

# Report Phase Consultation Responses

## P303 'Amendments to the Provisions for BSCCo Directors'

This Report Phase Consultation was issued on 12 September 2014, with responses invited by 30 September 2014.



What stage is this document in the process?

### Consultation Respondents

Respondent	No. of Parties/Non-Parties Represented	Role(s) Represented
E.ON	7/0	Generator, Supplier, Interconnector User, Non Physical Trader
Electricity North West	1/0	Distributor
RWE Npower plc	10/0	Generator, Supplier, Non Physical Trader
SmartestEnergy	2/0	Supplier
SSE plc	8/0	Generator, Supplier, Interconnector User
Utilita	1/0	Supplier



Question 1: Do you agree with the Panel's initial majority recommendation that P303 Proposed Modification does not better facilitate the Applicable BSC Objectives and should therefore be rejected?

## Summary

Yes	No	Neutral/No Comment	Other
5	1	0	0

## Responses

Respondent	Response	Rationale
E.ON	Yes	<p>We agree with the Proposer and Workgroup that the current requirement for ex-industry candidates to have a 5 year gap between leaving the industry and being appointed to a non-industry Board member position is too prescriptive and could exclude otherwise desirable candidates from applying for this post. Changing this would support Objective (d). We do not intend to infer any criticism of the present BSCCo board; it appears that there was a large (~400) number of candidates for the non-industry posts and much smaller but reasonable pool of (15) candidates for the industry members.</p> <p>However while the remuneration question may well have been a factor behind the respective numbers of applicants (and we understand that the subset of truly suitable candidates for the non-industry pool to have been rather smaller), and we do understand the Proposers' reasoning of paying all Directors equally, the fact is that those candidates are already receiving an industry salary, and that approximately 15 quality candidates volunteered for the industry posts suggests that remuneration is not a necessity in order to encourage colleagues to put themselves forward for the ~2 days per month. Potentially there might be a risk of unintended consequences with the Proposed that the prospect of payment might encourage a wider pool of applicants, but no substantial increase in the number of appropriate candidates, potentially detrimental to (d). In addition to uncertainty over whether the Proposed would actually attract more applicants or not – as the prospect/complication of a second salary could conversely deter some candidates, the prospective headlines of 'energy execs pay themselves twice' could be anticipated to give bad publicity. To create</p>

Respondent	Response	Rationale
		<p>another cost ultimately borne by the customer while many are struggling with bills is not desirable. Overall thus we think the Proposed would be detrimental to Objective (d).</p>
Electricity North West	Yes	<p>We do not believe it is appropriate for industry Directors to be remunerated for undertaking the role of BSCCo Director. Additionally, we doubt the lack of remuneration will restrict the pool of candidates from the industry, as remuneration would not be the main reason for their interest in such a role.</p>
RWE Npower plc	Yes	<p>We do not support the remuneration of industry Directors and agree that there is potential for “unintended consequences” as set out in the report. Remuneration would not necessarily increase the pool of candidates who apply as we don’t believe this is a primary consideration amongst candidates.</p> <p>Our view is that compared to the current baseline the Proposed solution does not better facilitate Applicable BSC Objective (d).</p>
SmartestEnergy	Yes	<p>We do not believe that remuneration will better facilitate any of the BSC objectives.</p> <p>With regards to the argument of removing discrimination, the principle of remunerating non-industry board members but not those in the industry is consistent with other groups within the BSC structure such as the BSC Panel. Put another way: removing one alleged difference between different board members would create another difference between industry board members and industry representatives on other committees such as the Panel, PAB etc.</p>
SSE plc	Yes	<p>SSE remains concerned that unintended consequences will arise as a result of remunerating Industry Directors for their time.</p> <p>There is no certainty that remuneration will increase the pool of candidates that would stand, indeed it is not inconceivable that it could reduce it owing to employer conflicts of interest. But there will an increase in cost.</p> <p>Additionally, it raises awkward questions as to whether other voluntary groups, such as the BSC Panel and its Committees, should also be remunerated, with associated impacts on cost and/or participation.</p>

