the modification proposal is the cost of implementation and the cost of any subsequent bid.</p> <ol style="list-style-type: none"> <li>1. The outcome of the bid is uncertain, as it is subject to competition and SSE consider that Elexon's cost base is historically high compared with some its natural competitors for DDC. Any perceived benefit of Elexon simply taking part falls to those exposed to SMART arrangements, not BSC Parties (in particular BSC Parties who operate as independent generators in the market).</li> <li>2. Were Elexon to be successful, the revenue associated with the service is uncertain. Whilst derisked from earlier iterations, the DCC service provider is still exposed to risk through, principally, liquidated damages, with a capped upside by virtue of being a regulated entity. There is therefore the potential for variability (or even loss) in earnings.</li> <li>3. Were the DCC to make a profit, the Dividend Policy is uncertain and unable to be clarified without exposure to a Shareholder Agreement between BSCCo and DCCCo, which will not be transparent to Parties. There can therefore be no certainty that the Dividend Policy will adequately remunerate BSCCo, as an arrangement could be put in place that allows DCCCo to retain all of its profits until certain triggers/ceilings are met (for example the setting of an overly high trigger on rate of earnings, prior to which no dividend will flow from DCCCo to BSCCo).</li> <li>4. The quantified defrayment benefit of £1m per annum has never been broken down and justified, and therefore is unsubstantiated in SSE's opinion. Notwithstanding this, it will only transpire upon successful tender, and will be highly dependent on the suitability of accounting procedures to reallocate costs, which will not be transparent to Parties.</li> <li>5. Parties exiting the BSC prior to the 5-year initial loan repayment period will not receive their</li> </ol>

Respondent	Response	Rationale
		<p>monies back.</p> <p>Parties are therefore required to take a leap of faith and trust in Elexon to behave properly and honourably in implementing these key tools that are required to ensure that costs are allocated and benefits attributed fairly. However, it is SSE's opinion that Elexon's recent behaviour as BSC Code Administrator (in failing to follow due process in some respects, and failing to honour the spirit and intent of the BSC provisions in others) has undermined our willingness to give this trust. We have little or no confidence therefore that the benefits identified will accrue in the way contemplated. Additionally, it seems quite probable that Elexon will seek to change the arrangements to suit its commercial interests further down the line, based on the process pursued to progress this proposal.</p>
Centrica	Yes	<p>We believe the relevant objective is objective (d), promoting efficiency in the implementation and administration of the balancing and settlement arrangements.</p> <p>P289 requires parties to take a view on whether the relatively certain costs (up to £300k internal and up to £300k external) to BSCCo (ultimately BSC parties) of funding DCCCo's DCC bid are likely to be outweighed by the potential benefits of defrayed costs and accrual of shareholder returns – both of which would result in lower charges to BSC parties.</p> <p>Centrica believes that the potential benefits of P289 (~£1m per annum of defrayed costs plus shareholder returns arising from DCCCo's activity) <b>are</b> significant and probable enough to justify the ≤£600k total DCCCo bid costs.</p> <p>We highlight two key factors in our support for P289:</p> <ol style="list-style-type: none"> <li>1. Elexon's skills and experience seem sufficiently well matched to the role of the DCC to give comfort that DCC responsibilities will not overwhelm Elexon and impair business as usual BSC activities – we also note the additional resourcing protection for BSC parties in P289 arising from the proposed paragraph 3.5.2:</li> </ol> <p><i>"... BSCCo shall at all times act in a manner to ensure it has available to it such resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents and facilities, on such terms and with all such rights, as shall</i></p>

Respondent	Response	Rationale
		<p><i>ensure that it is at all times able to discharge its powers, functions and responsibilities under the BSC in all respects."</i></p> <p>2. BSCCo (ultimately BSC parties) shall have no obligation or ability to provide financial support to DCCCo beyond the ≤£600k DCCCo bid costs provided for – we note and endorse the following extract from the draft modification report (p16):</p> <p><i>"The Workgroup.... agreed that the P289 solution and legal drafting should be amended to completely preclude any cost or risk being placed on BSCCo or BSC Parties in order to provide funds or security to DCCCo (other than in respect of the bid costs)."</i></p> <p>Were P289 to require or enable BSCCo to provide financial support to DCCCo beyond the capped £600k bid costs provided for in the legal text, the balance of costs and benefits of P289 would inevitably be worse for BSC parties than what is in fact proposed. We therefore underscore the importance of the ring-fencing protections in P289 to the furthering of objective d) and the importance of any services from BSCCo to DCCCo post DCC licence award (e.g. the provision of office space) being provided on normal commercial terms.</p> <p>Finally, we note that the competitive pressure created by Elexon's participation in the DCC tender process will likely result in ancillary benefits to DCC customers, some of whom may also be BSC parties. Elexon's participation in the DCC tender process guarantees a level of service quality and price competitiveness of DCC services, which may not be forthcoming absent Elexon's participation. We accept that the relevance of this point to the BSC objectives is arguable.</p>
Energy UK	Overall <b>No</b> but due to concerns on the process followed for this proposal	<p>Members recognise that the P289 process has been short and that there should have been more time for exploring the potential alternatives around DCCCo's leadership and bringing in a private investor. DECC's DCC tender timetable means that an Ofgem decision one way or the other on Elexon's eligibility is needed in advance of the final stages of DECC's tender process.</p> <p>Regarding the merits of the P289 proposal, it is essentially that parties take a view about whether the Elexon bid costs (≤£300k internal + ≤£300k external) are worth the potential upside of defrayed costs and</p>

Respondent	Response	Rationale
		<p>possible DCC shareholder returns to BSCCo, and ultimately BSC parties. Parties may also factor in risks to Elexon's business as usual activities and the overall impact on the competitiveness of the DCC process when having an additional competitor.</p> <p>Some members believe the P289 proposal may strike an acceptable balance between costs and the potential upside. Whilst others are concerned about the merits of BSCCo/Elexon diversification into this particular external non BSC related work. Many Generator members can see little benefit verses increased risk if such work were undertaken whereas Supply side members are split regarding the overall merits of the proposal. Elexon should expect a number of individual company responses to be submitted by member companies.</p> <p><b>Process Observation</b></p> <p>P289 has been initiated by Elexon (following a split decision at the BSCCo Board) because it could not find a BSC Signatory to sponsor the proposal. This is a concern because if the Board were able to undertake such instruction why has it waited until this late stage in the process and why has the industry endured many months of debate if in the first instance the BSCCo had within its gift the ability to raise such a proposal. This is exacerbated by the fact that due to the late submission it has been rushed through on an expedited timetable over the Christmas period, which severely curtailed Panel, workgroup and more importantly industry debate.</p>
RWE npower	No	<p>Npower is very keen to ensure that there is an effective process for procuring the DCC and that all suitable entities have the ability to participate in this process. While we support the intentions of this Modification to enable BSCCo to bid for the role of the DCC, and indeed would like to see BSCCo participation in the procurement process, we cannot agree with the Panel's initial recommendation that P289 should be approved.</p> <p>As this standard modification has been progressed with an expedited timetable we believe numerous key issues have been overlooked or glossed over. This lack of clarity is concerning. Although we have been able to obtain some clarification from Elexon, we consider that further details and absolute clarity are needed on the following points :</p> <ul style="list-style-type: none"> <li>What are the bid stages and what requirements</li> </ul>

Respondent	Response	Rationale
		<p>and associated costs are attributed to each of these and when is the funding is needed for each?</p> <ul style="list-style-type: none"> <li>• The modification doesn't confirm what the liabilities are for funding parties should the bid be successful yet the DCC fails within the five year repayment timescale. Will these liabilities change depending upon original funding parties and those which have joined since initial funding? What is the actual value of the under spend pot that is proposed to be used to fund the DCC bid, and where have savings been made to achieve this under spend? Full details of where savings have been made should be provided rather than a general categorisation of under spend.</li> <li>• What are the legalities regarding the use of the under spend funds to support a project which is entirely separate from the BSCCo's remit?</li> <li>• The wording surrounding payment of dividends implies that payments will be made to parties based upon funding share. Is this the case or will it be offset against the budget?</li> </ul> <p>Due to the hurried approach over the Christmas period we feel insufficient time has been given to allow for a full industry analysis to be undertaken. Preparatory work had clearly been undertaken by Elexon in the drafting of this modification however the late issue and need for clarification of certain issues has given the impression that this was modification has been rushed through without due care being given to interested parties.</p> <p>Questions also remain surrounding the funding. Last year, the Panel and Board took a decision that funding for Smart-related activity should not be included in the BSC budget, yet now the proposal is to use this very funding for this purpose. Why is it now acceptable to use the BSC funding in this way, when it clearly was not acceptable before?</p> <p>BSC Parties should have been approached with these details and a request made to use the saved amount to support the DCC bid rather than for the purposes originally intended. We are concerned that the current modification will mean that BSC Parties are having funds diverted without full consultation or being given details of what they will actually be used for. We believe a detailed spending plan for the Bid process is needed prior to accepting the use of these funds.</p> <p>We would also have expected a cost benefit analysis</p>



Respondent	Response	Rationale
		to have been undertaken for this modification (as is normally the case with other modifications). At present we have been presented with the high level costs yet the benefits are not completely apparent. We have been advised there would be benefits but projections of these would very valuable.
IBM UK Ltd for and on behalf of the ScottishPower Group	No	<p>Firstly, we do not consider it possible for BSC Parties to properly assess the risks involved without ELEXON first fully divulging the nature of any commercial relationships that it might envisage as mitigating these risks. The DCC tender exercise demands that the successful bidder must be able to demonstrate financial health and stability, and we are at a loss to understand how the DCCCo would be able to do that without external support.</p> <p>ScottishPower does not agree with the Panel's initial recommendation that P289 should be approved, as we believe that this modification in principle would not better facilitate the following Applicable BSC Objectives:-</p> <ul style="list-style-type: none"> <li>• While the Transmission licence describes the purpose and scope of the BSC and not BSCCo, the whole existence of BSCCo is because of the BSC, hence its unique structure, liability and funding arrangement. In our view, all activities of the BSCCo must necessarily relate to the BSC and, we therefore agree with National Grid that allowing BSCCo to pursue non-BSC activities in the way this modification proposes would detriment Objective (a) – efficient discharge of licence obligations.</li> <li>• Damages and liabilities involved in the DCC licence remain unclear and uncertain. This, along with the risk of potential service degradation and the imposition of non-BSC costs on BSC parties would be detrimental to Objective (c) – competition.</li> <li>• The identified 'benefit' is entirely conditional on DCCCo winning the bid. However, while success in the endeavour is far from assured, failure could see the 'benefit' quickly turning into written off costs. We take the view that the risk outweighs the potential benefit in this case and the proposal would not, therefore, better facilitate Objective (d) – efficiency.</li> </ul>

## Question 2: Do you agree with the Panel's recommended Implementation Date?

### Summary

Yes	No	Neutral/Other
10	7	-

### Responses

Respondent	Response	Rationale
Electricity North West Limited	Yes	Due to the urgency of this we agree with the implementation date.
Haven Power Ltd	No	We do not feel that this Implementation Date leaves sufficient time to look at the ramifications.
SmartestEnergy Limited	Yes	-
E.On	No	On the basis that I don't agree that the proposal should be implemented, I don't agree with the implementation date. I think the development has been rushed, and the industry hasn't had sufficient time to consider these revised proposals and they haven't been subject to the same review and development processes that Issue 40, and P284 have been through, and since this solution is different from those considered in those modification/issue groups, there hasn't been sufficient engagement by the industry to determine whether this is a suitable solution and that it BSC parties are content that it addresses the concerns from the Richard Morse report commissioned by Ofgem, or those of the Issue 45 group.
TMA Data Management Ltd	Yes	Given the timescales, no other Implementation date is possible.
National Grid	Yes	National Grid agrees that P289 be implemented 1 Working Day after approval by the Authority.
Total Gas and Power Ltd	No	The legal text relies on additional documentation to protect the interests of BSC parties, such as DCCCo articles of association to ensure that dividends come back to parties, and a "procedure" for charging between BSCCo and DCCCo. These documents need to be approved by the BSCCo Board before implementation. As a company would not start a commercial relationship without these details being

