

Modification Proposal P57: Amendment to Failing Supplier Process to Allow a Legal Entity to have 2 Party Ids for a Short Period

Industry Consultation

1 Introduction

- 1.1 Modification Proposal P57 'Amendment to Failing Supplier Process to Allow a Legal Entity to have 2 Party Ids for a Short Period' was raised on the 03 December 2001 by British Gas Trading (BGT). It was requested that the Modification Proposal was treated as Urgent pursuant to BSC F2.9 as the Proposer did not feel the existing provisions of the Code were sufficient to deal with an emergency Trade Sale or appointment of Supplier of Last Resort (SoLR) in the event of a failing Supplier.
- 1.2 The Panel decided that the Modification Proposal should be treated as an Urgent Modification on 03 December 2001. The Proposer made further representations to the Panel that the need for Urgency had reduced. The Panel subsequently agreed on 13 December 2001 that there was no longer a requirement to expedite the Modification Proposal any quicker than the normal Definition and Assessment Procedures, but still be treated as an Urgent Modification.
- 1.3 The Modification Group met on 08 January 2002 and decided that the Interim Report should take the form of an Assessment Report to detail any impact on BSC Systems, Parties and the Code. This report would be submitted to the February Panel followed by an Urgent Modification Report to the March Panel.

2 Background

- 2.1 Section K7 of the Code currently provides a facility for a failing Supplier to transfer responsibility for its energy flows to another Supplier in very quick timescales. The facility is available either where the failing Supplier's licence has been revoked and the Authority has appointed one or more Suppliers of Last Resort (SoLR) or where the failing Supplier agrees to sell its interest to one or more Suppliers. Since the systems and processes which support the Code do not permit Metering System and BM Unit registrations to be transferred to another Party within the timescales required to address insolvency situations, Section K7 allows the registration to be 'deemed' to be transferred for a limited period until the Replacement Supplier can transfer all relevant registrations properly.
- 2.2 This is achieved in the Code by the creation of new BM Units for the Replacement Supplier and the allocation of the failing Supplier's energy flows to those new BM Units rather than to the BM Units of the failing Supplier.
- 2.3 It should be noted that this facility was limited to SoLR and distressed trade sales situation because it was felt that the arrangements were less robust than the normal registration mechanics and as such compromise the integrity of the trading rules.

3 Modification Proposal P57

- 3.1 The Modification proposes amendments to the Code to allow a Party to have more than one Party Id in the event of an emergency Trade Sale or appointment of Supplier of Last Resort as part of the failing Supplier process. The Modification Proposal would

not oblige a Party to have more than one Party Id, but allow a Party to have more than one Party ID if need arises. It was suggested that the Replacement Supplier may be allowed to have 2 Party Ids for a short defined period of up to three months. This three-month period would match the current obligations for registering metering systems detailed in section K7.6 of the Code.

- 3.2 The Modification Proposal stated that ELEXON would be responsible for exercising discretion to allow a Party to have 2 Party Ids, however, it was also suggested that Ofgem could be asked to exercise discretion should Parties prefer. It is worth noting that early work on this Modification Proposal suggested that the Panel was more appropriate to exercise discretion within the governance of the Code.

4 Issues

As directed by the Panel, the Modification Group met to progress the Modification through to the Interim Report phase. The following issues were discussed:

- 4.1 Modification Proposal P57 is driven from system implications and not trading rules or legal drafting. The implementation of this Modification Proposal into the Code will be complex as Party Id is not defined in the Code and an extensive review of the Code may need to be completed. The Code does not recognise what rights and liabilities are related to Party Id as the Code refers to Party throughout. Furthermore, in transferring a Party's Id not all of a Party's rights and obligations will transfer automatically. The rights and obligations that could be transferred under Party Id have to be assessed in terms of what should be capable of transfer, as well as in terms of what would be possible to transfer within the current constraints of the BSC Systems. These two issues would need to be addressed in the Detailed Level Impact Assessment (DLIA) (see 6.1). It may be that a change to the definition of Party is required and this would involve the work of the BSC Lawyers (Denton Wilde Sapte) in conjunction with the information provided from the DLIA.
- 4.2 The Group noted that Section K7 of the Code details the requirements of the failing Supplier process and the transfer of Supplier assets. The transfer of Party Id could include the transfer of non-Supplier assets, for example, Generator BM Units or Interconnector BM Units. Therefore, the original Modification Proposal would allow non-Supplier assets to be transferred extending the boundaries of what can be achieved from Section K7 of the Code. The Modification proposes a whole new set of processes to allow the transfer of all the assets associated with Party Id and represents an extension and a change to the Code. Furthermore, it may be necessary to restrict the Modification Proposal to emergency Trade Sales where the failing Supplier has only Supplier assets.
- 4.3 The Group mentioned that once a Party is allowed to have more than 1 Party Id they would be allowed to have more than 2 Energy Accounts, which is not permitted by the Code in Section A1.4. There may need to be explicit changes to the Code to allow a Party to operate more than two Energy Accounts. Furthermore, Parties need to be consulted to determine the impact on a Party if another Party is allowed to have extra Energy Accounts, for instance, checking of other Parties' RCRC calculations and arbitrage issues.