Respondent	Response	Rationale
		We therefore support the majority BSC Panel recommendation that this proposal does not better facilitate objective d).
Utilita	No	<p>We consider that the current restriction on the type of director that can be awarded compensation limits the pool of suitable candidate who are able to take on the role. Additionally the lack of remuneration does not reflect the time and effort that a Board member is required to commit in order to fulfil the role to its fullest degree. Remuneration would support industry directors to fulfil their roles both through the remuneration itself and the signal this provides of the position's importance. It addresses issues arising from financial dependence on an employer and ensures independence.</p> <p>We do not understand why the report does not fully air the responses made by current directors in the main body of the report. Their views are clearly directly relevant to this process. The report should highlight explicitly that the BSCCo Board Members were in favour of removing the current discrimination in remuneration arrangements, with their responses noting the time and commitment put in industry NEDs and disconnect between ELEXON's remuneration policy and that for industry NEDs in other sectors. The Board Member responses also disagree with the risks of unintended consequences raised by the Panel of 'serial NEDs applying'. They correctly state that a candidate's history as a successful NED would be a significant factor in the decision to approve a NED for the position, and that this disparate background brings a wide range of experiences to the Board.</p> <p>We also disagree with the workgroup concerns about the possible expansion of remuneration to other BSC Panel members and Committee members, as this is not within the scope of the modification proposal. The modification seeks purely to remove the existing discrimination between independent and non-independent directors, despite both being subject to the same time requirements, level of scrutiny and accountability for performance, and legal obligations, and it would also align the BSC remuneration policy with that of the Code of Good Corporate Governance.</p> <p>We consider that the potential for improved operating efficiency by ELEXON from the increased candidate pool that implementation would bring</p>

Respondent	Response	Rationale
		<p>about will significantly outweigh the very modest costs of implementation.</p> <p>Overall we consider that implementation of the original proposal would better facilitate BSC objective d) promoting efficiency in the implementation and administration of the balancing and settlement arrangements than both the current arrangements and the alternative proposal. I attach a marked up copy of the summary that more accurately and fully reflects our views as expressed in the working group and in response to the assessment consultation. These arguments should be clearly explained in the main body of the report.</p>

Question 2: Do you agree with the Panel's initial majority recommendation that P303 Alternative Modification does better facilitate the Applicable BSC Objectives and should therefore be approved?

## Summary

Yes	No	Neutral/No Comment	Other
5	1	0	0

## Responses

Respondent	Response	Rationale
E.ON	Yes	As per our answer to question one we agree that the current requirement for ex-industry candidates to have a 5 year gap between leaving the industry and being appointed to a non-industry Board member position is too prescriptive. Not changing the remuneration arrangements but being more flexible on the duration of time that a candidate has been 'outside' the industry by empowering/obliging the Nomination Committee to assess potential applicants on "independence of mind", along the lines of the suggestions of the Corporate Governance Code, would seem the best option that would better facilitate Objective (d).
Electricity North West	Yes	We agree that the P303 Alternative Modification better facilitates Applicable BSC Objective d), as it will remove restrictions and provide efficiencies to the Nomination Committee for the appointment of BSCCo Directors'.
RWE Npower plc	Yes	For an industry independent Director, we believe that the ability of the Nomination Committee to assess a potential candidates 'independence of mind' based on qualitative measures is a better approach than the current baseline. The 5 year gap is too prescriptive and may lead to otherwise exceptional candidates being excluded from applying for this post.  Compared to the current baseline, the Alternative solution would widen the pool of potential candidates and better facilitate Applicable BSC Objective (d).
SmartestEnergy	No	We do not believe the 5 year restriction is detrimental to the BSC objectives nor that removing the restriction would better facilitate the objectives.

Respondent	Response	Rationale
SSE plc	Yes	<p>It is helpful to give greater discretion and flexibility to the Nominations Committee in order to exercise judgement where exceptional candidates can demonstrate the experience and skills needed to balance and complement the Board in fulfilling its duties. The Nominations Committee must be diligent in ensuring that any industry NED applying to be a non-industry NED can demonstrate the wider set of skills needed to provide the right balance.</p> <p>SSE therefore believe that the alternative proposal does better facilitate Applicable objective d) as it delivers the flexibility required by the Nominations Committee to exercise more discretion.</p>
Utilita	Yes	<p>We consider that the removal of this gap will increase the pool of suitable industry independent candidates, which will further BSC objective d) promoting efficiency in the implementation and administration of the balancing and settlement arrangements.</p> <p>While implementation of P303 would be preferable, implementation of the alternative will represent a small improvement to the current arrangements.</p>

Question 3: Do you agree with the Panel's initial majority recommendation that P303 Alternative Modification is better than P303 Proposed Modification?

