

Innogy plc

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Bryony Sheldon
Manager, Network Code Development
Ofgem
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Dear Bryony,

Gas Retail Governance

Innogy, on behalf of all its npower retail gas supply businesses, has actively participated in the industry discussions that have taken place over the last 18 months on the above issue. These discussions have culminated in the creation of the Supply Point Administration Agreement (SPPA), which we hope will provide the framework for formal governance of matters relating to the customer transfer process and supply point registration activity going forward.

In Chapter 4 of the consultation, you ask for comments on a number of specific issues relating to the SPAA itself and these are addressed on the attached Appendix.

The questions raised in the remainder of the consultation are addressed below.

The SPAA Licence Condition

We do not believe that the current informal governance arrangements that exist in gas supply are adequate for dealing with the extra degree of complexity that will be introduced into the customer transfer process following the introduction of metering competition.

To this extent we support the establishment of formal supplier governance through the SPAA which all suppliers would be required to accede to via a licence condition.

We can understand why suppliers in the I&C sector remain to be convinced that extending the regulatory burden is necessary in order to facilitate metering competition, as the transfer process and the volume of transfers involved in the I&C sector differ to those in the domestic sector.

However, in our opinion it is very important that SPAA represents the whole of the gas supply industry, as the RGMA baseline must be owned and managed collectively for the benefit of all suppliers. Also if suppliers do wish to achieve greater influence

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over the customer transfer process and supply point registration activity going forward, unified supplier representation is a pre-requisite to achieving this, particularly when it comes to migrating governance requirements out of transporters network codes.

To this extent we would recommend that further consideration be given to the nature of the schedules which are expected to affect I&C suppliers under the SPAA, and in particular the status of such schedules. It may be possible for certain schedules, particularly those relating to metering, to be initially designated as mandatory for domestic suppliers and elective for I&C suppliers. The effect of this may be to lessen the perception that participation in the SPAA will increase the regulatory burden for I&C suppliers for little overall benefit.

Whilst we support the introduction of a supply licence condition, the drafting proposed in the consultation gives us a number of concerns, and we could not support it in its current form.

By seeking to define the structure, role, contents and objectives of the SPAA in the licence condition itself, this opens up the possibility of suppliers being accused of breaching their licence as a result of circumstances over which they do not have full control.

For example, it would not be possible for SPAA to comprise “procedures and practices to be followed by gas suppliers in relation to changes of gas supplier in respect of any premises” or to achieve the objective of “the development, maintenance and operation of an efficient, co-ordinated and economical change of supplier process” without SPAA having direct governance over the registration process itself, which in turn would require transporters participation in the SPAA.

Also the objective to ensure “the efficient discharge of licensees obligations under this licence” may create a regulatory driver for extending the scope of SPAA into other aspects of the supply licence where it is not currently considered appropriate e.g. licence condition 48.

As the aspects of SPAA referred to in the licence condition are included in the document itself, we would suggest the licence condition be restricted to stating only that “the licensee shall, along with all licensed Gas Transporters, be a party to and shall comply with the relevant provisions of the Supply Point Administration Agreement”. Such wording is similar in principle to the drafting that exists in the electricity supply licence for compliance with the MRA.



The Domestic Code of Practice

The DCoP workgroup has undertaken a thorough review of the processes and procedures adopted by domestic suppliers under the Gas Forum Domestic Code of Practice, and has put forward recommendations as to which of these should be migrated across to SPAA and what the status of that obligation should be.

It has also reviewed the fitness for purpose of these processes and procedures and has amended them to reflect current circumstances.

Having been involved throughout these discussions we would support introducing schedules to SPAA which cover those processes referred to in section 7.6 of the consultation. We would expect this to be done through the SPAA change control procedure and for the status of these schedules to also be determined at this time.

Once this process has occurred we would not expect the DCoP to have any future role in supplier governance or to be supported going forward.

With regard to the Gas Forum I&C Code of Practice, we believe that there are aspects of the code which would benefit from being included under the SPAA. In particular the provisions relating to delayed transfers, opening/closing meter reads and inter shipper/supplier disputes are ones we believe are suitable for inclusion, and we would support these being voted in as schedules in the same way as for the DCoP.

