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31<sup>st</sup> March 2004

Dear Nick,

### **Gas Retail Governance – Final Proposals**

Thank you for the opportunity to respond to Ofgem's Final Proposals on the Supply Point Administration Agreement (SPAA). There are a number of comments that Gemserv would like to make and some more detailed points contained in the attached Confidential Annex.

Gemserv welcomes the publication of this Final Proposals document. There is no doubt that the introduction of the SPAA will take the gas industry a significant way towards complying with the Principles of Governance published in the June 2003 consultation and for this reason its implementation should not be avoidably delayed.

The introduction of such a change will be attended by a measure of uncertainty and risk, one such area is in the degree of involvement of Industrial and Commercial (I&C) suppliers. As stated in its response to earlier Consultation Documents, Gemserv believes that participation in the SPAA arrangements by I&C suppliers is essential for good and consistent governance of those parts of the business regime in which participation is not sector specific. The present suggestion that involvement need not be mandated by licence seems to be a reasonable compromise that could be expected to gain support at least from dual I&C and domestic suppliers. It does however raise some questions which may need to be resolved prior to designation, for example;

- Is it appropriate that a voluntary signatory has the same rights and obligations under the SPAA as one mandated by licence?
- Is there an effective remedy should a voluntary signatory fail to comply with a "mandatory" schedule?
- Under what circumstances can a voluntary party withdraw from the SPAA?
- Does the present arrangement for cost recovery still apply if some suppliers remain outside the SPAA?
- The SPAA Executive Committee requires two I&C members, one of whom must be present at every meeting. This may prove difficult if the SPAA doesn't attract enough I&C suppliers.

The solutions to these and other related points may not be difficult to arrive at, and many are being addressed through the Gas Industry Governance Group and its associated sub-groups. Their resolution however could overrun the timescales for implementation. These issues should be prioritised in order to give a robust and workable change process prior to designation. In this way any unresolved issues can be made the subject of change proposals after designation.



Views are also sought regarding the participation of transporters. Gemserv supports the principle of transporter involvement in the SPAA at the earliest practical opportunity. In paragraph 5.11 Ofgem states that the reason for GTs immediate involvement in the SPAA is the RGMA in addition to the potential future move of Supply Point Administration (SPA) requirements from Network Codes to the SPAA.

The degree to which immediate involvement in the SPAA will ensure compliance by GTs with the RGMA Baseline is unclear from these Final Proposals as no formal linkage is proposed between the SPAA and the NGT contract (see 6.10). NGT's ability to influence change may also be curtailed (see 7.23). In practice this may produce an unwelcome distortion in the governance arrangements with GTs potentially not being bound to mandatory schedules in quite the same way as suppliers. It is Gemserv's view that Ofgem should promote more work in this area as suggested in 7.24 in order to establish clarity and commonality of understanding. Gemserv would be willing to participate in this work if it were felt appropriate.

The migration of SPA services from Network Code(s) to the SPAA is likely to be some way off and it is arguable that it would need to be underpinned, and possibly even initiated, by a review of the present licence obligations to provide these services. The ongoing work in connection with the proposed NGT DN Sale and, independently, the creation of the NGT Agency will give vital background information in identifying the business processes and mapping them to the Network Code, as well as defining the costs of the present service.

Finally, Gemserv would like to comment on the need to keep Network Codes and the SPAA in step for relevant provisions. In paragraph 5.40 Ofgem speaks of it's role being to ..."ensure the two documents remain synchronised i.e. not approving a change to one until it is in a position to make a commensurate decision on the other." Gemserv is concerned that the number of Network Codes (13 rather than 1) may give rise to a "convoy" approach that makes the Regulator's position more difficult and introduces uncertainty. A more fundamental review of governance arrangements in this area should be undertaken in the near future.

Comments were also called for in relation to the drafting of the SPAA itself. Gemserv's observations are included in the attached Confidential Annex. If you would like to discuss any of the issues we raise further please either contact myself or Richard Gray (077 3056 6597).

Yours sincerely,

**Nigel Bromley**  
Chief Executive