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16 November 2012

Dear Lisa,

**Re. Code Governance Review (Phase 2) Proposals – Consultation 123/12**

The Supply Point Administration Agreement Executive Committee (SPAA EC) welcomes the opportunity to respond to this consultation.

We have been actively engaged with the Code Governance Review since its inception in 2007 and are committed to improving the governance arrangements and implementing best practice within the SPAA. In order to assist this process, we have documented below our initial thoughts on how the CGR2 proposals might be implemented and the timetable required to achieve this. The majority of proposals will however directly impact SPAA Parties as users of the Code. It is therefore appropriate for them, rather than the EC, to determine through their individual responses to this consultation and in discussion with Ofgem, whether the proposals should be implemented. Any resulting changes to the SPAA would then need to be fully developed in an open forum, consulted on with SPAA Parties and progressed through the SPAA Change Process.

Along with the proposals to extend the CGR1 provisions to all industry codes, the consultation proposes a licence amendment to require non domestic gas suppliers to accede to the SPAA. The EC has long been supportive of a fully inclusive membership of the SPAA, recognising the benefits this will bring, and has worked actively with Ofgem and industry parties to achieve this. We are therefore supportive of this proposal.

Should you require any additional information, please do not hesitate to contact me.

Alex Travell  
On Behalf of the SPAA Executive Committee

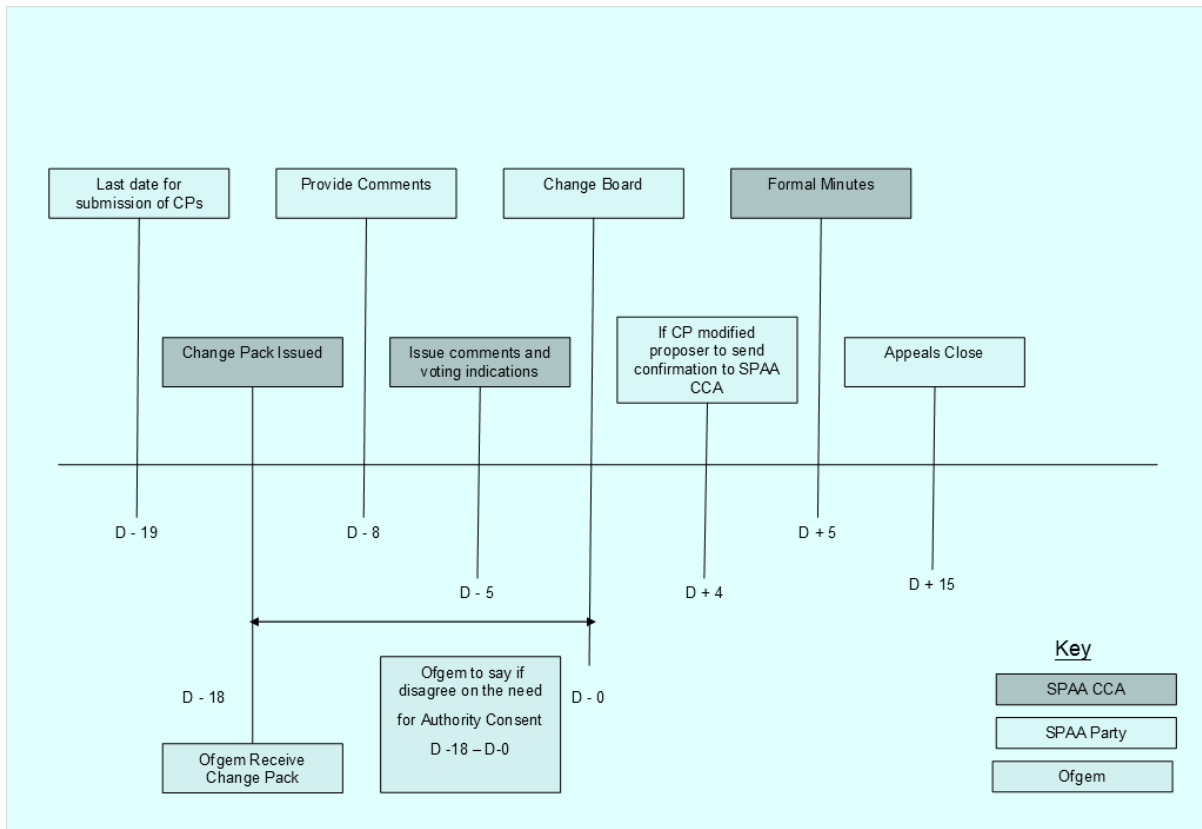
## SPAA Executive Committee – Initial Response to CGR2 Consultation November 2012

