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Dear Nick,

Gas Retail Governance – Final Proposals - March 2004

Thank you for the opportunity to respond to this consultation document. BP's response is not confidential and may be placed in Ofgem's library and on its website.

The key issue for BP within this consultation document is the proposal not to ask I&C suppliers to accept a licence condition mandating accession to the SPAA. BP welcomes and strongly supports this proposal. For BP, the primary purpose of SPAA is to govern the competitive metering processes developed under the RGMA project since governance in the gas supply market is already in place.

BP has provided the following detailed comments using the same structure as the document itself, and has included within the comments our responses to Ofgem's four specific questions where views are sought.

Provisions of the SPAA Document

10-day consultation period – BP welcomes Ofgem's proposal to amend the SPAA drafting to reflect a 15-day consultation period since there is a need to align with the timescales set out in the Shipper/Transporter relationship if such arrangements are to work successfully.

BP also welcomes the use of RIAs where proposals are considered to have a significant impact.

Criteria for urgent status – this will need a common sense of alignment with Network Code otherwise the mechanism will not work.

Introduction of schedules – we note the split view but recognise the value of a less prescriptive regime engendered by allowing voluntary schedules. We also note the value of providing a period of assessment before choosing to make arrangements mandatory. In addition we agree that immediate escalation to mandatory status may be required in certain circumstances, e.g. in response to legislation, etc., however we would wish to see a "higher hurdle" set for mandatory status to be conferred.

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Consumer representation – we support the role for energywatch as the appropriate consumer representative and their ability to raise changes, but agree that they should not have the ability to vote.

Appeals – Ofgem correctly state that some I&C suppliers are concerned at the influence of predominantly domestic suppliers who also declare an interest and vote as an I&C supplier, i.e. pushing through changes that primarily benefit domestic suppliers, but we do not agree with Ofgem’s belief that the two-tier voting structure mitigates this risk. This, therefore, remains a concern for BP.

We welcome the extension of the existing provisions for appeals to include class action, but seek clarity on which other “groups” might be included in this category and where this concept might be defined.

Protected provisions - we support Ofgem’s view that clauses 4.2, 5.1 and 9 should be afforded “protected” status and that clause 5.6 (previously 5.5) does not require “protected” status.

With regard to clause 14, we agree that obligations should only be classed as mandatory if it is demonstrated that they are essential to allow the efficient and effective interoperation of parties to the agreement, but seek clarity on how Ofgem intend to apply the use of derogation in relation to SPAA.

Voting thresholds – with voting rights based on MPRNs rather than volumes, BP remains concerned that the effectiveness of the I&C constituency may be diluted by suppliers active in both markets declaring an interest in the I&C vote. The ability to appeal by class action, if approved, would provide a degree of improvement but we would still have significant concerns over undue influence should the proposal for I&C non-mandatory accession not be approved.

We recognise the risk of apathy with regard to voting and note the example provided regarding relatively low levels of responses to Network Code modifications. We agree that the best means of ensuring robust and equitable decision-making would be for all parties to be actively engaged in the process but in reality larger players are better able to resource attendance at multiple fora than smaller participants. Where suppliers have an interest in both I&C and domestic markets, they are able to jointly resource attendance and participation. This position is demonstrated by Ofgem’s own observation regarding Network Code modification responses. We agree that voting should be by reference to the percentage of votes cast rather than the percentage of votes capable of being cast.

Derogations – please refer to the comment made above under “protected provisions”.

The SPAA licence condition(s)

Licensing of suppliers – the domestic market requires a high degree of alignment due to the volume nature of business in terms of numbers of customers. Such volume allows for the smearing of IT costs over millions of customers rather than over a small pool of customers.

We have stated from the outset that obligating I&C Suppliers to participate in SPAA is an extension of regulation into a hitherto unregulated market and we strongly believe that such arrangements for I&C should be voluntary, although our concerns regarding the implications of competition law have still not been resolved.

We remain of the belief that reforms to the customer transfer process will be driven by domestic suppliers. We agree that, other than the metering arrangements, much of the SPAA will not be directly applicable to I&C suppliers and we therefore welcome Ofgem’s intention not to ask I&C suppliers to accept a licence condition mandating accession to the SPAA. We believe that the mandatory areas of the RGMA baseline are robust and unlikely to suffer significant revision in the short to medium term.

Accession to the SPAA - it is only the mandatory areas of RGMA that will generally shape metering arrangements, and the I&C market is significantly different from domestic. As such, voluntary accession supports the development of innovation in the I&C market without obligating I&C suppliers to an overly restrictive mandatory SPAA regime.

Funding – since the budget from the second year onwards would be subject to approval using the same voting mechanisms as for other change proposals, this could be a concern for I&C suppliers.

