

Issue 26: Issues arising from determination by PAB re application of SCs to Replacement Suppliers

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Background

- Pre-NETA – BSC Failing Supplier Process
- PARMS issues re stopping and starting SCs
- Multiple / Transfer of Supplier IDs – P106
- PARMS issues re P106 – P141
- PAB/29/335 workaround – P99 PARMS Project
- Npower query re Eledor SCs and reference to PAB

PAB determination (ref Panel 119/01c)

- “Any liabilities associated with that ID would be transferred to the new Supplier”
- ‘due diligence’ in the case of SoLR
- “Supplier did have time to take meter readings between its appointment and the relevant SVA Run”
- “original decision on apportionment principles ... correct”
- “Replacement Supplier has no obligations in respect of Metering Systems lost by the Failing Supplier between the Settlement Date and the date of transfer to the SoLR”

Issues

- Is the interpretation and application of PAB/29/335 consistent with the Code?
- Serial SP08a “energy attributable to a Supplier”
- K 7.1.3 – Calendar or Settlement Day basis?
- “on a Supplier ID basis” (S 1.3.3)
- Intent of BSC Failing Supplier Process re financial liabilities
- Significance of not setting up Replacement Supplier BM Units?

Issues (2)

- How can MPANs lost by the failing Supplier be excluded while retaining consistency with Annex S-1 paragraph 2.2.2 (SP08a Serial definition)?
- Are the words added at the end of K 7.4.5 consistent with the principle of liquidated damages?
- Pragmatic solutions

Observations re paper 29/335

- The Principles (section 2 of the paper, and on which the Approach depends) refer only to the circumstance of “transfer of Supplier ID”.
- Nowhere does section K7 refer to transfer of Supplier ID; it refers to obligations, liabilities, rights and benefits (including in respect of Trading Charges and BSCCo Charges) related to Metering Systems and the Exports and Imports of Plant and Apparatus comprised in Affected BM Units, and the establishment of Replacement Supplier BM Units. This is a different process.
- The assertion in paragraph 3.3 of the paper, that the workaround process “would also support a Supplier of Last Resort process ...”, is questionable for the reasons explained (including that SoLR is not a transfer of Supplier ID).
- “Obligation point” or “measurement point”?
- Neither the paper nor Elexon’s presentation slides provide further clarification of what is meant by “the failed obligations that sourced the charges”, which would have enabled PAB (and SVG) to identify the anomalous consequences arising from the interpretation that appears to have been implemented.
- The paper leaves the reader to draw the obvious conclusion that, since Serial 1 is measured on a Settlement Day basis, the charges will be allocated to the relevant Supplier on that basis.

Serial SP08a (formerly Serial 1) – “energy attributable to a Supplier”

2.2.1 In relation to each GSP Group, the percentage of total energy attributable to a Supplier in respect of Non Half Hourly Metering Systems settled on the basis of Annualised Advances for each Settlement Day shall be not less than the percentage set out in the table below against the applicable Volume Allocation Run: *(NB These words pre-date SoLR, P106 and P141)*



...

2.2.2 For the purpose of paragraph 2.2.1:

(a) the percentage of total energy attributable to a Supplier settled on the basis of Annualised Advances shall be calculated in accordance with the following formula:

