

**FEBRUARY 2001**

**THE NEW ELECTRICITY  
TRADING ARRANGEMENTS**

**ADDRESSING SUPPLIER  
FAILURE WITHIN THE BSC**

**NETA PROGRAMME/ELEXON  
CONCLUSIONS PAPER  
(ON BEHALF OF OFGEM/DTI)**

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# 1. Introduction

- 1.1 The new wholesale electricity trading arrangements in England and Wales (NETA) are soon to replace the current Electricity Pool. The balancing and settlement arrangements, which form part of NETA, are defined in an industry-wide document, the Balancing and Settlement Code (BSC). The BSC came into effect on 14 August 2000. Trading under the BSC will begin at Go Live (a date to be determined by the Secretary of State and presently expected to be 27 March 2001).
- 1.2 The NETA Implementation Scheme<sup>1</sup> sets out the basis upon which modifications may be made to the BSC during the period prior to Go Live. It provides for the establishment of a joint NETA Programme/ELEXON working group (known as the G3 Group) to develop proposed modifications in relation to a number of specified matters (including arrangements to address the situation where a Supplier fails) and allows for industry expert groups to be instituted in order to analyse relevant issues. The proposals in this paper were developed under the remit of the Implementation Scheme with support from the G3 Supplier of Last Resort Expert Group, whose Terms of Reference have previously been posted on the Ofgem website [www.ofgem.gov.uk](http://www.ofgem.gov.uk). The G3 Group is required under the Implementation Scheme to consult with BSC Parties and other interested parties in developing and evaluating these proposals.

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<sup>1</sup> The Implementation Scheme is a scheme designated by the Secretary of State under licence conditions included in electricity licences. It contains provisions to facilitate introduction of the new trading arrangements, including provisions relating to the modification of the BSC during the transitional period prior to the commencement of trading.

- 1.3 In December 2000, the NETA Programme/ELEXON issued a consultation paper<sup>2</sup> putting forward a series of proposals in relation to the arrangements to apply in the situation where a Supplier fails or becomes insolvent under the BSC. These proposals support the deemed contracts provisions to be incorporated into the Electricity Act 1989 by virtue of the Utilities Act 2000 and the Supplier of Last Resort (SoLR) arrangements to be included in the proposed Standard Licence Conditions. Under these new arrangements, where a Supplier fails, a Replacement Supplier<sup>3</sup> may be appointed to act as SoLR in order to ensure a continuous supply of electricity to customers of the failing Supplier, under contracts which the Electricity Act will deem to be effective.
- 1.4 The BSC proposals described in the December consultation paper focus on the replacement of the failing Supplier for the purposes of the BSC with another Supplier, including the allocation of financial liabilities associated with the failing Supplier. The consultation paper outlined both an interim solution (to apply from Go Live and an enduring solution (supported by software changes to be implemented at a later date). The BSC arrangements proposed would also facilitate any trade sale which might be made (before the appointment of a SoLR) by a failing Supplier.
- 1.5 This conclusions paper provides a summary of the 14 responses received following the December consultation, and outlines Ofgem and the DTI's conclusions on the appropriate way forward for addressing Supplier failure within the BSC. The draft changes to the BSC, consistent with these conclusions, are presented within this document and comments on the legal drafting to deliver these proposals are sought.

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<sup>2</sup> The New Electricity Trading Arrangements: Addressing Supplier Failure within the BSC, NETA Programme/ELEXON Consultation Paper, December 2000.

<sup>3</sup> The December Consultation paper used the term "new Supplier" to refer to the SoLR or the purchasing Supplier under a trade sale, whereas within this conclusions paper the term "Replacement Supplier" is used to be consistent with the draft changes to the BSC.

1.6 The remainder of this conclusions paper is in six parts. Section 2 contains a summary. Section 3 outlines responses to specific questions. Section 4 outlines other concerns raised. Section 5 provides an overview of the provisions to apply under the BSC if a Supplier fails. Section 6 highlights the issues on which views are sought. The specific proposals for changes to the BSC are set out in Appendix 1 of this document and other appendices provide further background information.

## 2. Summary

- 2.1 Under standard licence conditions to be introduced under the provisions of the Utilities Act 2000 (and which are currently expected to come into force by June 2001), Ofgem will be able to revoke the licence of an insolvent Supplier on not less than 24 hours' notice. At the same time Ofgem will be able to appoint one or more Replacement Suppliers, as Supplier of Last Resort (SoLR) to supply under contracts which, by virtue of the Utilities Act 2000, will be deemed to exist between the SoLR and the customers of the insolvent Supplier. Prior to June 2001, Ofgem will be able to ask Suppliers to be the SoLR, however this would require consent from the relevant Supplier and the deemed contract provisions would only apply to each PES operating within its own area. The SoLR regime established by these provisions is primarily intended to ensure continuity of supply to customers of an insolvent Supplier on the basis that such customers might otherwise be disconnected.
- 2.2 From the Balancing and Settlement Code (BSC) perspective, the principal concern with a failing Supplier<sup>4</sup> is that its customers (unless disconnected) are likely to continue to take electricity, which would be allocated to the account of the failing Supplier under the BSC. However, such volumes would not be covered by notified contract positions (on the assumption that the relevant contracts would have been cancelled) and this would create continuing energy imbalances under the BSC, for which the failing Supplier will be unable to pay. All other BSC trading parties are then exposed to that unpaid indebtedness.
- 2.3 In order to give effect to the appointment of a SoLR, the BSC must recognise (from the time of appointment) the SoLR as the Supplier responsible in settlement for the energy consumption of the customers of the failing Supplier which the SoLR has taken on. In effect, the SoLR should step into the shoes of the failing Supplier for the purposes of the BSC.

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<sup>4</sup> The term "failing Supplier" is used in this paper to refer to a Supplier which either is insolvent (for the purposes of the licence revocation powers) or is in financial difficulties which may lead to such insolvency.

- 2.4 Under the provisions of the NETA Implementation Scheme, which makes express provision for the BSC to be modified by the Authority to incorporate arrangements for failing Suppliers, a NETA Programme / ELEXON consultation paper<sup>5</sup> was issued in December 2000. The consultation paper set out the proposed mechanism for handling a situation where a Supplier fails and a Replacement Supplier (acting as a SoLR) is appointed, providing for the continuous supply of electricity to consumers under deemed contracts. This set of arrangements is referred to as the BSC Failing Supplier Process and is intended to support the SoLR regime outlined above as well as to facilitate a trade sale by a failing Supplier. In parallel, MRASCo is developing and consulting on the registration related Master Registration Agreement (MRA) changes<sup>6</sup>.
- 2.5 The BSC Failing Supplier Process facilitates the transfer of customers from the failing Supplier to the Replacement Supplier via a two stage process with initial financial transfer in line with the SoLR appointment or applicable trade sale and subsequent registration transfer completed within three months. At present MRASCo is considering the scope for reducing the registration timescale, but this would not remove the requirement for a two-stage process.
- 2.6 The December consultation paper proposed a phased implementation of the BSC Failing Supplier process, with an interim solution, applicable from Go Live without software changes, and an enduring solution requiring changes that are not capable of implementation before Go Live. The key difference between these solutions is the degree of segmentation available with regard to appointment. The interim solution would limit Ofgem to appointing one SoLR for each BM Unit whereas the enduring solution would allow the customer portfolio of the failing Supplier to be split half hourly / non half hourly within each GSP Group. In both situations, all directly connected sites can be treated on an individual basis.

