

P268 'Clarify the P/C status process for exempt BM Units' Assessment Consultation Responses

Consultation issued on 23 May 2011

What stage is this document in the process?

01 Initial Written Assessment

02 Definition Procedure

03 Assessment Procedure

04 Report Phase

We received responses from the following Parties:

Company	No. BSC Parties/non-Parties represented	Role of Parties/non-Parties represented
RWE Supply & Trading GmbH	10/0	Supplier/Generator/ Trader / Consolidator / Exemptable Generator / Party Agent
IBM (UK) Ltd. (for and on behalf of ScottishPower)	7/0	Supplier/ Generator/ Trader/ Consolidator/ Exemptable Generator/ Distributor
Centrica Energy	11/0	
E.ON UK	6/0	Supplier / Generator / Trader / Consolidator / Exemptable Generator
EDF Energy	10/0	Supplier/Generator/Trader/ Consolidator/Exemptable Generator/Party Agent

Question 1: Do you believe that the (retrospective) Proposed Modification would better facilitate the Applicable BSC Objectives when compared with the current Code provisions?

Summary

Yes	No	Neutral/Other
0	5	0

Responses

Respondent	Response	Rationale
RWE Supply & Trading GmbH	No	We do not support the retrospective application of P268. We do not believe that the proposal meets the criteria for retrospection as outlined in the assessment report.

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Respondent	Response	Rationale
IBM (UK) Ltd. (for and on behalf of ScottishPower)	No	<p>No, we do not believe that the Proposed Modification better facilitates the BSC Objectives when compared to the current baseline for the following reasons:</p> <p>Objective a) Neutral</p> <p>Objective b) Neutral</p> <p>Objective c) In general the retrospective implementation of changes does not propagate a stable and safe marketplace which allows competition to flourish. Whilst it is true that clarifying rules brings certainty for new and existing market participants, in this case, it is outweighed by the uncertainty caused by the retrospective implementation.</p> <p>Objective d) There is a benefit to the operation of the BSC with this change in that it reduces the chances of future disputes which are time consuming and costly going forward, however this is washed out by the retrospective implementation, the effect of which needs to be managed.</p>
Centrica	No	<p>We believe that the retrospective element of the modification will not better facilitate objectives c and d. Retrospective amendment of the code does not promote effective competition in the supply and or generation of electricity or the sale and purchase, neither will it promote efficiency in the implementation of the balancing and settlement arrangements requiring further adjustment to charges levied.</p>
E.ON UK	No	<p>This modification is desirable to avoid Parties being exposed to imbalance charges as a result of inadvertently nominating against the wrong account. We support the principle that a BMU's P/C status should not "flip" without the Lead Party's knowledge, as is a greater risk for Exempt Export BMU with a null/dynamic flag than for other BMUs. While the Party in question might be able to see what has happened after the event from monitoring the CRA-I014 data flow, this will still leave it exposed through the actions of others that could only have been foreseen through a bilateral agreement. As a P/C election also only takes effect after 28 calendar days, when the status has been set by default a Party may be further disadvantaged through this restriction in the Code; it does seem a potential oversight that 28 days may have been decided upon with only new BMU registrations in mind. It is appropriate that this timescale be reduced to 2 days as suggested by P268 and also for such operational detail to be removed from the Code and inserted into the relevant BSCP.</p>

Respondent	Response	Rationale
		<p>However the arguments for and against retrospection are more finely balanced; fundamentally we do not believe that the Ofgem criteria for retrospective application of a change are met by P268 Proposed. The Code could, probably should, be clearer in setting out explicitly the requirements for existing BMU that become Exempt Export, and less restrictive with regard to the minimum notice period for P/C status election. The Proposer is also right to highlight the discrepancy between the Code and the CSD. It also appears that in the case that prompted this proposal, the Party in question when seeking clarification may have received misleading advice from the Code Administrator. If so this is most unfortunate and E.ON is sympathetic to the Proposer's situation. However it is the need to seek advice due to the current wording of the Code, and subsequent Trading Dispute resulting from confusion arising, rather than the nature of any advice received or outcome of the Dispute, that must influence the consideration of P268. Retrospection is generally undesirable and we are not convinced that it is justified in this case. All Parties must understand that the Code takes precedence to any CSD and although Section K could be more explicit regarding existing BMU that become Exempt Export, K3.5.5b does state how all Exempt Export units' status will be determined. We note that this retrospective change would only allow Parties to make a single retrospective election thus minimising administration, but while this change would affect 7 BMUs, the act of introducing a retrospective change to the Code increases uncertainty for all, a negative impact under Applicable Objective (c). Retrospective implementations by their very nature can be seen as inefficient and (albeit minor) disruption to many Parties hard to justify for a change such as P268 which would have a positive effect on very few. Thus although a prospective implementation would support (c) and (d) and we support this element of the Proposed Modification, on balance although the costs are not prohibitive we still believe that a retrospective implementation would not help to achieve Objective (c) or (d).</p>

