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Dear Bryony,

Gas Retail Governance – Further Consultation

Affinity Power is pleased to provide a response to Ofgem's further consultation on the proposals for changes and additions to governance arrangements for the gas sector.

As you are aware, since the early days of discussions in this area, our representatives have participated in the various industry groups that have been considering the needs of future Gas Industry Governance, as well as developing the Supply Point Administration Agreement (SPAA). Indeed, they drafted much of the first "Improving Customer Transfers" consultation document, published by Ofgem in November 2000, which first suggested that there might be a need for changes in governance arrangements. Many of our concerns have been raised previously within the various working groups, so in this response we have set out just what we consider to be the major issues.

Arrangements for agreeing mandatory changes to the regulatory framework

We have consistently stated our view that the SPAA mechanisms by which processes or obligations become mandatory on licencees, or by which changes are made to already mandatory obligations, should demand the same level of industry agreement as are required for proposed licence changes under the Collective Licence Modification rules. The impact on a licensed supplier will be broadly the same, whether the requirement is set out in a licence condition or under the SPAA, in that it will be required to comply with a set of obligations. In our view suppliers should therefore have an equal ability under either regime to protect themselves against the imposition of inappropriate changes in the overall regulatory framework.

Therefore, we do not agree with the voting arrangements currently proposed within the SPAA, specifically for creating and amending mandatory schedules. We recognise that the SPAA proposals for voting thresholds are similar to those already in place in the electricity sector, but we have increasing concerns about the representation of new suppliers in that sector and about the flaws in the governance arrangements, which are beginning to be debated. We will be raising these with MEC, but emphasise in this response our view that the MRA governance arrangements are not a sensible model for the gas sector to adopt.

Our current view is that the SPAA as currently drafted could result in significant anti-competitive effects for smaller suppliers, as well as serious barriers to entry.

Unfortunately, we do not take complete comfort from the reassurances provided by Ofgem at the Retail Gas Governance Seminar on 4th July that a disadvantaged supplier would be able to appeal decisions to Ofgem for determination. The introduction of the proposed SPAA could provide a mechanism through which the incumbent industry players, with the support of particular sections of Ofgem, adopt unsatisfactory processes that might address immediate problems, but also introduce barriers to entry or significant disadvantages for new entrants. For example, we consider that the Erroneous Transfer Voluntary Compensation Scheme, and the Assignment of Debt processes are deficient in many respects, and are not yet fit for inclusion as mandatory schedules. Ofgem has endorsed the efforts of the incumbent suppliers on these initiatives, without apparently ensuring that the interests of new entrants are adequately considered.

On a detailed issue, we believe that any schedules introduced into the SPAA should be brought under its governance as “voluntary” or “elective” schedules and only made “mandatory” through the SPAA governance (subject to a voting mechanism that is consistent with that which is in place for licence modifications). This approach should help to ensure that such processes and obligations have been defined and documented to a common set of standards and reviewed by all relevant SPAA participants (rather than just the suppliers who are members of the Gas Forum and have been involved in their development). We would not support the adoption of processes and obligations, which have been developed outside the SPAA governance arrangements, directly into the SPAA as mandatory schedules.

Inclusion of transporters and other market participants

At the early GIGG meetings the inclusion of transporters, shippers and potentially other market participants as parties to the SPAA was proposed and discussed at some length. Ofgem notes in its consultations that the creation of the SPAA would allow the opportunity to move existing Supply Point Administration (SPA) provisions from the various Network Codes into the SPAA. Indeed its name reflected a desire to do so. However, a decision was made, supported by Ofgem, that an urgent solution was needed to support impending metering competition, and that there was therefore insufficient time to consider the wider arrangements that would be needed for the inclusion of parties in addition to gas suppliers. As a result, the industry has adopted a phased approach, but now finds that there could still be time to address the wider scope of SPAA.

We believe that major benefits could be gained from the inclusion of gas transporters at the point at which the SPAA is introduced, and that it could be significantly more difficult to develop the SPAA to include gas transporters at a later date. Furthermore, the transfer of SPA into the agreement might best be facilitated by inclusion of the gas shippers within the SPAA, in some form, if only to allow for the transition of arrangements from one governance structure to the other.

We suggest that it would be very useful for Ofgem to combine together the consultations on issues related to the inclusion of gas suppliers and gas transporters into the SPAA, rather than consult separately. We would also encourage Ofgem to ensure that issues related to the funding of provision of SPA systems and related governance are considered in combination with the overall gas industry governance arrangements. It would be

disappointing if the costs of providing SPA services and governance, which Transco is allowed through its price control, were not transferred for the benefit of the industry.

Change control for RGMA mandatory processes

One of the major drivers behind the development of the SPAA proposals has been the apparent need to have such governance to allow the RGMA baseline to be managed effectively. On a number of occasions we have questioned whether this is the only, or most appropriate solution to support the introduction of competition in gas metering.

