

Assessment Procedure Consultation Responses

P351 'Align the BSC with changes to the SCR requirements'

This Assessment Procedure Consultation was issued on 9 November 2016, with responses invited by 25 November 2016.



Phase

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

Consultation Respondents

Respondent	No. of Parties/Non-Parties Represented	Role(s) Represented
Scottish Power	2/1	Generator, Supplier, MOP
EDF	2/3	Generator, Supplier, ECVNA, MVRNA, MOP
Npower	1/0	Supplier
National Grid	1/0	Transmission Company

P351
Assessment Consultation
Responses

28 November 2016

Version 1.0

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Question 1: Do you agree with the Workgroup's initial unanimous view that P351 does better facilitate the Applicable BSC Objectives than the current baseline?

Summary

Yes	No	Neutral/No Comment	Other
3	1		

Responses

Respondent	Response	Rationale
Scottish Power	yes	<p>ScottishPower agrees that P351 on balance would better facilitate the BSC objectives, although has concerns around Relevant Objectives (c) and (d). It was apparent within the workgroup's consideration of this proposal, that the Significant Code Review (SCR) Guidance Document issued by Ofgem does not fully document the process that will be adopted and omits to explain how costs will be recovered. During discussions Ofgem clarified that they would allow alternative modification proposals and also see a role for the Panel in determining implementation dates. None of this is documented within the SCR Guidance Document. ScottishPower therefore believes that the process, under Route 3, could be detrimental to competition, as there is not a clear process documented, which provides for regulatory uncertainty. In addition in using Route 3, ScottishPower expects that the costs incurred by Ofgem, who has to date had to enlist the assistance of consultants on SCRs, will be inefficient when compared to using the existing governance arrangements to progress change. However, given that there are Transmission Licence changes being introduced through the Code Governance Review process, we feel that it is important to allow this proposal to go ahead, to align the BSC to the Licence. We would highlight the concerns of BSC parties over its implementation.</p>
EDF	No	<p>We agree that P351 better facilitates objective (a), the efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence, given that Ofgem has amended SLC C3 (Balancing and Settlement Code (BSC)) to give effect to its Code Governance Review (Phase 3) (CGR3) Final Proposals.</p>

Respondent	Response	Rationale
		<p>However, we continue to believe that the implementation of Option 3, i.e. where Ofgem leads the end-to-end process to develop code modifications(s), goes beyond the CMA's remedies. The CMA states that Ofgem should have the ability to intervene to take substantive and procedural control of an ongoing strategically important modification proposal only in exceptional circumstances. To go beyond the CMA's recommendation without a clearly defined and documented process undermines confidence in the governance of the energy market and could be damaging to competition and administrative efficiency, negatively affecting objectives (c) and (d).</p> <p>In terms of objective (d), we have not seen any evidence to support the view that the Ofgem-led end-to-end process would result in the efficient implementation and administration of the balancing and settlement code. On the contrary, there are arguments to suggest that without the appropriate checks and balances enshrined in the industry process, the proposal could result in a dis-benefit.</p> <p>On balance, we believe the dis-benefits outweigh the benefit identified and P351 should not be approved. (See also answer to Q4 re potential Alternative.)</p>
Npower	Yes	On the basis that P351 will align the BSC with the licence (Objective A). We are not convinced that this modification will better facilitate the other objectives.
National Grid	Yes	Rationale is as per the P351 mod proposal with benefits against Applicable BSC Objectives (a) and (d) and neutral on the others. Whilst the WG views regarding detriment against Applicable BSC Objective (d) are noted, these appear to be in relation the SCR rules themselves rather than in relation to the need for consistency between BSC and licence which is what the mod defect relates to. For the avoidance of doubt, it would appear inefficient in terms of implementing BSC arrangements to have contradictions between BSC and licence.

Question 2: Do you agree with the Workgroup that the draft legal text in Attachment X delivers the intention of P351?

