Nick Simpson
Director, Modifications
Office of Gas and Electricity Markets
9 Millbank
London SW1P 3GE

Dear Nick

GAS RETAIL GOVERNANCE: FINAL PROPOSALS

We welcome the opportunity to comment on your final proposals for gas retail governance. This response represents the views of EDF Energy, which includes the licensed entities of London Energy plc and Seeboard Energy Gas Ltd. I confirm that our response can be treated as non-confidential and may therefore be placed on your website.

In the following paragraphs we outline our position in relation to issues raised in your document. We have also added some general comments to summarise our views and have included an appendix to highlight some small errors that we have noticed in the amended version of the SPAA.

Provisions of the SPAA

We are pleased that many of the recommendations made in our response to the June 2003 consultation have been incorporated into these final proposals. Overall responses have, however, indicated some areas where our preferred approach was not considered to be appropriate and we have therefore taken the opportunity to make some additional comments on those provisions in this part of our response.

In our response to the June document, we expressed the view that a ten-day consultation period would be appropriate in the majority of cases, provided that this was seen as a minimum, which could be extended in certain defined circumstances, e.g. to enable impact assessment of complex proposals. The extension of this minimum period to 15 days does not cause undue concern, although it follows that any urgency criteria may need to be invoked more frequently to facilitate certain changes. We would suggest that this is an area that should be kept under review by the SPAA executive committee as the agreement matures.

With regard to the inclusion of energywatch, we remain concerned at the extent to which their involvement has been enshrined into the revised SPAA. We do not contest that energywatch should have full access to meetings and documentation, but we do consider that the ability to raise changes to the agreement, albeit without the right to vote or appeal, is an unnecessary extension of their role.

Ofgem's extension of the internal appeals provisions under SPAA, to include rights analogous to those of a class action, is imaginative and we welcome this. However, since SPAA is a multi-lateral instrument which provides for industry-wide governance of the gas retail market processes, we remain of the view that there should also be rights of appeal against Ofgem's decisions under SPAA to an independent external body. Such a mechanism would be appropriate and desirable, since, by increasing both the transparency and accountability of Ofgem's role in the process, it would have the effect of increasing the confidence of all relevant parties (including consumers) in the operation of this market.

We shall be arguing this case to the DTI when the Secretary of State consults on the industry documents to be designated for the purposes of appeals to the Competition Commission under the forthcoming Energy Act.

Accession via licence obligation

We are concerned at the proposal that I&C suppliers should not be subject to a licence condition to mandate accession to SPAA. We continue to hold the view that SPAA needs to be a fully inclusive supplier agreement. We note Ofgem's concerns regarding the extension of regulation into the I&C arena, but our view is that the exclusion of the I&C suppliers from the mandatory requirements of the SPAA, in particular the flows incorporated within the RGMA baseline, could compromise the industry standard. This could result in the requirement for suppliers involved in both markets to make expensive differential provisions to systems and could also add cost to future changes that may be required to MAM systems, potentially inhibiting the future development of the RGMA baseline.

It is our view that without a licence condition for I&C suppliers, there can be no effective guarantee for their involvement in the agreement. Furthermore, there will need to be additional changes to SPAA, which currently assumes that all suppliers are mandated by licence to sign. Ofgem will need to lead this rationalisation as it is the only independent party.

Drafting of licence conditions

We are happy, both as to style and to content, with the drafting of the relevant conditions for the supply and transportation licences.

GT involvement in SPAA

We have previously indicated our support for the inclusion of GTs as parties to SPAA. We are therefore pleased to note that Ofgem believe that this can be achieved within the implementation timetable and fully support this objective. We agree that the requirement to sign SPAA must be mandated by a general GT licence condition, otherwise there is no guarantee of compliance.

With regard to funding, however, we do not agree with Ofgem's view that the SPAA does not offer any initial benefits to GTs. We do not see any reason why a class of party to the agreement, receiving the benefits that it confers, should not also make a contribution to the administration costs. Furthermore, we are of the view that the MRA funding model is appropriate to the SPAA and that the GT constituency should therefore be required to contribute one third of the funding, on a MPRN basis. We do not believe that this would adversely impact iGTs, bearing in mind the market share of NGT Transco.

Interaction with Network Code

As signatories to the SPAA, GTs should be under an obligation to ensure that their Network Codes are maintained in line with SPAA. We agree that the use of joint workgroups would be sensible where provisions under discussion cut across both agreements. We support the view that there should not be duplication across SPAA and Network Codes and we see the rationalisation of SPAA procedures as one of the major potential benefits of SPAA for all concerned in the future.

Metering

The relationship between the SPAA and the metering contracts is critical to the success of RGMA. We have previously expressed our concerns at the gaps in compliance between the TMSL Rainbow agreement and the RGMA baseline. We believe that there will be a requirement going forward to develop the baseline in such a way that it reflects the standards to which all MAMs will be required to operate.

As a consequence, it is vital that the appropriate framework should be in place to enable the synchronisation between the metering contracts and the RGMA baseline to be achieved. This should also recognise the limited commercial ability of individual suppliers to exert influence over the terms of the Rainbow contract. We therefore support the proposal that Ofgem should work with GIGG and MCG to develop detailed procedures for SPAA/NGT interaction.

We remain concerned about the issue of governance of the Metering Contract Group (MCG) contracts. Here, Transco has stated that it will not implement agreed changes to the RGMA baseline if its price control prevents it recovering its costs of implementation. This could put suppliers at risk of breaching their licence, since they would be unable to implement such an agreed change.

Ofgem has facilitated progress in this matter and a governance structure based on reasonableness and a route of appeal to Ofgem has been proposed. However, it is not clear what suppliers could do if Ofgem upheld an appeal from Transco, thereby meaning that suppliers could not implement a SPAA agreed change to the RGMA baseline. It would seem to be appropriate for the Transco veto to be considered and discussed at SPAA, so that any decision made at SPAA could be implemented through MCG without further controversy.

Way forward

We believe that the timetable is extremely aggressive but achievable. Recognition needs to be given to the parallel activities required to support SPAA, such as the procurement of a service provider and the development of metering schedules. These will need to be in place to ensure that the timetable remains appropriate to ensure the effective implementation of the agreement. It will also be necessary to ensure adequate alternative governance for the RGMA baseline post go-live in the event that the SPAA has not been successfully implemented prior to that event.

If you have any queries in connection with these comments, please do not hesitate to contact either myself or Paul Waite (on 07971 152430 or by e-mail to paul.waite@edfenergy.com).

Yours sincerely

Roger Barnard

Regulatory Law Manager
EDF Energy

Appendix 1 – SPAA Typographical Errors

Section	Comment
Definitions	I&C Supplier Member – should refer to Clause 6.3.1 Large Transporter – delete 'more than' Mandatory – add Clause 5.5 to references Voluntary Schedule – should refer to 5.17 not 5.18
5.13.5	References to Clause 5.4 (A) and (B) should be to 5.13.4 (A) and (B)
6.8	Sub-clause numbering is wrong (there are two section ii/s)
8.3	If GTs are included but not as funding parties, this clause needs to be changed to reflect that only supplier parties can vote on the budget.
9.8	Still refers to 10 days, not 15.
10.15	Should refer to Clauses 10.15 and 10.16