

Report Phase Consultation Responses



P324 'Review of BSCCo's governance: introducing improved accountability to BSC Parties'

This Report Phase Consultation was issued on 11 August 2016, with responses invited by 30 August 2016.

Phase

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

Consultation Respondents

Respondent	No. of Parties/Non-Parties Represented	Role(s) Represented
SmartestEnergy Limited	1 / 0	Supplier
ScottishPower	6 / 0	Generator, Supplier, Non Physical Trader, ECVNA, MVRNA, Supplier Agent
Western Power Distribution	4 / 0	Distributor, Supplier Agent
E.ON	1 / 0	Supplier
First Utility	1 / 0	Supplier
RWE npower plc	8 / 0	Generator, Supplier, Non Physical Trader

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Report Phase Consultation
Responses

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Version 1.0

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Question 1: Do you agree that the Proposed Modification better facilitates the Applicable BSC Objectives than the current baseline?

Summary

Yes	No	Neutral/No Comment	Other
5	1	0	0

Responses

Respondent	Response	Rationale
SmartestEnergy Limited	No	<p>Sadly, this otherwise helpful modification has been spoilt by introducing the following elements: 1) allowing for up to two members of the BSCCo executive team to be appointed as Directors; and 2) allowing the Board to remunerate any of its non-executive Directors. This second issue in particular should have been raised separately once the genuine governance aspects were in place. It would appear that remuneration is being introduced through the back door even though Ofgem have previously rejected it. As far as the first element is concerned, we are of the view that paid employees of Elexon should not be on the board as voting members, although they should attend. It is important for the Board to be directing Elexon, not the other way around. It would also lead to "HR issues" if an Elexon employee were voted off the board.</p> <p>As a package we have reluctantly come to the conclusion that the proposed modification does not better facilitate the current baseline.</p>
ScottishPower	Yes	<p>P324 overall better facilitates the Applicable BSC Objectives.</p> <p>By clarifying the roles of the Board, the BSC Panel and BSCCo and increasing the accountability of the Board to BSC Parties, P324 improves the efficiency of implementing the BSC arrangements better facilitating Objective (d). The proposal is neutral against the other Objectives</p>
Western Power Distribution	Yes	-
E.ON	Yes	<p>The current arrangements for the BSC Board are not optimal and we agree with the issues highlighted in the Knight Report published in 2013. Therefore we agree that this Modification will better facilitate that the objective of improving the</p>

Respondent	Response	Rationale
		efficiency in the administration of the BSC.
First Utility	Yes	The proposed modification would facilitate BSC Objective (d) by improving the efficiency of industry arrangements by enabling BSC Parties to have a more active role in how the BSCCo is managed.
RWE npower plc	Yes	RWE npower believes that P324 does facilitate BSC Objective D and we agree with the proposer that P324 would improve the accountability of the Board to the industry, which would improve efficiency in the arrangements. We also agree that P324 would allow BSC Parties a more active role in determining the management of BSCCo, by providing a means to remove Directors in whom they do not have confidence. For these reasons we believe that P324 should be approved.

Question 2: Do you agree that the Alternative Modification better facilitates the Applicable BSC Objectives than the current baseline?

Summary

Yes	No	Neutral/No Comment	Other
5	0	0	1

Responses

Respondent	Response	Rationale
SmartestEnergy Limited	Yes, but...	We still have concerns over allowing for up to two members of the BSCCo executive team to be appointed as Directors. As stated above we are of the view that paid employees of Elexon should not be on the board as voting members, although they should attend. It is important for the Board to be directing Elexon, not the other way around. It would also lead to "HR issues" if an Elexon employee were voted off the board.
ScottishPower	Yes	P324 Alternative Modification overall better facilitates the Applicable BSC Objectives. By clarifying the roles of the Board, the BSC Panel and BSCCo and increasing the accountability of the Board to BSC Parties, P324 improves the efficiency of implementing the BSC arrangements better facilitating Objective (d). The proposal is neutral against the other Objectives
Western Power Distribution	Yes	-
E.ON	Yes	The current arrangements for the BSC Board are not optimal and we agree with the issues highlighted in the Knight Report published in 2013. Therefore we agree that this Modification will better facilitate that the objective of improving the efficiency in the administration of the BSC.
First Utility	Yes	We agree that the Alternative Modification would better facilitate BSC Objective (d) due to cost savings and the good representation of 'industry' non-executive Directors to date.
RWE npower plc	Yes	RWE npower believes that the Alternative Modification better facilitates the current baseline on the basis that the modification is identical to the Proposed Modification except the remuneration would remain limited to non-industrial non-executive Directors only. Both the proposed and

Respondent	Response	Rationale
		<p>alternative solutions are better overall than the current baseline, however we believe that allowing any non-executive Director to receive remuneration will increase efficiency by widening the candidate pool for the industry non-executive Director roles. For this reasons we support the proposed modification better facilitates the applicable BSC objective in comparison to the alternative.</p>

Question 3: Do you agree that the Alternative Modification better facilitates the Applicable BSC Objectives than the Proposed Modification?