Respondent	Response	Rationale
EDF Energy	No	<p>Retrospective application of rule changes, particularly material ones, can reduce the incentive to understand rules and act accordingly, can create uncertainty and can undermine prudent investment decisions. Using such changes to rectify material mistakes made as a result of insufficient investment removes the benefit obtained by those that do make investment.</p> <p>In our view, the current rules on P/C status set out in the BSC are unambiguous. All parties should be aware that the BSC itself takes priority over subsidiary documents in the case of inconsistency. In this case, an oversight/mistake that could have been avoided by more prudent operation by the party has had a material impact on settlement and the proposal seeks to rectify this oversight by retrospective implementation.</p> <p>For these reasons, retrospective implementation would not help achieve BSC objective (c) concerning efficient competition, and would set a bad precedent for the future.</p>

Question 2: Do you agree with the Group's reasons for concluding that, if P268 is to be retrospective, this retrospection should be applied back to 1 March 2010 rather than the P100 Implementation Date in 2003?

Summary

Yes	No	Neutral/Other
4	1	0

Responses

Respondent	Response	Rationale
RWE Supply & Trading GmbH	Yes	This appears to be a pragmatic solution though as noted above we do not support the retrospective implementation of the modification.
IBM (UK) Ltd. (for and on behalf of ScottishPower)	Yes	We agree with the Group's assessment that there are no Parties which were disadvantaged in that period due to the drafting of the BSC in this area.
Centrica	No	If retrospectivity were applied it should be to when the defect arose, however we do not support the retrospective implementation of the modification
E.ON UK	Yes	There may be some logic in going back to the P100 implementation date in 2003, but as this issue has not affected many, potentially only the 2 BMUs that were

Respondent	Response	Rationale
		the subject of DA375, if retrospective then to 01/03/10 would be more practical. Recalculating Trading Charges for all Parties, some of which may have left the Code, all the way back to 2003 would be a disproportionate task for little benefit.
EDF Energy	Yes	<p>The consultation report indicates there is no additional materiality for dates earlier than 1 March 2010, and so there should be no question of discrimination between the proposer and other parties that may have been similarly affected by the issue raised.</p> <p>Any other party that might wish to change its P/C status from default to a specified value retrospectively prior to 1 March 2010 has had ample opportunity to raise the issue but it appears that no party has.</p> <p>In these circumstances, limiting the retrospection period, as compared with not limiting it, should not alter the extent to which BSC objective (c) concerning competition is better achieved, or not, by the proposal.</p> <p>Limiting the period of retrospection better achieves BSC objective (d) concerning efficiency of BSC operation by removing the possibility of opportunistic historic changes that would incur significant administrative costs to reconcile.</p>

Question 3: Do you believe that the (prospective) Alternative Modification would better facilitate the Applicable BSC Objectives when compared with the (retrospective) Proposed Modification?

Summary

Yes	No	Neutral/Other
5	0	0

Responses

Respondent	Response	Rationale
RWE Supply & Trading GmbH	Yes	P268 Alternative is a pragmatic solution to the administrative issues associated with the P/C status of BMUs without the retrospective issues for settlement raised by P268 original. Consequently P268 Alternative will better meet the BSC Objectives when compared with 268 Original.

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Respondent	Response	Rationale
IBM (UK) Ltd. (for and on behalf of ScottishPower)	Yes	<p>Yes, we agree that a prospective Alternative is better when compared to the retrospective Proposed modification for the following reasons:</p> <p>Objective a) Neutral</p> <p>Objective b) Neutral</p> <p>Objective c) Positive. The Alternative has all the good traits of the Proposed – i.e. it clarifies the rules for all Parties and brings more certainty to the arrangements, which in turn provides for a stable marketplace, without the uncertainty of retrospection.</p> <p>Objective d) Positive. The Alternative reduces the likelihood of future disputes, which put a financial and operational burden on the operation of the BSC.</p>
Centrica	Yes	As above, removing retrospection reduces the adverse impact on the relevant objectives
E.ON UK	Yes	<p>This would be a sensible, straightforward low impact change supporting Applicable Objectives (c) and (d), for the reasons stated in our answer to question 1. The Code could be more detailed/explicit in setting out what will or needs to happen when a BMU becomes Exempt Export. This would be helpful to both existing Parties and new entrants. Any inconsistency between the Code and CSD also needs to be tackled. In this instance we believe that the Proposer has highlighted a defect in the Code in that allowing a BMU's P/C status to flip due to the actions of other Parties, that the Lead Party in question will only find out after the event, and then faces a 28-day notice period to change this, is all anticompetitive. Inclusion of this notice limit in the Code rather than the operational BSCP is also undesirable. Hence we agree that the Code as well as the CSD should be changed. We note that the Workgroup is unanimous in support for such a prospective Alternative and like them, do not see any negative impacts from implementing P268 prospectively, a view supported by the fact that no eligible Exempt Export BMU has ever elected to have a dynamic flag.</p>
EDF Energy	Yes	<p>Although we consider the current BSC provisions to be clear on the issue of P/C status, and the case for any change to be borderline, we do not support retrospective modification for the reasons given for Q1 and so would prefer an alternative that is only prospective.</p>

Question 4: Do you believe that the (prospective) Alternative Modification would better facilitate the Applicable BSC Objectives when compared with the current Code provisions?