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<sup>5</sup> The New Electricity Trading Arrangements: Addressing Supplier Failure within the BSC, NETA Programme/ELEXON Consultation Paper, December 2000.

<sup>6</sup> Further details on MRASCo's activities can be obtained from MRASCo via its help desk: [helpdesk@mrasco.co.uk](mailto:helpdesk@mrasco.co.uk).

- 2.7 The NETA Programme received fourteen responses to the December consultation paper. The responses were generally supportive of the proposals made and thus, on the basis of the responses received, Ofgem and the DTI are not proposing to make any significant changes in policy.
- 2.8 Whilst respondents welcomed the pragmatic interim approach described in paragraph 2.6, two respondents questioned the cost benefit of the additional functionality required for the enduring solution compared with the interim solution. Initial indications into the costs of implementing the enduring solution show the central development costs to be significant i.e. in the region of one million pounds. On that basis Ofgem and the DTI believe that the benefits of implementing an enduring solution that provides for half hourly / non half hourly segmentation are outweighed by the costs involved. Consequentially Ofgem and the DTI conclude that the first phase of the proposed solution should be retained on an enduring, rather than an interim, basis.
- 2.9 The proposed drafting changes to the BSC to implement the BSC Failing Supplier Process have been prepared and are presented within this conclusions document for detailed comment.



### 3. Responses to Specific Questions

- 3.1 Within the consultation document views were sought on seven specific issues. Each of these issues is outlined below along with a summary of the 14 responses received. The conclusions drawn by Ofgem and the DTI are also provided. In addition other issues were raised and these are discussed in Section 4.

#### ***(1) Two Stage Process***

##### *December Consultation*

- 3.2 The overall approach proposed within the December Consultation for the BSC Failing Supplier Process was a two stage process splitting financial responsibility from registration.

##### *Respondents' Views*

- 3.3 Nine respondents were in favour of this approach with many supporting the pragmatic nature of this two stage approach. One respondent opposed this approach, suggesting an alternative where the Replacement Supplier is allowed up to five days to make all the registration transfers using existing change of Supplier processes.

##### *Ofgem/DTI Conclusions*

- 3.4 The alternative approach suggested, with transfers to be completed within a five day window, appears infeasible due to constraints within the systems and processes that support Supply competition. Additionally, such an approach does not cap the post default liability arising from a failing Supplier, which was a reason cited by certain respondents for supporting the two stage approach. Consequentially, Ofgem and the DTI conclude that splitting financial responsibility from registration via a two stage BSC Failing Supplier Process is the preferred option.

## **(2) Trade Sale**

### *December Consultation*

- 3.5 Although the BSC Failing Supplier Process is being developed to support formal appointment of an SoLR by Ofgem, it was proposed that Trading Parties would also be able to utilise the BSC Failing Supplier Process to facilitate a trade sale in the instance that a Supplier is failing.

### *Respondents' Views*

- 3.6 No respondents objected to this proposal, with ten respondents indicating support for such an approach. One respondent suggested that the BSC Failing Supplier Process should be available for any trade sale situation, rather than the limited circumstance where a Supplier is failing.

### *Ofgem/DTI Conclusions*

- 3.7 Ofgem and the DTI welcome the support for this proposal, which recognise the benefits a trade sale delivers. However, Ofgem and the DTI are concerned that more widespread use of the BSC Failing Supplier Process would unnecessarily reduce the integrity of the retail market arrangements. In addition more widespread application falls outside the remit of the G3 powers within which Ofgem and the DTI intend to modify the BSC. Therefore, Ofgem and the DTI conclude that the BSC Failing Supplier Process will be available only to facilitate a trade sale in the instance that a Supplier is failing (as well as supporting formal appointment of an SoLR).

### **(3) Agent Failure**

#### *December Consultation*

- 3.8 It was proposed that no specific provisions to address agent failure would be incorporated into the BSC Failing Supplier Process, recognising that the existing data estimation rules within the BSC may be invoked in the circumstances of agent failure within the circumstance of a failing Supplier. However, it was proposed that certain Supplier obligations would be relaxed for a three month period.

#### *Respondents' Views*

- 3.9 Eight respondents indicated support for such an approach with none objecting. Most respondents commented on the importance of this issue and welcomed the opportunity to consider detailed drafting in relation to those Supplier obligations that will be relaxed. One respondent suggested that this matter requires further consideration due to concerns regarding the impact of missing data. It was recognised that increased Agent competition should reduce any risks associated with Agent failure and it was suggested that ELEXON should monitor carefully Agent performance during the three month re-registration window.

### *Ofgem/DTI Conclusions*

- 3.10 Ofgem and the DTI recognise that missing data could be an issue. This matter was previously analysed during the development of the December consultation paper, and the existing BSC provisions are intended to address such issues. Ofgem and the DTI concur with the majority of respondents' views and accordingly specific provisions to address agent failure will not be included within the BSC. In order to allow a Replacement Supplier to operate with the failing Supplier's agents, the obligation to have completed Entry Processes with those agents will be relaxed. Ofgem and the DTI agree that ELEXON should monitor carefully Agent performance in relation to the Replacement Supplier and consequently the performance assurance arrangements within the BSC will be applied to a Replacement Supplier. The detailed proposals regarding these obligations are captured in the legal drafting within Appendix 1.

#### **(4) Re-registration Timetable**

##### *December Consultation*

- 3.11 It was proposed that the Replacement Supplier should be required to re-register all sites using the normal change of Supplier process within three months of financial transfer under the BSC Failing Supplier Process.

##### *Respondents' Views*

- 3.12 Seven respondents expressed support for this three month window, however one respondent suggested a shorter period would be more appropriate. One respondent sought clarification whether the three month window would be an obligation or a recommendation as there may be matters which would make it difficult to achieve all of the re-registrations within the three month period.

##### *Ofgem/DTI Conclusions*

- 3.13 Ofgem and the DTI concur with the majority view that a three month window is appropriate. Furthermore, Ofgem and the DTI conclude that there should be an obligation on the Replacement Supplier to re-register all sites within three months. This will allow ELEXON to instigate enforcement proceedings against the Replacement Supplier under the BSC if required.

## **(5) Interim Solution**

### *December Consultation*

- 3.14 The December consultation paper proposed an interim BSC Failing Supplier Process (not requiring central system software changes) that would be introduced from Go Live. Furthermore, an enduring BSC Failing Supplier Process would be introduced once the relevant software changes have been made. The difference between these solutions is the degree of segmentation available with regard to appointment; the enduring solution allows the failing Supplier's SVA portfolio to be split half hourly / non half hourly by GSP Group between different SoLRs, whereas the interim solution solely facilitates a split by GSP Group. In both situations, the very largest directly connected sites can be treated on an individual basis.

### *Respondents' Views*

- 3.15 Nine respondents welcomed this pragmatic interim approach and no respondents objected to this proposal. Two respondents suggest that the cost benefit of the additional functionality within the enduring solution should be clearly demonstrated.

### *Ofgem/DTI Conclusions*

- 3.16 Initial investigation by ELEXON have estimated that the central development costs for the enduring solution are likely to fall in the range of £0.5m to £1.5m, which appears significant. The BSC Failing Supplier Process is not likely to be used frequently and the additional functionality that delivers the half hourly / non half hourly segmentation provides only limited benefit. Also, it is recognised that, post Go Live, a participant could propose a modification to change the BSC to support implementation of the additional functionality needed to deliver the half hourly / non half hourly split if lower cost solutions were then available. Ofgem and the DTI conclude that the interim approach for the BSC Failing Supplier Process be adopted as the enduring solution to be effective from Go Live.

