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5th April 2004

Dear Nick,

Gas Retail Governance – Final Proposals

RWE Innogy, on behalf of its npower branded gas supply businesses has read the above document with interest, and is pleased to see that in a number of areas Ofgem has concurred with the views we expressed on this matter in our response to the June 2003 consultation document.

We support a large number of Ofgem's conclusions in the Final Proposals document and consider it helpful that Ofgem has reflected these conclusions in a marked up re-draft of the full SPAA terms and conditions.

RWE Innogy remains committed to the principle of establishing formal retail governance through the SPAA framework, and with transporter participation in this framework from the outset we believe that this will, over time, facilitate a more supplier centric approach to the development and operation of retail systems and processes. Ultimately this will be to the benefit customers and supply competition.

However, whilst our commitment to the SPAA in principle remains, we are disappointed that Ofgem has chosen to ignore some of the other concerns we raised in our response to the June consultation; namely the issues of what we believe to be an overly prescriptive draft supply licence condition and energywatch representation in the SPAA.

These remain legitimate concerns and are ones shared by a number of other respondents to the consultation. It is surprising therefore that the Final Proposals document appeared to contain little justification from Ofgem as to why the views they set out in last June's consultation remained unchanged.

We have restated our concerns on these two issues below, along with a number of other issues we have concerns over. We have also responded to the specific issues you have asked for comment on in Appendix 1.

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Draft Licence Condition

In our response to the June consultation we expressed concern that the proposed draft licence could expose us to accusations of licence breach as a result of circumstances over which we did not have full control. We also expressed concern that it could extend the scope of the SPAA into other aspects of the supply licence, which are inappropriate.

To this extent we favoured the adoption of minimal drafting along the lines of that prevailing in the MRA, where suppliers would be obliged only to accede and comply with the SPAA.

We note in the revised drafting that some of our concerns have been addressed and we now accept the need for appropriate SPAA objectives to be included in the licence.

However, we still believe the draft licence condition is overly prescriptive and has the potential of extending the scope of the SPAA. To this extent we have included a marked up version of what we believe should be included within the supply licence condition (Appendix 2), along with an explanation of why we believe these changes are necessary.

Energywatch Representation

In our response to the June consultation we said that we did not consider it necessary for energywatch to be entitled to raise change control proposals under the SPAA and that it would be wholly inappropriate for them to be able to vote at any meeting or on any change proposal. We also stated that as Ofgem are able to attend the 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 from Ofgem.

The Final Proposals document simply summarises a number of the views expressed by respondents and states that Ofgem remains of the opinion that its initial proposal represents an appropriate level of consumer representation within the SPAA.

However, this is clearly not the case as Ofgem's marked up version of the SPAA terms and conditions provides for energywatch attendance at SPAA EC meetings (following a request to this effect from energywatch themselves). Discussion on whether this was appropriate or not was not mentioned in the June consultation.

As the SPAA EC is, amongst other things, charged with discussing implementation dates, derogations, defaults, budgets, Operational Issues and future development issues, and as Ofgem are entitled to send a representative and to speak at the SPAA EC meetings, the added presence of energywatch (who would not be bound by any confidentiality undertaking as defined under clause 6.57) is unnecessary. Nor is it likely to be conducive to full and frank discussion amongst suppliers and transporters that is a pre-requisite for ensuring the efficient functioning of the SPAA EC.

With regard to granting energywatch the right to raise modifications, the June consultation document makes reference to the fact that energywatch have this right under CUSC, the BSC and Transco's network code. It goes on to say that as the proposed further development of the SPAA includes migration of the SPA provisions from the Network Code, it would appear perverse if this were at the expense of consumer representation that may otherwise have been afforded had the provisions remained in the Network Code.

However, the reality is that energywatch have rights to raise modifications under Transco's Network Code solely relating to seeking information and so they are currently afforded no right to raise modifications relating to the SPA provisions in the Network Code.

Nor are they afforded any right to raise modifications to the MRA in electricity, although an obvious consequence of granting them this right in the SPAA is for Ofgem to exert pressure on MRA signatories to replicate this within the MRA.

We are not re-assured by Ofgem's arguments that because energywatch already have rights under the BSC and CUSC which they have not yet exercised, and because energywatch will not have the right of appeal under the SPAA, they will necessarily act responsibly.

