

# Report Phase Consultation Responses

## P369 'National Grid Legal Separation changes to BSC'

This Report Phase Consultation was issued on 16 July 2018, with responses invited by 31 July 2018.



### Phase

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

### Consultation Respondents

Respondent	No. of Parties/Non-Parties Represented	Role(s) Represented
Drax Power Ltd	1	Generator
VPI Immingham LLP	1	Generator
SSE plc	3	Generator, Supplier, Interconnector User
Waters Wye Associates	1	Customer
Flexible Generation Group	1/1	Generator/ small generator
EDF Energy	3/0	Generator, Supplier, Non Physical Trader

P369  
Report Phase Consultation  
Responses

31 August 2018

Version 1.0

Page 1 of 11

© ELEXON Limited 2018

Question 1: Do you agree with the Panel's initial unanimous recommendation that P369 should be approved?

## Summary

Yes	No	Neutral/No Comment	Other
6	0	0	0

## Responses

Respondent	Response	Rationale
Drax Power Ltd	Yes	Applicable Objective (a) – Positive  The modification will ensure that the appropriate obligations within the BSC are placed on NGENSO due to the licence changes required for legal separation.
VPI Immingham LLP	Yes	NG separation requires the BSC reflect the reality of a separate SO. The change therefore does better facilitate applicable BSC Objective (a); and is also a lot more representative of the role of NG.
SSE plc	Yes	The proposed changes are necessary to ensure that the BSC properly reflects the new reality of a separate Electricity System Operator business, once the SO and TO functions and licence obligations within National Grid Electricity Transmission have been formally separated. SSE agree therefore the changes will better facilitate applicable objective a) in supporting the SO licensee to more efficiently discharge its obligations upon formal completion of the separation.
Waters Wye Associates	Yes	Only if the wording used is changed to NETSO.
Flexible Generation Group	Yes	As NG separation is completed, the BSC will need to reflect the reality of a separate SO. The change therefore does better facilitate applicable BSC Objective (a).
EDF Energy	Yes	Yes, subject to a detailed comment on legal text highlighted in response to question 2, and preference for an alternative term to 'transmission company' highlighted in response to questions 5 and 6.

Question 2: Do you agree with the Panel that the redlined changes to the BSC deliver the intention of P369?

## Summary

Yes	No	Neutral/No Comment	Other
4	1	0	1

## Responses

Respondent	Response	Rationale
Drax Power Ltd	Yes	We agree that the redlined changes deliver the intention of P369.
VPI Immingham LLP	Yes	Do you agree with the Panel that the redlined changes to the BSC in Attachment B and the Code Subsidiary Documents and Configurable Items in Attachments C-R deliver the intention of P369?
SSE plc	-	<p>The drafting appears to identify the correct set of changes; however, SSE would prefer to avoid the continued use of the term Transmission Company, and identify a terminology (such as that proposed in Q5 below) which</p> <p>Use of the term Transmission Company, whilst creating less change for the BSC, runs the risk of being misconstrued in the future (particularly by new entrants) as it is widely understood within industry that Transmission Companies (e.g. NG, SHETL, SPTL, OFTOs) own transmission assets.</p> <p>Whilst experienced operators in the market understand that TOs play no part in the BSC, new entrants will not necessarily understand this. Equally it provides no future proofing should TOs ever be required to become BSC Parties, or should full separation of SO ever be required. Arguably, Transmission Company is already a misnomer as the term does not reflect the increasing need to co-ordinate active system operation across transmission and distribution voltages.</p> <p>Communication by Ofgem and National Grid to date, all refer to the Electricity System Operator (ESO) and SSE believe that it would be clearer and more consistent for market participants if the terminology references "SO" in some way.</p>
Waters Wye Associates	Yes	n/a

Respondent	Response	Rationale
Flexible Generation Group	Yes	We have not reviewed the documents.
EDF Energy	No	<p>Unless section 6(1)(b) of the Act is going to change, I think the Transmission Licence referred to in the BSC is the one granted to the Transmission Company referred to in the BSC, being the organisation which is responsible for the BSC under its licence, as per the current and proposed BSC definition of the Transmission Company. I don't believe the BSC is referring to any Transmission Licence, which the draft change for P369 would infer.</p> <p>(Current, referring to the Transmission Company (as defined) in particular:</p> <p>"Transmission Licence": means the licence granted to the Transmission Company pursuant to section 6(1)(b) of the Electricity Act 1989, as modified from time to time;</p> <p>Proposed, which refers to any Transmission Licence including those of no relevance to references made in the BSC to the term Transmission Licence:</p> <p>"Transmission Licence": means a licence granted or treated as granted under section 6(l) (b) of the Act;)</p>

