



Bryony Sheldon  
Network Codes Development  
Office of Gas and Electricity Markets  
9 Millbank  
London SW1P 3GE

18<sup>th</sup> July 2003

Dear Bryony,

**Gas Retail Governance – Further Consultation**

Gemserve is pleased to have the opportunity to respond to your Consultation on the Supply Point Administration Agreement (SPAA) and I attach our response.

Gemserve was established by energy suppliers in the UK to develop gas and electricity retail processes and to utilise its experience in the design, development and operation of robust governance regimes. The Principles of Good Governance within this Consultation document are therefore of particular interest and Gemserve broadly supports the principles as outlined.

In line with the Government's Better Regulation task Force, we believe that one of the purposes of good governance is to enable self-regulation to develop within the industry. Self regulation within robust governance regimes will allow all stakeholders (including customers) to play an appropriate part in shaping the pace and direction of change. This will result in an efficient, economic and competitive market place.

It is Gemserve's view that the introduction of SPAA, RGMA, the Industry Customer Transfer Project and the potential divestment of Networks by Transco all point to the need for a re-examination of the existing governance arrangements within the gas industry. To this end the Principles of Good Governance should now be used to review, and where appropriate, revise those arrangements.

I hope you find these comments useful, should you wish to discuss anything in this response then please contact Richard Gray, telephone 0207 090 1015, email [Richard.gray@gemserve.co.uk](mailto:Richard.gray@gemserve.co.uk).

Yours sincerely,

Nigel Bromley,  
Chief Executive



## **Gemserv Response to Ofgem's Gas Retail Governance Consultation June 2003**

### **Background**

Gemserv is an independent company originally established by utility companies to develop gas and electricity retail processes in the UK. It was created from the MRA (Master Registration Agreement) Service Company (MRASCo), whose staff resolved many of the challenges in the opening of the Retail Electricity Market in the UK.

As such Gemserv aims to utilise its broad experience in the design, development and operation of robust governance regimes to pave the way for a diminution of regulatory input allowing self-regulation within utilities to develop. Self regulation within well developed complementary governance regimes will allow all stakeholders (including customers) within the industry to play an appropriate part in shaping the pace and direction of change. This will result in a well ordered, efficient and competitive market place with no one interest group able to dominate.

In this context Gemserv welcomes Ofgem's commitment to withdrawing from prescriptive regulation and adds its support to Ofgem's suggestion that the introduction of effective governance of inter-supplier processes within gas retail arrangements will be an important step in creating the conditions necessary for such withdrawal.

It is in the role of independent governance provider that Gemserv makes the following comments, both in general terms and specifically in regard to the proposals contained within the SPAA, leaving matters concerning the substantive content of the Supply Point Administration Agreement (SPAA) Schedules to those parties who will or may be impacted by its introduction.

### **Summary**

Gemserv is committed to developing robust, practical and cost effective governance for the energy industries. It believes that the key issues identified in Ofgem's earlier Consultation on Gas Governance remain and sees the introduction of the SPAA as an important first step towards their resolution. It also believes that SPAA is essential to achieve consistent supplier inter-operability and a necessary pre-condition to any beneficial alignment of governance arrangements between gas and electricity.

There is no doubt that as suppliers are increasingly offering dual fuel deals the business processes in the industries will continue to converge and thus increase the pressure for harmonisation and simplification. Indeed, the Industry Customer Transfer Project may reveal specific opportunities for such change.

These pressures, added to the possible divestment of one or more of Transco's Networks, present an excellent opportunity to review and improve the existing governance arrangements in order to better comply with the principles set out.

Against this background Gemserv offers comments under the following headings;



1. Principles of Governance,
2. GT involvement in SPAA, and,
3. Relationship with other governance regimes.

### **Principles of Governance**

In this response Gemserv regards the scope of “governance” in its widest sense, that is that the SPAA is itself part of the governance regime and not just those provisions which deal with changes to the agreement. In its Consultation Document Ofgem lists six principles or characteristics of good governance that should be adhered to by any “governing body, code or agreement”.