In our opinion they have not used their rights under the BSC and CUSC because these codes cover matters which are of little direct relevance to them. However, the SPAA and MRA contain detailed processes and flows which suppliers rely upon to ensure effective registration, change of supplier and inter-operability and energywatch have a distinct agenda on these matters which does not always align perfectly that of suppliers, or indeed Ofgem.

Whilst they have no right of appeal, this may not stop them publicly expressing their disquiet when modifications they have raised are not supported by suppliers and/or transporters. For example their publicly stated desire to introduce mandatory £250 compensation payments for all customers who have been erroneously transferred could be raised as a SPAA modification to the soon to be migrated DCoP ET procedure. In the event shippers rejected such a modification, this would create further opportunity for suppliers to be painted in a negative light.

For these reasons we remain of the view that energywatch representation should be limited to attending and speaking at SPAA Forum meetings and receiving modification proposals, implementation notices and the minutes of all the SPAA meetings.

We would also expect the SPAA EC to invite them to attend any sub committees set up to consider the objectives in clause 6.2 where appropriate.

Other Issues

In the same way as we do not consider it appropriate for energywatch to have the right to raise modifications, we do not think it appropriate for this right to be afforded to New Parties (as reflected in Ofgem's revised drafting of clause 9.5).

Although New Parties do not have the right to vote on modification proposals until such time as they are granted a gas suppliers or transporters licence, they too could bring their own agenda to the table and disrupt the efficient running of the SPAA.

There is also some uncertainty that the drafting of clause 9.15 may actually mean a New Party has the right to appeal modifications, and we believe the drafting would benefit from the addition of a "for the avoidance of doubt" statement, making it clear that this is not the case.

We also still believe it unnecessary for Ofgem to impose protected status on the entire change control process (clause 9). As this is as yet untested, it is possible that certain aspects of it may prove to be inefficient and so will require the Parties and the SPAA EC to make alterations to it. Imposing protected status on all of clause 9 may hamper the ability of suppliers to react when change are considered necessary, or on their ability to do this in a timely manner.

Whilst we understand Ofgem's arguments for imposing protected status on some of the sub clauses in clause 9, we are not convinced this is needed for sub clauses 9.3, 9.4, 9.7, 9.14, 9.19, and possibly 9.6.

Also we note that the drafting of sub clause 9.8 does not reflect Ofgem's stated view in the Final Proposals document that a 15 day consultation period is appropriate.

We hope that Ofgem will reflect once again on our concerns before issuing the Section 23 licence amendment notice, and designating the SPAA, later this month.

In the event the final supply licence condition and SPAA terms and conditions do not address our concerns we are minded not to support a change to the supply licence, as we believe this would expose us to an unacceptable level of regulatory and PR risk.

We would welcome the opportunity to discuss our concerns in more detail with you and should you wish to do so please do not hesitate to contact me.

Yours sincerely,

Steve Rose

Economic Regulation

I&C Suppliers should not be subject to a licence condition. How could their full participation be achieved

In our response to the June consultation we said that we believe all suppliers should be required to accede to SPAA via a licence condition. However we recognised that I&C suppliers remained to be convinced that extending the regulatory burden to facilitate metering was necessary. Further consideration should be given therefore to the nature of the schedules affecting I&C suppliers under the SPAA, and to the status of such schedules.

Whilst we would have liked all suppliers to have the same licence obligations to sign up to the SPAA from the outset we can accept a licence obligation applying initially to domestic suppliers only. We recognise the risk there could have been to implementing formal gas governance of any sort in time for RGMA go live had I&C suppliers voted against a licence condition, and believe it was necessary therefore for Ofgem to take the pragmatic step of excluding them in the first instance. We would however, expect Ofgem to keep this position under review.

Whilst I&C suppliers do not have a licence obligation to provide metering services, they have participated in the development of the RGMA baseline and will be expected to comply with the processes and flows defined in it once implemented. Transco's metering services are also used extensively by both domestic and I&C suppliers, and to the extent Transco make changes to their metering contracts, processes and flows, this will impact equally on both groups of suppliers.

If the RGMA baseline is to be incorporated as a schedule into the SPAA I&C suppliers who choose not to voluntarily accede to the SPAA will be disenfranchised from voting on any proposed modification. The SPAA is also expected to contain schedules governing how suppliers operate under the RGMA baseline and so suppliers who do not voluntarily accede will have no rights of redress should other suppliers operate in a manner inconsistent with their requirements.