Summary

Yes	No	Neutral/No Comment	Other
2	4	0	0

Responses

Respondent	Response	Rationale
SmartestEnergy Limited	Yes	-
ScottishPower	No	The evidence presented in Appendix 2 indicates that lack of remuneration for all Directors could impact potential candidate's willingness to serve on the Board and a resultant smaller "talent pool" from which to choose Directors. For this reason the Alternative is likely to facilitate Applicable Objective (d) less well than the Original Proposal.
Western Power Distribution	No	-
E.ON	No	<p>We do not believe that there is a significant difference between the modification and the alternative when assessing which would be preferable.</p> <p>The remuneration of the industry Board members potentially may restrict the numbers of candidates for the Board and therefore may have some merit. However we are not convinced that this is the case and therefore we favour the original Modification over the alternative.</p> <p>Considering the scope of the BSCCo as an organisation we question the value that 'non-industry' non-executive Directors bring. If the structure of the organisation was different and it was a service provider to a diverse range of contracts and industries then the logic for their appointment would be clearer. As it stands we are not sure what value they bring and would have liked to see this considered during the development of this Modification proposal.</p>
First Utility	Yes	Please see our response to Question 2 above.
RWE npower plc	No	RWE npower believes that the Proposed

Respondent	Response	Rationale
		Modification better facilitates the applicable BSC objective. Allowing the 'industry' non-executive Directors to be remunerated would widen the talent pool that would apply for such roles. This would increase efficiency in finding and appointing the best candidates to ensure the most efficient and effective leadership of BSCCo.

Question 4: Do you agree that the proposed redlining delivers the intention of the Proposed Modification?

Summary

Yes	No	Neutral/No Comment	Other
4	0	2	0

Responses

Respondent	Response	Rationale
SmartestEnergy Limited	No comment	-
ScottishPower	Yes	-
Western Power Distribution	Yes	-
E.ON	Yes	The proposal seems in line with the intent.
First Utility	No comment	-
RWE npower plc	Yes	RWE npower supports the proposed redlining provided, which does deliver the intention of Proposed Modification. More importantly, any changes are restricted to Board governance and do not go beyond the intention of P324 into Panel governance.

Question 5: Do you agree that the proposed redlining delivers the intention of the Alternative Modification?

Summary

Yes	No	Neutral/No Comment	Other
4	0	2	0

Responses

Respondent	Response	Rationale
SmartestEnergy Limited	No comment	-
ScottishPower	Yes	-
Western Power Distribution	Yes	-
E.ON	Yes	The proposal seems in line with the intent.
First Utility	No comment	-
RWE npower plc	Yes	RWE npower supports the proposed redlining provided, which does deliver the intention of the Alternative Modification. Similarly to the Proposed Modification, any changes are restricted to Board governance and do not go beyond the intention of P324 into Panel governance.

Question 6: Do you agree with the proposed Implementation Date?

Summary

Yes	No	Neutral/No Comment	Other
6	0	0	0

Responses

Respondent	Response	Rationale
SmartestEnergy Limited	Yes	-
ScottishPower	Yes	As the proposed changes have no impact on BSC systems it would be appropriate to coordinate P324 implementation with the November 2016 BSC Systems Release.
Western Power Distribution	Yes	-
E.ON	Yes	It seems sensible to implement the change as quickly as possible.
First Utility	Yes	We are not aware of other benefits to alternative dates.
RWE npower plc	Yes	RWE npower agrees with the recommended implementation date provided that a more defined process and clear criteria concerning the remuneration of Non-Executive Directors under the Proposed Modification can be established with the necessary caps and controls within the specified timescale. This way BSC parties who have a funding share can be confident and take comfort that any remuneration is reasonable.

Question 7: Do you believe that there are sufficient checks and balances in place under P324?

Summary

Yes	No	Neutral/No Comment	Other
4	1	1	0

Responses

Respondent	Response	Rationale
SmartestEnergy Limited	No comment	-
ScottishPower	Yes	We believe that there are sufficient checks and balances under P324 particularly through the ability of industry parties to raise Binding Resolutions to alter the composition of the Board should they feel that their interests were not being safeguarded by the incumbents.
Western Power Distribution	Yes	-
E.ON	No	<p>Considering the future potential structure of the BSCCo Board there is a risk that it will vote for a BSCCo Strategy that is not supported by the BSC parties and industry.</p> <p>The proposed check on this for Board members to be rejected seems retrospective and would not address the issue that Strategy would be approved and the BSCCo be delivering against a strategy for which the industry does not support.</p> <p>The ability for BSC parties not to vote to approve the Strategy for the BSCCo is a mistake and is different to the approach taken in other Codes.</p>
First Utility	Yes	With the principle of having both a minimum number of Voting Parties vote and a minimum percentage of the total votes cast as thresholds to achieve a quorum, this would comprise sufficient checks and balances, since the approach would help prevent larger parties from comprising a quorum on their own, while ensuring there is a reasonable chance of achieving a quorum even if several of the larger parties did not participate.
RWE npower plc	Yes	RWE npower believes that there are sufficient checks and balances in place under P324. The existing checks and balances already in place for

Respondent	Response	Rationale
		<p>BSCCo's activities should remain and any changes to such activities should be subject to the Modification Process. A process that we believe will not change as a result of P324. As expressed in the consultation, the concern that P324 would change the balance of power on the Board is mitigated by the ability to vote off Directors. We agree that P324 aligns the governance of the Board with good corporate governance by allowing both the ability to appoint executive Directors. Under P324, the industry could also raise a binding resolution if the Board voted for something the wider industry did not agree with. For these reasons we believe that there are sufficient checks and balances in place under P324.</p>

Question 8: Do you have any further comments on P324?

Summary

Yes	No
1	5

Responses

Respondent	Response	Rationale
SmartestEnergy Limited	No	-
ScottishPower	No	-
Western Power Distribution	No	-
E.ON	Yes	We support change in the BSCCo Board structure and arrangements. We are not clear that there are sufficient checks and balances in the proposal as it stands to ensure that BSC parties interests are protected and therefore have reservations about supporting the implementation of BSC P324.
First Utility	No	-
RWE npower plc	No	-