### SELF GOVERNANCE PROPOSALS

Self Governance is a key principle of the SPAA which has successfully operated since its inception in 2006. This has reduced the involvement of Ofgem in matters which do not directly impact Consumers, allowed Parties greater say in the management of the industry processes they operate and facilitated the faster implementation of agreed changes. Of the 32 Change Proposals (CPs) raised in the past 24 months, only five have required determination by the Authority. The SPAA Change Process is designed to engage with all Parties through consultation and voting. An efficient cycle batches CPs in a monthly pack allowing Parties to plan and manage their resources. From the point at which a final CP is raised, it is possible for it to complete the process in ~7 weeks. Under the SPAA, there are no central systems that could be impacted.

One of the aims of the CGR is to reduce red tape and drive efficiencies. The SPAA EC considers that the self governance proposals set out in the consultation should be assessed against the existing SPAA process with these factors as well as cost implications in mind.

The following diagram sets out the SPAA Change Process, parts of which are referenced in the sections below.



## Self Governance Criteria

Under the SPAA a CP is deemed to be 'self governance' where it does not have a "material effect" on identified SPAA Clauses. The determination is made by the proposer and the CP progressed on that basis. Ofgem is notified of the status of the CP and has 18 Working Days in which to raise an objection.

CGR2 proposes that standard criteria for determining whether a CP requires consent be set out in the Licence. Self Governance would be determined if the modification is "unlikely to have a material impact upon consumers, competition, security of supply or sustainable development".

We are generally supportive of the intention to align the criteria with other codes and agree that a flexible and pragmatic approach should continue to be used in determining the status of each CP. In order to implement this change a simple drafting amendment would be required to the Agreement.

However, the consultation also suggests that the relevant Code Panel should carry out the assessment against the defined criteria. Under the SPAA the EC is not actively engaged in the Change Process, delegating duties to the Code Administrator and Parties (via the Change Board). Significant amendments would be required to the Change Process to facilitate a committee determination of status before a CP is issued for consultation. This would increase administration, and potentially delay the progression of a CP and extend the change cycle.

Should it be taken forward, we would recommend consideration of a procedure that achieves the intent of the proposal but has minimum impact on the existing process with little cost or administration implications. E.g. allowing Parties to object to the status set by the Proposer at the consultation / voting stage.

Unlike other codes, only CPs which attain a recommendation 'accept' at the voting stage are passed on for determination (where consent is required). The SPAA would need to be amended so that any CP which requires consent is issued to Ofgem following party voting.

## 'Fast Track' self governance

The EC is supportive of proposals to drive out efficiencies and remove administrative burden. It has already developed a 'fast track' process for updating gas Market Domain Data (MDD) which takes 10 Working Days to complete.

The fast track process outlined in the consultation is designed for 'manifestly minor' matters such as typographical errors or an update to references where the full change process may be considered disproportionate. The consultation suggests that the relevant Code Panel should carry out the assessment and determine whether or not the modification should be made on a unanimous basis. Any change that was not approved unanimously would be entered in to the standard change process.

As prescribed this would bring additional complexity to the SPAA process and undermine the self governance principles of party voting. Should it be taken forward, we would recommend

consideration of a procedure that achieves the intent of the proposal but has minimum impact on the existing process with little cost or administration implications. E.g. mirroring the MDD fast track process.

#### Self Governance appeals process

CPs are open to appeal under the SPAA however the criteria under which an appeal can be raised are more restrictive than those proposed under the CGR. The EC recognises that a robust appeals process is an important safeguard. A drafting change would be required to implement this proposal however there would be minimal impact on operational processes.

#### SPAA Governance (non domestic suppliers)

Since go-live 2006, the SPAA has successfully developed as a robust governance vehicle for the gas retail market and continues to do so. There are now 32 Schedules to the Agreement, compared to 6 at its inception and it is anticipated that this will continue to grow.