## **(6) Wider Review of Credit Issues**

### *December Consultation*

- 3.17 The December consultation explained that Ofgem is planning a wider review of credit issues across a range of charges in both electricity and gas following the failure of Independent Energy. On this basis, the December consultation proposed that no requirement to provide collateral to secure post-default debt would be included as part of these changes to the BSC.

### *Respondents' Views*

- 3.18 Six respondents agreed with the approach proposed, whereas three respondents disagreed. These dissenting respondents welcomed the wider review but suggested that interim changes should be made to address this issue before Go Live.

### *Ofgem/DTI Conclusions*

- 3.19 Ofgem and DTI recognise the concerns regarding this matter and the concerns raised by certain respondents. However, the current BSC approach to credit provision is consistent with the Pooling and Settlement Agreement credit arrangements, and, in the interim, alternative approaches such as individual credit insurance are available to Trading Parties. In addition, Ofgem's wider review is progressing. A letter seeking initial views on these matters was sent to interested parties during December 2000 and Ofgem is planning to issue a consultation paper on these and other issues in March 2001. Ofgem and DTI believe that this wider review is appropriate to allow the widespread consideration of all relevant issues. Accordingly, Ofgem and the DTI conclude that the credit arrangements regarding the provision of collateral should not be amended in relation to these issues within the context of the BSC Failing Supplier Process.

## **(7) Credit Grace Period**

### *December Consultation*

- 3.20 In the context of the BSC Failing Supplier Process, the December consultation paper proposed that the existing credit default provisions of the BSC should not to be applied to a Replacement Supplier for a 'grace' period of ten working days.

### *Respondents' Views*

- 3.21 Eight respondents indicated support for this proposal. One respondent was opposed to such a grace period, questioning the rationale for any exemptions to the credit arrangements within the context of the BSC Failing Supplier Process.

### *Ofgem/DTI Conclusions*

- 3.22 The exact requirement for a grace period cannot be completely assessed at this stage as it depends on the practical issues facing the Replacement Supplier in the situation of Supplier failure. Ofgem and the DTI agree with the majority of respondents that the BSC Failing Supplier Process should allow for a 'grace' period and accordingly the existing credit default provisions of the BSC should not apply to a Replacement Supplier for the first fourteen Settlement Days following financial transfer.



## 4. Other Issues

- 4.1 Whilst comments were received in response to the specific questions raised in the December 2000 consultation paper (as discussed in Section 3), most respondents comments were generally supportive regarding the overall approach. However, certain other issues were raised and these are discussed below along with Ofgem and the DTI's conclusions on these issues.

### ***(i) Cost Recovery***

#### *December Consultation*

- 4.2 The December consultation outlined the provisions within the Utilities Act 2000 for a licensed SoLR to claim for unrecovered costs via bond / levy arrangements overseen by Ofgem. The possibility of a BSC cost recovery mechanism was considered, however the December consultation proposed not to introduce a BSC cost recovery mechanism as part of the BSC Failing Supplier Process.

#### *Respondents' Views*

- 4.3 One respondent suggested that BSC cost recovery mechanisms should be developed if Utilities Act 2000 provisions are not in force by Go Live.

#### *Ofgem/DTI Conclusions*

- 4.4 It is anticipated that the Standard Licence conditions will be effective from 1 June 2001 and, in the short term, the bond / levy arrangements would not be available. Ofgem and the DTI do not propose to include cost recovery mechanisms. It would be very difficult to agree arrangements at this stage which cater for all of the potential possibilities that might exist prior to the introduction of the Standard Licence conditions. Additionally, defining and agreeing interim BSC cost recovery mechanisms would be costly and time consuming.

## ***(ii) Within Day Transfer***

### *December Consultation*

- 4.5 The December consultation indicated that the scope for effecting a transfer at some point within a day (say 1100 hours) was being investigated to assess whether it is technically feasible. Such an approach was only likely to be utilised in the case of a trade sale as Ofgem has proposed that SoLR appointments would be effective from midnight.

### *Respondents' Views*

- 4.6 One respondent suggested that a facility for within day transfer was not appropriate, as it would be too complicated.

### *Ofgem/DTI Conclusions*

- 4.7 Within day transfers cannot be delivered as part of the interim BSC Failing Supplier Process proposed in the December consultation paper due to limitations within the software systems and associated processes. However the legal drafting for the proposed BSC Failing Supplier Process would not prevent such an arrangement being implemented manually.

### ***(iii) Impact on Imbalance Prices***

#### *December Consultation*

- 4.8 The December consultation paper made no reference to the impact on imbalance prices resulting from Supplier failure.

#### *Respondents' Views*

- 4.9 One respondent expressed concerns that the failure of a "significant" Supplier would have an undesirable impact on imbalance prices and at the extreme could lead to the failure of any SoLR appointed.

#### *Ofgem/DTI Conclusions*

- 4.10 It is not clear that the respondent's concerns are valid as any traders previously contracted with the failing Supplier would be seeking to re-contract and at the same time the SoLR would be seeking contracts to cover the volumes of its new customers. Furthermore it is anticipated that a Replacement Supplier will have some forewarning of the requirement to re-contract and Ofgem is expecting to consider such matters within the scope of the appointment process for a SoLR. Accordingly, Ofgem and the DTI conclude that the BSC Failing Supplier Process should not contain any specific provisions in relation to imbalance prices.

#### ***(iv) Failure of Major Supplier***

##### *December Consultation*

- 4.11 The BSC Failing Supplier Process proposed within the December consultation made no assumptions about the relative size of any failing Supplier, and as such was intended to address any Supplier failure.

##### *Respondents' Views*

- 4.12 One respondent suggested that the proposed BSC Failing Supplier Process is not robust to the failure of a large Supplier.

##### *Ofgem/DTI Conclusions*

- 4.13 Ofgem and the DTI recognise that the number of practical problems expected to arise within the operation of the BSC Failing Supplier Process is expected to be proportional to the size of the failing Supplier as there will be proportionally more re-registrations. However, the two stage process proposed is independent of the relative size of the failing Supplier as volumes are transferred at a BM Unit level straightaway. Accordingly Ofgem and the DTI conclude that the BSC Failing Supplier Process will include no specific provisions relating to the relative size of the failing Supplier.

## 5. BSC Failing Supplier Process

### *Overview*

- 5.1 The December Consultation paper proposals for the BSC Failing Supplier Process, amended by the conclusions presented in Section 3 and Section 4, are described in this section for information.
- 5.2 The BSC Failing Supplier Process will be in two stages:
- ◆ initially financial transfer via reallocation of total metered volumes; and
  - ◆ subsequently registration transfer via correctly registering each meter.
- 5.3 Under the BSC Failing Supplier Process, any SoLR appointed by Ofgem will:
- ◆ for the settlement day from appointment onwards (as deemed contracts are not retrospective), assume the financial responsibility for future energy purchases<sup>7</sup> under the BSC, relating to metering systems of the failing Supplier, implemented via transfer of energy to new BM Units; and
  - ◆ complete the transfer of metering system registrations, in the relevant registration services, from the failing Supplier to themselves in a timely manner.