It is hoped therefore that over time this will persuade I&C suppliers to recognise the benefits of the SPAA and to identify other areas where there may be benefit in bringing common practices within the bounds of more formal governance.

We do not believe it is appropriate to extend invitations to non SPAA parties to join expert groups that may be set up to manage the RGMA baseline. However, we would expect the minutes of such meetings and updated versions of the RGMA baseline document to be made freely available.

Gas transporters should be subject to a licence condition. Comments on the proposed draft of the gas transporter licence condition

As stated in our response to the June consultation we firmly believe transporters should be party to the SPAA from the outset and are pleased that Ofgem have agreed with this view in the Final Proposals document.

We believe that over time, as the transporters role becomes more defined and as the scope of the SPAA extends into the areas of registration and the customer transfer process, it will be appropriate for transporters to contribute toward the funding of the SPAA.

However, bearing in mind the difficulty in determining what an appropriate level of funding would be at this stage, and recognising that this may dis-incentivise transporters to vote in favour of a licence change, we are happy for this to be addressed via a future modification.

Should transporters reject such a modification, we would expect this to be appealed to the SPAA Forum and ultimately to Ofgem.

With regard to the gas transporter licence condition we do not believe the draft proposal is sufficiently detailed bearing in mind the equivalent draft condition proposed for the gas supply

licence. We have therefore suggested an alternative below, which draws heavily on the condition it is proposed supplier should accept.

Gas Transporters Licence Condition

1. The licensee shall, in conjunction and co-operation with all other transporters and suppliers, prepare, maintain and be a party to a form of agreement to be known as the Supply Point Administration Agreement, as may be designated by the Authority for the purposes of this condition generally, being a document designed to facilitate achievement of the objectives set out in paragraph 4
2. The licensee shall become a party to and thereafter comply with those provisions of the Supply Point Administration Agreement relevant to it.
3. The Supply Point Administration Agreement shall be an agreement made between:
 - a) on the one part, the licensee and all other licensed gas transporters; and
 - b) on the other part:
 - (i) all licensed suppliers in their capacity as users of supply point administration services; and
 - (ii) such other persons as are necessary parties, as determined by parties to the agreement.
4. The objectives referred to in paragraph 1 are:
 - a) the development, maintenance and operation of an efficient, co-ordinated and economical change of supplier process;
 - b) the furtherance of effective competition between gas suppliers and between relevant agents; and
 - c) the promotion of efficiency in the implementation and administration of the supply point administration arrangements.

Supply Licence Condition

1. The licensee shall, in conjunction and co-operation with all other suppliers and transporters, prepare, maintain and be a party to a form of agreement to be known as the Supply Point Administration Agreement, as may be designated by the Authority for the purposes of this condition generally, being a document designed to facilitate achievement of the objectives set out in paragraph 4.
2. The licensee shall comply with those provisions of the Supply Point Administration Agreement relevant to it.
3. The Supply Point Administration Agreement shall be an agreement made between:
 - a) on the one part, the licensee and all other licensed gas suppliers; and
 - b) on the other part:
 - (i) all licensed Gas Transporters in their capacity as providers of supply point administration services; and
 - (ii) such other persons as are necessary parties, as determined by parties to the agreement.
4. The objectives referred to in paragraph 1 are:
 - a) the development, maintenance and operation of an efficient, co-ordinated and economical change of supplier process;
 - b) the furtherance of effective and efficient competition between gas suppliers and between relevant agents; and
 - c) the promotion of efficiency in the implementation and administration of the supply point administration arrangements.
5. The licensee shall provide for a copy of the Supply Point Administration Agreement to be provided to any person requesting the same upon payment of an amount not exceeding the reasonable costs of making and providing such copy.

