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Dear Bryony

GAS RETAIL GOVERNANCE: CONSULTATION RESPONSE

Thank you for providing EDF Energy with the opportunity to comment on your consultation document relating to gas retail governance and also the draft Supply Point Administration Agreement (SPAA). This response represents the views of EDF Energy as a major energy supplier, distributor, and supplier of metering services. I confirm that our response is not confidential and may therefore be placed on your website.

For ease of reference, this response is set out in three separate sections as follows**:**

1. General comments relating to the main consultation document;
2. Specific comments on the questions posed within the main consultation document;
3. Comments on the content and drafting of the SPAA document.

In addition to the above, an appendix is attached to highlight typographical errors within the draft SPAA.

Section 1: Consultation Document – General Comments

EDF Energy has been fully engaged in the development of the SPAA and has been represented at the Gas Forum, Gas Industry Governance Group (GIGG) and the Constitution Working Group, formed as a sub-group of GIGG. In addition to the commitment of resource to these working groups, EDF Energy was also a contributing member to the fund established by the Gas Forum specifically designed to facilitate the development of the SPAA.

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We very much welcome the proposed introduction of the SPAA and regard it as an important development in providing the retail gas market with a robust governance framework supported by licence requirements. This will be essential if the new requirements being introduced via the Reform of Gas Metering Arrangements (RGMA) programme are to be successfully and effectively implemented.

In the longer term, we also regard the SPAA as having the wider potential to accommodate elements of gas retail governance currently contained elsewhere, for example in the Domestic and Industrial Codes of Practice and the Network Codes. This in turn should facilitate closer harmonisation of the governance structures within the retail energy markets, the benefits of which have already been seen in the joint work undertaken by gas and electricity suppliers to implement the Erroneous Transfer Customer Charter.

The introduction of metering competition will undoubtedly add an additional layer of complexity into the change of supplier process and require that suppliers have access to information relating to the ownership of the meter asset. The implementation of new data flows to support the enhanced functionality will require consistent application backed by robust governance, based on the supplier hub principle and complementary to commercial arrangements, to ensure that the processes work smoothly and do not adversely impact on customers.

Disciplines for change similar to those employed under the Master Registration Agreement (MRA) in electricity and applied to the maintenance of the Data Transfer Catalogue are therefore important. This concept is particularly relevant if the issue relating to communication between suppliers and independent GT (IGT) networks is to be addressed as a future benefit of the SPAA, especially if, as expected, the number of customers connected to such networks continues to grow.

Although outside the scope of this consultation, EDF Energy is firmly of the view that there should be rights of appeal against Ofgem's decisions, on their merits, under SPAA. This is a multi-lateral instrument which provides for the industry-wide governance of the gas retail market processes. Ofgem has sole and final decision-making power over changes to the most important provisions of SPAA, and will also hear and determine appeals by aggrieved parties against governance decisions. We believe that a right to appeal to an independent party would be appropriate and desirable, since, by increasing the transparency and accountability of Ofgem's role in the process, it would have the effect of increasing the confidence of all relevant parties (including consumers) in the operation of this retail market.

For the record, this is also EDF Energy's position in relation to Ofgem's decisions under the BSC, CUSC, Network Code, and MRA.

Section 2: Consultation Document – Response to Specific Questions

Subject to our comments above on formal rights of appeal, the principles of good governance set out in the main document are robust, and we endorse them. We particularly agree that mandatory provisions within SPAA should be kept to a minimum, with this status only being conferred when it can be shown that voluntary or elective status is not sufficient to achieve the objective of a particular provision. It is not clear that SPAA in its current form fully complies with this principle – see, for example, our comments below on whether the provisions referred to in paragraph 5.34 should be given 'protected' status.

Is a ten day consultation period appropriate?

The provisions for impact assessment of changes as contained in Clause 9.8 of the SPAA will, in our opinion, not always be sufficient to enable a robust review to be undertaken by parties. If, however, this is taken as the minimum window that will be allowed to review changes, which is our understanding, then the issue becomes less of a concern. Many of the changes entering the formal process will have been subject to prior consultation, in which case a minimum ten day review period should be sufficient.