Summary

Yes	No	Neutral/Other
5	0	0

Responses

Respondent	Response	Rationale
RWE Supply & Trading GmbH	Yes	P268 Alternative will clarify the arrangements for P/C status and as such will improve the administration of the BSC. Consequently, P268 Alternative will better meet Objective D.
IBM (UK) Ltd. (for and on behalf of ScottishPower)	Yes	We believe that the prospective Alternative is better than the current baseline for the following reasons: Objective a) Neutral Objective b) Neutral Objective c) The Alternative does clarify the process and bring more certainty to the arrangements than the current baseline, aiding competition. Objective d) Reducing the chance for disputes and time and resource intensive activities is better for the operation of the BSC.
Centrica	Yes	While we agree that there may be a defect meriting correction within the BSC to better facilitate objectives C & D, we believe that P269 is a better solution as it confines the remedy to Base Trading Units where we understand the issue arises, namely that P/C status may flip without the parties being aware in advance and hence not able to remedy. P268 if developed in alternate form however simply reinforces an existing position by making it mandatory for exempt export BM units to elect a P/C status. While this does not change the position, we understand the group view that this may improve clarity for parties. On this basis we believe this should better facilitate objective (d).
E.ON UK	Yes	As stated in answer to the other questions, a prospective Alternative implementation of P268 would support Objective (d) and more particularly (c). Clarification of the Code would be helpful to current and prospective Parties and this would be beneficial to competition. Reducing the risk of future Trading Disputes arising from any confusion caused by current wording would also support Objective (d), while prospective implementation is also the most efficient lowest cost option requiring less administration.

Respondent	Response	Rationale
EDF Energy	Yes	Although we consider the current BSC provisions to be clear on the issue of P/C status and the current arrangements provide full flexibility for Exempt Export BM Units, we acknowledge that more effort is required to understand and manage a default P/C status, whether it is actively requested or occurs by default. We note that only one other BM Unit is subject to the dynamic P/C rules, and that is by default rather than explicit request. We also note that a P/C status set by default may change at short notice for reasons beyond a party's direct control, although that is a situation faced by all BM Units in "multi-party" Trading Units, and not the situation specifically experienced by the proposer. Taking into consideration these points, on balance we would support an alternative prospective modification to simplify the rules by requiring and allowing only explicit declarations of P/C status by an Exempt Export BM Unit registrant.

Question 5: Do you agree with the Group's reasons for removing the ability for Exempt Export BM Units to choose a dynamically-determined P/C Status, such that they must elect to be either Production or Consumption (but can change their choice at any time)?

Summary

Yes	No	Neutral/Other
4	1	0

Responses

Respondent	Response	Rationale
RWE Supply & Trading GmbH	Yes	This appears to be a pragmatic solution that will remove administrative uncertainty.
IBM (UK) Ltd. (for and on behalf of ScottishPower)	Yes	-
Centrica	No	In general, where parties can manage risk they should be encouraged to do so and permitting a dynamically determined status is consistent with this approach. This should only be removed where the party cannot reasonably manage the risk.

Respondent	Response	Rationale
E.ON	Yes	As no-one has utilised this option and it seems fundamentally risky for Parties to do so, it seems most efficient to limit the required choice to Production or Consumption only. In case Parties do wish to change, reducing the minimum notice period from 28 days to 2 days as P268 would do, will be more efficient than the present stipulation that appears unnecessary from an operational standpoint.
EDF Energy	Yes	We note that only one other BM Unit is subject to the dynamic P/C rules, and that is by default rather than explicit request. We see little benefit in preserving this status, but would be interested in the views of the registrant of that BM Unit.

Question 6: Do you agree that, if both P268 and P269 are approved, there are benefits in implementing them together at the same time?

Summary

Yes	No	Neutral/Other
5	0	0

Responses

Respondent	Response	Rationale
RWE Supply & Trading GmbH	Yes	It seems sensible to minimise costs by implementing both P268 and P269 at the same time.
IBM (UK) Ltd. (for and on behalf of ScottishPower)	Yes	-
Centrica	Yes	If both changes are approved it would be better to implement together to ensure a consistently applied approach, however we do not support P268
E.ON UK	Yes	This would be simplest for all. As both modifications relate to P/C status it would be clearest to Parties if these changes were implemented together, also minimising administration in changing the Code.
EDF Energy	Yes	Although P268 should be capable of implementation relatively quickly, there is no evidence that delay would have material impact on any parties in the intervening period. This being the case, implementation with P269 would provide cost savings assisting BSC Objective (d).

Question 7: Do you have any further views or comments that you would like the Group to consider (including any comments on the solution, the proposed Implementation Date or the draft Code legal text)?

Summary

Yes	No	Neutral/Other
1	4	0

Responses

Respondent	Response	Rationale
RWE Supply & Trading GmbH	No	-
IBM (UK) Ltd. (for and on behalf of ScottishPower)	No	-
Centrica	No	-
E.ON UK	No	-
EDF Energy	Yes	Yes. We note that the issue arises in rules whose intention is to give benefits to Exempt Export BM Units.