GT Involvement in SPAA

We are firmly of the view that transporters should be party to the SPAA, and that all matters relating to the customer transfer process and supply point registration activity should ultimately reside in the SPAA.

Whilst the SPAA GT Forum agreed with the need for transporter inclusion within the SPAA, issues still remain over the funding of SPAA change proposals and how the current SPAA framework can be amended to support transporter inclusion. This suggests to us that full and active participation by transporters in the SPAA, and the migration of the customer transfer process and supply point registration activity away from the network code may still be some way off.

In our opinion the only means of ensuring transporter participation in the SPAA is for this to be mandated via a new transporter standard licence condition, and this is reflected in the proposed drafting of the licence condition in Appendix 1 (albeit in square brackets). We are therefore not prepared to support a licence condition requiring us to sign the SPAA unless the condition itself refers to transporters also being party to SPAA.

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Interim measures will need to be developed to ensure that processes and dataflows falling under the governance of transporters network codes are kept in line with changes made to the RGMA baseline under SPAA governance until such time as supply point registration is migrated across from transporters network codes.

With regard to how the funding of change is to be apportioned, further consideration needs to be given to this matter. Such consideration needs to be undertaken in context of supply point registration services currently being provided subject to charges that are bundled within transportation costs. However, funding of this provision on an unbundled basis could perhaps be addressed within the necessary change proposal required to facilitate migration, and if transporters are party to the SPAA this will give them an opportunity to directly represent their interests on these matters.

Governance of Metering

In order to ensure the transfer process is not adversely affected by the implementation of metering competition, there needs to be formal governance around aspects of the supplier hub processes included within the RGMA baseline so as to ensure meter assets can be transferred between suppliers and their agents effectively.

We therefore agree there is a need for formal governance to underpin the competitive metering market, as it is difficult to see how the interoperability required to support volume transfers of sites/meters on a timely basis can be ensured bearing in mind the informal supplier governance that currently exist.

A further reason why the customer transfer process may be compromised by introduction of metering competition is if suppliers can not agree terms for provision of meters in advance of the transfer date.

We have already experienced difficulties agreeing terms for the transfer of non Transco meters due partly to the fact that the contractual arrangements entered into between the relevant MAM and incumbent supplier provided for free installation. As a consequence we have been offered terms by the incumbent supplier's MAM which include unacceptable tie in arrangements and/or penalty charges in an attempt to recover the original installation cost and future lost revenue.

Whilst conditions 34 and 47 of the gas supply licence place obligations on both the outgoing and incoming supplier to try and agree terms for the transfer of the meter on change of supplier, we believe these obligations need to be strengthened to place a licence obligation on the outgoing supplier to offer terms for provision of metering equipment owned by it. These we would expect to be along the lines of the requirement included in condition 7 of the electricity supply licence, and would

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ensure that the incumbent supplier would not enter into any agreement to provide metering equipment which is likely to restrict, distort or prevent competition in gas supply.

The issue of data quality is also one that re-emphasises the need for formal governance, and the need for this extends beyond just the supplier and his agents, and includes the transporter as well.

Data quality, which is far from perfect at present, could deteriorate still further if obligations to verify, amend and validate data are not mandated on industry participants. The RGMA baseline itself, with all its inherent optionality, does not make maintenance of data quality easy to manage, and it may be that a more radical solution to this issue, for example through the appointment of an industry data manager, is needed to address this effectively going forward.

We do not believe SPAA should have any governance role or direct influence over the Transco metering contract. Transco Metering are not expected to be a party to the SPAA despite their dominant position in the metering market, and we would expect suppliers to take due account of the views of Transco Metering and any other agent, when voting on change proposals to the RGMA baseline.

Whilst a lot of consideration has already been given issues surrounding gas retail governance and the creation of the SPAA framework represents a considerable achievement, it is clear from the consultation, and from recent industry discussions, that there are still a number of issues to be resolved.

We therefore await Ofgem's response to this consultation with interest and will continue to play an active part in trying to resolve these issues going forward.

Should you wish to discuss our response in further detail, please do not hesitate to call me.