What is more important, in our opinion, is the ability of the SPAA and MRA change processes to facilitate efficient joint impact assessment and co-ordinated implementation of common changes. As this might become evident only with experience, both SPAA EC and MEC will need to keep the relative performance of the change processes in this area under close scrutiny.

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

EDF Energy recognises that there will be occasions when it is necessary to introduce changes within a window not normally achievable via the main change process. The SPAA Executive Committee is the appropriate body to invoke such a process. We agree that the development of a guideline to underpin this would be in the interests of both the EC and SPAA parties, but we are of the view that the decision to develop such criteria should rest with the SPAA EC rather than be mandated within the agreement.

The preferred method for the introduction of schedules into SPAA

This requirement is fundamental to the development of the SPAA, which, as currently drafted, provides a framework of how, rather than what, to govern. Both of the methods identified by the GIGG will achieve the objective of facilitating the inclusion of schedules to the SPAA, so the preferred option should be that which best supports the process.

If the chosen approach is to permit the inclusion of any new schedule only as 'voluntary', this may have the effect of delaying the adoption of provisions that are clearly intended to be mandatory. There would be a need to pass the

proposal through at least two change cycles, firstly to adopt the schedule and secondly to amend the status. This would appear to be both costly and time-consuming.

If, on the other hand, the change process enables the initiator to indicate the status of a schedule at the outset, this has the potential to achieve the objective in a reduced window without reducing the transparency of the process. It also allows flexibility in that the initiator can elect either to raise the change as voluntary, with a view to raising a further change as mandatory at a later date, or to opt for a mandatory proposal at the outset.

Based on the above, EDF Energy would support the latter option.

The appropriate degree of consumer representatives' participation in the SPAA

The proposal that customer representatives should be given a participative role within the SPAA was introduced towards the end of the constitutional debate. Ofgem made representations at meetings with the GIGG but it is our view that the case for customer inclusion has not been adequately made. We believe that this is a matter for further discussion amongst suppliers, which can be accommodated within the SPAA Forum. The issue should not be allowed to result in a delayed implementation of SPAA.

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

EDF Energy considers that the provisions for appeal proposed within the SPAA are valid, including the right to appeal on the grounds of unfair prejudice.

Ofgem challenges this view on the basis that matters of unfair prejudice could be considered at the same time that the change itself is considered. Whilst this might be a valid approach for those changes that are referred to Ofgem, it will not apply to changes falling within the remit of the SPAA Forum. In addition, it may be the case that the regulator will be unable to consider each suppliers' viewpoint in coming to a decision when the full reasons for taking a particular position have not been stated, possibly for commercial reasons. Appeals might also be raised where the true impact of a change has not been appreciated until late in the life cycle, leaving the appeal route as the only option.

In view of the above, we believe that the prudent course would be to retain a separate appeals process, in line with that operated within the MRA.

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

Clause 9.1 of the SPAA refers to those clauses that, following discussion at the GIGG, require 'protected status'. It is our view that, in keeping with its aspiration to move towards lighter-touch regulation, Ofgem must make a robust

case in respect of each additional sub-clause that it wishes to include in this category.

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

As mentioned in the consultation document, the level of agreement that is required to enable a change proposal to be approved is a delicate balance between limiting any undue influence of a relatively small number of parties and not wishing to stifle the change process. As one of the representative suppliers on the constitution sub-group of GIGG, we recognise the degree of discussion that preceded the proposal to set the threshold at 65% of votes cast.

We understand Ofgem's concern that all suppliers should be able to participate fully in the change process and we believe that the SPAA procedures do indeed facilitate this objective. There should be no reason why a party that wishes to cast a vote in relation to any change should be prevented from doing so. We are therefore of the opinion that the absence of a vote on any matter should be taken as a declaration of neutrality or no interest. To do otherwise could have the dual effect of stifling change and increasing the number of appeals by parties. We therefore support the process as drafted.

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

Ofgem's role in the granting of derogations should be limited, as proposed, to the right (which is also enjoyed by all parties to SPAA) to make representations and objections in relation to any application for a derogation, supplemented by Ofgem's special right to hear and decide appeals against decisions by the SPAA Executive Committee to grant derogations.