Respondent	Response	Rationale
		concluded.
Noble Clean Fuels Ltd	No	Briefly looking at the modification proposal and legal text, there seem to be a number of crucial documents that would underpin the relationship between BSCCo and the new entity. Those documents should be approved by the shareholders, i.e. BSC parties, prior to the modification being implemented. Commercial companies do not lend money to other companies without all the relevant documents being approved.
EDF Energy	Yes	One working day following Ofgem's decision is pragmatic given the short timescale involved.
Waters Wye Associates	No	This change should not be implemented until all of the documents relating to the DCC are put in place. Prior to being put in place they need to be consulted on. This should include documents such as the contract between DCCCo and BSCCo, Shareholder Agreement and dividend policy.
Drax Power Limited	Yes	If the Modification is approved the recommended Implementation Date is appropriate. However, the lack of industry debate and scrutiny, putting aside the arguments stated for and against the Modification (with the arguments against greatly outweighing the arguments for in our opinion), in our view mean that the Modification should not be approved.
Eggborough Power Limited	No	The modification, if approved, should not be implemented until all of the documents relating to the DCC are put in place. Prior to being put in place they need to be consulted on. This should include documents such as the Shareholder Agreement and dividend policy.
SSE plc	No	<p>SSE do not believe that such a shortened implementation date is appropriate for such a substantial modification, that has not been granted urgency by the Authority. SSE do not support the use of expedited modification processes by the BSC Panel, as it seems to usurp and undermine the intended powers of the Authority to grant or deny a proposal urgent status. It seems a gross absurdity and deliberate misinterpretation of the intent of the urgent process, that a modification can be implemented more quickly by a non-standard timetable determined by the BSC Panel, than by the formal urgent process requiring the agreement of the Authority.</p> <p>We believe that as a principle of good governance, this modification should have a minimum 5-10</p>

Respondent	Response	Rationale
		working day lead time,
Centrica	Yes	No BSC party system and process changes arise as a result of P289, so immediate implementation should be feasible. Further, we recognise the need for DCCCo to be a legally constituted entity as soon as practicable if Elexon's DCCCo bid is to be credible in the latter stages of DECC's tender process.
Energy UK	Yes	If approved there is no reason to delay implementation beyond the proposed one day however what proposal does Elexon have regarding implementation? Are the articles of association, contract between DCCCo and BSCCo, etc. being drafted pending presentation and agreement by the Panel or Board? If so an outline of the process to be followed would be of interest to code signatories.
RWE npower	Yes	-
IBM UK Ltd for and on behalf of the ScottishPower Group	Yes	ScottishPower agrees that in view of the DCC bid timescale, should this modification be approved, implementation should be at the earliest opportunity following the Authority Decision.

**Question 3: Do you agree with the Panel that the redlined changes to the BSC deliver the intention of P289?**

#### Summary

Yes	No	Neutral/Other
6	7	4

#### Responses

Respondent	Response	Rationale
Electricity North West Limited	Yes	This aligns with the Modification intent.
Haven Power Ltd	-	-
SmartestEnergy Limited	Yes	-
E.On	Yes	While the changes deliver the intention of the proposal, we are not confident that the proposal has

Respondent	Response	Rationale
		been sufficiently developed to ensure that all the risks and issues have been fully explored or articulated.
TMA Data Management Ltd	Yes	-
National Grid	No	<p>As stated in response to Q1, National Grid considers that the expansion of Elexon's role within the BSC is not consistent with NGET's licence as currently drafted; and hence P289 should not be implemented. Notwithstanding this, our views on the legal text are as follows.</p> <ul style="list-style-type: none"> <li>Paragraph 3.4.6 states that there will be no cross-subsidies but paragraph 10.3.6 (a) implies that there will be (by allowing the BSCCo Board to write off loans to DCCCo for DCC Tender Costs). If such a cross-subsidy is acceptable (notwithstanding NGET's concerns referred to in the response to Q1 above), reference to DCC Tender Costs could be made in 3.4.6 to make it clear at the outset that there will be no cross-subsidies except for DCC Tender Costs;</li> <li>Paragraph 10.3.6 (b) seems to be ineffective as it covers 'arm's length' and 'on commercial terms' arrangements for loans which can, in any case, be written off by the BSCCo Board. Consider deleting paragraph 10.3.6 (b).</li> <li>Paragraph 10.4.5 requires BSCCo to not cause DCCCo to be in default of Legal Requirements of the Smart Communications Licence by reason of any act or omission in respect of the code. This could be interpreted to give Smart Energy Activities precedence over normal BSC activities. If anything, these provisions should be the other way around and should ensure that DCCCo does not take any steps that could result in BSCCo being in breach of its obligations. BSCCo is required to meet its obligations under the Code and any additional Elexon activities should not interfere with this. Such requirements would be consistent with paragraph 2.6 which, in relation to Transmission Company, require that BSCCo should not take any steps that could result in the Transmission Company being in breach of its Legal Requirements.</li> </ul>
Total Gas and Power Ltd	No	<p>TGP has not been through the text in detail, but we would make the following observations:</p> <p>The BSC parties' control over DCCCo only seem to link</p>

Respondent	Response	Rationale
		<p>to the “initial” Chair. That seems insufficient. It is standard business practice for investors to have places on the Board.</p> <p>There is reference to a “procedure” to govern the relationship between BSCCo and DCCCo. This should be a firm contractual relationship, as we would expect BSC parties use in agreeing services between companies.</p> <p>BSCCo providing specific support to DCCCo would look as if it provides a competitive advantage to DCCCo in the DECC process, and therefore operates against Ofgem’s objectives.</p> <p>The BSC should not contain an obligation on BSC parties to ensure that the DCC licence is not breached. Third party obligations are the responsibility of those parties to whom they relate.</p>
Noble Clean Fuels Ltd	No	<p>There has not been enough time for the legal text to be reviewed. However, as a matter of principle, the shareholders of the new company should have seats on the company’s Board. These may be direct or indirect. The control that the shareholders can exert in the longer term, by simply choosing the initial chair is not sufficient.</p> <p>As noted above, the documents such as the agreement or contract between the new body and BSCCo to use its resources, share offices, etc. must be put in place as part of the modification. We believe that this should be a legally binding contract that aims to future proof the arrangements. The Articles of Associations, Shareholder Agreement, etc. also need to be approved.</p> <p>It would appear unwise to place any obligations on BSC parties to ensure that the DCC company can comply with its licence. There is nothing in the BSC that ensures we can comply with all the regulations we face in other markets. The same is true for other BSC parties and agents.</p>
EDF Energy	Yes	<p>Throughout the proposed legal text, the term DCCCo is used to describe the proposed BSCCo subsidiary company. This is the same term commonly used throughout industry to describe the proposed smart metering Data Communications Company. Until the DCC licence is granted, and in the case BSCCo is not successful, it would avoid misunderstanding and cross-code issues if a different term were used, which could be changed by a housekeeping change if a</p>

Respondent	Response	Rationale
		<p>BSCCo bid were successful. In future the BSC will need to make reference to the DCC Licensee, whoever it is. The same term DCCCo should not be used within the Code for both the BSCCo subsidiary and the DCC Licensee, unless they are the same thing.</p> <p>At C10.1.3 (b), transfer, lease, licence or loans from BSCCo to DCCCo "on normal commercial terms" are contemplated. The permanent transfer or sale of significant assets developed on behalf of and paid for by BSC Parties (value more than £100k, say), including intellectual property, should only occur with approval of the BSC Panel after consultation with BSC Parties.</p> <p>At C10.3.4, reference is made to a recovery share for each Trading Party, to be provided as soon as possible after the tender process is completed. This implies that any recovery would be on the basis of some current or historic share at that time. This should be made clearer, to avoid future ambiguity over recovery allocation between parties including what will happen to amounts relating to companies which are no longer parties at the time of repayment. We suggest a share matching to that on which contributions to the bid were made.</p> <p>C10.4.2 states that "...the Memorandum and Articles of Association of the DCCCo shall not form part of the Code'. At what point will they be made available to industry for scrutiny/consultation?</p> <p>C10.4.5 says "BSCCo agrees and undertakes that it shall not cause DCCCo to be in default of the Legal Requirements of the Smart Communication Licence by reason of any act or omission in connection with the Code or in its capacity as the DCCCo Shareholder...." While it is acceptable that BSCCo shall not actively and knowingly do anything that causes DCCCo to breach its licence, we have a concern about changes to the BSC or BSCCo activities that have unexpected or unintended impact on the SEC and DCCCo, and about changes to the DCC Licence or the SEC that require changes to the BSC or BSCCo's activities in order to be delivered. Hopefully these cross-governance concerns would be addressed by co-operation and regulation, but there remains an issue where requirements on code administrators in different codes interact. We believe an element of reasonableness should be added to this clause. For example, DCCCo non-compliances created by inadvertent or unexpected impacts of BSCCo actions</p>



Respondent	Response	Rationale
		<p>under the BSC, or as a result of changes by the DCCCo itself that place requirements on BSCCo, should not necessarily be deemed non-compliances under this clause as this could create significant liability or cost for BSC Parties.</p> <p>At C10.4.6 (a), the text says the BSCCo Board shall appoint the initial chairman of the DCCCo Board, who shall appoint other initial directors. Separately, we expect clarification and visibility of the appointment process to be provided to Parties.</p> <p>Paragraph numbering issues at C10.4.6 (b).</p> <p>At C10.4.6 (c), the (BSCCo) DCCCo shall provide information on Tender Costs to BSCCo, but suggests that certain items may be excluded. We do not see why information should be excluded, given that BSCCo and ultimately BSC Parties are paying for, and taking a risk with, the tender costs. The legal text should at least make clear that these amounts should be included in total amounts advised, even if certain amounts are not itemised, and BSCCo should require DCCCo not to enter into any arrangement with a third party where the costs cannot be included in regular cost reporting to BSCCo. Otherwise, there would be no means of demonstrating that the requirements in C10.2 are being/have been met.</p> <p>In the proposed text for Annex X-1, the "Aggregate DCC Tender Costs" term only exists in the event of a "successful" DCC Tender exercise. We do not believe the definition needs to refer to its success as it is clear from clause 10.3.2 that tender costs will only be recoverable in the event of a successful DCC Tender exercise. "Aggregate DCC Tender Costs" will also be of interest to Parties even if DCCCo is unsuccessful in the tender exercise.</p> <p>The definition of "DCC Licensee" or "DCCCo" refers here to the licence holder for DCC activity, not the proposed BSCCo subsidiary as in the proposed legal text. It highlights the issue raised above that unless or until the proposed BSCCo subsidiary secures the DCC licence, a different name for it would avoid any misunderstanding. The same term should not be used for both things.</p> <p>Clause 10.4.6 (e) (i) states that BSCCo and DCCCo shall implement an agreed dividend policy'. Details of the proposed thinking here should be produced as soon as possible in order to facilitate early consultation with stakeholders. This should link with the proposals under consideration within clause 10.4.6</p>