Yours sincerely,

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Whether a 10 day consultation period is appropriate

We believe that a minimum of 10 working days for consultation under the SPAA is appropriate despite 15 working days being commonly allowed under Transco's Network Code. In reality we would expect that the change voting days set by the SPAA EC will provide for longer periods of consultation than the 10 working day minimum that is defined, and if this does prove to be unsatisfactory we would expect suppliers to agree to change it by way of a change proposal.

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

We would expect that one of the early tasks of the SPAA EC will be to develop criteria for granting urgent status to a change proposal and in the event a party was unhappy with these criteria they would have the option of raising their concerns at the SPAA Forum.

As we do not envisage there being many change proposals that of an urgent nature during the early days of the SPAA which might warrant departure from the current change control timetable, we are happy for criteria surrounding urgency to be developed once the SPAA EC has been appointed.

What is the appropriate degree of consumer representative's participation in the SPAA

As Ofgem point out, the SPAA currently provides a degree of representation by energywatch in its statutory role as the consumer's representative. energywatch shall be entitled to attend and speak at SPAA Forum and as Ofgem are able to attend SPAA EC and will receive minutes and change control proposals as a matter of course, we would expect energywatch to be kept abreast of issues arising from the day to day functioning of the SPAA through regular briefing by Ofgem.

We do not consider it necessary for energywatch to be entitled to raise change control proposals under the SPAA and consider it wholly inappropriate for them to be able to vote at any meeting or on any change proposal.

Whilst energywatch do now have the right to raise modifications under Transco's network code this right is limited to the seeking information. In our opinion it is not necessary to replicate this right in relation to the SPAA as information energywatch are likely to be most interested in is already provided to Ofgem via the monthly monitoring report and can be requested by Ofgem under standard condition 19 of the gas supply licence. Nor is it appropriate to extend the right to raise modifications affecting the transfer process itself.

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

Whilst recognising that three out of the four proposed grounds for appeal against a resolution of the SPAA Forum are ones which Ofgem would ordinarily consider when deciding whether to accept or reject a change proposal referred to it, we still believe there is a need for a separate appeals procedure.

Whilst suppliers should normally be expected to make their concerns about change proposals known during the consultation period, it is conceivable that the true extent of these concerns and the impact a change proposal may have on their interests may not be fully understood at this stage.

If an appeal to the Forum fails to over turn a decision a supplier feels unfairly prejudices their interests, suppliers can draw some comfort from the fact that they will have a final right of appeal directly to Ofgem.

As we gain a better understanding of the extent to which change control decision are appealed or not, it may be appropriate to reconsider the extent to which this final right of appeal is required.

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

Whilst we can understand why Ofgem might have a legitimate interest in the effect changes to the additional clauses referred to in paragraph 5.34 might have on the market, customers or new entrants, we remain to be convinced this necessarily requires them to receive “protected status”.

Any changes to these clauses would need to be carried out via the change control process which Ofgem have a defined role in, and simply adding them to a what is already a relatively long list of clauses that have currently “protected status” appears heavy handed (particularly in the case of the inclusion of clause 9 in its entirety)

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

Voting rights, and the percentage of votes required to approve change proposals, was subject to considerable debate during the development of the SPAA, and the decision to exclude the votes of parties not exercising right to vote was in our view reached by consensus.

This decision to exclude abstentions is particularly relevant in relation to change proposals to mandatory schedules, which need to achieve a threshold percentage of suppliers by both number and market share. As Ofgem will have to approve such change proposals, one would expect them to take note of the fact that certain suppliers had, for whatever reason, not exercised their voting rights during the consultation and what the implication of this might be when deciding whether to approve the decision.

The extent of Ofgem’s role in granting derogations

Derogations to the SPAA should in our opinion be a matter for the SPAA EC, even though participation in SPAA is expected to be a licence condition on suppliers. As



Ofgem point out, Ofgem and any other party may make representations or objections to derogations, and any decision of the SPAA EC can be appealed to the SPAA Forum and ultimately to Ofgem. In the event Ofgem and/or another party were to make representations on proposed SPAA EC derogations, we would expect the SPAA EC to take due account of the gravitas of such representation in reaching their decision.