

Assessment Procedure Consultation Responses

P370 'Allow the Panel to designate non-BSC Parties to raise Modifications'

This Assessment Procedure Consultation was issued on 23 October 2018, with responses invited by 12 November 2018. We received a late response on 14 November 2018. This response has been incorporated into version two.



Phase

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

Consultation Respondents

Respondent	No. of Parties/Non-Parties Represented	Role(s) Represented
IMServ Europe	0 / 1	Supplier Agent
E.ON Energy Solutions	1/1	Supplier, Supplier Agent
The Association for Decentralised Energy (ADE)	0/1	Trade Association
Flexitricity Limited	1/1	Supplier / Non-BM services provider
Scottish Power	3/2	Supplier, Generator, Non Physical Trader / ECVNA, MVRNA
Conrad Energy Limited	0/1	Applying for a Supplier BSC Party Role
Western Power Distribution	1/0	Distribution System Operator
Npower Group Ltd	6/1	Generator, Supplier, Non Physical Trader / Supplier Agent
Stark	0/1	Supplier Agent
SSE plc	7/0	Generator, Supplier, Interconnector User
Power Data Associates Ltd	0/1	Supplier Agent

P370
Assessment Consultation
Responses

14 November

Version 2.0

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Question 1: Do you agree with the Workgroup's initial majority view that P370 does better facilitate the Applicable BSC Objectives than the current baseline and so should be approved?

Summary

Yes	No	Neutral/No Comment	Other
9	2	0	0

Responses

Respondent	Response	Rationale
IMServ Europe	Yes	None provided.
E.ON Energy Solutions	Yes	None provided.
The Association for Decentralised Energy (ADE)	Yes	<p>The ADE agrees that P370 better facilitates the Applicable BSC Objectives than the current baseline and should be approved. The modification better facilitates Objectives (c) and (d).</p> <p>As stated in the Consultation, the modification will make the designation process more transparent and better defined for non-Parties, thereby reduced the barriers to becoming a designated party. As also noted, the expertise present on the BSC Panel means that the modification is likely to result in a more efficient process that better enables innovation and competition. The ability to appeal designation rejections to Ofgem is also valuable, giving the appeal process independence and legitimacy.</p>
Flexitricity Limited	Yes	<p>P370 better facilitates BSC Objectives (c) and (d) than the current baseline and should be approved.</p> <p>The existing process for non-BSC parties to raise modifications is inefficiently time consuming and detrimental to competition between BSC and non-BSC parties.</p>
Scottish Power	Yes	<p>As there has only been one request for designation to the Authority to date, it is not clear that there is a systemic issue with the process that could not be addressed by an improved process within the Authority. Introducing new processes into the BSC and associated Procedures will not therefore necessarily improve the implementation of the BSC arrangements (Objective (d)).</p> <p>Having a more transparent process, may improve the apparent independence and neutrality of the</p>

Respondent	Response	Rationale
		<p>designation process for introducing a modification and may therefore improve the perception of promoting competition (Objective (c)).</p> <p>The Proposal is neutral against the other Applicable BSC objectives and any benefits from P370 are marginal at best.</p>
Conrad Energy Limited	No	We feel that by opening the BSC Modification process up to non-BSC Parties you are allowing parties not impacted by the BSC to affect those parties who are. This has the potential to have huge impacts to BSC Parties future earnings. Therefore, we feel this should not be approved.
Western Power Distribution	Yes	None provided.
Npower Group Ltd	Yes	We believe that P370 better facilitates BSC Objective (c), enabling the notion of promoting competition. We agree with the minority view of the Working Group that P370 is neutral against BSC Objective (d). Although the proposed change will make the process more transparent, it adds a level of complexity to the BSC.
Stark	Yes	P370 allows greater flexibility & broadens the source of potential problems and improvements than currently exists; non-party agents would potentially provide an alternative perspective based on innovation & competition that are closer to consumer needs than might otherwise be considered from a Party agent perspective.
SSE plc	No	SSE does not believe that it is appropriate to shift responsibility for designation (a process used infrequently since the introduction of the BSC) from the Authority to the BSC Panel. We believe that Authority oversight for this activity remains appropriate. The Authority is in a better position to make a determination, given its wider duties beyond the BSC Applicable Objectives. This check and balance is appropriate in our view given the fact that designation confers the same rights as Parties to the contract with regard to requesting change, but without the same cost implications. We therefore consider that it is appropriate that the Authority consider whether a non-Party request to raise a change is in the wider interests of the industry to progress; particularly given that Ofgem can make this judgement on a much broader basis than the BSC Panel, given its wider remit.