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

EDF Energy believes that it is essential for all classes of supplier to become parties to the SPAA and that the only practical way to achieve this is through a licence obligation. We are aware of the view that the SPAA is primarily of benefit to domestic suppliers and we recognise that issues facing the I&C market can be essentially different from those in the domestic arena. It is our view, however, that the objective of common governance must override these concerns. The SPAA makes adequate provision for I&C suppliers within the constitution and their inclusion would better facilitate the development of the retail market going forward.

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

We are dealing with this in a separate letter.

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

We do not believe that the SPAA is likely to have any anti-competitive effects. It has been drafted as a fully inclusive agreement with appropriate checks and balances to ensure that the interests of smaller suppliers are adequately protected. In addition, the absence of any requirement to undertake testing, in favour of a self-certification approach, should not create a barrier to entry for new suppliers in the gas market.

Whether the inclusion of schedules [such as those at outlined in the document] would entirely replace the existing Codes of Practice

EDF Energy supports the work being undertaken by the Domestic Code of Practice Group (DCoP) to review the existing voluntary agreements and recommend the candidates for inclusion as schedules into the SPAA. While these voluntary agreements have played an important role as enablers to supplier processes, the lack of any robust governance is an issue.

EDF Energy has recently invested in an automated system to facilitate the sending and receiving of data flows within the BISCUIT process. This system was developed to the standards contained within the BISCUIT specifications. Live operation has highlighted a widespread lack of compliance with these standards. Inclusion of BISCUIT as an elective schedule within the SPAA would provide a more suitable mechanism to pursue such non-compliance.

We support the view that there are two options for the schedules currently under DCoP. They are either candidates for inclusion as schedules within the SPAA, with modifications as necessary (some possibly as statements of best practice), or they are candidates for deletion. Once this has occurred, the DCoP should be subsumed within the SPAA, but we would envisage that it would have a role as an ongoing standing group within the overall umbrella of the SPAA.

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

We believe that this work should be undertaken similarly to the proposed way forward for DCoP as described above.

Whether GTs should become party to SPAA
Subject to the above, the appropriate timing of GT accession to SPAA

EDF Energy has supported the view that the optimum approach to the introduction of the SPAA is by means of a phased implementation. This view was primarily driven by the limited time available to deliver the SPAA in time to support the implementation of REMA. As this date has moved out, we have had the opportunity to reassess our position. While we still support the view that a phased approach is sustainable, with SPAA initially as a supplier

agreement, we are of the opinion that GT accession to the agreement is essential to the effectiveness of the SPAA going forward. We would therefore recommend that proposals to achieve this at the earliest opportunity be progressed. With regard to other potential classes of SPAA Party, we do not consider that the inclusion of either shippers, metering agents, or customer representatives is necessary in the short term, although we do recognise the important role that they will have as interested industry parties.

For the period of time that the SPAA remains as a supplier agreement, there is a risk that GTs will be excluded from debate relating to the development of the baseline. To mitigate against this we would like to see a clearly defined mechanism through which GTs will be able to participate in the process. This could be an extension of the role played by IMSIF or an alternative in which we would see Ofgem playing a key facilitation role.

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

We support the view that accession to the SPAA should be a condition of the GT licence in the same way as is proposed for suppliers.

How the funding of the change should be apportioned

We note the preference expressed by GTs for changes to be paid for on a 'gain share basis'. We do not support this view. Apart from the great difficulty of developing a mechanism to calculate and apportion benefits, this concept is not in line with current arrangements contained within the Network Codes, or with those of the MRA. The inclusion of GTs as a separate constituency within the SPAA will provide them with the opportunity to participate actively in the change process. We believe that adequate safeguards already exist to help ensure that GTs are able to recover their costs, either directly or indirectly.

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

The infrastructure to facilitate the transfer of a meter between suppliers does, in our view, require governance over and above the principles currently provided within the licence. We therefore support Ofgem's intention to ensure that an incoming supplier will have the opportunity to acquire the meter in situ at a reasonable price.

We would like to see the development of common practices relating to the agreement and timing of such arrangements and can see the benefits of adopting a similar approach to that currently followed in the electricity market within Standard Condition 7. Depending upon how such arrangements are progressed, there is certainly potential for the SPAA to be used as the appropriate vehicle for governance.