As discussed at the seminar on 4th July, there now appears to be some uncertainty about whether the proposed SPAA could be used to govern the RGMA baseline, given the need for Transco GT and Transco MAM to participate in the change control arrangements and their exclusion from membership of the current form of the SPAA. The points we raise in the previous section would appear to be relevant here as well, but we find it extraordinary that this issue has apparently only just been recognised by the relevant working groups.

The industry has continually been assured by the relevant working groups that only a minimum set of the RGMA processes (those absolutely necessary to achieve interoperability) would become **mandatory** schedules under the SPAA (if that were the mechanism to be implemented). Industry was told that changes to other aspects of the RGMA baseline could be managed using the SPAA change control mechanisms, but suppliers and market participants could choose whether they adopted them under elective schedules. We are concerned that the set of processes proposed to be included within a mandatory schedule appears to have increased significantly over time. We believe that it may be necessary to undertake a robust assessment of any schedules developed by the working groups, before accepting them as mandatory.

Ofgem has raised the issue as to whether Transco's metering contract should be under the governance of the SPAA. In our view it seems inappropriate for it to be included. However, it may be beneficial for SPAA arrangements to be used to manage changes to the RGMA baseline, and for Transco's regulated metering business to be obliged to comply with the RGMA baseline. However as highlighted above this raises questions about how Transco's metering business and all other gas metering businesses would be able to participate in the governance of the RGMA baseline without being party to the SPAA itself.

Ofgem does not raise in this latest consultation the question about the potential for Transco's regulated metering business contracts to distort competition between gas metering businesses. New entrants to the provision of gas metering services may find it more difficult to have such concerns addressed effectively if Ofgem has already endorsed Transco's metering contract through its acceptance of the contract as a mandatory SPAA schedule.

In our view generally it would seem inappropriate for Ofgem to encourage the industry (or just the licensed domestic suppliers) to adopt the SPAA and associated licence obligations, or make any judgement about the SPAA itself, before these issues have been more thoroughly considered and a number of issues resolved.

Inclusion of I&C suppliers

There has been significant resistance from several I&C suppliers to any proposal that they should be obliged to accede to and comply with a suitable SPAA. Any changes to the

industry infrastructure that apply for domestic customers would be likely to have a practical impact on arrangements for I&C customers, so it is not possible simply to adopt arrangements that only apply to the domestic sector. The governance arrangements will need to allow I&C suppliers to participate effectively in the management of changes, as has been discussed in the GIGG Constitution Group.

We do not believe that the SPAA discussions have reached a sensible position on this aspect yet, partly due to the haste to have arrangements to support RGMA in the domestic sector. More effort is needed to encourage many more I&C suppliers to feel enfranchised and to participate in the debate.

Harmonisation between gas and electricity sectors

We have already noted that we have concerns about the governance arrangements currently in place for the MRA. In particular we believe there will need to be significant changes before new entrants and suppliers with smaller customer bases obtain effective representation within these arrangements. Those involved in MRA governance (suppliers, distributors and administrators) could benefit from greater exposure to the issues that were discussed extensively within the GIGG Constitution Group.

There probably would be benefits for both customers and suppliers from harmonisation of certain aspects of the infrastructure used in the gas and electricity sectors, and there is even scope for harmonisation across other sectors. However, we would resist the apparent desire of many of the incumbent electricity suppliers to transfer much of the electricity arrangements into the gas sector, because these arrangements are now generally acknowledged to be overly complicated and result in problems, delays and costs. They also present higher barriers to entry than the current gas sector arrangements.

Customer representation

Affinity Power would welcome the inclusion of customer representatives within the gas governance arrangements. Indeed this is a role that energywatch is increasingly taking on, highlighting the need for changes in certain aspects of the industry infrastructure, such as customer transfer processes. We have suggested that it would be helpful for Ofgem to define more clearly the basic principles for customer representation that it believes should apply across all industry governance arrangements.

We believe that it is appropriate for customer representatives to be able to raise proposals for changes to industry arrangements, but that they should not be entitled to vote on change proposals, nor to ask Ofgem to consider an appeal against decisions. If customer representatives could both propose changes and appeal decisions there would be little point in involving licensees in the process.

In summary, we believe that there are many issues still to be resolved before it would be sensible to proceed with the introduction of both the SPAA and a licence condition to oblige gas suppliers to comply with its mandatory requirements. It is disappointing that most of these issues were raised in the early discussions, but dismissed because of the apparent need to introduce a solution quickly without considering its potential shortcomings. The latest delays in the RGMA programme and the stuttering start to the project to continue the review of scope for improvements in customer transfer processes now give the industry a



breathing space in which to address the shortcomings in the proposals set out in Ofgem's latest consultation.

We hope that Ofgem recognises the benefits that could be obtained by allowing more time, and not encouraging the industry to adopt inadequate governance arrangements. This can only be to the benefit of all suppliers, new entrants, other market participants and, most importantly, the gas consumers.

We would be pleased to discuss the points we have raised and other aspects of the consultation with Ofgem.

Yours sincerely

Stephen Nugent
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