Respondent	Response	Rationale
		<p>Whilst accepting views from some that the process when recently utilised was slow to navigate and required to be slicker, this seems to be more of a commentary upon and reflection of an infrequently used Ofgem process that has had few opportunities to develop and mature. It does not seem to be a particularly effective use of resource and time to develop a new BSC process to deal with designation requests, without first allowing the Authority the opportunity to improve the extant process in response to feedback from industry. Equally no evidence is provided to prove that a BSC Panel led process will be any quicker than an authority led process, if an appropriate level of scrutiny and rigour is being applied to assessment of applications.</p> <p>SSE do not agree that it is appropriate for designation requests currently funded by licence fees to be shifted and paid for by BSC Parties. We do not find the obligation upon the BSC Panel to keep under review costs a satisfactory way to deal with the issue. SSE believe that non-Parties requesting a designation should be required to make a contribution to the costs of the process, as BSC Parties are expected to contribute to change costs in line with their funding shares.</p> <p>SSE therefore believe that the proposal is marginally detrimental to objective c) as it imposes costs of change upon BSC Parties that are obliged to become signatories to the BSC without a contribution from non-Parties who have made a conscious choice not to sign the BSC.</p> <p>SSE also believe that the proposal is detrimental against objective d) as it adds additional administration costs to BSCCo which are unnecessary given that a pathway already exists for the Authority to process designation requests.</p>
Power Data Associates Ltd	Yes	The BSC is defective in not allowing non-BSC Parties to raise Modifications and Issues without interacting in an ill-defined process with Ofgem. This has prevented non-BSC Parties from highlighting concerns and/or proposals for improvement to the BSC, which if approved, should improve the BSC to the benefit of all stakeholders.

Question 2: Do you agree with the Workgroup that the draft legal text in Attachment B delivers the intention of P370?

Summary

Yes	No	Neutral/No Comment	Other
11	0	0	0

Responses

Respondent	Response	Rationale
IMServ Europe	Yes	None provided.
E.ON Energy Solutions	Yes	None provided.
The Association for Decentralised Energy (ADE)	Yes	The draft legal text delivers the intention of P370.
Flexitricity Limited	Yes	The draft legal text delivers the intention of the modification.
Scottish Power	Yes	The draft legal text provided appears to deliver the intention of P370
Conrad Energy Limited	Yes	The draft legal text delivers the intention of P370
Western Power Distribution	Yes	None provided.
Npower Group Ltd	Yes	We believe the addition of 9.4.4 in Section H provides the clarification that the designation of a Third Party Applicant as a Third Party Proposer is a status/decision that is related to one Modification. Our view is that this is required in conjunction with the changes to Section F to make it clear that the role of Third Party Proposer is not an enduring status.
Stark	Yes	None provided.
SSE plc	Yes	It appears to deliver the intent.
Power Data Associates Ltd	Yes	The redrafting assists in clarifying the criteria and process to raise Modifications and Issues

Question 3: Do you agree with the Workgroup that the draft redlining in Attachment C and D delivers the intention of P370?