Summary

Yes	No	Neutral/No Comment	Other
4			

Responses

Respondent	Response	Rationale
Scottish Power	Yes	We would note that the two aspects outlined by Ofgem in respect of Panel having a role in determining the implementation date and the ability of Parties to raise alternatives have not been covered in the legal text.
EDF	Yes	We have not sought legal advice but the draft appears to deliver the intent of the proposal set out in P351.
Npower	Yes	
National Grid	Yes	<p>In general the draft legal text appears to deliver the intention of P351. However, we have the following comments.</p> <p>Should para 5.1.3A(b) be as follows (or potentially with (aa) replacing (b))?</p> <p>“one of the circumstances in paragraphs 5.1.3(a), (aa) or (b) occurs (irrespective of whether such circumstance occurs within 28 days after the Authority has published its Significant Code Review conclusions); or”; and</p> <p>Should para 5.3A.2 be as follows (deliberately emboldened)?</p> <p>“In response to an Authority Led SCR Modification Proposal”</p>

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

Summary

Yes	No	Neutral/No Comment	Other
4			

Responses

Respondent	Response	Rationale
Scottish Power	Yes	We agree that the P351 solution should align with the change in the Transmission Licence, which the proposed implementation date would achieve.
EDF	Yes	Without prejudice to our views expressed in Question 1, the proposed implementation date of 31 March 2017, to align with the activation of the Transmission Licence amendments, seems appropriate.
Npower	Yes	The BSC needs to be amended to align with the licence go-live.
National Grid	Yes	The modification must be implemented in line with when the licence changes take effect on 31st March 2017.

Question 4: Do you agree with the Workgroup that there are no other potential Alternative Modifications within the scope of P351 which would better facilitate the Applicable BSC Objectives?

Summary

Yes	No	Neutral/No Comment	Other
3	1		

Responses

Respondent	Response	Rationale
Scottish Power	Yes	
EDF	No	We believe an Alternative proposal, in line with the CMA remedy, should be considered by the Workgroup. It would be necessary to define upfront what "exceptional circumstances" would mean and this should be clearly set out in the SCR Guidance document and also the drafting of the legal text.
Npower	Yes	At this stage, we have not identified any alternative solution.
National Grid	Yes	Whilst several potential Alternative Modifications were discussed by the WG, we do not currently believe that any better facilitate the Applicable BSC Objectives compared to the Proposed Modification.

Question 5: Will P351 impact your organisation?

Summary

Yes	No	Neutral/No Comment	Other
2	2		

Responses

Respondent	Response	Rationale
Scottish Power	No	There may however be additional costs levied on industry Parties, if Ofgem uses Route 3 as introduced by this proposal. This would be if Ofgem requires additional external support to deliver their SCR proposals under Route 3.
EDF	Yes	We will not be directly impacted by the implementation of P351, but should Ofgem ever lead the end-to-end process of an SCR without introducing any checks and balances that exist in the industry process, there is a greater possibility that both we and our customers are negatively impacted.
Npower	Yes	As a Supplier we will be impacted by any changes to the existing modification process.
National Grid	No	The implementation of P351 has no impacts on NGET (i.e. changes to systems, documents or processes). However it is worth noting that, absent this modification, the new and amended provisions in Condition C3 of the licence around "The procedures for modification of the BSC shall provide that..." will not be met which would impact NGET.

Question 6: Will you incur any cost in implementing P351?

Summary

Yes	No	Neutral/No Comment	Other
	3		1

Responses

Respondent	Response	Rationale
Scottish Power	No	
EDF	No	
Npower	Unclear	Whilst P351 itself will not see us incur any costs to implement, the resulting amendments to the modification process will see parties lose an element of control of the modification process in certain circumstances and as yet it is unclear how the costs of the new routes will be picked up.
National Grid	No	n/a

Question 7: Should there be a Panel consultation on the Implementation Date following an Ofgem-led SCR Modification being presented to the Panel under Route 3?

Summary

Yes	No	Neutral/No Comment	Other
3		1	

Responses

Respondent	Response	Rationale
Scottish Power	Yes	ScottishPower believes that it will be difficult for Ofgem to determine implementation dates, outside of the BSC process, without engaging with all BSC Parties. In considering Project Nexus, in the gas market, it is apparent that with significant change there is a requirement to consider how quickly industry and the central systems can be adapted to encompass solutions and to consider if testing is required to ensure that the change can be introduced without interruption or detriment to the market or customers. To be able to determine likely implementation dates, ScottishPower believes that the BSC Panel should be able to consult on implementation dates.
EDF	Yes	Without prejudice to our views expressed in Question 1, if the proposal set out in P351 is taken forward, we believe a Panel consultation on the Implementation Date following an Ofgem led SCR should be introduced. This additional consultation will create an opportunity for all impacted parties to highlight key constraints and have them considered by an independent Panel.
Npower	Yes	The BSC Panel must be allowed to continue to operate within their governance structure to ensure that the concerns of all BSC parties are taken into consideration alongside any impacts to the central systems.
National Grid	Yes/No	Whilst it is very important that sufficient consideration is given to whether the Implementation Date of any Ofgem-led SCR Modification being presented to the Panel under Route 3 is appropriate (i.e. achievable in terms of potential system changes etc), we would hope that this consideration is applied by Ofgem (e.g. via a consultation) and that the requirement for a separate Panel consultation under P351 should not be necessary.

