Ms Bryony Sheldon
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Ofgem
9 Millbank
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Date: 18th July 2003

Dear Bryony

Re: Powergen Response to Ofgem's Further Consultation on Gas Retail Governance – June 2003

Thank you for giving Powergen the opportunity to comment on the above consultation document dealing with the introduction of new retail gas governance arrangements and the creation of the Supply Point Administration Agreement (SPAA). Powergen have been keen supporters of the gas governance project from Day 1 and have contributed significant time, effort and money as a result of our involvement on the various committees and sub-groups set up to progress this important and substantial piece of work.

Our response to this consultation is structured into four parts:

- this covering letter summarises our key views on this consultation document
- Appendix 1 gives our detailed responses to the questions asked by Ofgem
- Appendix 2 gives our views on version 1.0 of the SPAA
- Appendix 3 gives our views on the proposed draft licence condition

The majority of our comments on the SPAA consultation document are in Appendix 1 but we have four key issues that we particularly want to concentrate on in this covering letter:

RGMA Baseline
Powergen fully supports the implementation of the RGMA at the earliest opportunity. The links between the delivery of the RGMA and SPAA are fundamental to the ongoing viability of a competitive gas metering market and industry inter-operability. Any further delays will affect the efficient implementation of the SPAA and impact on its effectiveness.

I&C Suppliers
Ideally we want a licence condition placed upon I&C suppliers to oblige them to sign onto and conform to the SPAA. If the requisite threshold is achieved when the voting occurs to approve the licence condition modification, then there is no issue as to whether I&C suppliers sign the SPAA or not. They will all be obliged to sign the Agreement.

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However, if the licence modification does not achieve the requisite threshold I&C Suppliers should instead be given the option to join the SPAA if they want to. Those who decide to join can take advantage of the full governance arrangements of the SPAA and have the opportunity to be elected as I&C constituency representatives on the SPAA Executive Committee. All I&C suppliers who decide to become signatories to the SPAA would obviously also be involved in the normal change control process to modify any schedules as they see fit. As we believe that all I&C schedules should be voluntary there would be no obligation on I&C suppliers to follow any schedules or changes made to them in the future.

Those I&C suppliers who decide not to join the SPAA can continue with the existing I&C CoP outside of the governance of the SPAA. Obviously the downside is that two sets of increasingly disparate I&CoPs may develop over time but that is just another commercial risk that I&C suppliers should be allowed to face, whether they are signatories of the SPAA or not.

We believe the I&C Code of Practice should be added to the SPAA in a similar fashion to the DCoP, that is they should be reviewed and the relevant parts of the I&C CoP then migrated into the SPAA. Adding these processes into the SPAA would be beneficial in that it extends and therefore enhances the SPAA role within the industry and gives the Agreement more creditability. It also allows the I&C suppliers to use the existing governance and administrative functions within the SPAA.

Gas Transporters

Powergen strongly support the inclusion of GTs in the SPAA from Day 1 as their involvement would be very beneficial to the efficient functioning of such core SPAA processes as the RGMA baseline and, their inclusion, will give them experience of the governance of the SPAA from an early stage. We would also see the SPA processes within the Network Codes transferring to the SPAA as soon as practicably possible.

We note that there is now a significant probability of a further delay to the implementation of the RGMA baseline. This now would seem to give the industry a window of opportunity to include GTs within the SPAA at the same time as suppliers. If this becomes a reality, then Ofgem should take advantage of the delay and push for GT inclusion from Day 1.

However, we do accept that there is some uncertainty that GTs may not become parties to the SPAA from Day 1 but, if such a decision is made, then a firm date for their future inclusion is absolutely necessary. This date should be as soon after the Go Live date for SPAA as possible.

A major benefit of the participation of GTs in the SPAA would be that governance would anticipate the later move to separation of supply point administration from gas transportation. We recommend that cost recovery mechanisms should also anticipate this change and that the principle is accepted that suppliers pay for process changes, which would either be justified by cost-savings or by improvement by the allowance in GT price controls for supply point administration. We accept that this changes the principles of the current price controls, but consider that the benefit of securing GT support for industry development justifies it. The example of the delays to RGMA shows the disadvantages of current structures.

Consumer Representation

The current proposals for SPAA give consumer bodies such as energywatch full involvement in the consultative process, including potential to contribute to

meetings and to comment on change proposals. We would expect Ofgem to take significant note of consumer bodies' views in determining any appeals. However, Powergen do not believe that consumer bodies such as energywatch should have equal consideration to SPAA signatories to vote on or raise change proposals.