## 's Question 3: Do you agree with the Panel's recommended Implementation Date?

### Summary

Yes	No	Neutral/No Comment	Other
4	0	0	2

### Responses

Respondent	Response	Rationale
Drax Power Ltd	Yes	It makes sense to implement this modification on 29 March 2019 to ensure the new legal text takes effect on 1 April 2019; the date of legal separation.
VPI Immingham LLP	Yes	-
SSE plc	-	<p>Assuming that all legal drafting is complete in time for 1st April 2019 and National Grid are ready to go-live. Alignment of dates is necessary to ensure that the correct legal entity is held responsible for its obligations under the BSC.</p> <p>If there is a risk that SO/TO separation legal drafting may not be complete in time, then it might be advisable to apply a more flexible approach to the effective date (i.e. determined as a consequence of National Grid's designated go-live date).</p>
Waters Wye Associates	Yes	If the legal drafting can be completed on time.
Flexible Generation Group	Yes	n/a
EDF Energy	-	Yes, noting that the legal drafting is such that if the expected date of NGENSO taking responsibility from NGET changes, another modification would be required. Hopefully the risk of this is small.

Question 4: Do you agree with the Panel's initial view that P369 should not be treated as a Self-Governance Modification?

### Summary

Yes	No	Neutral/No Comment	Other
5	0	0	1

### Responses

Respondent	Response	Rationale
Drax Power Ltd	Yes	This modification will have a material impact on the operation of the National Electricity Transmission System (Self-Governance criteria a(iii)).
VPI Immingham LLP	Yes	Having considered this we believe that the sheer number of documents impacted means that it should not be treated as self-governance.
SSE plc	Yes	<p>This proposal is one of a number of changes to Industry Codes that will need to take place in order to ensure that the correct legal entity responsible for system operation is identified and made responsible for its obligations under each Code. It is important that the effective date of all these changes is co-ordinated, which is most efficiently achieved through Ofgem decision and direction.</p> <p>In the specific case of the BSC, National Grid are the sole counterpart to transactions in the Balancing Mechanism, and therefore SSE believe that a co-ordinated Ofgem decision provides BM participants/BSC Parties with greater assurance that the correct legal entity within National Grid is party to trades and obligations at all times.</p>
Waters Wye Associates	Yes	It is a material change to alter the way that the SO is referred to as a result of separation.
Flexible Generation Group	Yes	Given the impact on the parties and non-parties, it is useful that it is flagged to the wider market, especially potential new BSC parties.
EDF Energy	-	The change appears to meet the self-governance criteria, but we have no objection to it not being treated under self-governance.

Question 5: Do you support the amendment of the proposed and existing legal text so that 'Transmission Company' is changed to 'National Electricity Transmission System Operator (NETSO)?

## Summary

Yes	No	Neutral/No Comment	Other
	0	0	0

## Responses

Respondent	Response	Rationale
Drax Power Ltd	Yes	We agree with the panel, using the term 'Transmission Company' to describe the System Operator's obligations may be unclear and lead to the incorrect interpretation that 'Transmission Company' means Transmission Owner. Using the term 'National Electricity Transmission System Operator (NETSO)' rather than 'Transmission Company' would introduce additional clarity.
VPI Immingham LLP	Yes	<p>VPI do not support the use of "Transmission Company" as it is widely understood that Transmission Companies own transmission assets and are not the System Operator. The proposed drafting is not clear and will not better fulfil BSC objective (d).</p> <p>We believe industry already refers to NG's role as the Electricity System Operator (ESO) so it is sensible that the BSC should reflect this. Using NETSO will allow parties to know that the BSC is talking about the SO and none of the TOs. We do not believe that using "The Transmission Company" represents an enduring solution.</p> <p>Industry modifications should seek to simply the language around industry jargon wherever possible. Using NETSO would better facilitate BSC objective (c) by not creating confusion which may be a barrier to entry, and objective (d) by clearly referring to the role of SO not TO. VPI would therefore strongly advocate that the Panel instructs the use of "NETSO" throughout the BSC and associated documents.</p>
SSE plc	Yes	<p>SSE believe that use of the term NETSO avoids the ambiguities highlighted in our response to Q2 above, making it clearer that the BSC is referring to the System Operator and avoiding any risk of confusion with Transmission asset owners.</p> <p>It also helps to future proof potential developments now, such as full separation. Equally SSE understand that this terminology is more consistent with proposed</p>

