



## The Gas Forum Response to Gas Retail Governance – Further Consultation, Ofgem, June 2003

### 1. Summary

- 1.1 The Gas Forum has been instrumental in the creation of the Supply Point Administration Agreement (SPAA), guiding its development to the point where most domestic suppliers are content with the governance arrangements set out within it. It is of course through the operation of those arrangements that operational schedules providing for supplier inter-operability will be added. This said it should be remembered that the Gas Forum cannot commit any member to any particular course of action and that the inclusion of any schedule is entirely a matter for SPAA parties to vote upon within the established procedures.
- 1.2 The conditions and challenges within the supply market are different for domestic and industrial and commercial customers and suppliers. Problems of data accuracy may be common, but the domestic market experiences procedural problems caused by the large volumes of individual supply points transferring between suppliers each week, whereas the problems in the I&C market are more likely to be associated with multiple supply points within a single contract not transferring smoothly. In the opinion of many Forum members whilst it is desirable to have common governance, the SPAA as currently envisaged offers greatest benefits to domestic suppliers.
- 1.3 The Gas Forum is committed to furthering competition in gas supply and is proposing to hold a general Shipper and Supplier meeting to further discuss issues concerning I&C suppliers accession in August. Naturally the Forum will update Ofgem on the outcome of this discussion. However, it should not be assumed that all I&C suppliers have been convinced of the benefits of SPAA. Indeed a number of suppliers believe that SPAA may increase the regulatory burden.
- 1.4 There is still debate amongst Gas Forum members over whether GT involvement in SPAA is essential from the outset for the smooth operation of industry processes. Many wish to see GTs involved as soon as possible and encourage the work of the SPAA GT Workstream. It is worthy of note, however, that at least one member is of the view that GT involvement is a necessary pre-condition of SPAA becoming effective.
- 1.5 The Forum will continue to support supplier inter-operability through maintenance of the Domestic Code of Practice (DcoP), Industrial and Commercial Code of Practice (IcoP) and the Basic Inter-Supplier Communication Using Internet

Technology (BISCUIT). Consideration as to whether or not these arrangements will migrate into SPAA will be given at an appropriate juncture. The Gas Forum will continue to support these meetings in the interim.

- 1.6 The present Consultation document highlights a number of areas in which further development is or will be required and Forum members wish to see this work concluded in a timely manner and offer the following comments.

## **2. Principles of governance**

- 2.1. In paragraph 5.3 Ofgem queries whether the Gas Forum may be able to fulfil the role of “raising awareness of and debating gas retail issues” which it envisages will be a useful thing for the SPAA Forum to do. The Gas Forum believes that the SPAA Forum will provide the ability for domestic suppliers to discuss and resolve operational issues associated with the SPAA schedules whereas the Gas Forum will continue to operate at a more strategic level with an inevitable interchange of ideas and information between the two fora. This is consistent with the approach now taken between Transco workstreams and the work of the Forum.
- 2.2. In paragraphs 5.7 and 5.8 Ofgem explores the notion that a liability regime may be introduced into SPAA following appropriate debate between suppliers. In development of SPAA to this point there has not been any consideration that such a scheme would be introduced and it was never envisaged that SPAA Ltd would act to collect and distribute monies between parties for such purposes. Gas Forum members are concerned that such a scheme may be unworkable. Nevertheless if such a scheme were to be discussed the Forum agrees that it is entirely appropriate that this be conducted amongst suppliers within the auspices of SPAA. However, in earlier deliberations, the Gas Industry Governance group rejected such proposals as unworkable.
- 2.3. In paragraphs 5.21 to 5.31 Ofgem discusses the desirability of changing the SPAA in order to permit energywatch to raise, but not vote upon, change proposals. It cites the existence of this ability under BSC, CUSC and the anticipated ability under Transco’s Network Code as grounds for the suggestion. Forum members are disappointed that this idea has surfaced so late in the development of SPAA and do not believe that the case for inclusion has been adequately made either in the meetings with Ofgem or in the consultation document. This is a matter for full discussion among suppliers which can be accommodated within the SPAA Forum and need not delay implementation.
- 2.4. At paragraph 5.34 Ofgem proposes to afford several provisions of the SPAA “protected status” (meaning the clause cannot be changed without prior Ofgem consent) in addition to those proposed with the SPAA itself. This list is based upon Ofgem’s view that the clauses may affect the market, customers or new entrants or relate to current licence conditions or legislation. The Gas Forum believes that, in keeping with its aspiration to move to light touch regulation, Ofgem should make a case in respect of each additional sub-clause but in particular of those within clause 9 Change Control many of which relate to the internal workings of the process. In particular, as Ofgem was involved throughout discussion on reserved sections and in light of the polarised view of one Forum member who

believes that Ofgem's role should be lessened or non-existent, as opposed to increased.