Respondent	Response	Rationale
		(e) (ii) to ensure what is meant by 'fair and reasonable'.
Waters Wye Associates	No	<p>This question is misleading. The Panel did not agree that the legal drafting delivered the intention of the modification.</p> <p>I have provided two sets of comments on this text: As a workgroup member on 19/12.12; and After the Panel on 21/12/13</p> <p>I have not repeated the comments here, but I believe significant changes to the text are required to make the modification achieve what the workgroup wanted and to protect the interests of Parties. I would ask the two sets of comments are given to the Panel and Ofgem.</p>
Drax Power Limited	Maybe	<p>There are numerous items in the legal text that need to be clarified to ensure it delivers the intention of P289.</p> <p><b>Items to clarify</b></p> <p>Clause 10.2.3 appears quite far reaching in that the 'BSCCo may do anything necessary or reasonably incidental to provide assistance to DCCCo in connection with the DCC Tender Exercise'. We would welcome greater explanation of what this is likely to entail in practice.</p> <p>Clause 10.4.2 states that the 'Memorandum and Articles of Association of the DCCCo shall not form part of the code'. We hope these will be made available to the wider industry in good time to allow necessary scrutiny and consultation.</p> <p>Clause 10.4.6 (a) (i) states that the Board shall appoint the initial chairman of the DCCCo Board and (ii) the initial chairman of the DCCCo Board shall, in consultation with the panel, appoint other initial directors of the DCCCo'. We question why it is only the <i>initial</i> members of the Board. Given that this company is a subsidiary of BSCCo, the BSCCo Board should be more involved in the composition of the DCCCo Board. In addition, we question whether appointments will be made under the current process for the appointment of BSCCo Board members (implemented under P281), i.e. involve a Nominations Committee led process? If this is not the case then clarification of the process to be followed should be provided.</p> <p>Clause 10.4.6 (e) (i) states that BSCCo and DCCCo</p>

Respondent	Response	Rationale
		shall implement an agreed dividend policy'. Details of this process should be produced and published as early as possible to ensure satisfactory consultation with the industry regarding what is being proposed.
Eggborough Power Limited	No	<p>EPL does not believe that the BSC parties should "acquire" the DCCCo. We suspect this company, having been set up by Elexon staff, has been set up using the resources of the BSC already. We further understand that the Working Group did not agree to this wording either. The shell company has no value to the shareholders so BSCCo should "acquire" for no more than a nominal figure of say £1.</p> <p>Were BSCCo to "buy" assets from staff it would suggest that those staff had some conflicts of interest in the way this modification has been handled.</p> <p>10.1.3 (b) any licencing should require some Board/Panel approval.</p> <p>10.2.3 – the wording could confer undue advantage on DCCCo. If Elexon is to offer reasonable help to DCCCo then it should do so to all service providers in the same field. Otherwise the BSC parties are effectively helping DCCCo at the expense of their competitors, some of whom BSC Parties will also be shareholders in. In our view the BSC should say nothing about Elexon helping any specific party and we would advise that Elexon be hands off to meet Ofgem's criteria. To not be impartial also carries risks to the whole DECC DCC tender process, making it potentially subject to legal challenge by third parties. Furthermore the BSC does not refer to helping any other parties with whom BSCCo does business so why this one?</p> <p>10.2.5 – they should report monthly.</p> <p>10.3.2 – the loan should be repaid with interest.</p> <p>10.3.4 – what happens if there is a manifest error? There seems to be no robust process for dealing with that.</p> <p>10.3.6 – this should be one loan. Arranging a number of loans will add costs to the whole process. Though it is unclear who will control this money keeping it in a ring fenced pot can ensure any surplus is paid back in one go.</p> <p>10.4.3 – This should be clear it will provide no "non financial" support as well, e.g. staff time, use of BSCCo assets, etc.</p> <p>10.4.5 – We cannot put an obligation on the BSCCo</p>

Respondent	Response	Rationale
		<p>that relates to another parties licence or regulation, and again the BSC contains no such obligations in relation to other parties. If any wording is thought appropriate then it should be drafted in the same way obligations to the transmission company are. How do BSC Parties take a view on the DCC when looking at a BSC mod? Considering DCC is not in the modifications process.</p> <p>The report implies that the Chair gives BSCCo parties the control over DCC, but the text is only the initial chair and initial Board (10.4.6 (a) (i) and (ii)). This offers no protection to the parties in the long term. This drafting cannot therefore fulfil Ofgem's concerns about protecting BSC parties.</p> <p>10.4.6 (c) this should be a regular, but not less than monthly, report.</p> <p>10.4.6 (e)(i) – We understand that the Panel were told the dividend policy is in the shareholder agreement – not a negotiation after the DCCCo is established. Further, the shareholder cannot set the dividend, that is for the Board. As noted above (10.4.6) the BSC parties can only choose the first Board and after that they have no say. There is nothing to stop the second Chair and the Board from agreeing any policy they like. The BSC parties have seen no Articles of Association that would stop that.</p> <p>10.4.6 (ii) this must be a contract not a Procedure. Which we understand was discussed at the workgroup.</p> <p>The definition of the tender costs needs to state the rate of interest that is being applied.</p> <p>We need to be clear that the moment they can repay this loan they do so.</p>
SSE plc	No	<p>10.1.1 Should be subject to industry approval as the industry does not yet fully understand the full scope of DCC activities and risks.</p> <p>10.1.1 This appears to give BSCCo the right to acquire another Company, and it is assumed that this Company is The Elexon Partnership Ltd (or any associated name change). Give that the registered officers of this Company are also employed directly by Elexon Ltd. in senior management roles, how will this conflict of interest be managed to ensure that a inappropriate premium is not placed upon the transfer of shares ?</p> <p>10.1.3 What is the test for "normal commercial</p>

Respondent	Response	Rationale
		<p>terms" ? How will this be established (e.g. testing against market rate) and will it be transparent ? Should the Board retain approval rights for any licensing of assets to ensure that appropriate market rates are being applied ?</p> <p>10.1.3 (c) Further explanation is required as to what exactly is intended by this provision.</p> <p>10.2.3 This provision is too wide ranging, SSE are uncomfortable that this inappropriately loosens necessary controls. Any "incidental" actions should be set out and limited.</p> <p>10.2.5 This provision seems to allow a very adhoc approach to reporting. An agreed timetable should be established to ensure regular scrutiny, e.g. monthly or quarterly as a minimum.</p> <p>10.2.6 An additional right of 3rd party audit should be available to BSC Parties and/or Ofgem.</p> <p>10.3.4 Given the process to establish a Main Funding Share upon receipt of relevant information and the length of time afforded to make repayment (5 years), a set of default rules should be established or clarified where funds cannot be disbursed because an exiting Party cannot be contacted.</p> <p>10.3.6 (a) For the avoidance of doubt such bad debts and write offs should be subject to the limits previously stated of £300k + £300k. This should be explicitly stated.</p> <p>10.3.7 This infers that funding to support DCC Tender Costs might be utilised in a way that does not support such a tender ? How would this be possible given the intended restrictions in the provisions to limit funding to DCC Tender Costs ? We agree that such costs should not be written off, but are seeking to understand how such an outcome could arise if the rules are complied with ?</p> <p>10.4.3 This provision needs to be stronger – BSCCo should have no liability or obligation to finance, but furthermore and for the avoidance of doubt BSCCo should NOT provide any further financial support to DCCCo outwith the stated DCC Tender Costs.</p> <p>10.4.5 How can obligations be placed upon BSC Parties that pertain to another party's licence and/or obligations ? How can BSC Parties be comfortable that this is not opening an unintended or unforeseen loophole ? What happens in the case of a conflict between the two, which takes precedence ?</p>

Respondent	Response	Rationale
		<p>10.4.6 We do not think it appropriate in this circumstance for BSCCo Board to appoint the Chairman of DCCCo Board. A process that is more inclusive of industry, who are providing the initial seed funding, should be established to ensure that early resolutions of the Board remain consistent with the provisions and undertakings set out within the proposal.</p> <p>10.4.6 (e) Greater certainty and transparency is required on how dividend policy and cost sharing mechanisms will be developed to ensure a reasonable and fair allocation of cost and reward to BSC Parties. Parties, as investors and continuing BSC funders, should have an involvement in the development of these proposals to ensure that they are working equitably. As a minimum a right of independent 3rd Party audit should be available to Parties and/or Ofgem on Parties behalf.</p>
Centrica	Yes	-
Energy UK	Not Sure as there is a significant amount of detail missing from within the draft modification report	<p>Can you confirm that the legal text in its current format, given the significant changes made since the workgroup meeting, been subject to robust scrutiny by BSC parties? It appears that the legal text presented to the Panel at its meeting on 20 December had not been reviewed by anyone other than Elexon which is not the norm.</p> <p>Clause 10.1.1 - should 'subject to the approval of industry' be added after ("DCCCo") as the industry does not yet know the full scope of DCC activities or what other arrangements may be proposed?</p> <p>As outlined in the answer to question 1 above an explanation is required why the costs associated with this proposal have moved from the initial £50,000 for the combined roles of DCC and SEC to £650,000 combined. A justification for these figures is required. The working group requested to see the business case, but were not provided with any analysis. We would note that CMP201 has been sent back by the Authority as there was insufficient analysis to judge the benefits of the modification. This modification has no analysis of either costs or benefits.</p> <p>Clause 10.2.3 appears quite wide in nature in that the 'BSCCo may do anything necessary or reasonably incidental to provide assistance to DCCCo in connection with the DCC Tender Exercise'.</p> <p>Clarification regarding what you have in mind that this provision should cover would be helpful to be clear</p>

Respondent	Response	Rationale
		<p>that this does not represent undue discrimination in the way DCCCo is treating Elexon compared to other DCC bidders. This obligation should be limited to the proposed maximum cost.</p> <p>Clause 10.2.5 refers to reports to the panel in relation to items listed within paragraph 10.4.6(c) but the clause lists several items that are excluded. Details of the items to be reported would be useful in order that the Panel and code signatories know what information to expect to see. At 10.4.6, confidential and/or commercially sensitive information should be published in aggregate/anonymised form, even if individual items are not explicitly itemised. Once the bidding process is over it would be useful to know what information would be confidential/commercially sensitive. Note that in definitions, "Aggregate DCC Tender Costs" only exist in the event of a successful Tender exercise. It should be made clear that Tender Costs as described in 10.2.1 (there is no section C) will be visible regardless of whether or not the tender is successful. It appears at proposed C10.3.4 that the Funding Shares to be used to refund the cost would be known soon after the completion of a successful bid. This implies refund based on shares at the time of making the bid. Clarity should be provided on this, and on what happens to the refund share of parties that subsequently leave the BSC.</p> <p>10.4.5 – We cannot put an obligation on the BSC parties that relates to another party's licence or regulation.</p> <p>Clause 10.4.6 (a) (i) states that the Board shall appoint the initial chairman of the DCCCo Board and (ii) the initial chairman of the DCCCo Board shall, in consultation with the panel, appoint other initial directors of the DCCCo'. For all appointments it is preferable that the current process for appointment of BSCCo Board members will be followed and includes an industry inclusive Nominations Committee process? If this is not the case then clarification of the process to be followed should be provided. What will be the process for appointment of future DCCCo Chairmen? How do BSC parties retain control of DCCCo and visibility of its actions if there is no ongoing, direct relationship?</p> <p>There is potential for cross-code inconsistency between BSC requirements and SEC requirements. The DCC would operate at arm's length from BSCCo, similar to the same way BSCCo operates at arm's</p>



Respondent	Response	Rationale
		<p>length from its owner, NGET. If so the interaction between BSCCo as parent, and DCC as subsidiary would need to be set out by regulation.</p> <p>Clause 10.4.6 (e) (i) states that BSCCo and DCCCo shall implement an agreed dividend policy'. Details of the proposed thinking here should be developed as soon as possible in order to facilitate early consultation with the industry regarding what is to be proposed. This should link with the proposals under consideration within clause 10.4.6 (e) (ii) to ensure what is meant by 'fair and reasonable'.</p>
RWE npower	Yes, probably	Due to expedited timescales on this modification a full legal view hasn't been obtained, we believe that further consultation time was a necessity to gain a detailed view on the redlined changes.
IBM UK Ltd for and on behalf of the ScottishPower Group	No	<p>Whilst acknowledging the fact that it would be difficult to have detailed provisions to ensure service standards are maintained, we would expect something to be added to the BSC to allow for performance measurement and setting out a process for recourse where BSCCo underperformance is identified (as an aside, we would think the recent spate of proposals in this area would suggest that the time may be right for the inclusion of such provisions in the BSC, irrespective of the progress of this P289. However, we recognise that this would require a separate Modification Proposal).</p> <p>Also, there is no assurance to Parties that a dividend policy will actually give a positive contribution to BSC costs. What is stopping the dividend policy to be zero (dividend), as DCCCo wants to stock up its cash reserve (and the BSCCo Board agrees to this)? What will happen if there is no agreement between the BSCCo Board and the DCCCo Board on the Policy?</p>

Question 4: Do you believe that the 'Private Investors' potential alternative solution would have better facilitated the Applicable BSC Objectives than the proposed solution?

