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18th July 2003

Dear Bryony,

Consultation Document: Gas Retail Governance

Thank you for the opportunity to comment on the above consultation document. Statoil (UK) Ltd. (STUK) would like to make the following comments. STUK is responsible for the marketing of potential supplies of its parent company's Norwegian equity gas and the Norwegian State's equity gas in the UK market. Due to its size, proximity to Norway and its prospective gas supply shortfall in the next few years, the UK market is of great interest to us.

STUK's comments are not confidential and can therefore be placed in the Ofgem library.

Please note that a response to this consultation document will also be submitted by the Gas Forum of which STUK are members. However, it should be noted that the comments in this letter take precedence over the Gas Forum letter where there appear to be dissimilarities on certain issues.

STUK's response will address the questions which Ofgem have set in their consultation document on Gas Retail Governance, including some general comments that we believe to be important towards discussions regarding membership of I&C suppliers to SPAA.

STUK have been active in many industry forums involved with increasing the level of competition within the downstream gas retail market. We have submitted resource to the development of RGMA, which essentially is the separation of Transco's transportation and metering business. This separation will create the requirement for new governance when sections of the Network Code will need to be migrated into separate governance arrangements.



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The GIGG group have identified that the RGMA baseline, which sets out the processes and data flows under which all suppliers must comply when metering competition commences, should be incorporated as a mandatory schedule to SPAA with the development of a change control structure to manage the document. Currently the RGMA Change Control Board (CCB) manages changes to the RGMA baseline and it has been evident that changes, which have been recently proposed, have not had a significant impact on the industry. This has led industry members to feel confident that the baseline represents a significantly stable platform under which data flows between parties can be exchanged. STUK therefore believes that the RGMA baseline should not be included as a schedule of any status within SPAA but should in the short term be housed in a similar structure to the CCB where it would continue to develop until competition was fully advanced and when commercial market drivers were able to take over.

Having attended a number of GIGG meetings, STUK have become increasingly concerned over the development of SPAA with the requirement to include the same set of governance structures for both I&C and Domestic suppliers. STUK believe there to be many differences in the manner in which I&C suppliers and Domestic suppliers operate, and we are concerned that these different market sectors are being allowed to develop within a single structure of governance. Currently, I&C suppliers operate under a voluntary basis under the Industrial and Commercial Code of Practice (ICoP), where there appears to be fewer issues affecting end users on areas such as erroneous transfers, misuse of the objections process, problems encountered with change of supplier process etc. These issues primarily affect the Domestic market and STUK therefore do not consider it appropriate for I&C suppliers to be compelled under a licence condition to be subject to SPAA.

Section 5:

The principles of good governance, and the extent to which the proposed SPAA conforms to them.

Effectiveness

STUK believe that the SPAA agreement does not necessarily have to be bound by a licence condition in order to demonstrate its effectiveness. The voluntary membership of both the DcoP and ICoP are good examples of self-regulation and best practices without enforcement mechanisms being in place. STUK believe that effectiveness is difficult to predict beforehand and can only be best determined retrospectively.

Efficiency

Efficiency of SPAA will evolve over time when robust working structures are in place. However, STUK are concerned that costs associated with developing and running new governance processes adds additional upfront costs upon suppliers, as currently this is not the case with the Network Code. We are unsure how suppliers will manage the additional costs of governance and whether these costs will be borne by suppliers or passed onto end consumers.

Transparency

STUK believe that it should be Ofgem and not the SPAA Executive Committee as currently proposed, who could grant derogations from obligations in mandatory schedules. This would ensure that no unfair advantage has been gained by any supplier.



Participation

STUK believe that SPAA accession should not be mandated by a new standard condition to the gas supplier's licence for the same reasons identified above. However, consumer representatives should not be entitled to raise or vote upon change proposals as they will not be signatories to SPAA or bound by either liabilities or costs.

Accountability

STUK are unclear over the merits of including elective schedules when provisions for voluntary and mandatory schedules already exist. As no penalties exist within SPAA for non-compliance of an elective schedule, STUK believes that elective schedules would be an administrative burden adding no value and should therefore not be included in SPAA.

Consistency

The SPAA has been developed to date to take account of gas retail governance and should therefore be focused primarily on activities that relate solely to the gas market. It is well known that harmonization of processes between electricity and gas is an aspiration of certain parties within the industry, predominantly the large domestic suppliers. STUK believes that I&C gas processes are fundamentally robust and meet the needs and expectations of our customers and that the case for harmonisation in the I&C market is far from proven. Issues affecting customer transfer processes has an undue bias towards problems within both electricity and the domestic market. STUK does not believe that the problems identified within the Ofgem consultation are universal, and believes that any attempt at full harmonisation has the potential to damage the interests of I&C suppliers and customers. Gas and electricity markets are two separate industries and alignment of activities may not be suitable. For instance, the electricity market does not recognise the entity of a shipper who in the gas industry holds a contractual relationship with the gas transporter.

Whether a 10 day consultation period is appropriate

There is little justification in reducing the period to which the industry responds to consultations from 15 days in the Network Code to 10 days other than the fact that this aligns with practices in the electricity market. Reducing this window to 10 days could cause some suppliers being excluded from making appropriate representation caused by higher workload especially for smaller organisations. This would add further questions to the efficiency of the governance process as detailed above.

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

STUK believes that customer's interests are best served if change proposals could be granted with an urgent status as per the current guidelines within the Network Code. Criteria similar to that in Network Code must be defined in order permit a change proposal with an urgent status. Proposals that merit an urgent status should be granted when there is a real likelihood of significant commercial impact upon either suppliers, customers, or the GTs.