In other words, the Replacement Supplier would be treated for the purposes of the BSC as if it were the Registrant of the relevant Metering Systems from the date of transfer of financial responsibility. The Replacement Supplier would be required to effect the transfer of the relevant metering systems from the failing Supplier to itself as soon as possible. For the avoidance of doubt, these arrangements should ensure a smooth cross over with no gap where neither the Replacement Supplier nor the failing Supplier is responsible for particular customers.

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<sup>7</sup> For the avoidance of doubt, this does not relate to settlement or reconciliation runs or disputes for previous settlements days.

- 5.4 The BSC Failing Supplier Process will also be capable of supporting circumstances where a failing Supplier, or an appointed insolvency practitioner, undertakes a trade sale. The failing Supplier will therefore be able to take advantage of the BSC Failing Supplier Process to facilitate a trade sale (which may be retrospective) within the confines of that process, particularly as to segmentation of the failing Supplier's portfolio.

### ***Triggers***

- 5.5 The BSC Failing Supplier Process will be applied in the following cases:
- ◆ formal appointment of a SoLR by Ofgem following licence revocation;  
or
  - ◆ a trade sale due to the failure of a Supplier's business.

In all other circumstances, such as an ordinary sale of a business, re-allocation of customers from one Supplier to another would be via the normal change of Supplier process, as captured within the BSC and associated procedures as well as the MRA.

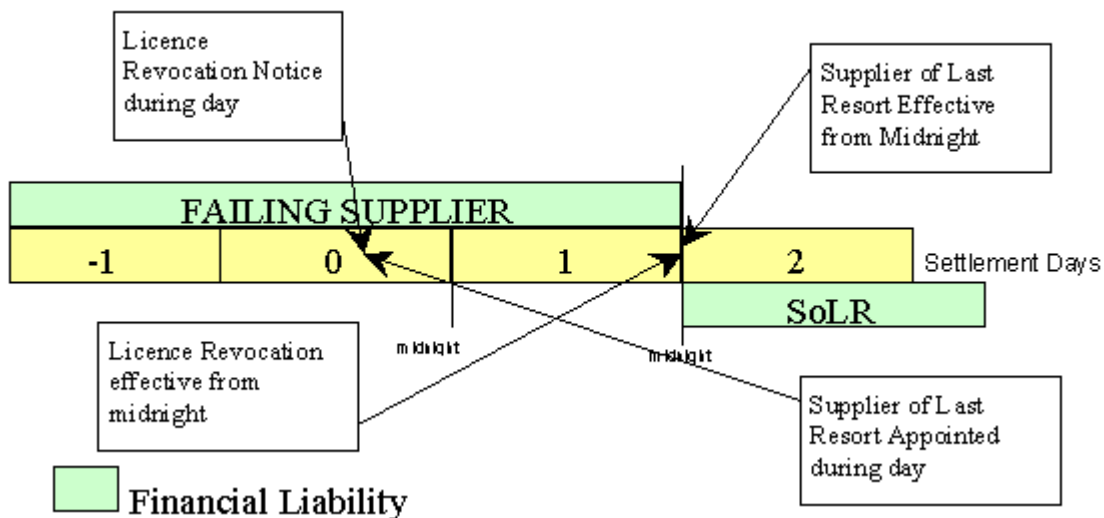
- 5.6 Availability of the BSC Failing Supplier Process will be limited to trade sales of a genuinely failing Supplier as defined below:
- (a) the occurrence of one of the insolvency events listed in Section H3.1.1(g)(iii)-(vi) of the BSC, which are objectively verifiable and occur at a defined point in time, namely:
- ◆ the appointment of a receiver; or
  - ◆ the making of an administration or winding up order; or
  - ◆ the passing of a resolution for winding up (other than for a solvent reconstruction); or
  - ◆ the presentation of a petition or commencement of legal proceedings for administration or winding up; or

- (b) ELEXON determining that one of the insolvency events listed in Section H3.1.1(g)(i)-(ii) of the BSC has occurred, namely:
- ◆ suspension of payments of debts or admission of inability to pay; or
  - ◆ inability to pay debts.

5.7 In the case of the appointment of a SoLR by Ofgem, every Replacement Supplier will provide ELEXON with a copy of the relevant SoLR direction issued to it by Ofgem. This should confirm the following information:

- ◆ the date from which the failing Supplier's licence is to be revoked<sup>8</sup>; at this point the failing Supplier's Supply contracts will be cancelled;
- ◆ where there is more than one, the portfolio allocated to the relevant Replacement Supplier (see paragraph 5.9); and
- ◆ the date from which the Replacement Supplier is to assume financial liability, which will be immediately following revocation of the failing Supplier's licence.

**Figure 1 – Schedule for Financial Transfer**



<sup>8</sup> Ofgem expects to make the appointment from midnight as per Figure 1.

5.8 In the case of a trade sale, both the Replacement Supplier and the failing Supplier would need to provide evidence to the satisfaction of ELEXON that one of the triggering events had occurred. The failing Supplier and the Replacement Supplier(s) would then be required to give a notice in writing to ELEXON indicating the portfolio to be transferred to the relevant Supplier(s) and the date from which such Supplier(s) are to assume responsibility. The effective date of transfer could be earlier than the date of receipt of notice but must be no later than midnight on the date of receipt of the notice. However, the effective date of transfer may be no earlier than the date of the Settlement Day for which the Initial Settlement Run has not yet been carried out. In practice, this means the effective date can be no earlier than approximately 13 days prior to the date when the notice is received by ELEXON. ELEXON would determine the earliest date at the relevant time, based on the dates in the Settlement Calendar. It should be noted that, where there is a retrospective reallocation of energy from the failing Supplier to the replacement Supplier as described above, this will be considered (from a Section N perspective) as creating new obligations in respect of that Settlement Day. In other words, it will be treated, for Section N purposes, like a Reconciliation Charge even though it will automatically be fed into the Initial Settlement Run and will, therefore, not require a further calculation by the FAA.

### ***Financial Transfer***

5.9 Within the systems and processes, the portfolio of customers whose energy is accounted for within each BM Unit cannot be further segmented. The transfer of financial liability to the Replacement Supplier is at this BM Unit level and therefore the Replacement Supplier will assume financial liability for all customers within each BM Unit. Every Supplier has at least one BM Unit for each GSP Group and therefore, the portfolio of SVA customers will be split with at least one segment per GSP Group. In addition each of the Central Metering Registration Service (CMRS) registered sites, the very largest customers, could be treated separately as each site is contained within a separate BM Unit.



- 5.10 The BSC Failing Supplier Process will re-allocate the meter volumes allocated to the failing Supplier within each GSP Group by changing ownership of the relevant BM Units of the failing Supplier, without changes made to BM Unit configurations. Similarly, in the case of CMRS Metering Systems the CRA would allocate the energy associated with each site previously supplied by the failing Supplier to the Replacement Supplier by changing ownership of the relevant BM Units of the failing Supplier, without changes made to BM Unit configurations. It should be noted that the BSC Failing Supplier Process is only available to deal with demand (and certain generation which is intrinsically linked to that demand i.e. SVA generation and exempt generation with on-site demand). It will not be possible to use this process to transfer financial responsibility for any other generating plant. If a trade sale includes generation assets belonging to the failing Supplier, the transfer of responsibility for those assets under the BSC would have to be carried out using the normal change of ownership (BSCP15 - COBO) processes under the BSC.
- 5.11 In the situation of a trade sale, BSC will ensure that the financial liabilities for energy for the failing Supplier are redirected to the Replacement Supplier(s) from the start of the effective settlement day of appointment of the SoLR or no later than the day on which the transfer due to a trade sale is sanctioned as effective. However, as the functionality for within day transfers is not delivered by the existing systems and processes, ELEXON would only be able to sanction a within day transfer for a trade sale if it felt that this could be achieved manually.