#### Summary

Yes	No	Neutral/Other
-	5	12

## Responses

Respondent	Response	Rationale
Electricity North West Limited	No	Whilst initial thoughts are that any funding should benefit those who wish to contribute and that seeking volunteers is better than mandating, in this instance it may delay the process and miss the opportunity laid before us and is less likely to be an acceptable solution moving forward in that share ownership may prove to be a concern. So on balance we believe that this would not better facilitate the BSC objectives.
Haven Power Ltd	-	-
SmartestEnergy Limited	No	-
E.On	Don't know	The modification group didn't have the opportunity to review this alternative proposal, some emails have been exchanged but the group have not explored or debated this solution, but it is clear that Elexon did not wish to seek alternative private investors for their diversification. The P284 group believed that the awarding of a contract to Elexon to provide the BSC services on an outsourced basis would give Elexon the ability to raise capital from private investors to fund their expansion, at no risk to BSC parties.
TMA Data Management Ltd	No	The solution of Private Investors is incompatible with the BSCCo expansion conditions, in particular the condition that BSC Parties should benefit from any diversification. The benefits to BSC Parties would be lessened by dividends due to Private Investors. There would also be potential conflict of interest between the Private Investors and the BSCCo.
National Grid	Neutral	National Grid considers that the potential benefits of the 'Private Investors' appear to be marginal and it is unclear what additional rights such private investors would seek and how that may impact on BSC/DCC work.
Total Gas and Power Ltd	-	We are unclear why this has not been discussed by the workgroup. It may be a possible model, but would need due consideration.
Noble Clean Fuels Ltd	-	Noble suspects that this model may not work, but it is worthy of some consideration.
EDF Energy	No	A private investor would want a share of the potential benefits, over and above recovery of its initial contribution. This would minimise the potential

Respondent	Response	Rationale
		<p>benefits to BSC Parties.</p> <p>From a practical perspective, we think it unlikely a private investor would come forward in the limited timescale, so this option does not appear pragmatic.</p>
Waters Wye Associates	-	This should have been considered by the workgroup, as the e-mail sent to them suggested support for consideration.
Drax Power Limited	Yes possibly	In principle this alternative could have represented an improvement on the proposed solution. We believe that it is premature to conclude that this potential alternative is 'unworkable', particularly when there has been such limited opportunity for the Workgroup and the wider industry to develop and evaluate the solution. The use of an expedited timetable over the Christmas period has severely curtailed Panel, Workgroup and industry debate and meant that the opportunity to develop alternatives has not been provided.
Eggborough Power Limited	-	That is difficult to tell without further consideration by the working group. In principle private investors do back tenders for contracts in new businesses.
SSE plc	Potentially	There is insufficient information to assess whether this option better facilitates the applicable objectives when compared to the proposal, as we understand that the Panel chose not to further develop this option as an alternative with the workgroup. In principle, SSE feel that a modification that allows the participation of willing/interested investors is preferable to a mandatory obligation to fund, and would advocate the Panel returning this alternative to assessment for further consideration.
Centrica	No	We believe the <i>quid pro quo</i> of private investment would be the investor owning a substantial share of the DCCCo business, meaning reduced dividends being remitted back to BSCCo. We also doubt that the shared services on normal commercial terms envisaged by Elexon, leading to an estimated £1m p/a of defrayed costs, would be assured if a private investor was brought in. A private investor may have different preferences for the organisation of DCCCo, e.g. a preference for a separate office and less fluid staffing arrangements – this could reduce the potential for defrayed costs and in our view the net benefit of P289. We also have concerns that such an arrangement could be unwieldy, with greater risk of

Respondent	Response	Rationale
		conflicts of interest between BSCCo and DCCCo if a private investor was involved.
Energy UK	Yes possibly	Without being subject to robust workgroup debate it is difficult to know if this is unworkable as deemed to be the case by Elexon
RWE npower	Possibly	As the modification process has been expedited, insufficient time has been allowed to adequately explore the possibilities of alternative solutions and unless further analysis can be undertaken we are unable to confirm for sure the best possible approach to take.
IBM UK Ltd for and on behalf of the ScottishPower Group	Yes (conditional )	<p>The suggested alternative certainly removes one of the issues we have (i.e. Mandatory funding of non-BSC activity) and would better facilitate Objective (c).</p> <p>However, we are unclear as to whether the new company would still be a subsidiary of BSCCo with this arrangement, or if it would be a new company consisting of a number of private parties who can also be BSC parties (though not sure if this is possible under the DCC licence rule – please see additional comments section)? If the latter were the case, then would it still be a valid alternative (as the mod explicitly says via a subsidiary) or should it be a new mod? If it is the former, we are not sure how this would work (as it stands).</p> <p>However, irrespective of whether it is a valid alternative or not:</p> <ul style="list-style-type: none"> <li>a) as indicated above, it would remove one of the issues. However, it needs a commercial arrangement or partnership for utilising/sharing BSC resources;</li> <li>b) less returns/benefits is not an issue as BSC parties would not have to bear the risk of cost write-offs. The other claimed benefits are still there and the same as the Proposed. We believe that it still fulfils the argument that 'BSC Parties would benefit' as there is still the benefit of sharing of overheads/facilities/resources (if arrangement exists to do so);</li> <li>c) we believe the risk should be less (than the Proposed) as there would be a contract in place (on resource sharing) and BSCCo would have more focus on BSC activities; and</li> <li>d) therefore, it would still meet Ofgem's expansion criteria, in the same way as the Proposed. The</li> </ul>

Respondent	Response	Rationale
		<p>question is whether this is an expansion of ELEXON or just selling BSC resources commercially as consultants/experts.</p> <p>Overall, until there are confirmations/agreements to our queries above, particularly on whether this is a valid alternative or a new mod, and clarity on the arrangement between BSCCo and this new private (investor) company, it is difficult to decide how this could be progressed. However, it certainly has some merit over the Proposed and should be investigated further.</p>

Question 5: Do you believe that the 'BSCCo Board becomes DCCCo Board' potential alternative solution would have better facilitated the Applicable BSC Objectives than the proposed solution?

### Summary

Yes	No	Neutral/Other
5	6	6

### Responses

Respondent	Response	Rationale
Electricity North West Limited	No	This in our opinion is not good governance and seems to be a potential breach of the DCC licence.
Haven Power Ltd	-	-
SmartestEnergy Limited	No	-
E.On	Don't know	Again since this wasn't put to the modification group it wasn't debated or developed .
TMA Data Management Ltd	No	The BSCCo Board cannot become the DCCCo Board as its constitution is mandated by the DCC's licence.
National Grid	Yes	National Grid notes that the P289 Proposed Modification only allows the BSCCo Board to appoint the initial chairman of the DCCCo whereas the potential alternative proposes the BSCCo Board to be the same as the DCCCo Board. National Grid recognises that 'BSCCo Board becomes DCCCo Board' potential alternative may not be entirely within the control of BSCCo Board if the arrangements for the appointment of DCC directors are set in the DCC Licence and/or the Smart Energy Code. However,

Respondent	Response	Rationale
		<p>there may be suboptions which may work e.g. DCCCo Board being the same as the BSCCo Board plus independent directors, as required; this may ensure that there is optimal alignment between the Boards of BSCCo and DCCCo which would give the industry comfort that the interests of the BSC Parties would be better safeguarded and the BSC arrangements would continue to be delivered efficiently. The P284 Workgroup went through a similar thought process to develop an alternative (making implementation of 'contract model' conditional upon satisfying Ofgem's pre-conditions) which provided additional safeguards (e.g. no disproportionate risk to the BSC Parties) and was approved by the Authority.</p> <p>National Grid therefore considers that the 'BSCCo Board becomes DCCCo Board' potential alternative (or a variant of this alternative) could have better facilitated the Applicable BSC Objectives than the proposed solution.</p>
Total Gas and Power Ltd	Yes	<p>TGP again can see no evidence this has been given due consideration. In principle we would certainly want BSC parties to have more control over the new subsidiary than just the initial Chair. Were we to take a substantial investment (shareholding of say 20% or more) in another company we would expect Board level representation in some form. How the BSC parties are represented to ensure that they can maintain control and oversight of their investment needs to be addressed.</p>
Noble Clean Fuels Ltd	Yes	<p>As noted above, it is standard practice for major investors to have seats on the Boards of companies which they finance. Whether it is the whole Board, BSC party representatives or another option needs to be considered. Given some BSC parties will have no direct interest in DCC, it may be possible for the BSC parties to elect a neutral party (i.e. a non-DCC user) to represent their views on the Board.</p> <p>Noble is surprised that some firmer control over the new entity has not been considered in some detail.</p>
EDF Energy	No	<p>As the text in the consultation states, the appointment of the directors of the DCC Licensee is set out in the DCC Licence. Under paragraph 9.14 and 9.16 of the DCC licence as currently drafted, at least two DCCCo directors cannot also be directors of any affiliate or related undertaking. As DCCCo would be an affiliate of BSCCo this would exclude the potential alternative proposal, that the BSCCo Board</p>

Respondent	Response	Rationale
		<p>should be the DCCCo Board. The only caveat is that Ofgem could consent to alternative arrangements. In addition, 9.8 of the DCC licence requires that a director of DCCCo cannot be an employee of any SEC Party or External Service Provider this may therefore exclude some future BSCCo Board members, but not others.</p>
Waters Wye Associates	Yes	<p>The legal drafting only allows for the "initial" Chairman and Board. There was mention of shareholder and dividend agreements, but Parties have seen nothing. It would be unusual for a major shareholder to not get Board representation in some form. This needs consideration to meet Ofgem's objectives.</p> <p>The assertions around the DCC rules have not been substantiated and there is likely to be a pragmatic way to achieve better representation if the workgroup is given time to consider alternatives.</p>
Drax Power Limited	Yes possibly	<p>In principle this alternative could have represented an improvement on the proposed solution. We believe that it is premature to conclude that this potential alternative is 'unworkable' particularly when there has been such limited opportunity for the Workgroup and the wider industry to develop and evaluate the solution. The use of an expedited timetable over the Christmas period has severely curtailed Panel, Workgroup and industry debate and meant that the opportunity to develop alternatives has not been provided.</p>
Eggborough Power Limited	Yes	<p>As noted above, EPL has considerable concern that the BSC Parties, while shareholders of DCCCo, do not have enduring influence over it. The legal drafting only allows for the "initial" Chairman and Board. There has been talk of shareholder and dividend agreements, but we have seen nothing that gives us any comfort that the interests of BSC parties will be protected in the longer term.</p> <p>For all companies the dividend policy is set not by the shareholders, but by the Board. At the very least increasing the BSCCo representation on the Board, if not the control of it, would provide a far better solution for BSC parties. It is common practice for major shareholder to have seats on Boards, especially in private companies where the shareholders are the key funders of the business.</p> <p>As these alternatives were raised, we would like the</p>