Our rationale for limiting the involvement of consumer bodies is that the SPAA is essentially an inter-industry agreement, and if no industry parties are supportive of a change proposal it is wholly inappropriate for the SPAA to be a vehicle for change. In practice, of course, one or more industry players will always be prepared to promote a cost-effective change which benefits customers.

If you would like to discuss any aspect of this letter, please contact me on 0115 906 2671 or email me at afroze.miah@powergen.co.uk.

Yours sincerely

Afroze Miah
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Appendix 1

Powergen Response to Ofgem's Consultation On Gas Retail Governance – Further Consultation June 2003

Section 5
The SPAA – Ofgem's Views

The principles of good governance set out above, and the extent to which the proposed SPAA conforms with them?

Powergen agree with most of Ofgem's comments with regard to the effectiveness, efficiency, transparency, participation, accountability and consistency of the SPAA and the overlap with other existing contractual obligations. However, we have concerns about the level of involvement of consumers which we will elucidate further later in this response.

To work effectively, the SPAA has to have a clear remit (i.e. the RGMA baseline, DCoP, I&C CoP and SPA processes) and a licence obligation on parties to conform to the SPAA's obligations.

Whether a 10-day consultation period is appropriate?

No. We prefer to see the SPAA in line with the Network Code's current 15 working-day response time rather than copying the MRA's 10 working days. This allows more time for larger organisations such as Powergen to ensure that the change is circulated to all the relevant affected areas and a more constructive response can therefore be made.

Should criteria be developed for the granting of urgent status to a change proposal?

Yes. The ability to fast track urgent changes may be required at times. We believe a clear set of stated criteria as to when a change should be classified as urgent would be useful for the change control process and ease the work of the SPAA Executive Committee.

The preferred method for the introduction of schedules into SPAA?

We prefer all new schedules to be introduced on a voluntary basis and then changed to mandatory if it is felt necessary to do so. This would have two benefits:

- it allows the introduction of schedules to be tested / assessed operationally before they become mandatory
- it allows different industry participants to implement changes at different speeds, something that may be commercially advantageous to the industry and also enhance competition.

On the subject of change, we would support simpler ways to vote such as over the Internet. This would suit companies better than having to attend numerous meetings. We understand that the GIGG recommended Internet voting as a key outcome of the SPAA project.

The appropriate degree of consumer representatives' participation in the SPAA?

We agree that the minutes of meetings and the details of changes should be made available to interested parties such as energywatch. They should also be allowed to comment on changes.

The current proposals for SPAA give consumer bodies such as energywatch full involvement in the consultative process, including potential to contribute to meetings and to comment on change proposals. We would expect Ofgem to take significant note of the views of consumer bodies' in determining any appeals. However, Powergen do not believe that consumer bodies such as energywatch should have equal consideration to vote on or raise change proposals under the SPAA.

Our rationale for limiting the involvement of consumer bodies is that the SPAA is essentially an inter-industry agreement, and if no industry parties are supportive of a change proposal it is wholly inappropriate for the SPAA to be a vehicle for change. In practice, of course, one or more industry players will always be prepared to promote a cost-effective change which benefits customers.

Also, Ofgem will be involved in deciding changes and considering appeals and would be expected to take into consideration the consumer's interests, their statutory duties and obligations and the wider affect of any SPAA changes on the industry, when considering a particular change. This should be sufficient to protect consumer's interests.

Whether issues of unfair prejudice should be determined as part of the change decision rather than holding a separate appeals procedure?

No. We prefer the appeals process to undertake any assessments related to unfair prejudice. Otherwise the change decision could be bogged down in commercial arguments as to which company is unfairly prejudiced by a change. Such a requirement could also be used as a delaying tactic if a party does not like the change proposal anyway.

Whether the provisions referred to in paragraph 5.34 should be afforded 'protected' status?

Yes. We agree with the list of clauses that Ofgem are proposing to have 'protected' status for. These clauses are crucial for governance purposes and being protected by Ofgem will give comfort to SPAA parties.

Whether voting should be by reference to the percentage of votes being capable of being cast?

Yes. Voting should be based on an individual company's or group of companies under common ownership's market share. The number of MPRNs a company has is a fair indicator of their market presence as the larger their market share the greater the impact a change will potentially have on them. However, by having a cap of 20% on companies this should reduce any disproportionate impact that the voting of larger suppliers may have on SPAA change proposals. This should reduce the fears of smaller suppliers that changes will either be railroaded through or blocked by a minority of larger suppliers.