## ***Registration Transfer***

- 5.12 In the second stage of the two stage process, the transfer of registrations of a customer's metering system(s) will be performed by the Replacement Supplier once the Replacement Supplier has financial responsibility. The Replacement Supplier will be required to apply for registration as soon as possible in order to restore the market arrangements to their usual robust state with financial liability aligned with, and based on registered meters. However, it should be noted that such customers that are to be re-registered by the Replacement Supplier are able to enter into supply contracts with another Supplier before the Replacement Supplier has registered the particular metering systems. This other Supplier would then register the relevant metering systems using the standard processes.
- 5.13 The transfer of registrations from the failing Supplier's customer portfolio will be through a change of Supplier processes, initiated by the Replacement Supplier. This enables the Replacement Supplier to manage the transfer and utilises existing registration functionality. The arrangements will need to cover registrations in:
- ◆ SMRS (the vast majority of customers); and
  - ◆ CMRS (typically although not exclusively the largest industrial sites connected to the transmission network – around 14 sites).
- 5.14 Therefore, it should be recognised that until the transfer of registrations is completed, the trading registrations of individual metering systems will remain registered to the failing Supplier. Whilst the old Supplier is registered within the trading arrangements, information that is sent on the basis of the registrations will be sent to the old Supplier unless the Replacement Supplier can agree alternative arrangements with the failing Supplier's Party Agents. However, there will be a general obligation for the Replacement Supplier to complete all registrations as soon as possible and in any event within three months.

- 5.15 It will be necessary for the settlement data flows to continue for the failing Supplier as this will be required to allow the SVA systems to aggregate data correctly.
- 5.16 It is considered appropriate to suspend certain Supplier obligations during the financial transfer stage (ie prior to re-registration) in order to allow the Replacement Supplier to operate with existing agents for which it has not made the appropriate appointments. The suspension will apply until the Replacement Supplier has re-registered the relevant metering system.
- 5.17 Prior to re-registration by the Replacement Supplier, the Replacement Supplier will be treated as if it were the Registrant of the relevant metering systems although the failing Supplier will be the actual Registrant recorded within the relevant systems and processes. The relevant BSC provisions rely on the failing Supplier remaining the actual Registrant of the metering systems until the re-registrations have been performed by the Replacement Supplier and in particular the failing Supplier will need to remain a party to the MRA. The relevant BSC provisions to support the BSC Failing Supplier Process (included in Appendix 1) assume that the MRA will be amended to reflect this matter. The NETA Programme / ELEXON are working together with MRASCo<sup>9</sup> to progress this matter.
- 5.18 If the existing Agents do not continue to perform, the existing data estimation rules may need to be applied to ensure data continues to be included within settlements.

### ***Credit***

- 5.19 A 'grace' period of fourteen Settlement Days will be introduced whereby Level 1 Credit Default and Level 2 Credit Default will not apply to the Replacement Supplier, in the context of the BSC Failing Supplier Process.

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<sup>9</sup> Further details on MRASCo's activities can be obtained from MRASCo via its help desk: [helpdesk@mrasco.co.uk](mailto:helpdesk@mrasco.co.uk) .

## 6. Views invited

- 6.1 Comments and views are requested on the proposed BSC drafting changes in Appendix 1 of this document. This drafting is intended to reflect in substance what the modifications are seeking to achieve. However, in some cases, further work may be required to finalise the exact form of the legal text.
- 6.2 Whilst respondents are free to mark their responses confidential, it is preferable if responses can be placed in the Ofgem library. Respondents should be aware that their responses would in any event be circulated to those appropriate within Ofgem, DTI and ELEXON.
- 6.3 Responses to this consultation should be sent to Jerome Williams at The NETA Programme, Ofgem, 338 Euston Road, London NW1 3BP. Please send electronic copies to Jerome Williams at [jerome.williams@ofgem.gov.uk](mailto:jerome.williams@ofgem.gov.uk) to be received no later than Friday 2 March 2001. If you wish to discuss any aspect of this report, please contact John Bennett on 020 7874 1650.

# Appendix 1 BSC Drafting

## SECTION D

*The following text will be inserted in paragraph 3.1 of Annex D-3:*

"(i) for a Replacement Supplier BM Unit held by a Replacement Supplier for all or any part of that month:

- (1) which corresponds to a Base BM Unit, to the Replacement Supplier, one twelfth of the Base BM Unit Monthly Charge;
- (2) which corresponds to an Additional BM Unit, to the Replacement Supplier, the Additional BM Unit Monthly Charge,

and no charge will be made in respect of Replacement Supplier BM Units under paragraphs (g) or (h) provided that, for the purposes of this paragraph 3.1, a BM Unit shall cease to be considered a Replacement Supplier BM Unit when all the Metering Systems associated with that BM Unit are no longer registered in the name of the relevant failing Supplier."

## SECTION K

*The following text will be inserted as paragraph [7]:*

### "7. FAILING SUPPLIER PROCESS

#### 7.1 Transfer of responsibility

7.1.1 For the purposes of the Code:

- (a) "**Supplier of Last Resort**" means, in relation to a BM Unit comprising or including premises of one or more Customers the Trading Party to which a last resort direction is issued by the Authority in respect of those premises;
- (b) "**last resort direction**" has the meaning given to that term in each Supply Licence;
- (c) "**Transferee**" means, in relation to a BM Unit, the Trading Party identified as the transferee for that BM Unit in a notice which is given and takes effect pursuant to and in accordance with paragraph 7.2;
- (d) the "**Affected BM Units**" are:
  - (i) in relation to a Supplier of Last Resort, the BM Unit(s) comprising or including premises in respect of which the last resort direction is made and, where applicable, any related BM Units referred to in paragraph 7.3.3;
  - (ii) in relation to a Transferee, the BM Unit(s) specified in the notice given pursuant to paragraph 7.2 in respect of that Transferee and, where applicable, any related BM Units referred to in paragraph 7.3.3;

and, in each case, an "**Affected BM Unit**" shall be any one of them.

- (e) "**Replacement Supplier**" means, in relation to an Affected BM Unit:
  - (i) the Supplier of Last Resort; or
  - (ii) the Transferee,as the case may be;
- (f) "**failing Supplier**" means:
  - (i) in relation to a Supplier of Last Resort, the other supplier (as defined in the Supply Licence of the Supplier of Last Resort); and
  - (ii) in relation to a Transferee, the Lead Party giving (and entitled to give) the notice referred to in paragraph 7.2.1;
- (g) the "**Appointment Day**" means:
  - (i) in relation to a Supplier of Last Resort (and, where applicable, an Affected BM Unit), the day when the relevant last resort direction takes effect pursuant to the Supply Licence of the Supplier of Last Resort;
  - (ii) in relation to a Transferee (and, where applicable, an Affected BM Unit), the day next following the day on which the relevant notice referred to in paragraph 7.2 is received by BSCCo; and
- (h) references to the 'appointment' of a Replacement Supplier are:

- (i) in the case of a Supplier of Last Resort, to the issue of a last resort direction to the relevant Trading Party;
- (ii) in the case of a Transferee, to the giving of a notice to BSCCo pursuant to paragraph 7.2 identifying the relevant Trading Party as the transferee,

and derivative terms shall be construed accordingly.