Respondent	Response	Rationale
		<p>changes to other Codes.</p> <p>Whilst recognising that Elexon's legal drafting costs may increase in the short-term for this modification, it will hopefully create a longer-term efficiency by avoiding the need to redraft in the future as a result of further evolution of the SO entity, e.g. full separation. SSE believe therefore that this alternative wording should be directed by the BSC Panel.</p>
Waters Wye Associates	Yes	<p>Yes, Yes, Yes!</p> <p>The phrase NETSO is clear that we are talking about the SO and not a TO. I regularly explain to new market entrants who they will contract with, interact with and how. It is a key feature of the market that SO and the TOs have different roles. The references to the transmission company would be describing a company owning the transmission networks, pylons, etc. The SO is the body charged with balancing the market to make sure that the lights go out. These are commonly used terms and largely understood.</p> <p>For new entrants reading the BSC, the alternative NETSO wording more clearly describes the NG's SO function, rather than a transmission company. If full separation were to occur in future then providing this clarity now should future proof the BSC drafting.</p> <p>It will be economic and efficient to use the correct drafting now, rather than having to revisit it, with the associated costs, at a later date. Using NETSO would better facilitate BSC objective (c) by not creating confusion which may be a barrier to entry, and objective (d) by clearly referring to the role of SO not TO.</p>
Flexible Generation Group	Yes	<p>FGG has responded to this consultation to flag to those governing the BSC that the use of correct, clear and logical terms is important for smaller parties and new entrants. We are disappointed that NG has not taken a more robust approach to code changes to facilitate their separation, taking the opportunity to clarify their various roles with consistent, self-explanatory terminology. Minimal change is generally to be welcomed, but in this instance, the change proposed creates confusion, with the BSC referring to the "Transmission Company" when really it means the "System Operator". These are both widely used and well understood terms and should not become confused. FGG therefore believes it would be better to use the phrase 'National Electricity Transmission System Operator (NETSO)'. This would be less</p>



Respondent	Response	Rationale
		confusing, so less likely to create a barrier to market entry and reduce competition, and would be a more efficient implementation and administration of the BSC - relevant objectives (c) and (d).
EDF Energy	Yes	<p>Although it would involve numerous changes throughout the BSC, is not a legal necessity and might have knock-on effects in commercial agreements which refer to the BSC, 'NETSO' would better describe the role that is being referred to throughout the BSC. It would also be consistent with the general approach in the BSC of describing participants according to their role. It would prevent future new readers of the BSC confusing the system operator with transmission companies in general or in particular. It would be consistent with similar proposals for the Distribution Connection and Use of System Code.</p> <p>Use of a defined acronym such as NETSO (or NESO or NEGSO, see Q6) rather than the full name everywhere, in a similar manner to how BSCCo/ECVAA/CDCA etc are used, would avoid lengthy repetition. NESO might be more future-proofed, as described in response to question 6.</p>

## Question 6: Do you have any further comments on P369?

### Summary

Yes	No
1	5

### Responses

Respondent	Response	Rationale
Drax Power Ltd	No	n/a
VPI Immingham LLP	No	n/a
SSE plc	No	n/a
Waters Wye Associates	No	n/a
Flexible Generation Group	No	n/a
EDF Energy	Yes	<p>In future, it seems likely that the 'NETSO' role performed by National Grid could become established as a wider National Electricity System Operator co-ordination role (NESO?), as distinct from a National Electricity Transmission System Operator or an Electricity Distribution System Operator or any other local electricity system operator.</p> <p>On an interconnected network, electricity travels virtually instantaneously with limited respect for ownership or voltage boundaries. Efficient future system operation will require increased co-ordination between operators of generation, demand, storage (to the extent storage is considered different from generation and demand) and networks across transmission and distribution voltages, including connected private networks. This will require a National Electricity System Operator co-ordinating system operation across the entire national system and with external system operators, interacting closely with operators of distribution or local networks who might be better placed to manage local networks and the behaviour of small generators and local demand. It seems sensible that National Grid perform this future national electricity system operation co-ordination role. The BSC currently refers to the Transmission Company in relation to balancing and settling flows</p>

Respondent	Response	Rationale
		mainly at transmission level, but the current 'NETSO' role could become a National Electricity System Operator, as distinct from a National Electricity Transmission System Operator or an Electricity Distribution System Operator, or a Local Electricity System Operator.