We do not agree with the suggestion that 'only votes cast count' is a good way forward when deciding change proposals. We prefer the rule that states that a no response equals agreement to the change proposal. We do not believe that the industry would want to leave it to chance that something could go through, or get blocked, just because only two or three suppliers could actually be bothered to vote

on something. If a supplier felt strongly against a change proposal they would vote against it. A non-vote would then indicate support for a change.

The extent of Ofgem's role, if any, in granting derogations?

There should be no Ofgem involvement in the initial granting of a derogation. We believe derogations should, in the first instance, only be granted by the SPAA Executive Committee with Ofgem possibly in attendance but not able to influence any decisions made. The earlier the issue can be discussed and resolved between the SPAA Executive Committee and the party concerned the better it will be as this will reduce administrative requirements and the potential commercial impact upon the supplier concerned and its agents and customers. If the party is not happy with the SPAA Executive Committee's decision then they should be allowed to appeal to Ofgem.

Section 6
The SPAA Licence Condition

Whether such a licence condition should be placed upon both domestic and I&C suppliers?

Yes. We would like to see the licence condition applied to both domestic and I&C suppliers. If the required threshold were achieved to allow for the implementation of the licence condition then both types of suppliers would be obliged to sign the SPAA. Even if the threshold is not achieved say, for example, with the I&C licence condition, I&C suppliers should still be allowed to voluntarily become parties to the SPAA, if they so want to.

The proposed drafting of the condition, as outlined in Appendix 1

We have concerns about the amount of detail that is being proposed for the draft licence condition. The drafting goes well beyond what is in existence in similar licence conditions that oblige energy companies to sign onto or conform to the requirements of other industry agreements. Why is there so much detail? Why isn't the licence condition just limited to a simple clause along the lines of 'the licensee shall become party to and thereafter comply with the provisions of the Supply Point Administration Agreement…' and nothing else? This is how the equivalent drafting for the MRA appears in the electricity suppliers' licences. We would therefore prefer the licence condition to be along the lines of that in existence for the MRA (Electricity Supply Licence: Standard Conditions LC 20).

Also, there are elements of the draft licence condition that are better placed in the SPAA itself.

However, without prejudicing our views above, we have made some comments on the proposed draft licence condition in Appendix 3.

Whether the SPAA has, or is likely to have, any anti-competitive effects, especially in relation to small suppliers or new entrants?

As long as only the key elements of the SPAA are obligatory then it should be seen to aid competition and encourage new entrants. It would assist in the understanding of and facilitate the processes required for operating as a supplier or GT and ensure a consistent approach to managing key processes related to industry inter-operability.

However, if too many of the schedules or obligations within the SPAA become mandatory then it could hinder the development of differential and/or innovative services between suppliers. It could also impose a high level of cost that could

result in not only new entrants and/or small independent suppliers but, also more established suppliers, not being able to compete.

It should also be noted the SPAA requires no entry testing for new entrants / signatories to the SPAA. This should help new or smaller suppliers become signatories of the SPAA without concerns over the costs of acceding to it.

Section 7
The Domestic Code of Practice

Whether the inclusion of schedules such as that outlined in this Chapter would entirely replace the existing Domestic Code of Practice?

Yes. The existing Domestic Code of Practice should cease to exist. There seems little point in having both a Domestic Code of Practice and the SPAA running side by side. It would be better to have all the key elements included in one document where relevant governance could be applied. It is therefore important to migrate the relevant processes from the DCoP to the SPAA.

We would also support those elements that can be potentially discarded from the DCoP and not included in the SPAA being retained under the auspices of SPAA Ltd to ensure a single point of reference for parties. It would be impractical to have these (e.g. those used as best practice or for guidance) in a different place from the key DCoP processes that are under the SPAA.

We are not sure if the Theft of Gas procedure should be in the SPAA as it is more a guidance note for suppliers on how to deal with suspected cases and is not really an inter-supplier issue. We imagine this will be discussed in more detail when the industry comes to migrating the DCoP into the SPAA.

Whether the I&C Code of Practice should be developed as a SPAA schedule?

Yes. We believe the I&C Code of Practice should be added to the SPAA in a similar fashion to the DCoP e.g. there should be a review and migration of the relevant parts of the I&C Code into the SPAA. Adding these into the SPAA would be beneficial in that it extends and therefore enhances the SPAA role within the I&C sub-sector and gives it more creditability. It also allows the I&C CoP to use the existing governance and administrative functions within the SPAA.