$$\left(\frac{A_{HZ}}{A_{HZ} + E_{HZ}} \right) \times 100$$

where:-

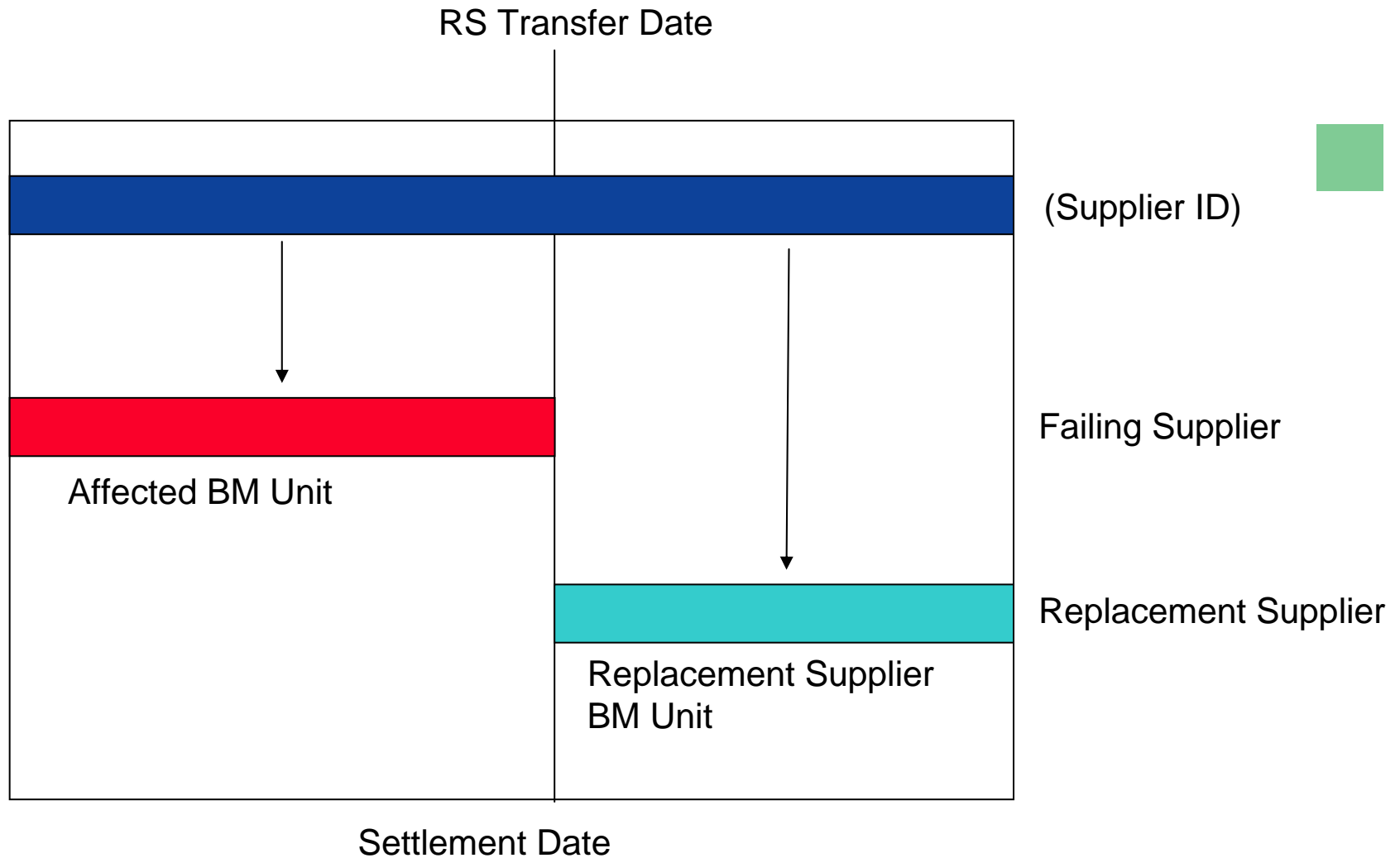
A_{HZ} means $\sum_{N(AA)} \sum_j (C_{iNj} + CLOSS_{iNj})$; and

E_{HZ} means $\sum_{N(EAC)} \sum_j (C_{iNj} + CLOSS_{iNj})$;

(Section X, Table X-4)

i refers to a BM Unit; (e.g. a Replacement Supplier BM Unit)

Financial responsibilities and BMUs



Appointment of Party Agents (K 7.1.3)

“such Replacement Supplier shall be treated ...

as having appointed and registered the Party Agents of the failing Supplier in respect of such Metering Systems, and otherwise as having complied with any conditions to the appointment or registration thereof,