These principles and Gemserv’s comments are;

1. Effectiveness – the agreement, code or body should be able to achieve what it is set up to do, there may need to be some means of enforcement.

Parties to a legal agreement have access to legal redress amongst themselves but usually would need to be able to show that the other party’s action had caused damage of some sort. With an arrangement such as SPAA this may not always be appropriate and so this principle translates into the provision of remedies other than legal action against any party that fails to observe the rules currently in force. Suppliers will in the first instance be accountable to each other through the Forum with compliance ultimately mandated through licence changes. This suggests that the proposal demonstrates adherence to this principle.

It is less clear how it is intended that compliance should be measured or who will be monitoring it, but in principle Gemserv believes that all parties should have a clear understanding of how it is intended to handle such matters. For example, if it were felt appropriate for all parties to positively demonstrate compliance it would be possible to insert provisions requiring periodical returns to the secretariat demonstrating achievement against a set of key performance indicators, or to satisfy an independent business audit of systems and processes. Such positive demonstration would be burdensome and costly and therefore more passive arrangements are desirable, possibly through the sharing of customer complaints and survey information between energywatch and the secretariat on behalf of the Executive Committee.

2. Efficiency – the arrangements put in place should not be administratively burdensome and must be cost effective.

The proposed SPAA seems to embody this principle well with voluntary, elective and mandatory schedules and the creation of a Forum of all signatories overseen by a small Executive Committee itself supported by a secretariat conducting as much business as possible via electronic media. As the form of the agreement is based upon the existing MRA and the majority of domestic suppliers are already familiar with this governance regime from the electricity industry the administration should be largely familiar. Governance of the gas and electricity industries is on a convergent course which will lead to greater simplification for



companies active in both sectors and hence reduce costs.

3. Transparency – appropriate information should be available to signatories and non-signatories concerning the operation of the agreement and its governance procedures.

In principle Gemserv supports the points made in the consultation document. Governance should as far as possible be open to public scrutiny. The general rule should be that everything is published unless a case can be made for keeping it confidential to the parties. This will strengthen and add validity to the proposed arrangements.

4. Participation – contributions should be permitted from all appropriate parties.

In keeping with the point made above responses to change proposals coming from a wider range of interested parties will help to refine those proposals and the agreement. This will better facilitate its objectives when compared with limiting the constituency to signatories. It is however less clear that non-signatories should be able to propose changes. In principle it seems inappropriate for parties not bound by an agreement to be able to propose the introduction of additional obligations or to cause the signatories to incur additional costs.

Ofgem points to the work presently under way to recognise “third party participants” in Transco’s Modification Rules and to afford them the right to raise proposals. As a principle Gemserv would agree that the introduction of SPAA should not diminish the rights of customers, however it is not yet established what limitations will be put on the scope such third party participants may have to propose change to Transco’s Network Code. It is more practical to envisage beneficial customer representation within the change process which falls short of either raising changes or voting upon them.

5. Accountability – signatories and the body or agent operating the agreement must be mindful of and accountable to the parties.

The proposed arrangements should work well in this respect. Suppliers will be accountable to each other through the SPAA Forum and Executive and ultimately to Ofgem as compliance with the agreement will be a licence requirement. The Executive is accountable to the Forum which elects it and appoints a secretariat to manage the operation of the agreement and its change control. The secretariat is clearly accountable to the Executive and will have established service levels in its contract of service.

6. Consistency – the agreement will not operate in isolation and needs to recognise how it will relate to other governance regimes.

This principle is one where further work may be required. SPAA was proposed as a vehicle to secure inter-supplier communication and co-operation, initially in the transfer of meter assets in the competitive domestic market. As such it provides a home and change control mechanism for the RGMA baseline. This arrangement should work between suppliers but in practice there are other parties who will need to be operating under the same or very similar governance, principally meter providers and asset managers. This is explored in more detail in the



following sections.

Gemserv would also suggest adding the following general characteristics to the list;

7. Direction – the agreement and governance framework should have some overall objectives by which to judge the desirability of change.