Comments on draft supply licence condition (by paragraph)

1. As transporters are now to be Parties to the SPAA we believe it is appropriate to recognise their role in co-operating with suppliers in the preparation, maintenance of the SPAA. As stated below, because we believe paragraph 5 & 6 should be deleted in their entirety sub paragraph 1. b) should also be deleted.
2. As transporters are now to be Parties to the SPAA it is possible there will be sections within the SPAA which relate to transporters only. We therefore think the wording in this clause should replicate that proposed in the transporter licence and refer only to compliance with provisions that are relevant to suppliers.
4. The gas supply licence contains a number obligations which are specific to an individual supplier and do not relate to inter-relationships with other suppliers and transporters (e.g. Marketing and Codes of Practice). By including within the objectives of the SPAA "the efficient discharge of the licensee's obligations under this licence" there is a danger that this will be used to extend the scope of the SPAA into areas where suppliers may be unwilling to disclose act consensually with their competitors. This objective should therefore be deleted from the draft licence condition.

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Deleted: 5. The Supply Point Administration Agreement shall contain:¶ <#>provisions for admitting as an additional party to the Supply Point Administration Agreement any person who accepts the terms and fulfils the conditions (each as specified in the Supply Point Administration Agreement) on which accession to the Supply Point Administration Agreement is offered;¶ <#>provisions for the licensee to refer to Ofgem for determination, whether of its own motion or as provided in the Supply Point Administration Agreement, any dispute which shall arise as to whether a person seeking to be admitted as a party to the SPAA has fulfilled any accession conditions; and if Ofgem determines that the person seeking admission has fulfilled all relevant accession conditions, for admitting such person as a party to the Supply Point Administration Agreement;¶ <#>arrangements enabling modification of the Supply Point Administration Agreement;¶ <#>such other persons as are necessary (i) so as to better facilitate the achievement of the relevant objectives a ... [1]

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5. We do not think any of the provisions detailed in paragraph 5 are needed in the supply licence itself as they are all covered by protected clauses within the SPAA. Ofgem approval would therefore be needed before any changes could be made to these clauses covering what the SPAA must contain.
- a) this is covered by clause 4.2 of the SPAA
 - b) this is covered by clause 4.4 of the SPAA
 - c) change control is covered within clause 9 of the SPAA
 - d) this is covered by clause 9.1.1. of the SPAA
 - e) this is covered by clause 9.1.5. of the SPAA
6. We are concerned that part a) of this paragraph seeks to place obligations on suppliers to implement changes to their systems and processes so as to give full and timely effect to any modification to the SPAA. We are also concerned by the reference to implementation being consistent with the procedures applicable under core industry documents to which it is a party as this is ambiguous and could increase the scope for double jeopardy.

Due to differing governance regimes it may not be possible to implement change consistently, and the in the event a supplier does not implement a modification to a mandatory schedule in accordance with the timescales defined through the SPAA change control process they will be in breach of paragraph 2 of the licence condition.

We believe therefore that part a) of this paragraph should be deleted and part b) is provided for in clause 9.10 of the SPAA itself, which is a protected clause.

5. The Supply Point Administration Agreement shall contain:

provisions for admitting as an additional party to the Supply Point Administration Agreement any person who accepts the terms and fulfils the conditions (each as specified in the Supply Point Administration Agreement) on which accession to the Supply Point Administration Agreement is offered;

provisions for the licensee to refer to Ofgem for determination, whether of its own motion or as provided in the Supply Point Administration Agreement, any dispute which shall arise as to whether a person seeking to be admitted as a party to the SPAA has fulfilled any accession conditions; and if Ofgem determines that the person seeking admission has fulfilled all relevant accession conditions, for admitting such person as a party to the Supply Point Administration Agreement; arrangements enabling modification of the Supply Point Administration Agreement:

such other persons as are necessary (i) so as to better facilitate the achievement of the relevant objectives as set out in paragraph 5; and

following consultation with the parties, or representatives of the parties, to that agreement and other interested parties.

provisions (which shall be approved in advance by Ofgem) by virtue of which specified parts of the Supply Point Administration Agreement shall not be capable of modification without the prior approval of the Authority; and

provisions enabling parties to the Supply Point Administration Agreement to appeal against any proposed modification of the Supply Point Administration Agreement to the Authority for determination.

6. The licensee shall:

take all reasonable measures to secure and implement (consistently with the procedures applicable under or in relation to the core industry documents to which it is party (or in relation to which it holds rights in respect of amendment)), and shall not take any steps to prevent or unduly delay, such changes which are appropriate in order to give full and timely effect to any modification which has been made to the Supply Point Administration Agreement; and

furnish the Authority with a copy of any modification which is made.