- 4.4 The Group then discussed whether there would be any Reconciliation liabilities arising from Modification Proposal P57. It was noted that Reconciliation liabilities may occur if the Party Id of a failing Supplier was to be transferred. The Modification Group noted that it is unlikely that any Trade Sale will result in a Replacement Supplier inheriting Reconciliation liabilities. It was suggested that these liabilities should be included in the due diligence of purchase and not included within the scope of this Modification Proposal. It is worth noting that excluding Reconciliation liabilities may require additional BSC System changes to record the transfer of Party Id from the failing Supplier to the Replacement Supplier. Furthermore, future liabilities in respect of its customer demand may eventually have to be smeared across all other Trading Parties assuming the failing Supplier is no longer paying its Trading Charges. Also Parties are free to allocate pre and post transfer liabilities between themselves outside the governance of the Code. The DLIA will include an assessment of the transfer of liabilities for both the past and future and the impact on BSC Systems.
- 4.5 The Modification Group raised the fact the Modification Proposal may have an impact on the BSC Systems, for example, Funds Administration Agent (FAA) and Energy Contract Volume Aggregation Agent (ECVAA). If a Party is allowed to have more than 1 Party Id this will change the one-to-one relationship and may impact BSC Systems and Parties. An Impact Assessment will be carried out to determine the costs and time needed to implement any changes to BSC Systems, particularly FAA.
- 4.6 The original Modification Proposal stated that a Party should be allowed to hold 2 Party Ids for a short defined period. If the situation arose when a Party was involved in more than once Replacement Supplier process within a three-month period then there will be a requirement for a party to have more than 2 Party Ids. An alternative Modification was proposed by the Modification Group whereby a Party could have multiple Party Ids at any point in time but that none of the transferred additional Party Ids should be effective for more than a three-month period.
- 4.7 The original Modification Proposal stated the requirement for a Party to have 2 Party Ids for a short period of three months. The Modification Group agreed with the period of three months as it will allow ample time to register metering systems and is the same timescale as the current obligations for the failing Supplier process in Section K7.6 of the Code.

In summary there was no objection to the Modification Proposal and the Modification Group supported the progression of this Modification to the Assessment Phase. Following legal and financial advice, however, ELEXON have identified further issues that require consultation.

- 4.8 When a Party has more than one Party Id would they be assessed for credit purposes in respect of each Party Id. The implications of the transfer of Party Id on the credit arrangements and what rules are needed require further consideration.
- 4.9 The original Modification Proposal will only work where there is a single Replacement Supplier in a SoLR or emergency Trade Sale.
- 4.10 SoLR is a mandate to transfer customers of a failing Supplier to a SoLR. It does not mandate transfer of non-Supplier assets. Therefore, the Modification Proposal will only work for SoLR where only Supplier assets associated with the failing Supplier.

5 Points to note

In addition to the above issues that need to be resolved during the assessment of P57, there were also several points raised by the Modification Group that are detailed below.

- 5.1 The Group commented on that if a Party was to take over the failing Supplier's Party Id then there would be no issue of having to create new Meter Volume Reallocation Notifications (MVRNs) or Energy Contract Volume Notifications (ECVRNs). It is probable that there would be a number of Meter Volume Reallocation Agent Authorisation (MVRNAAs) already in place that could be used (Energy Contract Volume Notification Agent Authorisations (ECVNAAs)). Therefore, the requirement to retain MVRNAAs and MVRNs will need to be considered as part of the Impact Assessment.
- 5.2 The Group mentioned that Administrator failure to carry out certain tasks should not be covered by the Balancing and Settlement Code.

6 Way Forward

- 6.1 Parties are invited to comment on the Modification Proposal P57 as proposed. Furthermore, Parties are requested to provide comments on the underlying principle to P57 and the issues raised by the proposal and additional alternative options.
- 6.2 Impact Assessment will be completed to determine the costs and time required to implement any changes to BSC Systems. This is especially important to highlight any impacts on financial reports produce specific to Party Id.
- 6.3 Attached to this note is a pro-forma, listing the issues raised. You are invited to provide a response with your views on these issues.
Please send your responses by close of business on Friday 25th January 2001 to the following e-mail address: Modifications@elexon.co.uk
Please entitle your e-mail 'P57 Urgent Consultation'.
Any queries or questions on the content of this consultation should be addressed to Helen Bray (helen.bray@elexon.co.uk) at ELEXON.

7 Relationship between P57 & P60

- 7.1 Modification P60 proposes an amendment to the Code to remove the obligation on a single Replacement Supplier to re-register Metering Systems and appoint Party Agents as soon as reasonably practicable within three month after the Appointment Day of the Replacement Supplier. Modification Proposal P60 (P60) does seek to address a different issue from that discussed in P57. However, P60 relates to the failing Supplier process for a single Replacement Supplier and it is suggested that Parties consider the impact on the requirement for P57 should P60 be agreed for implementation.

8 Modification Group Members

Members and attendees at the Modification Group meeting on the 8th January were as follows.

Name	Organisation	Role
Peter Davies	ELEXON	Chairman
David McNair	ELEXON	Secretary
Helen Bray	ELEXON	Lead Analyst
Simon Hadlington	British Gas Trading	Proposer
Bob Brown	St Clements	Modification Group Member
Rob Cullender	British Gas Trading	Attendee
Richard Harrison	Npower	Modification Group Member
Paul Jones	Powergen	Modification Group Member
Neil Magill	Scottish Power	Modification Group Member
Chris Pooley	Campbell Carr	Modification Group Member
Phil Russell	TXU	Modification Group Member
Clare Talbot	NGC	Modification Group Member
Paul Chesterman	London	Modification Group Member
Catherine Monaghan	Ofgem	Ofgem Attendee