Respondent	Response	Rationale
		Panel to please explain to us why these alternatives were not considered under the BSC modifications process. It is our understanding that this was not an urgent modification and as such should have followed the process set out in the BSC.
SSE plc	Potentially	There is insufficient information to assess whether this option better facilitates the applicable objectives when compared to the proposal, as we understand that the Panel chose not to further develop this option as an alternative with the workgroup. In principle, a proposal that allows the BSCCo Board as constituted upon full implementation of P281 to act as DCCCo Board has certain merits compared to the original, but it may also result in unintended consequences.
Centrica	No	In principle, there may be coherence benefits of aligning the leadership of BSCCo and DCCCo. However, we note Elexon's views about compatibility of a common leadership arrangement with the expected terms of the DCC Licence. If having a common Board for BSCCo and DCCCo Board would render Elexon's DCCCo bid void, any potential benefits of DCC tender participation to BSC parties would be null. Needless to say, this would preclude the furthering of objective d).
Energy UK	Yes possibly	Without being subject to robust workgroup debate it is difficult to assess if this is unworkable as deemed to be the case by Elexon. However, either this proposal or a variation on it may provide some additional comfort to BSC parties that they have longer term control over the DCCCo that they will be funding. Though it seems unlikely that the BSC would be able to dictate the makeup of the DCCCo board. See earlier comments on cross-code difficulties
RWE npower	Possibly	As the modification process has been expedited, insufficient time has been allowed to adequately explore the possibilities of alternative solutions and unless further analysis can be undertaken we are unable to confirm for sure the best possible approach to take.
IBM UK Ltd for and on behalf of the ScottishPower	No	While we agree that it would provide total control by BSCCo, apart from the issue with the requirement of the DCC licence, we are not sure if this is best corporate governance and what implications there would be for the BSCCo Board if DCCCo were to be



Respondent	Response	Rationale
Group		allowed to 'go bust' and it is the BSCCo Board who were responsible: i.e. any potential risk of director disqualification as a result. In terms of Applicable BSC objectives, it would probably detriment objective (d).

Question 6: Do you believe there are any other alternative solutions to P289 that should have been considered?

### Summary

Yes	No	Neutral/Other
5	6	6

### Responses

Respondent	Response	Rationale
Electricity North West Limited	No	With the limited time available there is no time to debate this further.
Haven Power Ltd	-	-
SmartestEnergy Limited	No	-
E.On	-	There is a risk that every time Elexon want to undertake new pieces of work, the BSC Co will be creating many separate subsidiary companies – see P290 for the SEC proposals. The P284 proposals if implemented would have protected the BSC and the parties from the ring fencing required for each of these organisations and the cost the industry face in developing multiple modifications every time they want to do something new – this isn't a sustainable solution.
TMA Data Management Ltd	No	-
National Grid	No	-
Total Gas and Power Ltd	Yes	As noted above there is probably a number of ways of putting BSC party reps onto the DCCCo Board. We would ask that they be considered.  We were unaware that the timetable was so tight that we needed to provide comments the moment we saw the paperwork. As you can appreciate there are a lot of changes going on in the market, not only in power, but gas as well. As this was not an urgent

Respondent	Response	Rationale
		proposal, and in light of the Christmas break and timing of the circulation of paper work, we did not have time to feed alternative ideas into the process.
Noble Clean Fuels Ltd	Yes	The timing and timetable of this modification has not offered an opportunity for parties to feed views in either directly or via their representatives. We are slightly confused by the wording of this question, as it appears the alternatives that have been raised have not been considered. We do not have a specific proposal, but believe the issues around control of the new subsidiary need to be considered so that BSC Parties can be sure that their interests are protected, spending is kept under control and repayment is prompt and equitable.
EDF Energy	No	Owing to limited timescale, it has not been possible to consider other alternative solutions.
Waters Wye Associates	Yes	The alternatives raised need consideration.
Drax Power Limited	Yes	It seems highly likely that a number of different alternative solutions could have been developed. However, due to the limited amount of time allowed in the Modification process it is hardly surprising that the development of fully worked alternatives has been curtailed.
Eggborough Power Limited	Yes	From the discussions around some form of working relationship with Ernst and Young, a formal Joint Venture option could be considered. We are very unclear what the current relationship with them is, but they clearly have an interest in working on the DCC and consideration of offering them the opportunity to take on some of the potential liabilities and funding associated with this proposal was worth consideration.
SSE plc	Potentially	Other alternatives could certainly have been considered, including for example a changed ownership model for BSCCo, and/or an alternative funding model for BSCCo that does not directly expose BSC Parties, and/or a model that confers strong rights of independent audit upon BSC Parties to ensure that safeguards are being adhered to. However, given its decision to not assess the private investor alternative proposed by a workgroup member, it would seem that the Panel have placed a greater weight on the speed of progression of a solution, rather than taking the time to fully consider

Respondent	Response	Rationale
		its options. So we are unsure as to why the question is being asked as we do not believe that any alternative suggested will be pursued anyway.
Centrica	No	-
Energy UK	-	Without being subject to robust workgroup debate it is difficult to assess whether other proposals may have emerged. There were a number of alternates raised following the workgroup meeting.
RWE npower	Possibly	As the modification process has been expedited, insufficient time has been allowed to adequately explore the possibilities of alternative solutions and unless further analysis can be undertaken we are unable to confirm for sure the best possible approach to take.
IBM UK Ltd for and on behalf of the ScottishPower Group	Yes/No	See our comments on Question 4.

Question 7: Do you have any views or comments in relation to the four specific questions asked by the Panel on costs, benefits and funding?

1. Do you understand the monies at risk?
2. Do you believe there is benefit in BSCCo's participation in the DCC Bid Process?
3. Is there benefit of BSCCo undertaking the DCC Role?
4. Are the initial funding arrangements appropriate?

### Summary

Sub-question	Yes	No	Neutral/Other
Q1	9	6	2
Q2	7	8	2
Q3	6	7	4
Q4	6	11	-

### Responses

Respondent	Response	Rationale
Electricity North West Limited	Q1: Yes	It is £600k capped and may be substantially less dependent upon how far in the bid process it is progressed.
	Q2: Yes	The reasoning for this is contained in Q1 above covering the Panel's recommendation.
	Q3: Yes	This should drive down costs to BSC parties through the dividend receipts.
	Q4: Yes	Whilst this area is vague regarding whether the values will be sufficient, Elexon have sufficient expertise to determine whether this value is adequate and as such we support their assessment.
Haven Power Ltd	Q1: Yes	We do not feel the level of money is the most significant issue.
	Q2: Yes	We believe there may be benefit in BSCCo's participation in the DCC Bid Process, providing that it is appropriately funded.
	Q3: -	We do not feel there is sufficient tangible evidence to agree or disagree with this statement.
	Q4: No	We strongly feel that the funding arrangements are wholly inappropriate and set a dangerous precedent.

Respondent	Response	Rationale
		The idea of mandatory funding of commercial activities is unacceptable. Whilst we understand and support the idea of the BSCCo bidding for the DCC we do not feel that there is any merit in making parties who will not reap any benefit (such as some BSC parties) being made to assume a share of the burden.
SmartestEnergy Limited	Q1: Yes	We understood this better without the aid of the pink and blue "down-select" diagram!
	Q2: Yes	The maximum amount of £600,000 is not that significant in the context of the funding of the BSC generally
	Q3: Yes	DCC activities and potential profits can be used to offset BSC overhead costs; and ELEXON's involvement in DCC activities would facilitate effective interaction between the DCC and Settlement, and thereby potentially minimise any risk to Settlement arising from introduction of the DCC arrangements
	Q4: Yes	Due to the fact that the costs are to be capped and the risk limited to around £50k for the first stage, that the potential benefits outweigh any risk and as such the funding arrangements are appropriate.
E.On	Q1:Yes/No	Yes and No. We understand what Elexon have told us, but we haven't seen the breakdown of monies already spent that was requested by the Panel and the Mod group
	Q2: No	The BSC Co isn't participating in the DCC Bid! DCC Co will be participating – and surely that's a separate legal entity. If it isn't – then there what is this modification for? The question of whether Elexon should undertake the DCC role is one for DECC when it considers the merits of the various bidders, and whilst we believe Elexon have the skill set to make them suitable bidding participants, we don't necessarily agree that they are the only qualified party to take on the role. Elexon's participation in the SMIP programme has ensure that the relationship between DCC and Settlements is understood as part of the smart programme, and that is why we agreed to a strategy which funded Elexon's involvement in the SMIP programme.
	Q3: No	If Elexon are successful in bidding for the DCC licence, then we would hope the claims made regarding the benefits BSC parties can achieve from shared

Respondent	Response	Rationale
		overheads can be achieved, but they are not certain, however there remains costs on parties to assure robust ring fencing is in place.
	Q4: No	We believe Elexon should have sought non-BSC funding for their bid process, either via a contract model or willing funders for the subsidiary model.
TMA Data Management Ltd	Q1: Yes	-
	Q2: No	The only benefit can be realised if the bid is successful but the participation in the tender itself, does not offer any benefit to the BSCCo.
	Q3: Yes	-
	Q4: Yes	Given the answers provided in the Report phase of P289 documentation, the initial funding arrangements.
National Grid	Q1: Yes	Although National Grid is not directly affected by the initial funding for the DCC bid, we understand that the risk to the BSC Parties is capped at £600k for both internal and external costs, and that the BSCCo Board will not be able to sanction any funding in addition to the £600k for the DCC bid.
	Q2: Yes	<p>National Grid considers that there is benefit in BSCCo's participation in the DCC bid process as this has the potential to promote efficiency in the BSC arrangements. However, National Grid considers that these efficiencies are more likely to be realised at minimal risk to the BSC activities via P284 (i.e. the current baseline) than P289.</p> <p>National Grid does not consider that the wider benefits such as additional competition in the DCC tender process should form part of P289 assessment as these are not relevant to the Applicable BSC Objectives. Instead, these benefits may be considered by the Authority as part of its wider statutory obligations.</p>
	Q3: No	<p>As stated in response to Question 1, National Grid considers that Elexon expansion under the BSC is unlikely to facilitate the Applicable BSC Objectives. In National Grid's view, sharing of resources between the BSCCo and DCCCo could disproportionately divert resources to non-BSC and adversely impact the efficient operation of the BSC arrangements, with potential degradation of BSC services.</p> <p>National Grid considers that any benefits such as effective interaction between the DCC and BSC</p>

Respondent	Response	Rationale
		settlement arrangements are likely to be marginal as any DCC licensee would be expected to comply with its licence obligations and deliver outputs accordingly.
	Q4: No	As stated in response to Question 4, National Grid considers that keeping liabilities out of the BSC as much as possible would be preferable to retaining them within the BSC. This would also ensure that there are no cross-subsidies between BSCCo and DCCCo, and that the BSC Parties are not mandated to fund the DCC bid.
Total Gas and Power Ltd	Q1: No	TGP can see the numbers in the report, but these seems to have altered from the modification and we are unclear why. We have seen no business plan so cannot tell if they are reasonable.
	Q2: No	Not on the basis of this modification.
	Q3: No	Not on the basis of this modification. There may have been under the contract model, as BSC parties' interests would have been better protected.
	Q4: No	The Funding Shares does mean that some parties pay more than others. We would also prefer to see a contract for the spending of money between the two companies.
Noble Clean Fuels Ltd	Q1: No	Noble has not seen a business plan to understand whether the monies are correct. From what we can see no other party has either. We are concerned that if the new company wins the DCC bid and then starts to run out of money before cash starts flowing (given how often Government run schemes are delayed) the BSC parties will have no choice but to provide more funds. Can we see the business plan to check that the contingencies in there are sufficient?
	Q2: No	From what we understand there are a number of parties in the competition and BSCCo's participation is not required to create a competition.
	Q3: No	It is not obvious to us why BSCCo, or importantly the BSC parties would want to risk Elexon staff being distracted by a new business venture at a time when we will need to move forward with the implementation of EMR policies, which are vital to the operation of the wholesale market with which the BSC is concerned.
	Q4: No	As noted above Noble has not seen a business plan. The numbers in the papers seem to alter, for reasons