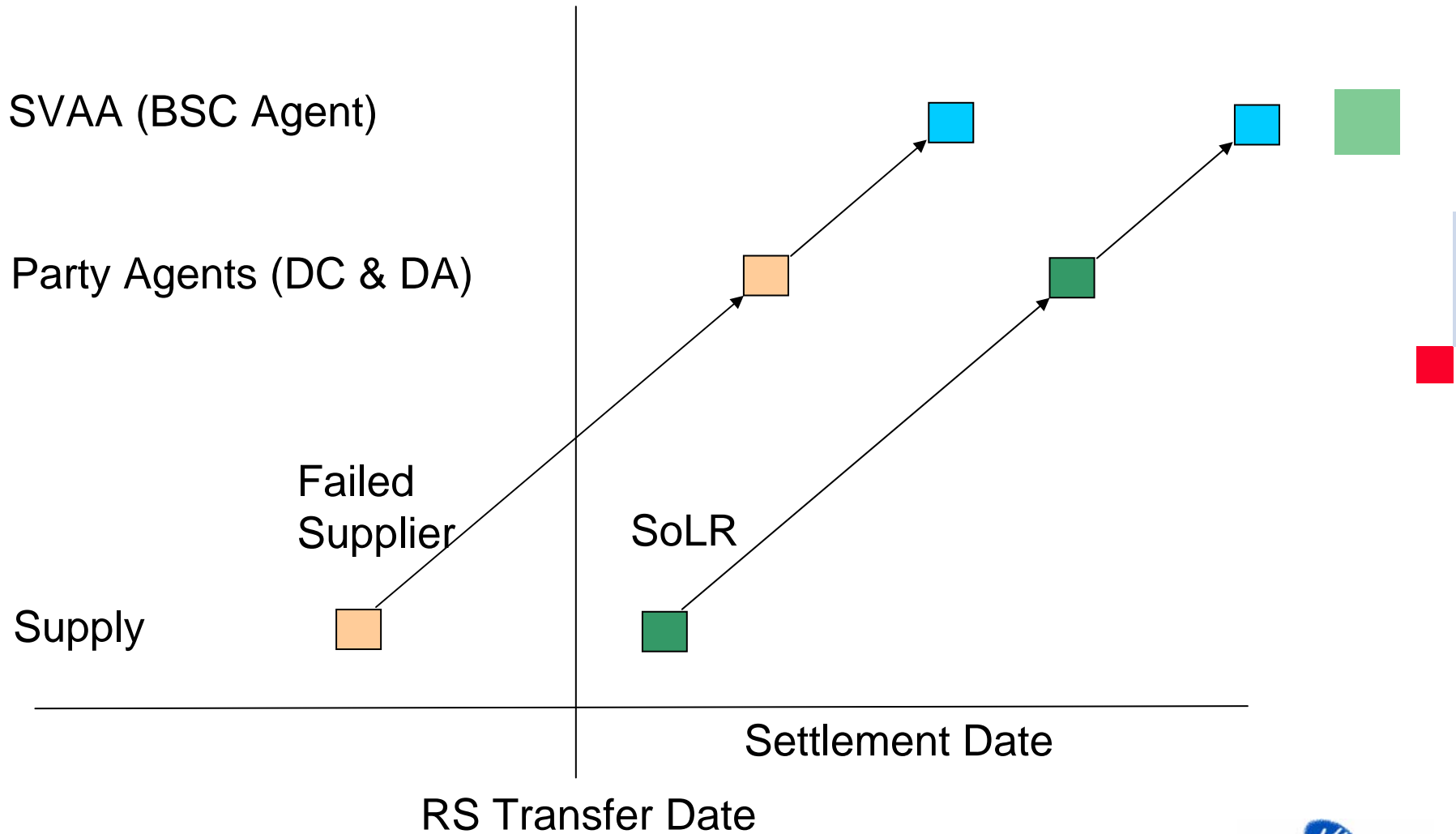
... with effect from the time and date when the transfer of responsibility resulting from such appointment is deemed to take effect in accordance with paragraph 7.1.4 and in respect of each Settlement Period on and after such time, and the provisions of the Code shall be construed accordingly.”

Supplier responsible for obligations

Settlement (Trading Charges etc)	Period of Supplier Registration (Settlement Day)
Supplier Volume Allocation	(BSC Agent function)
Data Aggregation	the Settlement Days for which the Non Half Hourly Data Aggregator is appointed
Data Collection	all Settlement Days for a SVA Metering System within the period of its Associated Supplier's effective registration in a Supplier Meter Registration Service (SMRS), in respect of that SVA Metering System ...
Meter Operation	Period of appointment (~ Settlement Day)



Responsibility for obligations



“ on a Supplier ID basis” (S 1.3.3)

Where a Supplier holds more than one Supplier ID:

- (a) the provisions of the Code referred to in paragraph 1.3.4, and any other provision of the Code which is expressed to apply on a Supplier ID basis, shall apply separately in respect of the Supplier in the capacity of each of its Supplier IDs so far as capable of so applying;
 - (b) except as otherwise expressly provided, all other provisions of the Code apply in respect of the Supplier without regard to its Supplier IDs,
- and references to a Supplier ... shall be construed accordingly.