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

We agree that the dominant position of Transco in the provision of metering services does inhibit the ability of suppliers to negotiate reasonable contract terms. As a result of the new arrangements to be implemented as a result of RGMA, there is undoubtedly a requirement to ensure that changes introduced through the SPAA Change Control process can be supported by equivalent changes negotiated within the metering contract.

Where changes to RGMA requirements are related to mandatory elements, we support the view that Ofgem's role in approving such changes can be inter-linked with its wider statutory duties with respect to Transco. This should ensure that the removal of metering provisions from the Network Code does not diminish the recourse of parties to Ofgem in the event of any failure to agree.

Indicative timetable for further work

We note the timetable set out in Section 10 of the consultation and agree that this is feasible. With reference to the inclusion of schedules in the SPAA, the point made earlier in this response, relating to our preferred option to facilitate this process, is particularly relevant if the process is to be effected in the optimum manner.

Section 3: Draft SPAA – General Comments

As mentioned previously in this response, EDF Energy has played an active part in the development of the SPAA. The result is that, given the level of discussion and negotiation to recognise a range of views expressed by suppliers, the SPAA broadly provides a governance structure that satisfies the objectives for which it was created.

The drafting of the SPAA draws heavily on the electricity model and in particular the MRA. EDF Energy recognises the value of this approach in providing a platform for further harmonisation, where appropriate, in the future. Where the SPAA deviates from the MRA model, this has been primarily, but not exclusively, in recognition of the inherent differences in the market. Other changes have been made in an attempt to improve on the MRA model, in particular with regard to procedures for change control and disputes. EDF Energy's view on these variations is discussed in more detail below. The SPAA also actively promotes the use of e-mail as a communications medium and we support this concept.

Change control

The proposals for change control contained in Clause 9 of the SPAA are based on the concept that the nominated Party Change Administrator will register votes and comments on changes electronically. The SPAA Change Control Administrator will then, in accordance with the voting framework defined in Clause 7.22, determine the outcome. It is of concern to us that this process

will not allow the comments made in response to a change proposal to be discussed with a view to accommodating valid modifications into the final version of the change. This is achieved within electricity by using the MRA Development Board as a body with delegated powers to agree modified changes. It also has the ability to agree implementation dates, a task that will rest with the SPAA Executive Committee (EC).

We believe that this delegated role of the MDB adds considerable value to the change process in electricity and should therefore be considered by the SPAA EC as part of their obligation under Clause 9.14. Further, it is our view that SPAA EC should seek to develop a separate mandatory change process, in accordance with Clause 9.14, which subsumes much of the detailed procedural instructions currently contained in Clause 9.

Disputes

The process for the resolution of disputes described in Clause 13 rests totally with the Contract Managers. In the event of a failure by them to resolve a dispute, the next course of action is to refer the matter to arbitration. It is our view that the SPAA EC could provide an intermediate level of dispute resolution by means of a committee similar to that constituted within the MRA.

If you have any queries on the response, please do not hesitate to contact either myself or Paul Waite (on 01454 452212 or by email paul.waite@edfenergy.com).

Yours sincerely,

Denis Linford
Head of Regulation

Appendix 1 – Table of Typographical Errors Within the SPAA Draft

Section	Comment
Index	Numbering of Parts is out of step – Confidentiality, Disputes and Miscellaneous should be Parts IV, V and VI respectively.
Definitions	'Change Proposal' should make reference to 'Clause 9'
Definitions	'I&C Member' should make reference to 'Clause 6.3.1'
6.45.3	Item (iii) should reference 'Clauses 6.3.1 to 6.3.3'
6.45.4	Should reference 'Clauses 6.3.1 to 6.3.3'
6.45.5	Item (iii) should reference 'Clauses 6.3.1 to 6.3.3'
6.57	Should reference 'Clauses 11.1 to 11.10'
7.10.1	Should include 'Clause 9.15'
7.10.2	Should include 'Clause 9.15'
7.12	Should reference 'Clauses 7.3 and 7.4'
7.13	Should reference 'Part VI'
21	Incorrectly numbered Clause – should be 21.1 and not 20.1
21.3	Should reference 'Clause 21.2'
24.2	Should reference 'Clause 20'