Summary

Yes	No	Neutral/No Comment	Other
11	0	0	0

Responses

Respondent	Response	Rationale
IMServ Europe	Yes	None provided.
E.ON Energy Solutions	Yes	None provided.
The Association for Decentralised Energy (ADE)	Yes	The draft redlining delivers the intention of P370.
Flexitricity Limited	Yes	The draft read lining delivers the intention of P370.
Scottish Power	Yes	The draft redline changes provided for BSCP40 appear to deliver the intention of P370
Conrad Energy Limited	Yes	The draft delivers the intention of P370
Western Power Distribution	Yes	<p>We agree with that the draft redlining in Attachment C and D delivers to intention of P370.</p> <p>Under the section "Submission of issues" the first paragraph requires an amendment:</p> <p>"Where a Party or interested third party feels that it has an issue, problem, defect or improvement with the BSC arrangements, but is unsure of how or whether to progress the concern, or wants to explore the solution options an Issue should be raised. This pre-change process shall assist in the framing of issue(s)/defect(s) and possible CPs or Modifications. Parties, Parties, interested third parties (including bodies representative of interested third parties and Party Agents) and BSCCo, may raise an Issue in accordance with section 3.15 below. "</p>
Npower Group Ltd	Yes	In addition, where Elexon are raising Issues on behalf of non-Parties, they may wish to make this clear on the Issue form.
Stark	Yes	Particularly with regards to clarification of the rights & obligations towards the criteria of designation

Respondent	Response	Rationale
		requests.
SSE plc	Yes	It appears to deliver the intent.
Power Data Associates Ltd	Yes	None provided.

Question 4: Do you agree that P370 does not meet the Self-Governance Criteria and so should not be progressed as a Self-Governance Modification?

Summary

Yes	No	Neutral/No Comment	Other
10	0	1	0

Responses

Respondent	Response	Rationale
IMServ Europe	Yes	None provided.
E.ON Energy Solutions	Yes	None provided.
The Association for Decentralised Energy (ADE)	yes	P370 does not meet the Self-Governance Criteria, for the reasons stated in the Consultation.
Flexitricity Limited	Yes	The modification does not meet the Self-Governance Criteria as it will have a material effect on competition.
Scottish Power	Yes	As the subject matter of P370 deals with the change process it is not appropriate for P370 to be progressed under Self-Governance
Conrad Energy Limited	Yes	P370 does not meet the Self-Governance Criteria, for the reasons stated in the Consultation
Western Power Distribution	yes	We agree that P370 does not meet the Self-Governance Criteria and therefore should not be progressed as a Self-Governance Modification.
Npower Group Ltd	Yes	None provided.
Stark	yes	None provided.
SSE plc	Yes	The proposal impacts the governance process of the BSC, so is not appropriate to be progressed under Self-Governance.
Power Data Associates Ltd	N/C	None provided

Question 5: Do you agree with the Workgroup that there are no other potential Alternative Modifications within the scope of P370 which would better facilitate the Applicable BSC Objectives?

Summary

Yes	No	Neutral/No Comment	Other
11	0	0	0

Responses

Respondent	Response	Rationale
IMServ Europe	Yes	None provided.
E.ON Energy Solutions	Yes	None provided.
The Association for Decentralised Energy (ADE)	yes	None provided.
Flexitricity Limited	Yes	There are no other potential Alternative Modifications that better facilitate the objectives.
Scottish Power	Yes	We believe that the working group have fully explored the options arising from the defect identified under P370.
Conrad Energy Limited	Yes	None provided.
Western Power Distribution	Yes	None provided.
Npower Group Ltd	Yes	None provided.
Stark	Yes	None provided.
SSE plc	Yes	The most appropriate alternative is to work to improve the existing process overseen by the Authority.
Power Data Associates Ltd	Yes	None provided

Question 6: Will the implementation of P370 impact your organisation?

Summary

Yes	No	Neutral/No Comment	Other
4	7	0	0

Responses

Respondent	Response	Rationale
IMServ Europe	No	None provided.
E.ON Energy Solutions	No	None provided.
The Association for Decentralised Energy (ADE)	Yes	<p>It will enable the ADE to apply for a designation to raise a modification to the BSC in circumstances where a BSC party cannot be found to sponsor a modification that a large number of ADE members feel is necessary. We do not anticipate having to apply for a designation on a regular basis, but the option is likely to be extremely valuable.</p> <p>For illustration, there have been two occasions in the last two years where this option would have been considered, if available.</p>
Flexitricity Limited	No	Flexitricity is a BSC party, and therefore can already raise modifications.
Scottish Power	No	We do not believe that implementation of P370 would materially impact processes within our organisation.
Conrad Energy Limited	Yes	Indirectly – by the actions on Non-BSC Parties
Western Power Distribution	No	The implementation of P370 will not have any impact on our organisation. Our concern would be the volume of modification and change proposals that could potentially be raised by Third Party Proposers, however, we note that provision has been made to monitor this by the Panel and the Panel will be able to take steps if the volume increases significantly. We would also not wish to be burdened with ill-conceived proposals which could involve wasted time, effort and costs.
Npower Group Ltd	No	In line with the Assessment Procedure Consultation document, there will be no direct impacts from the implementation of P370. However, if there is an increase in the number of Modifications and Issues