Respondent	Response	Rationale
		<p>that are unclear, and we think there is a risk of further costs arising if unforeseen events occur. Parties seem to be signing an initial cheque without knowing what funding will be needed. It seems highly unusual to ask investors to give any funds without seeing a business plan.</p> <p>Parties who talk to investors will probably have concerns that, at the current time, raising further funds on good terms will be not easy and the default will be to ask BSC parties to pay.</p>
EDF Energy	Q1: Yes	<p>We understand the contributions that the industry is being asked to make towards the funding of the DCC licence bid, which would not be refunded if the bid is unsuccessful.</p> <p>We understand that if Elexon via DCCCo were to be successful in securing the DCC Role, the risks to BSC Parties from operational or financial failure of the DCCCo would be limited to the consequential effects on the settlement of BSC Trading Charges due to data interruption, with no direct financial liability other than loss of share capital.</p>
	Q2: Yes	<p>We believe Elexon's participation in the DCC bid process will apply competitive pressure and increase the overall quality of the bids.</p> <p>Elexon has expertise and experience in operating and managing complex service provision under the electricity industry arrangements. Its participation as a DCC licence candidate would add competitive pressure to the bid process, increasing choice in quality and cost. This will increase the likelihood of effective and efficient operation of the DCC, which may have interactions with the efficient operation of the BSC.</p>
	Q3: Yes	We see potential synergies from Elexon, via a new subsidiary DCCCo, undertaking the DCC role.
	Q4: Yes	We assume the "initial funding arrangements" relate to the £50,000 (at most) which is the cost that would be incurred between implementation of the P289 and the end of February when the bidders would be reduced as part of the "down select" phase. If this is the case, we agree the funding arrangements are appropriate.
Waters Wye Associates	Q1: No	The numbers have kept changing. As a workgroup member I cannot say if any are right or even reasonable. Not business plan has been seen and no



Respondent	Response	Rationale
		<p>idea of contingencies given.</p> <p>Were Elexon to run out of money, or be unable to secure further financing having won the role of DCC, I suspect it will come back to the BSC Parties asking for more.</p>
	Q2: No	<p>I have no idea how many parties are taking part, but it would be damaging to the trust between Elexon and the BSC Parties if this modification is to go ahead. There is no direct benefit for many BSC Parties, or even those who will use the DCC. No business plan or cost benefit analysis has been shared with BSC parties so to let this go ahead is either an act of faith or Ofgem will have to get comfort from Elexon itself that this proposal is a sound investment for the Parties.</p>
	Q3: No	<p>Not on the terms that do not protect BSC parties.</p>
	Q4: No	<p>Not without a clear contract that protects the relationship between Elexon staff administering the BSC and those working on DCC.</p> <p>Using any surplus without a clearer consultation with BSC parties is also undesirable.</p>
Drax Power Limited	Q1: No	<p>Following the raising of P290 there appears to be a further £50k of funding required for third party (external) costs to pursue a bid for the SEC role. The original Modification presented to the BSC Panel in December envisaged allowing BSCCo to undertake both the DCC and the SEC. It was suggested that funding would be capped at £300k for third party (external) costs and an additional £300k for internal costs. We do not understand how separating these activities into two Modifications have resulted in an additional £50k funding requirement. This increase in monies at risk should be explained.</p>
	Q2: Uncertain	<p>The benefits are uncertain and we are not yet convinced of the business case.</p>
	Q3: Uncertain	<p>We do not feel there is sufficient tangible evidence to agree or disagree with this statement. However, we note that BSCCo currently has no gas expertise, whilst a significant aspect of the DCC work involves the gas market. This means that expertise will need to be recruited. This would seem to add to the list of risks associated with the bid. Also, if the BSCCo was to win the DCC contract there is a risk that EMR work (that may be given to BSCCo to undertake) could be hampered as resources are stretched.</p>

Respondent	Response	Rationale
	Q4: No	We strongly feel that the funding arrangements are wholly inappropriate and set a dangerous precedent. The idea of mandatory funding of commercial activities is unacceptable.
Eggborough Power Limited	Q1: No	<p>The money at risks alters in the various documents. With the recent appearance of modification P290 the costs associated with these external activities appear to be spiralling. What started off at £300,000 is now heading towards £650,000 plus.</p> <p>Elexon has not provided any business plan, despite requests from the working group, so parties have no idea if these are reasonable amounts. EPL finds it difficult to have confidence in the numbers given their rapid changes and the lack of any plan.</p> <p>We also suspect this is not the true cost at all. We note that Elexon staff have been working on this for some time, attending conferences, etc., which we suspect they are doing in BSSCo time and not as part of their annual leave. We have concerns that it will be easy for BSSCo to indirectly pick-up additional costs which will be accounted for as BSC costs and the parties will foot the bill. There is no robust ring fencing to ensure that staff working on BSC issues are not dragged into DCC work, but their time never billed.</p>
	Q2: No	<p>EPL can see no benefit from BSSCo being in the process. It seems to be costing BSC Parties money with no direct benefit to them. If the Suppliers, who will interact with DCC want to fund a bid they could have raised a modification to allow them to do that, or offered to fund a contract model version.</p> <p>We are not aware how many parties are bidding to be the DCC, but we suspect that there will be enough for a competitive tender.</p> <p>The process itself risks Elexon getting distracted by more exciting ventures and thus becoming unable to efficiently administer the BSC. The negotiations with DECC over contractual terms is also likely to take time and resources.</p>
	Q3: No	Going forward, as DCC kicks off, EPL also suspects Elexon will need to be working on EMR implementation, which is more relevant and important to wholesale electricity than the DCC is. The Suppliers, who are required to interact with the DCC, will have the right incentives to ensure that it does not

Respondent	Response	Rationale
		<p>cause any issues for the BSC.</p> <p>EPL is not convinced that Elexon has the necessary skill set for the DCC, especially lacking expertise on the gas front. It will therefore need to hire new staff, etc. All of this will be a distraction.</p>
	Q4: No	<p>This modification forces us to become shareholder in a company in which we have no interest and over which we have no control.</p> <p>We assume that the funding is based on funding shares, which are not convinced is an appropriate mechanism. On the main funding share, if a BM Unit that belongs to a Trading Unit is generating while the Trading Unit as a whole is consuming in a Settlement Period or vice versa, its QCE will count negatively towards this calculation. The Annual Funding Share is also calculated by averaging each Party's General Funding Share. This means some parties may not be forced to pay for this in the same way as others.</p> <p>There are also inter-generational issues, which result in parties potentially signing up to the BSC and getting the benefit from a company they never invested in, which distorts not "promotes" competition.</p>
SSE plc	Q1: No	<p>We understand the monies that have been stated, however SSE do not believe them, as they seem to alter on a frequent basis. What started out as a £300k + unquantified internal resource cost in the original P289 proposal (which included bidding for SMART roles other than DCC prior to alteration at Panel 206), has now risen to £650k + unquantified internal resource when looking at both P289 solution and P290 proposal together. Equally, no detailed information has been provided to the workgroup to justify the veracity of the costs that have been proposed.</p> <p>Additionally, SSE remain concerned that resource and cost will be attributed to the bid beyond this cap if needed to complete the process, and that industry who will be obliged to fund this, have little or no transparency or control over how these monies will be spent.</p>
	Q2: No	<p>Not to BSC Parties. Any benefit will only arise were BSCCo to be successful, and even then subject to an uncertain dividend policy arising from an uncertain revenue.</p> <p>Whilst increased competition may bring benefits to</p>

Respondent	Response	Rationale
		<p>SMART award process, it is impossible to quantify the marginal value that this may add. Irrespective of this, Elexon's cost base historically has been high in comparison to other market operators, so we are uncertain that price benefits will actually accrue as a result of them being able to take part in the competition.</p>
	Q3: No	<p>There is no more benefit in BSCCo performing the DCC role than any other competent, appointed Agent. Elexon have no evidence to suggest that its competitors are incompetent, or indeed any more or less competent than Elexon. Whoever is appointed will be obliged to adhere to its license and a set of multilateral rules set out within the Smart Energy Code, as well as having natural incentives to deliver.</p> <p>Equally, BSCCo would be expected to interact and worked alongside SECCo to ensure access to data for settlement and to assure the quality and integrity of BSC services, a cross-code working relationship that BSCCo successfully maintains currently with CUSC, Grid Code, DCUSA, MRA Code Administrators, amongst others.</p> <p>Furthermore, DCC will operate across both gas and electricity sectors, and BSCCo have no track record or expertise in the gas market arrangements, so its confidence that there will be little or no error in transition to SMART simply by performing both roles is misplaced in our opinion.</p> <p>Regardless, BSCCo should, and we are sure would, work in the best interests of the BSC, regardless of whether it also functions as DCC, or else it is failing to deliver its core purpose. It is disingenuous to suggest that settlement will collapse and fail if BSCCo is unable to fulfil a dual role; Parties have already funded substantial costs for BSCCo to support the SMIP to assure as best it can against such an outcome, thus extracting already most of the potential benefits in this area. And what if BSCCo were to bid but fail to be selected ? Are we to assume BSCCo will refuse to continue to work with the preferred bidder, or will BSCCo seek to work in partnership with the DCC for the benefit of an orderly market ?</p> <p>More importantly, SSE are concerned that BSC service standards may suffer as a consequence of lack of enforceable service levels and through the sharing of resource, which may tend to focus by choice or design on the profit making part of the business. Mistakes are already happening (e.g. allowing NHHDA, EAC/AA</p>

Respondent	Response	Rationale
		operating software to run out of support), which may be heightened by an organisation which seems more interested in pursuing its future ambitions.
	Q4: No	<p>Funding for this venture should not be mandatory, which exposes BSC Parties to a risk of bad debt that will arise not from the operation of competitive energy markets, but from the management ambition of a central market operator.</p> <p>Additionally, SSE are concerned that provision of such funding may be considered anti-competitive given the unwilling participation of some of those funders, creating a potential exposure to BSC Parties of the costs associated with defending (and possibly losing) a legal challenge.</p>
Centrica	Q1: Yes	≤ £600k to fund DCCCo's bid (≤ £300k internal; ≤ £300k external).
	Q2: Yes	See our response to Question 1.
	Q3: Yes	See our response to Question 1.
	Q4: Yes	See our response to Question 1.
Energy UK	Q1: Not 100%	It is not clear how the sums have risen between meetings from £50,000 to £650,000. As a descoped proposal which sees the removal of the SEC role P289 has actually increased in cost from £300,000 up to £650,000 (£300k for external costs/£300k for internal costs + £50,000 for the SEC proposal as outlined in P290). How does this fit with the Ofgem condition that BSC Parties should not face higher costs. This is money we are told that has been accrued by Elexon as an under spend and which should be returned to code signatories not utilised for out of vires activities.
	Q2:Yes/No	<p>There may be to some but not all BSC Code Signatories are interested in this service or want Elexon to be involved in the process. Three Supplier members believe there may be a benefit.</p> <p>BSCCo currently has no gas expertise, whilst a significant aspect of the DCC work involves the gas market. This means that expertise will need to be recruited or even worse hired on a long or short term basis. This must add to the list of risks associated with this exercise.</p> <p>Any work undertaken here may increase the risks to future Electricity Market Reform work that could be heading BSCCo's way in that resource required for</p>