The preferred method for the introduction of schedules into the SPAA

STUK believe that any new schedules should have an intended status of introduction on the change proposal but that all schedules should initially be introduced on a voluntary status. The timescales for amending the status of the schedules needs to be developed in order to provide clarity on this issue.



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

STUK are comfortable with the inclusion of a consumer representative to SPAA who are able to obtain documentation on various proposals. We would however be concerned if a non-member were able to raise change proposals and cast votes that could either directly or indirectly affect suppliers and their organisations. STUK are comfortable with Ofgem's recommendation of Energy Watch as the appropriate consumer representative.

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

STUK believe that a separate appeals procedure should be in place to remedy issues of unfair prejudice.

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

STUK would support Ofgem's concern over protecting various areas within SPAA. This will ensure that changes cannot be made unless granted by Ofgem. However, STUK would like to re-iterate our concern on whether to include elective schedules as Ofgem's list of provisions requiring protected status include the status of schedules, of which elective is included.

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

STUK shares Ofgem's views and has strong concerns over the issue concerning voting by reference to the percentage of votes cast rather than the total votes capable of being cast. Under this proposal, this would mean that those suppliers casting their votes based on their market share of MPRN's (capped at 20%), are able to receive extra votes through the reallocation process and those suppliers are therefore able to allow changes to proceed which relatively few suppliers have voted for.

STUK believes that further work needs to be undertaken on the issue over voting as this could have significant impact upon the operation of SPAA. Adopting a similar voting process to the Network Code with one vote per supplier licence could be regarded by some as being a more favorable option. Also, instead of having 2 constituencies, 3 could be proposed which would include domestics supplier only, domestic and I&C supplier and a pure I&C supplier only. This would ensure that change proposals raised for example by a pure I&C supplier could not be unfairly out-voted on the basis of MPRN market share by a domestic and I&C supplier.

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

As stated earlier, STUK believe that any application made by a supplier for being excused from complying with an obligation should not be granted a derogation by the SPAA EC but by Ofgem as this could lead to inconsistencies and potential conflict in the future.



Section 6:

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

STUK believe that there should be no licence conditions placed upon I&C suppliers to sign up to SPAA. This contradicts Ofgem's role within SPAA of moving towards 'lighter touch regulation' and thus increases regulatory involvement than at present.

There are significant dissimilarities between the Domestic and I&C markets and placing a licence condition upon the Domestic suppliers would address Ofgem's concerns over the protection of end consumers, for example from issues relating to data exchange during the transfer process.

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

STUK are concerned over the possibility of dominant behaviour towards small suppliers by suppliers who are active in both market sectors. For example, a change proposal which could incur costs and which has been raised by a pure I&C supplier could be out voted by another I&C supplier who are also dominant in the domestic market. The consequence of this is that through the current voting mechanisms, pure I&C suppliers would not be in a position to effect change.

Section 7:

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

As mentioned earlier, we believe that the ICoP works well under the auspices of the Gas Forum on a voluntary basis and therefore does not need to be migrated into SPAA.

Section 8:

Whether GTs should become party to SPAA

Whilst GTs have a contractual relationship with shippers and not suppliers, it could be argued that being a party to SPAA is not an issue. However STUK believe that Transco as the main service provider of regulated metering assets should become party to SPAA as the level of influence, in the retail gas market, could impact upon other suppliers. For example, under the metering contracts, TMAM have maintained their right to veto against RGMA changes, which would place suppliers in breach of their licence condition if any changes to the RGMA mandatory schedule were approved by Ofgem under SPAA.

Subject to above, the appropriate timing of GT accession to SPAA

It is difficult to envisage how long it could take GTs to become members of SPAA, as there is much debate to be had within the SPAA Transporters Workgroup especially on the issue concerning funding. To date there have been 6 meetings of this workgroup and STUK believe that more discussion needs to take place especially with Transco present at these meetings.



Section 9:

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

STUK believe that the arrangements between suppliers and their meter asset providers are based on contractual negotiations and should not therefore be subject to governance under the SPAA. STUK believe that there should be arrangements in place for the transfer of assets between suppliers but that these should again not be subject to governance under the SPAA.

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

STUK do not believe that SPAA should have any role over the Transco metering contracts as again, this is a contractual agreement between suppliers and TMAM and as MAM's are excluded from participating under SPAA, obligations should not be placed upon them.

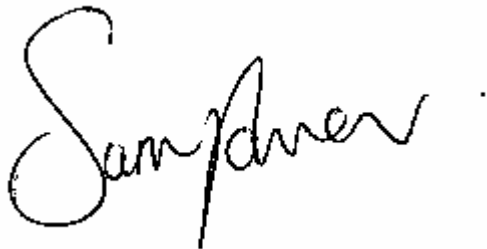
Section 10:

Ofgem would welcome views on the indicative timetable

The industry have decided that the November 2003 date for RGMA go live is no longer attainable for various reasons and we would therefore question the need to have a tight timetable as proposed by Ofgem. It was recognised at the beginning of discussions that SPAA would be developed primarily to accommodate the development of metering competition through the separation of Transco's metering from it's transportation business. As no further date has been decided upon for RGMA go live and the possibility of this being introduced sometime in 2004, we believe that the timetable for SPAA should be relaxed to allow the industry to debate the many issues arising from this consultation document. For many suppliers who have not been active in discussions within GIGG, the Ofgem consultation document has provided them with more detail on the new governance arrangements being proposed which will probably require additional time in which they will need to discuss internally within their organisations.

STUK trust that our comments will be given due consideration and would welcome the opportunity to meet with Ofgem to discuss in more detail the issues concerning gas retail governance. Should you wish to discuss any aspects of this response further please contact me on the above number.

Yours sincerely,



Sam Parmar



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Regulatory Affairs Advisor



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