Respondent	Response	Rationale
		raised, this could have an impact but it is not possible to quantify this.
Stark	No	None provided.
SSE plc	Yes	SSE as a party to the contract will be required to contribute to funding of designation applications, thereby increasing our BSCCo costs on an ongoing basis (to the extent that applicants are not required to make a contribution to such costs).
Power Data Associates Ltd	Yes	It gives the opportunity to raise Modifications and Issues where appropriate. To date this has been done by lobbying BSC Parties, which has been a long and drawn out process.

Question 7: Will your organisation incur any costs in implementing P370?

Summary

Yes	No	Neutral/No Comment	Other
0	11	0	0

Responses

Respondent	Response	Rationale
IMServ Europe	No	None provided.
E.ON Energy Solutions	No.	None provided.
The Association for Decentralised Energy (ADE)	No.	None provided.
Flexitricity Limited	No	There are no system changes that would affect Flexitricity as part of the modification.
Scottish Power	No	We do not believe that our organisation will incur any material costs in the implementation of P370. However, if implemented, the Panel should monitor the number and associated costs of modifications raised under the designation process to ensure that there is no material increase in the cost burden on BSC Charge payers.
Conrad Energy Limited	No	Our organisation will not incur costs directly but there is potential for non-BSC parties to raise a modification which could have negative impacts to our organisation.
Western Power Distribution	No	No costs will be incurred implementing P370
Npower Group Ltd	No	In line with the Assessment Procedure Consultation document, there will be no direct impacts from the implementation of P370. However, if there is an increase in the number of Modifications and Issues raised, this could have a financial impact but it is not possible to quantify this.
Stark	No	None provided.
SSE plc	No	No systems changes associated with the application process, purely a documentation change.
Power Data Associates Ltd	No	None provided.

Question 8: How long (from the point of Ofgem approval) would you need to implement P370?

Responses

Respondent	Response
IMServ Europe	N/A
E.ON Energy Solutions	No impact so expect minimal lead times / time scales
The Association for Decentralised Energy (ADE)	N/A
Flexitricity Limited	0 days because Flexitricity would not need to make any changes.
Scottish Power	Our organisation would not require any time for implementation on P370
Conrad Energy Limited	N/A
Western Power Distribution	P370 would be implemented immediately from Ofgem approval as no system changes will be required.
Npower Group Ltd	As per the answers to Questions 6 and 7, there is no requirement for a particular implementation No timescale.
Stark	Not Applicable
SSE plc	SSE are not likely to use the process as a long-standing BSC Party.
Power Data Associates Ltd	No time lag. Implement ASAP

Question 9: Do you agree with the Workgroup's recommended Implementation Date?

Summary

Yes	No	Neutral/No Comment	Other
10	1	0	0

Respondent	Response	Rationale
IMServ Europe	Yes	None provided.
E.ON Energy Solutions	Yes	None provided.
The Association for Decentralised Energy (ADE)	No	While we understand the reasoning for the recommended Implementation Date, we recommend that the P370 Final Modification Report be released a week earlier, on 10 January 2019, enabling P370 to be implemented within the 28 February 2019 scheduled release, subject to Ofgem's decision being received on or before 21 February. Given that the UK is set to leave the European Union on 31 March 2019, it is likely that Elexon will be exceptionally busy in the month leading up to this date, with the possibility of a large volume of changes needing to be issued in the March scheduled release. We therefore recommend that the 28 February scheduled release be targeted for the implementation of P370.
Flexitricity Limited	Yes	The rationale outlined in the consultation document makes sense.
Scottish Power	Yes	If approved, P370 should be implemented in line with the first available BSC release i.e.29 March 2019
Conrad Energy Limited	Yes	None provided.
Western Power Distribution	Yes	None provided.
Npower Group Ltd	Yes	None provided.
Stark	Yes	None provided.
SSE plc	Yes	None provided.
Power Data Associates Ltd	Yes	Earlier the better.