7.1.2 The provisions of this paragraph 7 apply on the appointment of a Replacement Supplier for the purposes of recognising and giving effect, under the Code, to the transfer of responsibility for Exports and Imports of Affected BM Unit(s) from the failing Supplier to the Replacement Supplier.

7.1.3 Without prejudice to Section N6.10, where a Replacement Supplier is appointed, then in respect of each Affected BM Unit:

- (a) such Replacement Supplier shall be treated for the purposes of the Code (notwithstanding any other provision of this Section K but subject to the further provisions of this paragraph 7) as becoming:
  - (i) responsible for Exports and Imports associated with that BM Unit;
  - (ii) the Lead Party in respect of that BM Unit;
  - (iii) the Registrant in respect of all Metering Systems comprised in that BM Unit (and as having appointed and registered the Party Agents of the failing Supplier in respect of such Metering Systems); and
  - (iv) subject to the obligations and liabilities and entitled to the rights and benefits (including in respect of Trading Charges and BSCCo Charges) related to or connected with those Metering Systems and Exports and Imports of that BM Unit; and
- (b) the relevant failing Supplier shall be treated for the purposes of the Code (notwithstanding any other provision of this Section K but subject to the further provisions of this paragraph 7) as ceasing to be:
  - (i) responsible for Exports and Imports associated with that BM Unit;
  - (ii) the Lead Party in respect of that BM Unit;
  - (iii) the Registrant in respect of all Metering Systems comprised in that BM Unit; and
  - (iv) subject to the obligations and liabilities and entitled to the rights and benefits (including in respect of Trading Charges and BSCCo Charges) related to or connected with those Metering Systems and Exports and Imports of that BM Unit,

in each case, with effect from the time and date when the transfer of responsibility resulting from such appointment is deemed to take effect in accordance with paragraph 7.1.4 and in respect of each Settlement Period on and after such time, and the provisions of the Code shall be construed accordingly.

7.1.4 The transfer of responsibility resulting from the appointment of a Replacement Supplier shall be deemed to take effect, for the purposes of the Code:

- (a) in the case of a Supplier of Last Resort, from 00:00 hours on the Appointment Day;

- (b) in the case of a Transferee, from the time and date specified in the relevant notice given pursuant to paragraph 7.2.1 and in accordance with the further provisions of paragraph 7.2,

(such time and date being referred to in the Code as the "**Replacement Supplier Transfer Date**").

7.1.5 The transfer of responsibility in respect of Affected BM Units from the failing Supplier to the Replacement Supplier pursuant to this paragraph 7.1 shall be without prejudice to and shall not affect:

- (a) the rights and liabilities of the failing Supplier under the Code relating to or connected with such BM Units (or Metering Systems comprised in such BM Units), including in respect of Trading Charges (including Reconciliation Charges and Ad-hoc Trading Charges) and BSCCo Charges, accrued or accruing in respect of the period prior to the Replacement Supplier Transfer Date;
- (b) the rights and liabilities of the failing Supplier under the Code relating to or connected with any other BM Units or Metering Systems for which the failing Supplier is responsible, including in respect of Trading Charges (including Reconciliation Charges and Ad-hoc Trading Charges) and BSCCo Charges, accrued or accruing in respect of the period on, before or after the Replacement Supplier Transfer Date.

7.1.6 For the avoidance of doubt, nothing in this paragraph 7 shall affect any Energy Contract Volume Notifications for which the failing Supplier is a Contract Trading Party, whether submitted or submitted in respect of a period on, before or after the Replacement Supplier Transfer Date, and any such Energy Contract Volume Notifications validly submitted in accordance with Section P shall apply and be taken into account in Settlement, subject to and in accordance with the other provisions of the Code, for the purposes of determining any liability or entitlement of the failing Supplier in respect of Trading Charges.

7.1.7 The provisions of paragraph 7.1.3 are without prejudice to the obligations of the Replacement Supplier and the failing Supplier contained in paragraph 7.6.

7.1.8 The provisions of this paragraph 7.1 shall apply for the purposes of Settlement under the Code notwithstanding any other provisions in any Core Industry Document.

7.1.9 Where a last resort direction is issued to a Trading Party, such Trading Party shall forthwith send a copy of the last resort direction to BSCCo, and BSCCo shall send a copy thereof to each other Party.

7.1.10 Until and unless each Supply Licence requires the holder of that Supply Licence to comply with a direction of the Authority to supply electricity to customers of the holder of another Supply Licence upon revocation of that other Supply Licence:

- (a) references in this paragraph 7 to a Supplier of Last Resort shall be to the Trading Party which has consented, at the request of the Authority, to supply electricity to customers at premises upon revocation of the Supply Licence of another Trading Party which was supplying such customers immediately prior to revocation; and
- (b) in relation to the Supplier of Last Resort, references in this paragraph 7:
  - (i) to the Affected BM Unit(s) are to the BM Unit(s) comprising or including premises in respect of which such Trading Party so consents to supply electricity and, where applicable, any related BM Units referred to in paragraph 7.3.3;



- (ii) to the Appointment Day are to the day when such Trading Party commences that supply of electricity (under a contract made or deemed, by virtue of schedule 6A of the Act, to have been made with the relevant customer(s)); and
- (iii) to the failing Supplier are to the Trading Party which was responsible for the supply of electricity in respect of such premises immediately prior to such day and whose Supply Licence is revoked.

## 7.2 Trade Sales

7.2.1 Where, in relation to a Lead Party:

- (a) one or more of the events referred to in Section H3.1.1(g)(iii), (iv), (v) or (vi) occurs; or
- (b) BSCCo determines that one or more of the events referred to in Section H3.1.1(g)(i) or (ii) has occurred,

such Lead Party may give notice to BSCCo that it intends to transfer to another Trading Party its interests in respect of the provision of electrical power to Customers and/or the receipt of electrical power from Generating Plant (such transfer being referred to as the "**relevant transfer**").

7.2.2 A notice given pursuant to paragraph 7.2.1 shall:

- (a) be in writing;
- (b) identify:
  - (i) subject to paragraph 7.2.3, the BM Unit(s) of the Lead Party in respect of which the relevant transfer is to take place;
  - (ii) the transferee, being the Trading Party to which the relevant transfer is to be made;
  - (iii) subject to paragraph 7.2.4, the date with effect from which the relevant transfer is to be made;
  - (iv) subject to paragraph 7.2.5, the time with effect from which the relevant transfer is to be made; and
- (c) be signed by or on behalf of both the Lead Party issuing such notice and the Trading Party identified in such notice as the transferee.

7.2.3 A relevant transfer:

- (a) may relate to Plant and Apparatus (of the relevant Customer(s) and/or generator(s), as the case may be) associated with one or more BM Units but may not relate to part only of the Plant and Apparatus associated with a BM Unit;
- (b) may not include BM Units comprising only Generating Plant (except where the Generating Plant is owned or operated by a SVA Generator) or associated only with an Interconnector.