Question 8: Should SCR Modifications be made exempt from being progressed as Urgent Modifications?

Summary

Yes	No	Neutral/No Comment	Other
1	3		

Responses

Respondent	Response	Rationale
Scottish Power	No	ScottishPower does not believe that SCR proposals would meet the criteria for urgency and therefore believes there should be an exemption for SCR proposals. If Ofgem believes that a proposal is urgent it can enact Route 3 and set the timetable that it deems is necessary.
EDF	No	The consultation is not very clear why it is asking this question but we believe any modification originating from an SCR is unlikely to meet the Urgent Modification criteria. However, there is no reason why it should not be considered on a case by case basis.
Npower	Yes	We cannot foresee a situation where a change of significance in requiring an SCR could be deemed urgent.
National Grid	No	We agree with the WG that, whilst it is unlikely that SCR Modifications would ever meet the Urgent Modification criteria, formally removing the right for SCR Modifications to be raised and progressed as Urgent Modifications as part of the P351 solution is unnecessary.

Question 9: Should SCR Modifications be able to be determined under Self-governance?

Summary

Yes	No	Neutral/No Comment	Other
	3	1	

Responses

Respondent	Response	Rationale
Scottish Power	No	ScottishPower does not believe that SCR proposals would meet the criteria for self-governance, as to meet the requirements to be progressed as an SCR proposal, in the first instance, the change would be seeking to address a significant issue or implement strategic changes.
EDF	No	By nature, SCR modifications will have a material impact on parties so we do not believe they should be determined under Self-governance.
Npower	No	As above, if the modification is as a result of an SCR then it's unlikely the impact will be immaterial enough to warrant self-governance.
National Grid	Yes/No	Whilst we agree with the WG that it is unlikely that any SCR Modifications would meet the Self-Governance Criteria, we do not feel that there is a need to explicitly remove this possibility as part of the P351 solution.

Question 10: What more do you believe can be done to ensure alignment across multiple codes when progressing and implementing SCR conclusions?

Responses

Respondent	Comment
Scottish Power	It would be beneficial for the Code Administrators to have links to the relevant areas of each other's websites, where changes are cross-code. It may also be helpful to have joint meetings to consider issues and agree on progress routes and timelines. In addition, it would be beneficial to appoint a lead code administrator for cross code issues.
EDF	We believe code administrators need to work closely and collaboratively with each other. We understand that code administrators have quarterly meetings – we suggest they use this as an opportunity to discuss cross code issues and discuss ways how they can work effectively and efficiently together.
Npower	Amendments could be made to the CACoP to create a process for aligning code delivery during an SCR. Ofgem would be an integral part of that process and would need to ensure that they worked with the relevant Code Administrators in the same way as a party raising a modification would. The Code Administrators should also work in the same manner with Ofgem as they do with all other parties raising modifications (i.e. work as a critical friend etc.).
National Grid	Alignment and coordination across multiple codes is important for all modifications and this is particularly true for SCR Modifications given the likely scale of their impact. However CGR3, and the CMA recommendations in this area, strongly support cross-code working and so it is expected that this should be invaluable when progressing and implementing SCR conclusions.

Question 11: Do you have any further comments on P351?

Summary

Yes	No
2	2

Responses

Respondent	Response	Comments
Scottish Power	Yes	It would be constructive and provide industry with clarity if Ofgem were to update their SCR Guidance document to clarify the aspects of the process that they advised the P351 Workgroup of, namely – that Parties will be able to suggest alternative proposals; that there would be a full industry and code consultation before any implementation date is decided and that the Panel will have a say in the implementation date.
EDF	Yes	Ofgem is currently consulting on “Industry Code Governance: Initial consultation on implementing the Competition and Markets Authority’s recommendations”. In the consultation, they are seeking views on the future of the SCR. Specifically, they are asking whether Ofgem’s enhanced powers over strategically important modification proposals mean that their SCR powers will become obsolete. It would appear sensible to await the conclusion of the consultation to avoid (potentially) wasted time and effort; not just under the BSC but across all codes.
Npower	No	Not at this time
National Grid	No	