Is the SPAA likely to have anti-competitive effects? – BP supports the non-inclusion of entry testing and the principle of minimising mandatory requirements in the SPAA.

Since SPAA parties will have the ability to influence changes, creating the risk that the result of changes over time could introduce anti-competitive effects, perhaps Ofgem could give consideration to including some form of wording relating to the elective schedule that avoids any potential for anti-competitive effects being created.

Whilst we accept that individual parties have a responsibility to satisfy themselves that any actions are compliant with their legal obligations, including those under the Competition Act 1998 and the Gas Act 1986, if Ofgem wishes to encourage voluntary accession of I&C suppliers then any assistance in providing assurance over competition law implications would be appreciated.

Ofgem seek views (3.28);

- BP supports Ofgem's proposal not to ask I&C suppliers to accept a licence condition mandating accession to the SPAA,
- If I&C accession is not mandated, full participation of I&C suppliers could be encouraged by;
 - The creation of a framework that does not disadvantage an I&C supplier,
 - A charging structure that is not prohibitive,
 - A “by meter point” cap on the IT cost of implementing change, and
 - Support from Ofgem in achieving assurance on competition law implications.

Codes of Practice

The Domestic Code of Practice – BP agrees with the comment that inclusion of the DCoP in the SPAA is of secondary importance to governance of gas metering arrangements. Governance of the RGMA baseline was the principle purpose for which the SPAA was originally created.

The Industrial and Commercial Code of Practice – BP believes that the I&C CoP should remain outside SPAA, and suppliers will continue to have access to these arrangements via their shipper. The review of the I&C CoP, suggested by some respondents to the previous consultation, is already underway.

We therefore support the removal of this item from the “schedule 5” list of topics to be pursued as a priority for the SPAA EC, and welcome the recognition that this is an issue for suppliers to progress themselves if considered appropriate.

GT Involvement in SPAA

Whilst IGTs' Network Code arrangements are broadly consistent with Transco's, they operate mainly manual processes and these have cost implications for suppliers and at least in some cases these additional costs are being passed on to consumers. If Transco proceeds with its intention to sell one or more Distribution Networks, with their incumbent populations of many millions of consumers, we agree that there will be a need for consistency across the networks. This may at the same time create an opportunity for IGTs to be included in any solution.

We are aware that some suppliers have argued that they have no direct influence over the Network Code arrangements, but in most cases suppliers are served well through their relationship with their shipper. In the majority of cases both shipper and supplier belong to the same corporate entity and as such should resolve such issues between themselves.

We do not disagree that there is little incentive for NGT to invest in SPA improvements or to actively maintain accurate data, but this might be an issue for Ofgem to deal with through a more commercial approach to price controls to facilitate improvements not covered in existing Transco OpEx.

Following a potential sale of DNs, BP would support the proposal that IGTs also participate in the Agency. This could bring some real benefits by allowing development of generic IT systems for communication to replace the low-tech solutions currently utilised.

It should be noted that the relationship for metering is covered neither by Code nor SPAA but rather by separate contracts between Suppliers and Transco Metering Services Ltd through MCG.

We seek clarity on how the shipper/supplier relationship would be impacted by these proposals to include GTs in SPAA.

Should GTs be part of SPAA? – BP does not object to the principle of GT accession, but we remain unclear as to how this would work in practice, in particular in relation to the interaction of the SPAA with Network Codes. We are also unconvinced as to the purpose or benefits of migrating SPA provisions from the Network Code into SPAA.

We are concerned that if GTs have an interest in both Network Code and SPAA, they could have undue influence on both regimes. This would, of course, depend on the level of their interest.

N.b. the text in 5.12, second line, should state that GTs have a function to “obtain” rather than “provide” read data.

Timing of GT accession – if it is agreed that GTs should accede to SPAA, then we would advocate immediate involvement, at least by NGT, to ensure that Network Code and SPAA governance regimes remain aligned, preventing either gaps in governance or the creation of “double jeopardy”.

GT licence condition – we note that NGT and Ofgem have had extensive discussions on the possible governance arrangements that may apply to the UK gas market in the event of a sale of one or more DNs, and that NGT have agreed in principle to accede to the SPAA, subject to a clearer appreciation of the potential costs and risks involved. BP is also keenly interested in the assessment and definition of these costs and risks, and urge Ofgem and NGT to keep interested parties, such as ourselves, fully involved in these critical issues.

Funding – we agree that it is not appropriate to base funding of the SPAA on the funding mechanism of the electricity MRA and support Ofgem’s suggestion to base GT funding on MPRNs. We welcome the intention to move to a more sophisticated funding arrangement whereby costs are apportioned on a schedule-by-schedule basis, recovered only from those parties to whom the schedule applies.