Question 10: If you are a non-Party do you have any Modifications or Issues that you would like to raise, and if so, how many would you estimate you may raise within the first year?

Summary

Yes	No	Neutral/No Comment	Other
2	2	7	

Respondent	Response	Rationale
IMServ Europe	No	None provided.
E.ON Energy Solutions	N/A	None provided.
The Association for Decentralised Energy (ADE)	Yes	As mentioned in our response to question 6, there is currently an issue that the ADE would have strongly considered raising if the ability to do so were currently in place. Although P370 is unlikely to be approved in time to raise this issue, we would expect, given previous experience, to wish to raise 1-2 Modifications or Issues within the first year.
Flexitricity Limited	N/A	None provided.
Scottish Power	N/A	None provided.
Conrad Energy Limited	N/A	We are in the process of becoming a BSC Party – there are not currently and Modifications or Issues that we would like to raise.
Western Power Distribution	N/A	None provided.
Npower Group Ltd	N/A	N/A
Stark	No	None provided.
SSE plc	N/A	None provided.
Power Data Associates Ltd	Yes	I drafted two Issues on Aug 2017 which have not progressed due to lack of BSC Party endorsement. So might revisit these.

Question 11: Do you agree with the Workgroup that Parties should be able to appeal a Panel decision to designate a Third Party Proposer and a Third Party Applicant should be able to appeal a Panel decision not to designate them a Third Party Proposer?

Summary

Yes	No	Neutral/No Comment	Other
9	2	0	0

Respondent	Response	Rationale
IMServ Europe	Yes	None provided.
E.ON Energy Solutions	Yes	None provided.
The Association for Decentralised Energy (ADE)	No	<p>The ADE believes that a Third Party Applicant should be able to appeal a Panel decision not to designate them a Third Party Proposer but that Parties should not be able to appeal a Panel decision to designate a Third Party Proposer.</p> <p>In the Workgroup, the argument was made that, if non-Parties were allowed to appeal the Panel's rejection of its designation request. Parties should be allowed to appeal the Panel's decision to approve a designation request. This was cited as an example of 'moral equivalence'. Upon reflection, however, it is clear that the argument is fallacious and an example of false equivalence.</p> <p>Where a non-Party's designation request has been rejected, after they have gone through the process of creating and raising a Modification Proposal, it makes sense to allow appeal to Ofgem, given their wider remit than the BSC Panel. Where a non-Party's request has been approved, however, it is not clear on what grounds an appeal against the decision could be made. Such a route would only be of use to BSC parties looking to erect barriers to Modification proposals whose contents a Party may disapprove of. Given that these parties can already attend and vote in Workgroups to express their opposition to any modification, this seems to create an unwarranted barrier to entry.</p>
Flexitricity Limited	No	Third party applicants should be able to appeal a Panel decision not to designate them a Third Party Proposer and Parties should not be able to appeal a Panel decision to designate a Third Party Applicant a Third Party Proposer.

Respondent	Response	Rationale
		The two situations are not equivalent as Third Parties have no ability to appeal against a Panel decision to allow a Party to be Proposer for a modification. There are also no benefits to giving Parties this ability proposed in the consultation document, and there seem to be none.
Scottish Power	Yes	Allowing Parties to appeal a Panel decision to designate a Third-Party provides some equivalence of treatment in the appeal process. However, we cannot realistically foresee the Authority ever overturning a Panel decision to designate a Third-Party where this was intended to promote effective competition.
Conrad Energy Limited	Yes	None provided.
Western Power Distribution	Yes	We would agree that the appeals process should be a two way process.
Npower Group Ltd	Yes	We believe that the appeal's process as drafted in the proposed red-line text is equitable and transparent. Any alternative Modification would need to justify how it better meets the applicable BSC Objectives.
Stark	Yes	None provided.
SSE plc	Yes	It seems an absurdity to grant non-Parties a right of appeal to a decision made about a contract that they have chosen not to sign up to; whilst not allowing Parties that have had no choice but to sign a corresponding right. Both Parties and non-Parties should be allowed the right of appeal to maintain fairness and balance in the arrangement.
Power Data Associates Ltd	Yes	There are two questions in this one question. But having the capability there gives comfort to some parties, I doubt the processes will be invoked.