Respondent	Response	Rationale
		those activities will be extremely stretched.
	Q3: Not sure	There are a number of unknowns that mean this is a difficult question to assess at present. Some members believe that there may be benefits in Elexon participating in the DCC Bid process.
	Q4: No	It is not clear how the sums have risen between meetings from £50,000 to £650,000. Further clarity should be provided.
RWE npower	Q1: Yes	<p>After further discussions with Elexon we are aware of the monetary risk; however the modification is particularly vague surrounding the values. We have been given a lower figure of £50,000 to support the initial bid with a potential of an additional £600,000 although timescales of when these amounts will be paid and actual values are not specific.</p> <p>We would appreciate a detailed breakdown on projected costs as £300,000 for both internal and external costs is not sufficient to justify that level of investment.</p> <p>What costs have already been incurred for the qualification process and where have the funds come from to support this? They would have been totally separate to those requested through this modification so further clarity on the sourcing of these is needed.</p> <p>The modification only covers the monies at risk should the bid process be unsuccessful, it fails to address what should happen in the unlikely event of the failure of the DCC within the five year repayment proposal following a successful bid.</p>
	Q2: Yes	In the interest of competition further parties with the appropriate knowledge and stability participating in the bid process is seen as a positive addition. We would like to see BSCCo being able to participate in the procurement process if a suitable way can be found to enable this.
	Q3: Yes	<p>Providing the knowledge and expertise are present and no detrimental impact is felt to BSC Parties we have no objections to BSCCo undertaking the DCC Role.</p> <p>There may be benefits associated to this however further details are required as specific benefits have not been clearly identified in this modification.</p>
	Q4: Yes	The approach taken to obtain the initial funding has

Respondent	Response	Rationale
		<p>not been completely transparent and relies on under spend figures; clarity is required regarding the areas in which savings have been made.</p> <p>We believe insufficient time has been allowed to determine if a more appropriate funding arrangement could have been achieved.</p>
IBM UK Ltd for and on behalf of the ScottishPower Group	Q1: Yes	<p>ScottishPower understands at least £50k is at risk and if DCCCo is 'down selected', a max of £600k, though some of the internal costs (at least the £50k) are 'sunk' costs. However, we are concerned at the perception that the BSCCo, as the sole owner of DCCCo, could in reality avoid liabilities to creditors; we would certainly question the ability for a start-up company, with no obvious security to offer, could secure sufficient credit cover to make it a reasonable candidate for the DCC role.</p> <p>We are also concerned to note that the £600k appears to be double the original mooted figure and that it would be very difficult for BSC Parties to refuse further funding as the process unfolds.</p>
	Q2: No	<p>As far as BSC parties are concerned, there is no benefit. Elexon is already actively involved in the development of the SMART arrangement through its SMIP programme. One could argue that there is more benefit to the wider (SMART) industry through more potential competition. However, one has to recognise that the majority of BSC parties have no direct involvement in the implementation of SMART metering.</p>
	Q3: Yes/No	<p>The balance between more integrated settlement relationship with BSCCo involving in both services and risk to settlement (and the BSC) when BSCCo is spreading its resource too thinly, is a fine one. If it could be guaranteed that DCCCo wins the bid, then the benefits would be as stated above.</p>
	Q4: No	<p>It is not appropriate to mandate BSC parties to fund this non BSC activities, particularly when there is a risk that there could be write off costs with no benefit and that some parties may not get their money back. In particular, Parties not involved in SMART industry may not want to invest in this area.</p>

## Question 8: Do you have any further comments on P289?

### Summary

Yes	No
11	6

### Responses

Respondent	Response	Rationale
Electricity North West Limited	Yes	This modification is related to the bidding of the DCC and still allows progression of other activities under P284.
Haven Power Ltd	Yes	Whilst we see there may be benefits in allowing the BSCCo to bid for the DCC, we do not agree that BSC Parties should be made to fund commercial activities and feel that this should be optional. Mandatory funding of commercial activities would set a dangerous precedent and we are not satisfied that protections regarding the existing BSC activities and staff are anywhere near sufficient enough.
SmartestEnergy Limited	No	-
E.On	No	-
TMA Data Management Ltd	No	-
National Grid	Yes	<p>National Grid would like to make a comment on the process followed during P289, in relation to the impact assessment by the Transmission Company.</p> <p>Paragraph 2.6.6(a) of Section F states that "In respect of each Assessment Procedure, BSCCo shall (after appropriate consultation with the Workgroup): (a) commission an analysis and impact assessment from the Transmission Company in accordance with paragraph 2.8".</p> <p>At the Workgroup meeting on 17/12/12, it was highlighted that there may be an impact on the Transmission Company. Following these discussions, it may have been appropriate for Elexon, as custodian of the BSC change process, to request Transmission Company analysis, even if Elexon's own views were against the need for such analysis. No such request was received by the Transmissions Company.</p>



Respondent	Response	Rationale
		<p>As part of the Workgroup review of the draft P289 Assessment Report, we requested (19/12/12) that Section 4 of the Report should be amended to reflect the potential impact on the transmission licence. The draft Report circulated to the Panel, and subsequently circulated to the Workgroup for any final views (21/12/12), did not take these comments into account.</p> <p>During the final review by the Workgroup, we re-iterated that P289 is likely to impact the transmission licence and our views were eventually incorporated in the Assessment Report.</p> <p>Whilst there may have been time constraint issues, or Elexon views being different from those of some Workgroup members, the process has been far from satisfactory.</p> <p>In the past, Elexon has rightly taken a pragmatic approach and has at times requested Transmission Company analysis even though the Transmission Company later found no significant impact on any aspect of its operations. The Transmission Company considers that the high standards of service set by Elexon need to be maintained, particularly at a time when the industry is looking for assurances that any diversification would not lead to deterioration of the service standards.</p>
Total Gas and Power Ltd	No	-
Noble Clean Fuels Ltd	Yes	<p>Noble is concerned by the process this modification has followed. We are being asked to invest in a business in which we have no interest. However, the modification has followed a rapid timetable, over the Christmas break, and we were not aware that it existed. It is only because this change was flagged to us we became aware of it. While we would look for urgent changes, this did not appear to be urgent.</p> <p>The BSC is a contract that dictates the way we trade wholesale power in the GB market. It should be subject to a robust, defined change process. It is unclear why the Panel has raised this change; why this timetable has been used; why alternatives have not be considered; and how parties such as ours are to manage regulatory risks under these circumstances. If we were to raise a BSC modification can we expect it to get an expedited process, with no consideration of alternatives as well?</p>

Respondent	Response	Rationale
		We would be grateful if the Panel could explain to BSC parties what criteria will be used in future to use this process, in the same way Ofgem have urgency criteria and the urgent modification route is defined in the code. This modification is just unwelcome, but future potential modifications could be seriously detrimental to our business interests.
EDF Energy	Yes	<p>We have not taken legal advice but consider P289 would require an associated change to National Grid's Transmission Licence, in particular Condition C3 1(e), to explicitly permit BSCCo to undertake this additional activity. We would welcome Ofgem's view on whether the proposed modification would be legitimate without such a licence change.</p> <p>The process for raising this modification and the resulting short timescale of the overall consultation does not represent best practice for the code. We are aware of the reasons and circumstances, but would have expected Elexon to have better foresight. It has been clear that there were industry concerns with P284 and Ofgem had mentioned on several occasions that Elexon should consider other alternatives to the contract model. Earlier foresight of these issues would have allowed greater regard to the modification process as set out in the BSC, although we do not believe that this is grounds for rejection of this modification.</p>
Waters Wye Associates	Yes	<p>I have clients who may like to raise modifications and see them progressed on a timetable like this. I would welcome the Panel and Elexon putting forward a process that recognises this "expedited timetable" so other parties could benefit from it.</p> <p>I would also like Ofgem to give a clear steer to the code administrator that its role as "critical friend" does rely on it consulting more fully with code parties and taking on board their views, or explaining why they are not taking on board views. BSC parties have felt sidelined by this process and that is not helpful.</p>
Drax Power Limited	No	-
Eggborough Power Limited	Yes	EPL would like to request that the Panel asks for a review of the way this modification has been dealt with, we suggest by an external party. We are concerned that the BSC modification process has not been followed as it should. This is a key contract for our business and we would like assurances that the

Respondent	Response	Rationale
		<p>process was correctly followed and, if not, similar problems will not arise in future.</p> <p>We also believe if "expedited" mods processes are to be used for some modifications they will need to be open to all. Such processes should be hardwired into the BSC. What is to stop all parties wanting a fast tracked service?</p>
SSE plc	Yes	<p>SSE have grave concerns regarding the validity and suitability of the process followed to progress this modification. In particular we are becoming increasingly concerned about Elexon's conduct and objective management of the provisions of the Code which seem to have become increasingly clouded by its pursuit of its own expansionist ambitions, at BSC Parties expense and to the detriment of good governance practice.</p> <p>Firstly, as stated above in Q2, SSE are concerned that the use of the expedited process put forward by Elexon to put into effect an aggressive decision timescale is inappropriate. In determining a set of rules within the Code to allow for an Urgent process, industry has contemplated that quick decisions are sometimes required, but with appropriate safeguards by ensuring Authority oversight in agreeing shortened timescales. However, it cannot have been the intention to usurp and undermine the powers of the Authority in this respect by allowing the Panel to agree to a timetable that effects a faster decision than would be achieved under Urgency. This seems an inappropriate use of the Panel powers to amend standard timetables. What if a Party were to use this process to suggest expedited rule changes which would benefit consumers by making it more competitive in a supply tender, would we view such requests in the same light ?</p> <p>Secondly, we do not feel that it was appropriate to request the BSC Panel to raise this modification. We understand that Elexon discussed the potential to raise this modification with industry prior to requesting the Panel to raise it. The fact that no Party offered to support the raising of the proposal is somewhat telling. The Panel can only raise modifications in very limited circumstances, as described in BSC Section F2.1.1(d). Elexon in bringing forward the request to Panel to raise a modification, relied upon provision F2.1.1(d)(i) to support its aims. However, SSE cannot see how a modification supporting a bid for DCC, which has no</p>

Respondent	Response	Rationale
		<p>direct relationship to BSC Parties, allows the Panel to raise such a change as the benefits to BSC Parties are uncertain, whilst the costs incurred may result in an unrecoverable bad debt. Even if one accepts that technically the provisions allow the Panel to raise such a change, which SSE do not, it nevertheless in our view is against the spirit and intent of these provisions as originally envisaged. This seems self evident to us as such provisions were drafted in the context of an organisation deliberately constrained in expanding its activities through the BSC and its Company by-laws.</p> <p>Thirdly, the subsequent progression of the modification does not appear to have fully complied with the provisions of the BSC. Section F, states that:-</p> <p>"2.6.1 The provisions of this paragraph 2.6 shall apply if the Panel decides to submit a Modification Proposal to the Assessment Procedure pursuant to paragraph 2.2 or 2.5.9(b)."</p> <p>[and]</p> <p>"2.6.2 The purpose of the Assessment Procedure is to evaluate whether the Proposed Modification identified in a Modification Proposal better facilitates achievement of the Applicable BSC Objective(s) and whether any alternative modification would, as compared with the Proposed Modification, better facilitate achievement of the Applicable BSC Objective(s) in relation to the issue or defect identified in the Modification Proposal."</p> <p>Three potential alternatives had been raised by Workgroup members; however, they were not discussed by the Workgroup, as they were raised after their 17th December meeting. At least one of the three potential alternates was felt by a number of Panel members could, if it had been discussed, have offered BSC Parties better protection against risks, and thus would better facilitate the relevant objectives over the P289 original.</p> <p>Notwithstanding the obligations in the 2.6.1 and 2.6.2. it is also debatable as to whether Elexon has, with respect to P289, complied with CACOP, Principle 7:-</p> <p>"Code Administrators will facilitate alternative solutions to issues being developed to the same degree as an original solution"</p> <p>"Any process for considering a suggested Modification</p>