Section 8
GT Involvement in SPAA

Whether GTs should become party to SPAA?

Yes. Involving GTs in the SPAA process from Day 1 would be very beneficial to the workings of the SPAA and will get them involved in the governance of the SPAA from an early stage.

Ofgem have already highlighted suppliers' concerns about the potential problems that may occur if suppliers make changes to the RGMA baseline independently of the GTs. Also, how can possible changes to the SPAA be reflected in the Network Code? The early involvement of GTs in SPAA changes will prevent any discrepancies or inconsistencies developing between the SPAA and Network Code.

Regarding the RGMA, GTs have a fundamental role in metering competition and their non-involvement in the SPAA, where the RGMA will reside, seems inconsistent with their important role in the RGMA debate to date. The SPAA GT Forum alluded to this role in their recommendation that GTs should be included within the SPAA.

We understand the forthcoming SPAA Transporter / Supplier Forum meetings will progress this recommendation to a speedy conclusion.

Subject to above; the appropriate timing of GT accession to SPAA?

In an ideal world we want the GTs (and especially Transco) in the SPAA from Day 1. However, we do accept that they may not be there on time but a firm date is absolutely fundamental.

Also, as there now seems to be another delay to the implementation of the RGMA baseline very likely, there is potentially a window of opportunity developing to progress the inclusion of GTs within the SPAA at the same time as suppliers. Ofgem should take advantage of this opportunity and facilitate this outcome.

Whether becoming party to and compliance with SPAA should be a condition of the GT licence?

Yes. All GTs should have a licence condition placed upon them to oblige them to sign onto the SPAA. This will ensure that the full benefits of the SPAA are realised especially those schedules that are common to both suppliers and GTs. Not having GTs involved in the process would continue the additional costs of maintaining duplicate sets of 'governance frameworks' and continue the lack of supply choice for customers on their networks.

How the funding of change should be apportioned?

A major benefit of the participation of GTs in SPAA would be that governance would anticipate the longer-term move to separation of supply point administration from gas transportation. We recommend that cost recovery mechanisms should also anticipate this change and that the principle is accepted that suppliers pay for process changes, which would either be justified by cost-savings or by improvement by the allowance in GT price controls for supply point administration. We accept that this changes the principles of the current price controls, but consider that the benefit of securing GT support for industry development justifies it.

Section 9
Governance of Metering

Whether the transfer of the meter asset between suppliers or their agents should be subject to collective governance under the SPAA?

The transfer of the meter asset between suppliers and the potential for stranded assets and customer inconvenience is one of the most difficult issues for the implementation of true competition within gas metering. A framework needs to exist whereby some form of governance as to the transfer of assets should be outlined for the situation where a change of supplier occurs.

The SPAA offers a good potential solution for this to be included but should not mandate the price at which assets will be transferred between supplier's agents - simply the mechanism. The cost of a meter asset and its original installation are not clear to a supplier and therefore it is wrong for them to dictate what the value of an asset should be. The SPAA offers an opportunity for suppliers to ensure that there is a framework in place that their agents will then be obliged to follow to allow for either the transfer or lease of assets between relevant parties with a minimum of inconvenience to either the supplier or customer.

Whether SPAA should have any role in or influence over the Transco metering contract and if so, to what extent?

Yes. Transco's metering contract should reflect the RGMA baseline and be kept up to date with changes that are implemented through SPAA. This monopoly service provision will overtime be replaced by supplier's contracts with new entrants. Until this time most meters will be serviced via the Transco Metering Contract. It is therefore vital that any changes to the SPAA are reflected in the Transco contract if suppliers and their customers are to benefit.

Section 10
Further Work

Ofgem would welcome views on the indicative timescale outlined above.

This timescale is being driven by the implementation of metering separation. If this date slips then there may be more time available for the implementation of the required licence changes and for the involvement of other parties from Day 1, for example, Gas Transporters.

Appendix 2

Comments on the Supply Point Administration Agreement Version 1.0

Definitions & Interpretation

Elective — why does the definition include '…a Domestic Supplier, an Industrial and Commercial Supplier or a Supplier…'? Delete the reference to a Domestic Supplier and an Industrial and Commercial Supplier. The single word 'Supplier' encompasses both types of Supplier in its definition.

I&C Member — should be clause 6.3 and not 6.1

Mandatory — why does the definition include '…a Domestic Supplier, an Industrial and Commercial Supplier or a Supplier…'? Delete the reference to a Domestic Supplier and an Industrial and Commercial Supplier. The single word 'Supplier' encompasses both types of Supplier in its definition.