It should be clear why the agreement was introduced and how the appropriateness and priority of any proposed change would be judged. The introduction of relevant objectives into the supplier licence should satisfy this general requirement and also give guidance to the Executive in deciding whether a proposal should be accelerated through the procedures. In this respect Gemserv believes that in keeping with the principles of transparency and accountability the Executive Committee should publish guidelines for deciding “emergency” status.

8. Impartiality - the agreement and rules for change control should be operated for the benefit of all legitimate constituencies and without undue influence from any one of them.

In addition to being operated impartially the principle of transparency should make it clear to all that this is the case. This should ensure that there is no cause for any constituent group or individual party to feel they have been unfairly discriminated against. The proposed SPAA constituencies, voting and appeal arrangements together with independent provision of the secretariat services should provide a balanced and impartial regime.

9. Evolution - feedback on the operation of the rules governing change and how they could be improved, and then the ability to change them.

It is clear in SPAA that the change control arrangements are part of the agreement and can themselves be changed by raising a proposal. It will be a matter for parties, the Forum and Executive to monitor the change process in operation and to decide where beneficial change can be made. Gemserv believes that the ability of all parties to propose changes in the modification process is important to prevent any party or constituency from skewing the process in its favour.

Gemserv believes that these principles should be used to review existing governance regimes and it is worthy of note that the SPAA is itself closely based upon the MRA.

### **GT Involvement in SPAA**

There are two grounds on which Gemserv believes that for the SPAA to function properly as a governance arrangement GTs need to be involved. Firstly because Transco will remain the dominant meter provider it must be tied into the RGMA baseline in order for it to be preserved, and, secondly to support the migration of SPA processes from Network Codes when the time is right.

The initial reason behind the development of SPAA was to ensure the smooth operation of the competitive domestic metering market. This boils down to a need for the computer systems operated by different parties to follow the same rules at the same time. If Transco is not obliged to follow all changes to RGMA in the same



timeframe as suppliers then there could be widespread confusion and a breakdown in the customer transfer processes. It would therefore seem odd (and inappropriate) for Transco to have no formal ability to propose changes to RGMA as will be the case if it is not involved in SPAA

It is possible for Transco to be obliged within its metering contract to follow RGMA changes as they are approved and with further work this may provide a pragmatic solution. However, this would require a coordinated approach to changes in SPAA, Transco's metering contract and supporting computer systems which at the very least would proliferate separate governance arrangements and undermine the principle of consistency set out above

The second point concerns the anticipated transfer of SPA processes from Network Codes into SPAA. It would seem sensible that processes which are essentially the concern of suppliers should be dealt with under the supplier governance arrangements within SPAA rather than that of shippers and transporters in Network Codes. If this transfer is to be achieved without industry disruption it will require very careful co-ordination of two separate change mechanisms running under different rules, to different timeframes and involving different parties. Whilst the example of parallel governance in respect of the Joint Change Process for BSC and MRA is successfully managed in the electricity industry it must be remembered that Gemserv and Elexon are broadly neutral to the outcome of changes which is not reflected within gas

Simply involving GTs in SPAA will not in itself remove the potential hazards but should help in the necessary co-ordination. There is a good case to modify and harmonise the change processes in some way. Further work will need to be done on this before the migration process can start.

These arguments point for the need to have GTs involved but do not necessarily require accession. It seems highly probable that the full inclusion of GTs would require more work than could be accomplished prior to RGMA go live, but there may be scope for a more pragmatic, voluntary, solution which could be accomplished in a shorter timescale.

### **Relationship with other Governance Regimes**

Gemserv believes that proliferating governance regimes should be avoided wherever possible as it will introduce inefficiency, cost and risk for industry participants.

As stated above the anticipated migration of SPA activities into the SPAA will require further work on the two change control processes to ensure consistency and continued operability without a detrimental effect on customers. This work needs to be undertaken against the background of the Industry Customer Transfer Project and National Grid Transco considering possible divestment of one or more of its Networks.

Gemserv believes that the time is right for a fundamental re-examination of the existing governance regimes in the light of the proposed Principles of Governance.