Question 12: Do you have any further comments on P370?

Summary

Yes	No	Neutral/No Comment	Other
5	6	0	0

Respondent	Response	Rationale
IMServ Europe	No	None provided.
E.ON Energy Solutions	No	None provided.
The Association for Decentralised Energy (ADE)	Yes	<p>The ADE would reject the characterisation that “the Workgroup agreed that there was a risk of additional Modifications being raised by non-Parties as a result of P370.” P370 seeks to remove a barrier to non-Parties being able to raise Modifications – if more Modifications are raised as a result of P370, this is a sign of success and demonstrates that the current process available to non-Parties is so convoluted that it prevents them from raising Modifications.</p> <p>The only potential risk created by P370, which has been discussed thoroughly in the Workgroup, is that a large volume of frivolous or vexatious Modification proposals are raised. As noted in the Workgroup, however, this risk is extremely low, for three reasons. First, individuals or organisations given to raising this kind of proposal are likely to be dissuaded by the need to provide the mandatory designation criteria agreed. Second, if they are not, there are clear routes for the Panel to reject frivolous or spurious requests or for the Modification Secretary to reject Proposals that do not meet the requirements in Section F of the BSC. Finally, real-world examples, principally that of the AEMC (cited on p. 22 of the Consultation), provide strong evidence that the number of designation applications will be manageable, that the number of frivolous Applications will be small, and that the latter are easily dealt with.</p>
Flexitricity Limited	Yes	As there is an increased trend in BSC Parties raising modifications which have large effects on non-Parties it makes sense that barriers are removed for non-Parties to be able to participate fully in the modification process.
Scottish Power	No	None provided.

Respondent	Response	Rationale
Conrad Energy Limited	Yes	The potential risk created by P370, which has been discussed thoroughly in the Workgroup, is that a large volume of frivolous or vexatious Modification proposals are raised. As noted in the Workgroup, this risk is low, but it is still a risk. If a modification came through the process from a Third Party which had significant impacts to BSC Parties, it seems unfair that an unaffected Non-BSC party is responsible.
Western Power Distribution	No	None provided.
Npower Group Ltd	Yes	We note that the Working Group has considered the possible impact from a potential increase in the number of Modifications and Issues on the BSC Panel. We welcome the ongoing reporting on the impact to BSCCo, but consider that there are other impacts that may need to be considered (although not necessarily reported on). For example, if there was to be a significant increase in the number of requests, could this impact on other Panel business?
Stark	No	None provided.
SSE plc	yes	<p>It seems to SSE that the BSC arrangements and BSCCo itself are becoming increasingly portrayed as (by ELEXON) and seen as (by industry) a wider public good than a Market Operator that operates to ensure an equitable and efficient settlement outcome for BSC Parties. Particularly as new business models emerge and act as disruptors to current market structures, this could be argued inevitable as the centre needs to adapt.</p> <p>However, it does raise the question as to whether it is appropriate for BSCCo to continue to be funded in the way that it currently is as clearly ELEXON and the arrangements (with this modification and the likes of P362) are seeking to support a much wider church than Section D charges were designed to capture, which will result in cross-subsidies. It is appropriate that all who benefit from the arrangements, should make a contribution to the costs (perhaps in line with proposed changes to residual network charges as BSCCo charge out is a revenue collection process to cover costs).</p> <p>It therefore seems appropriate (perhaps upon conclusion of TCR recommendations), to reconsider as a minimum, funding arrangements for BSCCo in the near future; and perhaps more fundamentally,</p>

Respondent	Response	Rationale
		ownership arrangements for BSCCo.
Power Data Associates Ltd	No	None provided.