2.5. Views are invited on the need for an appeals mechanism in paragraphs 5.37 and 5.38. Ofgem suggests that of the four grounds for appeal against a SPAA Forum decision to implement or reject a change proposal presently in the SPAA only the first (unfairly prejudicial to the interests of a supplier) should result in an appeal to itself. Ofgem goes on to suggest that it may be sufficient for it to consider whether a particular change proposal unfairly prejudices the interests of a supplier at the same time that it considers the change itself. This suggestion seems flawed on two grounds, firstly whilst it may be practical to adopt this approach for those changes referred to Ofgem for decision the opportunity to consider this will never arise for changes within the Forum's remit. Secondly, it may not be possible for the regulator to consider each suppliers viewpoint in coming to a decision when for commercial reasons the suppliers themselves may not have made their position plain in representations. There is also the possibility that for whatever reason a supplier will not appreciate the true impact of a change until late in its lifecycle and need to raise an appeal. Gas Forum members believe that the prudent course would be to retain the separate appeals process, as operates under the MRA upon which the SPAA appeals process is based.

2.6. Ofgem notes in 5.54 that the proposed voting mechanism will discount any abstentions in calculating the required threshold and so it is possible for a proposal to be implemented with the active support of relatively few suppliers. Most Forum members believe that there are sufficient checks and balances within the SPAA to prevent the industry being taken in a direction which is only supported by small numbers of participants and that to weight the voting mechanism in favour of the status quo may make it too difficult to make progress. In practice Ofgem must approve changes to mandatory provisions and will do so by reference to the SPAA objectives as well as its wider statutory duties, this coupled to the appeals mechanism provides a safety net for any supplier that believes it will be disadvantaged.

### **3. The SPAA Licence Condition**

3.1. In 6.3 and 6.4 Ofgem references the potential to extend regulation where it does not currently exist for I&C suppliers in respect of RGMA and raises the possibility that accession to SPAA may only be a licence requirement for domestic suppliers. In view of the fact that it is initially envisaged that the SPAA schedules will contain the Domestic Code of Practice and the RGMA baseline some Forum members support the suggestion that I&C suppliers should not at the outset have an additional licence requirement to accede to the SPAA. Whilst acknowledging that many suppliers who operate in both market sectors have indicated that they are willing to sign, the Gas Forum believes that as it is unlikely that some I&C only suppliers will want to accede prior to the inclusion of directly pertinent and beneficial schedules. It would therefore be difficult for the SPAA Forum to provide the appropriate setting for discussion of I&C topics such as inclusion of the I&C Code of Practice. The Gas Forum intends to hold a working group (as it did for GTs) in August inviting all licensed suppliers to discuss the issues raised in the Ofgem seminar.

- 3.2. With this in mind, Gas Forum will watch responses to Ofgem's consultation with interest and will consult with its members to understand if they agree with this proposed course of action.

#### **4. GT Involvement in SPAA**

- 4.1. The Gas Forum fully supports the accession of transporters to the SPAA, as and when the SPA processes currently in the Network Codes, are brought into SPAA. As stated earlier the majority of members wish to see GTs involved at the earliest possible stage, however, a balance should be maintained against the issues that have still to be resolved about their constitution.
- 4.2. The question of timing is perhaps less clear and at least one member is adamant that Transco at least must accede from the outset. It seems clear that for RGMA to succeed Transco must be prepared to abide by the baseline and to adopt changes in a timely way. This may be achievable outside the SPAA through appropriate clauses in the metering contract by which Transco would undertake to abide by the schedule in SPAA as amended from time to time. Some Forum members are concerned that this may be insufficient, could lead to uncoordinated implementation of change and would in any event preclude Transco from proposing changes. There is a strong case for Transco to be involved as early as possible.
- 4.3. The Gas Forum wishes to understand how Ofgem would envisage reductions to transportation charges being introduced, should Transco's obligation to provide SPA services diminish.