

05 April 2004

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NO. 4236804

Dear Nick,

Re: Gas Retail Governance Final Proposals Document – March 2004

We have now reviewed the above mentioned document and would like to submit the views of Gaz de France ESS for your perusal.

Principles of Governance:

The principles of Governance proposed by OFGEM provide a broad basis from which to define and monitor the effectiveness of a governance regime. The continued review of any active regime against these principles should provide a yardstick against which the ongoing operation of a governance regime could be monitored.

Licence of Suppliers:

Gaz de France welcome OFGEM's recognition of the difference between the legal frameworks covering the provision of Domestic and I & C meters, and that they have further applied this differentiation to the requirement for there to be a licence obligation to accede to SPAA, proposing to limit the application of a licence condition requiring accession to the SPAA to the holders of Domestic Supply Licences.

Accession:

The facility to accede voluntarily to the SPAA provides a route for any party that is not required to join SPAA as a licence condition to join on the basis of value and inclusiveness. It became clear at the OFGEM seminar that any such voluntary accession should be supported by a right and process to leave the SPAA. Without such a complete process it will be more difficult to obtain internal legal sign off on the issue of voluntary accession.

Codes of Practice:

The present governance of the IcoP is under the auspices of the Gas Forum. The successful operation of this Code of Practice and its governance procedures can be surmised from the low level of complaints from I & C consumers relating to the areas covered by the IcoP. Gaz de France support the continuance of the

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existing arrangements until such time as an overwhelming majority of the I & C suppliers have acceded to SPAA at which point there may be value in incorporating some or all of the aspects of the IcoP into a SPAA schedule. A separate consultation by OFGEM covered the MAMCoP. There has been no public response following the submission of comments by parties on this document and particularly the issues of what status this CoP would have and how the use of the MAMCoP would be mandated given that MAMs are not recognised under either the Gas Act or the Utilities Act and are therefore not directly governable by OFGEM. Therefore, Gaz de France feel that it is necessary to re-iterate here their position that as the MAMCoP stood it was unsuitable to be used as a CoP mandated for use by means of a condition in supplier's licences requiring them to only contract with MAMs that have undertaken to operate in line with the MAMCoP. This position will be reviewed once a response to the industries detailed comments on the MAMCoP and any changes that have been made in response to these comments is made public. It is unfortunate that all these issues could not be brought in line temporarily.

GT Involvement in SPAA:

Gaz de France support the inclusion of GTs in the operation of SPAA from its formation and view this as one of the positives to come out of the delay to the implementation of metering separation.

Interaction with Network Codes:

The continued smooth interaction of the SPAA with the various Network Codes is key to the continued smooth operation of the retail market. Placing a licence obligation on GTs to accede to the SPAA will assist in this area, but it may need a specific obligation on GTs to raise necessary Network Code modifications to support changes to mandatory elements of the SPAA.

Interaction with NGT Metering Contracts:

The inclusion of GTs in the operation of SPAA counters NGT's position in these contracts regarding their governance, namely that they have no influence over the operation of the change control process within SPAA and therefore could find themselves exposed to a requirement to implement a change that was outside the scope for which they had budgeted and with no means of changing their prices to recover the unexpected costs. Based on this we would expect OFGEM to bring the discussions on NGT's right to veto within the metering contracts to a conclusion by requiring NGT to withdraw the appropriate clauses from the contracts.

RGMA Baseline Document:

Given Gaz de Frances international nature, we are keen to maximise the value obtained from our involvement in the development of the RGMA baseline. Thus, we wish to have the option of making use of the processes and file formats contained within the document in as wide a forum as possible. Therefore, we believe strongly that there should be no limit on where and how the contents of the RGMA baseline are used by those parties that contribute to its development. Whilst we recognise that the RGMA baseline requires a home so that IPR can be vested in a body, the use of the IPR by any party involved in its development, even if not a signatory to the SPAA, must not be constrained. The present wording in the SPAA is not ideal, but does provide wide latitude in the use of the

IPR of the SPAA and its associated schedules. Gaz de France consider that these provisions may need to be awarded “protected status” to ensure that our rights to the IPR are not weakened by other parties.

Regulatory Impact Assessment (RIA):

Gaz de France welcome the detail provided by OFGEM in the Regulatory Impact Assessment and look forward to achieving some of the benefits identified in the report.

Supply Licence Condition:

Gaz de France welcome the limiting of the licence obligation to accede to SPAA to the holders of Domestic Supply licences, but have a number of concerns as to whether the precise wording of the proposed licence condition unambiguously supports this position.

Positioning of the Condition – It is not clear from the proposal how the condition will be incorporated into the licences. This is important, as the wording could be open to different interpretations based on whether it is included as a general condition in supply licences or as a condition specific to Domestic Supply licences. We would like to see a position of absolute clarity.

Detailed Comments –

Clause 1 (1st Line) – “...all other suppliers...” should be made more specific and only refer to Domestic Suppliers.

Clause 3a) - “...all other licensed gas suppliers...” should be made more specific and only refer to Domestic Suppliers.

Clause 3b)(ii) – This clause seems to grant powers to be signatories of SPAA to require other parties who are not to accede to SPAA on the basis that the parties to SPAA deem the other parties to be “necessary parties”. This goes completely against the statements made by OFGEM in the consultation that I & C suppliers will not be required to accede to SPAA. It is also a moot point as to whether this clause could be used as it requires persons that are not party to an agreement to be subject to that agreement. Also there is no definition of “necessary parties”.

Clause 5b)(ii) – There is no definition of “interested parties”.

Clause 6b) – This clause would seem to operate in such a manner that OFGEM would receive a copy of any modification from the holder of each and every licence. Surely, this would be more efficiently achieved through provision within SPAA.

Clause 7 – Should this be extended to specifically cover any schedules of the SPAA?

Will this cause any IPR conflicts within the SPAA?

The Supply Point Administration Agreement:

The areas within the SPAA on which Gaz de France provided our previous response have not substantially changed and as such their comments from our previous submission stand. However, we see little value in repeating those here.

There are no areas of content within this letter that we deem to be confidential and therefore they are open to be used within the public arena.

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Please do not hesitate to call for clarification of comments or further queries.

Yours sincerely



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