Code provisions affected by S 1.3.3

- S 2 – Responsibilities of Suppliers and Supplier Agents
- S 6 – Supplier BM Units
- S 7 – Supplier Volume Allocation Rules
- Annex S-1 – Performance Levels and Supplier Charges
- Annex S-2 – Supplier Volume Allocation Rules



Purpose of BSC Failing Supplier process:

- Transfer of customers and associated Settlement liabilities to Replacement Supplier with effect from appointment date
- NOT transfer of failed Supplier's business and processes
- Feb 2001 Consultation silent on Supplier Charges



Differences between Failing Supplier process and Transfer of Supplier ID

(References are to the Code unless stated otherwise)

- No mention of transfer of Supplier ID in section K7
- Transfer only applies in respect of Affected BM Units (12 out of 14 in case of Eledor)
- Replacement Supplier BM Units are (at least in theory) different BMUs and Settlement data is therefore segregated for Replacement Supplier
- SoLR has obligation to re-register Metering Systems within 3 months
- SoLR has no inherent rights to use of failed Supplier's processes (acknowledged in K 7.4.5)
- NB "Transfer of Supplier ID" is separate and covered in S1.4-1.8



Consequences of Elexon's interpretation and the PAB determination

- The Replacement Supplier (RS) may be liable for consequences of historic failures on Metering Systems (customers) for which it has never been the Supplier
- In the extreme, the Metering Systems acquired as RS may be completely different from those included in RF runs currently being carried out.
- RS potentially responsible for other obligations including Trading Charges related to Reconciliation Runs
- If such unreasonable obligations and liabilities were held to apply it would be a significant deterrent to Suppliers undertaking the role of SoLR.
- Potential loophole resulting in unrecoverable payments to failed Supplier/Administrator
- Inconsistency with definition of Serial SP08a in S-1 2.2.2 and need for significant system/process changes





The anomaly of the proviso at the end of K 7.4.5

- This appears to say that the Supplier is liable for a 'liquidated damage' payment even though it is not considered to be in breach of the Code
- Either this violates the legal principles of "LDs" or it does not mean that!
- What is the process required to determine whether the condition in K 7.4.5 has been met? (This condition is clearly different from that required for Supplier Force Majeure)
- Is a Modification required?



Conclusions

- The Elexon/PAB solution (and the “legal advice”) seems to be driven by what the PARMS system can do rather than what the BSC says.
- “energy attributable to a Supplier” can only reasonably be taken to mean energy for which the Supplier is responsible in Settlement 
- [Virtually] all the relevant obligations for which the SoLR is responsible, which are likely to impact the SP08a performance, appear to relate to a Settlement Day basis.
- The Elexon/PAB interpretation of S 1.3.3 is perverse and would create obligations/liabilities which conflict with other clauses including K 7.1.3. npower’s interpretation does not have this effect. 
- The Failing Supplier Process is recognised as one under which the SoLR does not have the use of the failed Supplier’s systems/processes, and distinct from the process for transfer of Supplier ID.
- SP08a charges relating to Settlement Dates prior to the Replacement Supplier Transfer Date should be applied to the failing Supplier and not the SoLR.
- Npower does not believe that the proviso at the end of K 7.4.5 is consistent with the principle of liquidated damages if the relevant condition applies; it also needs clarifying in other respects.

Solution options and implications

Option	Implications
[Confirm interpretation essentially on Calendar Day basis]	Liabilities for earlier Settlement Days; impact on SoLR process; Supplier Force Majeure & consequent recalculation of SCs
Interpretation as PAB, but with exclusion of lost metering systems	Inconsistency with Annex S-1, so Modification required; problem with access to failed Supplier's data; Process changes necessary to invoice correctly
Interpretation on Settlement Day basis	Automatically excludes lost metering systems; requires re-allocation of Serial data on Settlement Day basis and recalculation of SCs
(In addition) Amendment of Section K 7.4.5	Removes ambiguity/inconsistency