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		<p>to a code will allow for alternative solutions to be developed and fully assessed during the Modification lifecycle. To ensure this happens:</p> <ul style="list-style-type: none"> <li>• [i] Other than the proposer of the Modification, any user who has a right to raise a Modification will be allowed to propose an alternative solution;</li> <li>• [ii] Alternative proposals shall be raised prior to or during the workgroup stage;</li> <li>• [iii] Subject to timing and ownership there shall be no restriction on the number of alternative proposals that can be raised. Each alternative solution will be assessed with the same rigour as the proposed solution</li> </ul> <p>Objections by Panel members to the Workgroup not having had time to consider the potential alternatives resulted in comments by Elexon, at the 20th December BSC Panel meeting, that further modifications could be raised. In fact, as noted above, the BSC states that the report back to the Panel should contain consideration of any alternatives. This also reflects the CACOP Principle 7.</p> <p>The Workgroup report sent back to the Panel should also consider (according to Section F 2.6.6(a)) the impacts on the Transmission Company taking account of the impact on its ability to meet its licence obligations (2.8.1(a)). This is meant to be done "after appropriate consultation with the Workgroup".</p> <p>With respect to the matter covered by 2.6.6(a) and 2.8.1(a) concerning consulting with the Workgroup this was not done.</p> <p>With respect to the matter covered by 2.8.1(a) the Transmission Company representative also told the Panel at the 20th December meeting that they believed that P289 was not consistent with their licence. The Workgroup had requested Elexon's legal view on this and National Grid's, but Elexon had not provided their view and National Grid had not had time (between the 13th December and 17th December) to fully consider it before the Workgroup concluded and only raised the issues at the 20th December Panel meeting.</p> <p>In addition to the serious concerns that P289 might, with respect to the Transmission Company Licence, be ultra vires (which many BSC Parties are not experts in so, understandably, defer on the merits of this to National Grid and Ofgem) neither the Workgroup, the Panel or BSC Parties have had sight of the fully legal advice obtained by Elexon with</p>

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		<p>respect to this matter.</p> <p>Given that this legal advice was sought by Elexon as part of a Modification Proposal, it is legitimate BSC Modification information (funded by BSC Parties) and should therefore be shared fully with the Workgroup, Panel and BSc Parties.</p> <p>If it is Elexon's contention that this legal advice was not sought on behalf of the BSC Modification process (but by Elexon on its own behalf - if so, at whose cost?) then how did it get into the Workgroup Report? The content of the Workgroup report (as per Section F 2.6.4 and Annex F-1) are for the Workgroup to produce, assisted by BSCCo. No party has the vires to add information (no matter how relevant or worthy) to the Workgroup report without the consent of the Workgroup.</p> <p>Fourthly, the proposal has proceeded to a completely unreasonable timetable for a matter of such substance. Allowing for the fact most people were off on Christmas week, this realistically gave BSC Parties 8 working days to comment which runs counter to (i) the CACOP Principle 10 (where "in the absence of other considerations, a standard 15 business day period will apply" to consultations) and (ii) the 'custom and practice' of industry code (and Ofgem) consultations over the festive period of having a longer than the standard consultation period to reflect the reality that many respondents (and especially smaller parties, who may not have 'duplicate' resources able to respond if the primary responder is away) are on holiday.</p> <p>On a separate point we note that any continuation of DCC bid will be achieved through the acquisition of a company currently unrelated to Elexon Ltd. However, we note that this Company's registered address with Companies House is the same as that registered by Elexon Ltd., and that its incorporated officers are all employed by Elexon Ltd. In senior positions. So it appears that this unrelated Company, The Elexon Partnership Ltd., has been utilising Elexon's office space and quite probably its assets and people's time (e.g. IT equipment). This seems to contravene the vires restrictions currently in place and SSE seek an explanation from the BSC Board as to why this has been allowed to happen. Additionally, we understand from Panel 206 that in setting forth the expedited timetable, Elexon pointed out that upto £50k of bid expenditure was likely to be incurred prior to the</p>

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		Authority making a decision. We cannot understand how Elexon think that they have the right to spend money on a venture bid unassociated with the BSC, until such time as explicit approval is provided to do so, by the Authority approving this modification or by the Board agreeing to contract out BSC services in line with the provisions of P284. Again, we seek an explanation as to how this is allowed given the current restrictions. It may be helpful in this respect, if Ofgem or Parties were allowed to conduct an independent audit to satisfy themselves that Company by-laws, BSC provisions and undertakings previously provided to the BSC Panel have all been complied with.
Centrica	No	-
Energy UK	Yes regarding the process followed to date	<p><b>Modification Timetable and presentation to the Panel</b></p> <p>The BSC contains two provisions for processing all Modification proposals. It is either a 'standard' or an 'urgent' Modification proposal. This proposal was not deemed by the Panel to be urgent. If it is a 'standard' BSC Modification then whilst certain stages in the process can be dispensed with (for example, as per, F2.2.4, if self evident it does not need to progress through the Assessment phase but can go straight to Report Phase) it must fully follow the prescribed process. All Modifications which are not treated as urgent have to be treated as 'standard'.</p> <p>A late paper (206/17 Request to Raise a Modification) was sent to the Panel at 15.56 on Thursday 13 December. It should be noted that BSC parties wishing to submit a new 'standard' Modification proposal are required to submit them by Panel 'agenda day' (two Monday's preceding the Panel meeting on the Thursday).</p> <p>The Panel then voted on the use of an "expedited" timetable for P289. The Panel rejected the proposed timetable as it did not allow BSC Parties sufficient time to respond to the proposed consultation. The Panel meeting was halted for a short time whilst Elexon reconsidered the timetable for the Modification (this is not standard practice). When the Panel meeting resumed, Elexon presented a de-scoped proposal that took out the references to the SEC and provided a timetable that had been extended by one week.</p> <p>The Panel Chairman then called a further vote. By a</p>

Respondent	Response	Rationale
		<p>slim majority of 1 vote (3 for, 2 against and 1 abstention) the Panel agreed to send it to a Workgroup for Assessment. However it should be noted that at the point of the second vote, there were two fewer Panel members, as the two consumer representatives had to leave prior to the vote.</p> <p>Elexon first informed BSC Parties that P289 Modification had been raised and submitted to the Assessment stage via an email of 19:14 on Friday 14th December, with the Workgroup meeting taking place on the following business day, Monday 17th December. The Workgroup members not in the office on Friday and travelling to Elexon on Monday saw no papers prior to the meeting. This clearly frustrated the ability for BSC Parties, as per Section F 2.2.4, "to provide comments to the Workgroup in respect of such Modification Proposal" which could have been taken into account by the Workgroup. The wider market (i.e. none BSC Parties) were notified of the change via Elexon's Newscast on 17th December, so had no time to feed any views into the Workgroup meeting that day (the Workgroup only met once, on the 17th December). Given the short notice about the Workgroup date and process adopted for the paper circulation there was no reasonable way for the Workgroup or other parties to meaningfully discuss this P289 proposal at its one Workgroup meeting.</p> <p>Following the Workgroup meeting on the 17th December a report was given back to the Panel at an 'Ad Hoc' meeting on 20th December. Again papers were not circulated to Panel members prior to the meeting and due to the Christmas holidays a number of Panel members were unable to attend and had to appoint alternates.</p> <p><b>Alternative Proposals</b></p> <p>Three potential alternatives have subsequently been raised by Workgroup members; however, they were not discussed by the Workgroup as they were raised after their 17th December meeting. One of these was circulated to the Workgroup, but not discussed by them, and was highlighted in the slides at the 20th December Panel meeting, but the other two were raised by a Workgroup member who happened to be standing in for a Panel representative at that meeting. It is possible that at least one of the three potential alternates could, if discussed, have offered BSC Parties improved protection against risks, and</p>



Respondent	Response	Rationale
		<p>thus may have better facilitate the relevant objectives over the P289 original.</p> <p>Objections by Panel members to the Workgroup not having had time to consider the potential alternatives resulted in comments by Elexon, at the 20th December meeting, that further modifications could be raised. The BSC states that the report back to the Panel should contain consideration of any alternatives. This also reflects the CACOP Principle 7.</p> <p><b>Transmission Licence</b></p> <p>The Workgroup report sent back to the Panel must consider the impacts on the Transmission Company taking account of the impact on its ability to meet its licence obligations. This is meant to be done “after appropriate consultation with the Workgroup” which was not done.</p> <p>The Transmission Company representative also told the Panel at the 20th December meeting that they believed that P289 was not consistent with its licence. The Workgroup had requested Elexon’s legal view on this and National Grid’s, but Elexon had not provided its legal view and National Grid had not had time (between the 13th December and 17th December) to fully consider it before the Workgroup concluded and only raised the issues at the 20th December Panel meeting.</p> <p>In addition to the serious concerns that P289 might, with respect to the Transmission Company Licence, be ultra vires (which many BSC Parties are not experts in so, understandably, defer on the merits of this to National Grid and Ofgem) neither the Workgroup, the Panel or BSC Parties have had sight of the legal advice obtained by Elexon with respect to this matter.</p>
RWE npower	Yes	<p>We believe that the progression of this standard modification with shortened timescales has increased the necessity to seek clarification on numerous points where these would normally have been fully addressed during the working group discussions. The short timescale has also limited the opportunity to develop appropriate solutions to address parties’ concerns.</p> <p>We would encourage all involved to seek ways of resolving the current issues surrounding BSCCo participation in the DCC procurement process. We recognise that time is now short, but hope that a way</p>

Respondent	Response	Rationale
		forward can be found.
IBM UK Ltd for and on behalf of the ScottishPower Group	Yes	<p>We are concerned at the process followed in relation to the timescales allowed for this Modification Proposal. Having been refused urgent status, ELEXON asked that an 'expedited timetable' could be followed. We are not aware of any such provisions within the BSC and are disappointed that insufficient time appears to have been afforded the assessment of the issues raised by this proposal. We would also seek to understand whether this precedent (for expedited progression) might be followed for Modification Proposals raised by BSC Parties in the future?</p> <p>We note the requirement that the DCC '<i>...must be independent of the industry participants that it services...</i>' and ELEXON's explanation that the proposed DCCo would satisfy this requirement '<i>...because BSCCo has no direct relation with industry participants.</i>' Notwithstanding this explanation, we would be concerned that the proposal to establish a contract between the two Boards that would guarantee disbursement of 100% of dividends to BSCCo '<i>...for the benefit of BSC Parties in accordance with their funding shares...</i>' might, in effect, establish such a relationship.</p> <p>In particular, we are concerned that this might be construed as undermining the DCC's ability to satisfy requirements for non-discrimination, where certain DCC users could stand to gain financially from the profitability of DCC. If anything, this risk would be amplified under the 1st alternative solution.</p> <p>With regard to the ring fencing provisions that ELEXON contends will protect the BSCCo from extraneous cost, we would be anxious to understand the implications such arrangements might have on the likelihood of a successful DCCo bid. With the Government apparently at pains to ensure the financial viability of DCC bidders; might such ring fencing terms render a DCCo bid unacceptable?</p> <p>It was indicated that some of the internal costs are already sunk (i.e. staff are already employed with the plan to do the work). If this is the case, it implies that either BSC parties are already funding non-BSC activities, or BSCCo is not administering the BSC as efficiently as it should be.</p>