A number of the matters in the Agreement and those currently being developed under the SPAA framework (e.g. RGMA, MAMCoP and Theft of Gas) are cross sector issues which impact both domestic and non domestic suppliers as well as large and small transporters.

We fully recognise the concerns raised by non domestic suppliers regarding the governance framework. We are committed to continuing to work with non-domestic gas suppliers and Ofgem to resolve these issues. The CGR2 proposals should assist in addressing some of these elements including: a robust criteria for self governance; both 'accept' and 'reject' recommendations going to the Authority; reasons for recommendations and decisions; a broader appeal criteria; and adoption of the CACoP principles.

The SPAA will benefit greatly from non domestic participation in the relevant provisions of the Agreement. The restricted participation has inhibited effective governance and resulted in disparate work groups, the creation of multiple processes and the breakdown of some initiatives. Although non domestic suppliers can accede voluntarily to date only four I&C only suppliers have done so and mandating the requirement in Licence will ensure a fully inclusive membership.

#### **SIGNIFICANT CODE REVIEWS**

The SCR mechanism is designed to facilitate complex and significant changes to industry codes and has already been established in the BSC, UNC and CUSC. The consultation proposes extending the process to all industry codes.

The SPAA EC agrees that Ofgem should be able to lead complex changes and that the governance of all codes should effectively support the process. Drafting amendments would be required to the SPAA initially and on-going, to reflect any changes to the SCR process.

## **CODE ADMINISTRATION**

### Reasons for recommendations and decisions

SPAA CPs are voted on by SPAA Parties at the Change Board. A 'change declaration' detailing the outcome of the vote and the parties' recommendation is then published and, where consent is required, issued to the Authority.

Under the current SPAA process, the proposer sets out why it believes the CP will further the relevant objectives and this information is issued to all Parties during the consultation period. Parties may choose to comment on this in their consultation responses but no collective or formal assessment is carried out and Parties are not asked to give reasons for their decisions when voting.

In order to facilitate this proposal, the CP would need to be assessed as to whether it facilitates relevant objectives; Parties would need to comment whether or not they believe the change furthers the relevant objectives when issuing their votes. Simplistically this could be achieved through changes to templates, although it is likely that a more fundamental change to the SPAA change process would be required to fully meet Ofgem's requirement to ensure rigorous and high quality analysis and increase transparency of decision making. Measures could include asking the Code Administrator to carry out an assessment or introducing a 'working group assessment phase' as standard to ensure robust analysis of each CP is undertaken before voting / submission to Ofgem. Such changes would increase costs and administration for Parties and lengthen the change process.

### 'Send back' powers

At present the Authority can only accept / reject a CP that is issued to it for determination. The consultation proposes introducing a third option of 'send back' where more information and analysis is required for a decision.

Minor drafting changes would be required to the SPAA to reflect the ability to send back, however it is likely that more fundamental change would be required to support the process. Under the SPAA, the majority of CPs are not developed in a Working Group environment. Should a CP be 'sent back', the EC would need to determine who would provide the additional information required and carry out additional analysis. In recent times the majority of changes have been sent to the SPAA Expert Group (RGMA changes and the Gas First CP) and/or the SPAA EC (the I&C constituency changes).

SPAA would also need to consider whether amendments are required to the 'front end' of the process e.g. a 'working group assessment phase' as standard to ensure robust analysis of each CP is undertaken to mitigate the risk of send back, or whether the EC / Change Board be required to 'sign off' a modification report before voting / submission to Ofgem to confirm sufficient analysis has been undertaken.

### Adherence to CACoP and 'Critical Friend'

The EC is supportive of the intent of the CACoP but considers that the application of it should be proportionate. Blanket application of the principles could have cost implications both in changes to the Agreement and with relation to the commercial contract. The benefits of the proposal need to be assessed against this measure.

The consultation also processes that CACoP compliance be mandated in Licence. The consequences of non-compliance and impact on the Licence holders need to be more fully understood.

#### **TIMETABLE**

The EC considers that the timetable proposed in the consultation is aggressive. Licence changes and the necessary 'enabling' clauses in the SPAA could be drafted to meet this timetable. However the consequential amendments to operational processes would need to be fully developed in an open forum consulted with SPAA Parties and progressed through the SPAA Change Process. It is anticipated that this would take ~12 months to complete once direction was given by Ofgem.

SPAA Executive Committee

November 2012