## Summary

Yes	No	Neutral/No Comment	Other
5	1	0	0

## Responses

Respondent	Response	Rationale
E.ON	Yes	As per our answers to questions one and two, we believe that the Proposed could be detrimental to (d) but the Alternative would be supportive of (d).
Electricity North West	Yes	Please see our responses to Questions 1 and 2 above.
RWE Npower plc	Yes	We concur with the Workgroup's arguments against remunerating industry Directors. The Alternative solution retains the current restriction that only industry independent Directors can be remunerated, and delivers the intended benefit of the Proposed solution at lower cost to the industry.
SmartestEnergy	Yes	Whilst the Alternative is better than the Proposed we do not believe that this modification should be implemented in any form. The Alternative is such a minor change that it is a waste of time to implement it.
SSE plc	Yes	The alternative proposal offers the benefits of providing greater flexibility when wanting to appoint exceptional candidates without the uncertainty and unintended consequences of remunerating industry NEDs.
Utilita	No	<p>While implementation of the alternative will allow for an increased pool of candidates for the non-industry NED roles, it will not address the more pressing issue of the discrimination between industry and non-industry NEDs.</p> <p>The current arrangements are not consistent with the UK Code of Good Corporate Governance which calls for a remuneration policy "sufficient to attract, retain and motivate directors of the quality required". It also states that "all directors should be able to allocate sufficient time to the company to discharge their responsibilities effectively".</p> <p>Remunerating both industry and non-industry</p>



Respondent	Response	Rationale
		<p>directors will ensure that all directors are able to commit the required time to their role and increase the potential pool of candidates for the industry role.</p> <p>We also consider that remuneration of industry directors would remove a barrier to smaller independent parties having representatives on the board, as under the current arrangements they are required to support the employee for non-work activities, an area where they have considerably fewer resources to devote to compared to larger parties.</p>

Question 4: Do you agree with the Panel's initial majority view that the redlined changes to the BSC deliver the intention of the P303 Proposed and Alternative solutions?

### Summary

Yes	No	Neutral/No Comment	Other
5	0	1	0

### Responses

Respondent	Response	Rationale
E.ON	Yes	-
Electricity North West	Yes	We believe the redlined changes do deliver the intention of the respective solutions.
RWE Npower plc	Yes	We agree that the redlined changes to the BSC deliver the intention of the Proposed and Alternative solutions.
SmartestEnergy	No comment	-
SSE plc	Yes	-
Utilita	Yes	We agree that the proposed BSC changes deliver the intention of the proposal.

## Question 5: Do you agree with the Panel's recommended Implementation Date?

### Summary

Yes	No	Neutral/No Comment	Other
6	0	0	0

### Responses

Respondent	Response	Rationale
E.ON	Yes	-
Electricity North West	Yes	It will link in with the timescale for the next BSCCo Board appointments.
RWE Npower plc	Yes	It is appropriate that the implementation date is aligned with the next round of BSCCo Board Director appointments.
SmartestEnergy	Yes	The timing of the implementation date of this modification is not a significant issue as it is straight forward to implement. The timing is sensible but we do not agree with implementation.
SSE plc	Yes	-
Utilita	Yes	We agree with the workgroup's recommended implementation date of 1 March 2015 to align with the next round of BSCCo Board director appointments. Early implementation of the proposals will allow for the potential good governance savings to be realised and so maximise the savings. Alignment with the next round of appointments will minimise both disruption to the process and implementation costs.

## Question 6: Do you have any further comments on P303?

### Summary

Yes	No
1	5

### Responses

Respondent	Response	Rationale
E.ON	No	-
Electricity North West	No	-
RWE Npower plc	No	-
SmartestEnergy	No	-
SSE plc	Yes	SSE believes that the issues of remuneration of and categorisation of Board members are better addressed as part of wider reform of ELEXON governance arrangements, currently under discussion (and as recommended in the 2013 Knight Report). New governance arrangements may well render unnecessary differing arrangements amongst Board members.
Utilita	No	-