Clauses

Clause 1.2.7 — modify - 'includes'

Clause 5.2 — why does the clause include '…a Supplier, a Domestic Supplier or an Industrial and Commercial Supplier…'? Delete the reference to a Domestic Supplier and an Industrial and Commercial Supplier. The single word 'Supplier' encompasses both types of Supplier in its definition.

Clause 5.5 — why does the clause include '…a Supplier, a Domestic Supplier or an Industrial and Commercial Supplier…'? Delete the reference to a Domestic Supplier and an Industrial and Commercial Supplier. The single word 'Supplier' encompasses both types of Supplier in its definition.

Clause 5.11 — either a sentence is missing here or Clause 5.11.1 should be brought back one level and the remaining clauses re-numbered.

Clause 5.15 — modify – '…(a **"Voluntary Schedules")**…'

Clause 7.4 — modify – 'clause~~s~~ 7.3'

Clause 7.13 — Should the Gas Forum be hard coded in the SPAA? What if it's name changes or it ceases to exist? Then we would have to propose a change proposal, which seems to us to be a bit bureaucratic.

Clause 7.17 — Clause 20.2 is not the correct cross-reference. It refers to notices.

Clause 7.25 — Should energywatch be added to the circulation list for SPAA Forum minutes?

Clause 7.26 — Prefer 15 Working Days and not 10.

Clause 8.1.2 — modify – '…proper performance of its ~~or his~~ duties and…'

Clause 8.2 modify – second sentence '…shall be prepared by the Shadow EC…'

Third sentence – do we want to state that the first budget would not exceed £200,000? It seems a bit extreme to hard code it in the SPAA.

Clause 9.16 Prefer 15 Working Days and not 10.

Clause 10.1 'Event of Default' should be in **bold** as it is a defined term.

Clause 13.3 Prefer 15 Working Days and not 10.

Clause 14.4 Do we want the SPAA Ltd website address hard coded in the SPAA?

Schedule 4

Clause 1.4 modify - 'for the avoidance of doubt ~~about~~'.

Annex 4 to Schedule 4

Clause 10.1 this clause seems to conflict with clause 10.2.

Clause 10.4 modify – 'In the case ~~case~~ of a corporation…'

Clause 16 modify – '…sentence of ~~r~~Regulation 84 of Table A…'

Schedule 5

Add a new clause:

'Clause 2.5 The incorporation of any part of the SPA from the gas Network Codes.'

Appendix 3

Comments on the Draft Licence Condition

Powergen are concerned about the high level of detail in the proposed draft licence condition. The drafting goes well beyond what is in existence with similar licence conditions obliging suppliers to sign or conform to other industry agreements. We believe the licence condition should be as brief as possible and, ideally, be limited to a simple clause along the lines of 'the licensee shall become party to and thereafter comply with the provisions of the Supply Point Administration Agreement….' This is how the equivalent drafting of the clause requiring suppliers to sign the MRA appears in the electricity suppliers' licences.

We prefer the licence condition to be along the lines of that in existence for the MRA (Electricity Supply Licence: Standard Conditions LC 20). We also believe some of the clauses in the proposed licence condition are better placed in the SPAA itself (for example, the objectives).

However, without prejudicing our views above, we have some specific comments to make on the draft licence condition as follows:

Clause 1

Add to the first sentence as follows 'the licensee shall endeavour to, in conjunction and co-operation with all other suppliers, prepare…'

Clause 5

This clause should ideally be placed in the SPAA itself.

Add to bullet point (b) as follows 'to facilitate the development, maintenance and operation…'

Clause 7

Modify bullet point (a) (ii) as follows 'following consultation with the parties, or representatives of parties, to that agreement [and energywatch/bodies designated by the Authority].

We do not believe it is a good idea to hardcode energwatch's name in the licence condition. If their name changes then the licence condition will have to be updated. This seems bureaucratic.

Modify bullet point (b) as follows 'provisions (which shall be approved in advance by Ofgem the Authority) by virtue…'

Modify bullet point (c) as follows 'provisions enabling parties to the Supply Point Administration Agreement [and energywatch/bodies designated by the authority] to appeal…'

We believe that only signatories of the SPAA should be allowed to appeal against any proposed modification of the SPAA.

Clause 8

Delete.

What do we mean by reasonable? And who determines reasonableness? The SPAA should govern how quickly a change proposal is progressed. It is not for a licence condition to determine this.