7.2.4 For the purposes of the Code, the date with effect from which a relevant transfer is to take effect:

- (a) may not be earlier than the date of a Settlement Day to be determined at the time by BSCCo such that the transfer of responsibility pursuant to this paragraph 7 can be taken into account for the purposes of the Initial Settlement Run to be carried out for that Settlement Day;
  - (b) may not be later than the Appointment Day.
- 7.2.5 Unless otherwise agreed in advance by BSCCo, the time with effect from which a relevant transfer is to take effect, for the purposes of the Code, is 00:00 hours on the date with effect from which such relevant transfer is to take effect in accordance with paragraph 7.2.4.
- 7.2.6 Without prejudice to the provisions of paragraphs 7.2.3, 7.2.4 and 7.2.5 as they apply for the purposes of the Code, those provisions shall not affect or limit the terms and conditions upon which a relevant transfer is to be made as between the parties to the relevant transfer.
- 7.2.7 For the avoidance of doubt:
- (a) a notice may not be given pursuant to paragraph 7.2.1 (and any notice given shall not take effect) in respect of premises for which a Trading Party is appointed as the Supplier of Last Resort (in the same set of circumstances);
  - (b) where a Lead Party intends to transfer its interests to more than one Trading Party, a separate notice shall be required under paragraph 7.2.1 for each relevant transfer.
- 7.2.8 BSCCo shall send a copy of any notice given pursuant to paragraph 7.2.1 to the Authority, each Party and the CRA.

### **7.3 Establishment of BM Units**

- 7.3.1 The provisions of this paragraph 7.3 apply in relation to an Affected BM Unit where a Trading Party becomes, for the purposes of the Code, the Replacement Supplier in respect of that BM Unit.
- 7.3.2 Where this paragraph 7.3 applies, the CRA shall establish a BM Unit (a "**Replacement Supplier BM Unit**") associated with the Replacement Supplier corresponding to each Affected BM Unit in respect of which the relevant Trading Party becomes the Replacement Supplier as soon as reasonably practicable after the appointment of such Replacement Supplier.
- 7.3.3 Where a Replacement Supplier is appointed in respect of a BM Unit which is a Base BM Unit of the failing Supplier, such Replacement Supplier shall also assume responsibility for any BM Unit of the failing Supplier in the relevant GSP Group which comprises Generating Plant of a SVA Generator, unless responsibility for such BM Unit is otherwise assumed at the time by another Replacement Supplier.
- 7.3.4 References to BM Units in the Code shall include Replacement Supplier BM Units.
- 7.3.5 The establishment of Replacement Supplier BM Unit(s) pursuant to paragraph 7.3.2 shall take effect on and from the Replacement Supplier Transfer Date.
- 7.3.6 Each Replacement Supplier BM Unit established or deemed to be established pursuant to paragraph 7.3.2 shall, save for the identity of the Lead Party associated with such BM Unit, be configured in the same way and have the same attributes (subject to paragraph 7.4.2) as the Affected BM Unit of the failing Supplier to which it corresponds, including:
- (a) the Generation Capacity and the Demand Capacity;
  - (b) the Credit Assessment Load Factor;
  - (c) (where applicable) the CVA Metering Systems associated with that BM Unit;

- (d) (where applicable) the GSP Group in which that BM Unit is situated;
- (e) (where applicable) the status of that BM Unit as a Base BM Unit or an Additional BM Unit;
- (f) (where applicable) the SVA Metering Systems associated with that BM Unit;
- (g) the P/C Status;
- (h) (where applicable) the Aggregation Rules;
- (i) the Trading Unit to which that BM Unit belongs;
- (j) the Joint BM Unit Data (if any);
- (k) whether that BM Unit is considered a relevant BM Unit for the purposes of Section Q,

but without prejudice to the Replacement Supplier's rights and obligations to revise such configuration and attributes from time to time pursuant to any other provision of the Code or otherwise to the revision of such configuration and attributes from time to time pursuant to any other provision of the Code.

7.3.7 Where a Replacement Supplier is appointed in respect of Plant or Apparatus which is subject to a Shared SVA Meter Arrangement, then notwithstanding any provisions to the contrary in paragraph 2.5:

- (a) references in this paragraph 7 to Metering Systems comprised in a BM Unit shall include the Shared SVA Metering System;
- (b) the transfer of responsibility under this paragraph 7 shall apply in respect of Exports and Imports associated with the SVA Metering System Number of the failing Supplier;
- (c) the Allocation Schedule prevailing immediately prior to the Appointment Day shall continue to apply and to bind the Replacement Supplier and the other Supplier (not being the failing Supplier) to the Shared SVA Meter Arrangement;
- (d) the Replacement Supplier shall assume the status previously held by the failing Supplier as the Primary Supplier or the Secondary Supplier (as the case may be);
- (e) the provisions of paragraph 7.6.7 shall apply.

#### **7.4 Effect of establishment of Replacement Supplier BM Units**

7.4.1 The establishment of a BM Unit pursuant to paragraph 7.3 shall be treated, for the purposes of the Code, as if a new BM Unit had been registered (comprising the same Metering Systems as those comprised in the corresponding BM Unit of the failing Supplier) by the Replacement Supplier with effect from the Replacement Supplier Transfer Date and the corresponding BM Unit of the failing Supplier had been cancelled with effect from such date.

7.4.2 Without prejudice to the generality of paragraph 7.4.1, with effect from the Replacement Supplier Transfer Date and in respect of each Settlement Period on and after the Replacement Supplier Transfer Date, the BM Unit Metered Volumes relating to a BM Unit corresponding to a Replacement Supplier BM Unit shall be allocated to the Replacement Supplier BM Unit for the purposes of Section T and such BM Unit Metered Volumes shall not be allocated or treated as allocated to any BM Unit of the failing Supplier to which such Replacement Supplier BM Unit corresponds.

7.4.3 The provisions of Section M3.4.5 shall apply.

7.4.4 Without prejudice to the obligations of the Replacement Supplier in paragraph 7.6, a Trading Party shall not be considered to be in breach of any provision of the Code relating to Metering Systems (and/or Party Agents deemed to be appointed and registered by it pursuant to paragraph 7.1.3(a)(iii)) to the extent that, during the period between the Replacement Supplier Transfer Date and the relevant Replacement Supplier Registration Date, the Trading Party is unable to comply with such provision by reason (only) of the fact that it is not formally registered in CMRS or SMRS (as the case may be) as the Registrant of Metering System(s) for which it is deemed to be the Registrant by virtue of paragraph 7.1.3(a)(iii), including the provisions of:

- (a) Section J5; and
- (b) Section O3.2.

7.4.5 Notwithstanding paragraph 7.4.1:

- (a) in respect of each Settlement Period during the period (if any) between the Replacement Supplier Transfer Date and the Appointment Day:
  - (i) each MVRNA Authorisation of the failing Supplier relating to a BM Unit corresponding to a Replacement Supplier BM Unit, which is effective for such period in accordance with Section P, shall be treated as effective for that period in relation to the Replacement Supplier BM Unit and the Replacement Supplier;
  - (ii) each Metered Volume Reallocation Notification of the failing Supplier (as Lead Party) relating to a BM Unit corresponding to a Replacement Supplier BM Unit shall be treated as effective in relation to the Replacement Supplier BM Unit and the Replacement Supplier, and shall be taken into account for the purposes of Settlement accordingly;
  - (iii) each data item submitted by the failing Supplier or established by the Transmission Company under, and each action taken in pursuance of and as contemplated by Section Q, in relation to a BM Unit corresponding to a Replacement Supplier BM Unit shall be treated as applying to or taken in relation to the Replacement Supplier BM Unit and (where applicable) submitted by the Replacement Supplier, and shall be taken into account for the purposes of Settlement accordingly;
- (b) without prejudice to paragraph 7.1.3, the failing Supplier shall remain registered in CMRS or SMRS (as the case may be) in respect of each Metering System associated with the Replacement Supplier BM Unit until the earlier of the relevant Replacement Supplier Registration Date and the date when another Trading Party becomes registered, for the purposes of and in accordance with the Code, in respect of such Metering System; and
- (c) the Replacement Supplier shall not be entitled to:
  - (i) allocate SVA Metering Systems comprised in a Replacement Supplier BM Unit to Additional BM Units, in accordance with Section S6, until the relevant Replacement Supplier Registration Date for that Metering System;
  - (ii) otherwise to change the status (as a Base BM Unit or Additional BM Unit) and/or allocation of SVA Metering Systems to Replacement Supplier BM Units.