BP welcomes the NGT/Ofgem agreement to review the funding of the agent SPA services in preparation for the next price control review. We would expect such a review to lead to the establishment of unbundled transparent and cost-reflective charges, and we would welcome the introduction of financial responsibility on parties proposing change, allowing for more robust analysis of the relative merits of the proposal.

BP is one of the I&C suppliers who has advocated the SPA function being split into I&C and domestic functionality, allowing it to develop to meet the requirements of each market without placing costs on parties who do not benefit, and agree that a review of SPA funding could facilitate such a move away from the current “one-size-fits-all” service.

Interaction with Network Code(s) – whilst we appreciate the need to keep SPAA aligned with Network Code, we do not support SPAA signatories being allowed to raise Network Code modifications unless they are also signatories to the Network Code and do so in that capacity. It should be noted that RGMA-related issues are outside Code in any case and sit within the Transco Metering Contracts.

Ofgem states that it would seem sensible to avoid duplication wherever possible but, at least to some extent, the inclusion of GTs in SPAA may be seen as creating duplication in that Ofgem will acquire a new role requiring them to ensure that Network Code and SPAA remain synchronised.

Ofgem seeks views (5.46);

- The question whether or not a licence condition should be introduced upon all GTs, mandating accession to the SPAA, makes the assumption that GTs will be involved in

the SPAA. Although Ofgem consider this to be appropriate, we understood that this matter is still part of the consultation process. If there is a strong argument for the inclusion of GTs in the SPAA, it is likely that the consequent potential for impact on other parties would require a licence obligation on GTs.

- BP has no comment on the proposed GT licence condition in Appendix 3

Governance of metering

The need for formal governance to underpin the competitive metering market was the original driver for development of SPAA. Since then it has been adopted by mainly domestic suppliers and extended to encompass issues that predominantly impact the domestic market.

Collective governance of meter asset transfers – BP does not support collective governance in meter asset transfers. Due to the specific nature and complexity of metering in the I&C market, prescription should be avoided. Ofgem recognises that SPAA must not become embroiled with the pricing of meters, and we agree with this, though there may be a role for them in arbitration in the event of a dispute.

BP agrees that it is not necessary for the relationship between the RGMA baseline and the NGT metering contract to be formally codified within SPAA.

Way Forward

BP agrees with Ofgem that licensees need the certainty that will be provided by Ofgem designating the final version of the SPAA document at the same time as formally consulting on the introduction of the new licence conditions.

RGMA Baseline document – BP agrees that an accurate and comprehensible RGMA baseline must be maintained and made freely available for the benefit of potential new entrants to the gas industry as well as its incumbents. We support the insertion of the RGMA baseline documentation as a schedule into the SPAA, and recognise that responsibility for ownership and ongoing change control will therefore reside with SPAA parties. We seek clarity on the timing of its inclusion, since Ofgem states that an SPAA party will need to raise a change proposal in order for it to form part of SPAA; we had understood that it would be in place from Day One.

Since flexibility was a key principle of the development of the RGMA, only compliance with mandatory areas should be sought. BP does not believe that enforcement to ensure compliance will be critical for Day One, but it will certainly be important in the future and we welcome the intended review of work previously carried out in this regard.

As Ofgem are already aware, there are a number of outstanding NWC modifications whose implementation has been deferred pending the implementation of metering competition. The impact of these modifications on SPAA will need to be considered.

BP notes Ofgem's statement that NGT will not have a power of veto over changes proposed to the RGMA baseline by virtue of refusing to make the necessary changes to its metering contract.

BP welcomes Ofgem's offer to work together with the GIGG and MCG to develop detailed procedures for the interaction between the SPAA and the NGT metering contract, and we support the need for a link between MCG change control and SPAA change control. This could be via joint meetings for common issues, an open invitation to attend (recognising that certain issues may not be appropriate to be jointly discussed) or edited minutes to be more widely circulated.

We agree that it will be helpful if SPAA parties are mindful of the DN Sales proposals when developing the SPAA.

Regulatory Impact Assessment

Suppliers' costs – whilst operating costs have been capped for the first year, it should be noted that it is the IT cost of change, both initial and ongoing, that is the most significant.

Other organisations – if the introduction of new standard licence conditions leads to the freeing up of Ofgem resources and a reduction in complaints to energywatch, then this will be a welcome benefit.

Supply Licence Condition (revised draft)

BP suggests a minor addition to paragraph 4(d);

d) the promotion of efficiency in the implementation, *operation* and administration of the supply point administration arrangements.

BP hopes that you find our comments helpful; please do not hesitate to contact me (on 01206 752019) or Steve Mulinganie (on 07990 972568) if you would like to discuss any aspect of our response.

Yours sincerely,

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Regulatory Affairs