## **7.5 Data**

- 7.5.1 For the purposes of any provisions in the Code relating to the ownership and use of data (including Section L5), the rights of the failing Supplier in respect thereof, as they relate to the Affected BM Units for which a Trading Party becomes the Replacement Supplier, shall apply to the Replacement Supplier as if it were the actual Registrant of the relevant Metering Systems with effect from the Replacement Supplier Transfer Date, and any such rights shall automatically be assigned by the failing Supplier to the Replacement Supplier with effect from and in respect of the period on and after the Replacement Supplier Transfer Date.
- 7.5.2 The failing Supplier shall take all reasonable steps to co-operate with the Replacement Supplier to give effect to the transfer of responsibility contemplated by this paragraph 7 and to enable the Replacement Supplier to comply with its obligations hereunder.
- 7.5.3 Without prejudice to the generality of paragraph 7.5.2, the failing Supplier shall provide the Replacement Supplier with such records, data and information and otherwise take such steps as if a change of Registrant (from the failing Supplier to the Replacement Supplier) had occurred on the Replacement Supplier Transfer Date.

## **7.6 Obligation to register Metering Systems**

- 7.6.1 Subject to paragraph 7.6.6, each Replacement Supplier shall take such steps as may be necessary:
- (a) to effect, in accordance with the provisions of paragraph 2, the registration of Metering Systems (or, in the case of an Shared SVA Meter Arrangement, the Shared SVA Metering System with the relevant SVA Metering System Number) treated, for the purposes of this paragraph 7, as comprised in its Replacement Supplier BM Unit(s);
  - (b) to effect the appointment and registration of Party Agents in relation to those Metering Systems; and
  - (c) otherwise to comply with the provisions of the Code, including Section J, Section L, Section R and Section S, relating to the registration of Metering Systems and Party Agents.
- 7.6.2 The Replacement Supplier shall take the steps referred to in paragraph 7.6.1 as soon as reasonably practicable after the Appointment Day and, in any event, within 3 months after the Appointment Day.
- 7.6.3 The failing Supplier shall take such steps as may be required under the Code in order to permit the Replacement Supplier to become registered as the Registrant in respect of the Metering Systems referred to in paragraph 7.6.1.
- 7.6.4 For the purposes of the Code, in respect of a Metering System comprised in a BM Unit for which the Replacement Supplier becomes responsible pursuant to this paragraph 7, the date when the Replacement Supplier becomes registered in CMRS or SMRS (as the case may be) as the Registrant in respect of that Metering System shall be referred to as the "**Replacement Supplier Registration Date**".
- 7.6.5 In the case of each SVA Metering System in a GSP Group comprised in a Replacement Supplier BM Unit, such Metering System shall with effect from the relevant Replacement Supplier Registration Date be associated with and comprised in the Base BM Unit of the Replacement Supplier (not being the Replacement Supplier BM Unit) for that GSP Group, subject to paragraph 7.6.6 and without prejudice to the rights of the Supplier under Section S6 from that date.

- 7.6.6 The obligation of the Replacement Supplier under paragraph 7.6.1 to become registered in respect of each Metering System comprised in its Replacement Supplier BM Units is without prejudice and subject to the rights and obligations of another Trading Party under the Code to become registered in respect of any such Metering System, in accordance with the provisions of the Code and, where applicable, the MRA, if such other Trading Party becomes responsible for Exports and Imports associated with such Metering System prior to the relevant Replacement Supplier Registration Date, in which case such Metering System shall cease to be associated with such Replacement Supplier BM Unit with effect from the effective date of registration by such other Trading Party.
- 7.6.7 In relation to a Shared SVA Meter Arrangement, if the Replacement Supplier and the other Supplier (not being the failing Supplier) fail to reach agreement, prior to the deadline provided in paragraph 7.6.2, on the arrangements which are to apply as between themselves for the purposes of the Shared SVA Meter Arrangement, the provisions of paragraph 2.5.6 shall apply as if the Secondary Supplier had ceased to be the Secondary Supplier.

## **SECTION M**

*The following text will be inserted as paragraph 3.4.5:*

- 3.4.5 Notwithstanding any other provision of this Section M, BSCCo shall and shall be treated as having refused to give to the ECVAA any authorisation notice in relation to a Replacement Supplier in respect of any Settlement Period for which Gate Closure falls within the first 14 days after the Appointment Day for such Replacement Supplier (counting the Appointment Day itself for these purposes).

## SECTION N

*The following text will be inserted as paragraph 6.10:*

- 6.10.1 Where a Replacement Supplier is appointed in accordance with Section K7 and the Replacement Supplier Transfer Date precedes the Appointment Day for that Replacement Supplier, then subject to paragraph 5, the Transmission Company and each Trading Party shall be liable to pay to, or (as the case may be) entitled to receive from, the BSC Clearer a sum in respect of each Settlement Day within the Relevant Period representing the difference between:
- (a) the net amount of the Trading Charges for that Party for that Settlement Day determined taking account of the application of Section K7.1.3; and
  - (b) the net amount of the Trading Charges for that Party for that Settlement Day determined disregarding the application of Section K7.1.3,
- which sum shall be payable on the Payment Date for the Initial Settlement Run for that Settlement Day.
- 6.10.2 It is hereby acknowledged and agreed that the obligations of Payment Parties and the BSC Clearer arising by virtue of paragraph 6.10.1 are new obligations to pay an amount by way of Trading Charges and not an adjustment or amendment to any existing obligation and those obligations are subject to the provisions of paragraphs 2.4 to 2.7 (inclusive).
- 6.10.3 In respect of each Settlement Day within the Relevant Period and for each Payment Party, the Trading Charges Amount under paragraph 6.1 automatically (by virtue of Section K7) includes the sum referred to in paragraph 6.10.1.
- 6.10.4 For the purposes of this paragraph 6.10, the "**Relevant Period**", in relation to the appointment of a Replacement Supplier, is the period of whole Settlement Days from (and including) the Replacement Supplier Transfer Date to (and including) the Settlement Day immediately preceding the Appointment Day.



**ANNEX X-1**

*[Insert new defined terms and cross-refer to relevant Section/paragraph numbers]*

## Appendix 2 List of Respondents

2.1 Comments were received from the following 14 parties:

1. British Energy Generation Ltd
2. British Gas Trading Ltd
3. GPU Power UK (Worcester)
4. Innogy Plc
5. London Electricity Plc
6. Northern Electric Plc
7. Powergen Energy Plc
8. Scottishpower Plc
9. Scottish Electricity Settlements Ltd
10. TXU Europe Energy Trading (UK) Ltd
11. Western Power Distribution
12. Yorkshire Electricity Group Plc
13. East Midlands Electricity
14. Scottish and Southern Energy Plc