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1st April 2004

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Dear Nick

Consultation: Gas Retail Governance Final Proposals

Thank you for giving ScottishPower the opportunity to respond to the Ofgem Final Proposals document for Gas Retail Governance. As you are aware, ScottishPower has been actively involved in discussions over gas governance and indeed the development and management of the RGMA baseline since discussions began. We fully appreciate and support the need for robust governance and change control mechanism for the RGMA Baseline and envisage that the SPAA proposal will facilitate the introduction of DCoP schedules into more robust governance arrangement. This is a development that we would support and would view such a step as a positive development.

Since the discussions on gas governance commenced, there have been two significant developments in the gas market, which would appear to rely heavily on there being robust Supplier governance arrangements in place. These two developments are the Customer Transfer Programme and the potential sale of Transco Distribution Networks. Again, ScottishPower is heavily involved in each of these developments and view that this places a greater emphasis on there being sustainable and encompassing governance arrangements in place to support changes proposed by them.

In our opinion SPAA would deliver the mechanism for formalising and strengthening the communication link between Suppliers and we believe that it will be the cornerstone for proposed changes to the transfer process that will benefit customers who are changing Supplier. In addition, over the longer term we believe that SPAA

will be able to facilitate the governance and development of the Supply Point Administration Service, although at present it is unclear how this would be delivered by SPAA, given the present Network Code governance arrangement. That said we look forward to working with Ofgem, Transco and other market participants to overcome issues in this respect, to deliver a more tailored and responsive service and change process.

For ease of reference we set out below our comments on the consultation and answer questions posed in the order in which they appeared.

Provisions

It is the case that Ofgem have been faced with varying views on the provisions of the agreement and have therefore had to take a reasoned judgement on the best way forward.

There are various mechanisms that could be used in an agreement of this nature and ScottishPower participated in the lengthy discussions to agree those proposed by GIGG, taking account as they did of Suppliers market shares, the potential for market consolidation and the issues faced by new and small Suppliers. It is our view that only test of time will reveal if the SPAA arrangements are suitable for the ever changing UK gas market, but are confident that the change control process contained within the document will allow the agreement to develop, if the provisions are found lacking or inappropriate for future market operating.

We therefore respect the position Ofgem has taken and agree with the provisions set out on the principles of the agreement, with the exception of the role and privileges of the customer representative, which we will comment upon later in our response

One final point that we would note on provisions is that the consultation seems to float the idea of voting on votes capable of being cast. It would therefore be beneficial if Ofgem would clarify that voting is on the basis as detailed within the draft agreement i.e. votes cast only.

Licence Conditions - Gas Transporters

As set out within our previous response on gas governance, ScottishPower advocated the inclusion of all Transporters in SPAA, in particular given that there are potential opportunities for the agreement to benefit Transporters in the future. Since that time our opinion in this respect has been strengthened due to the proposal by Transco to sell off one or more of their Distribution Networks. We see that there is a clear role for SPAA in the arrangements for network sell offs and in particular around how an SPA Service may be delivered in the future.

We therefore support the proposal to have a Licence Condition on all Transporters, but are concerned by the assertion by Ofgem that Transporters should not be required to fund the SPAA arrangements. We believe that it would be beneficial to have Transporters provide funding, as an incentive to ensure that they are fully involved and active in discussions that are taking place. Additionally we do not agree that a party should be constituted within an agreement where they do not share the same responsibilities and obligations as other parties.

In our previous response we were clear on this point, notably by suggesting that the funding arrangements should mirror the MRA. We continue to see a clear requirement to have Transporters funding the agreement in this way to ensure that they are fully engaged and have an investment in the SPAA model.

Licence Conditions – Industrial and Commercial Suppliers

Again, as stated within our previous consultation response, ScottishPower believes that I&C Suppliers have to have a Licence Condition to sign onto SPAA to ensure that the agreement adheres to Ofgem's principles of good governance. It is unclear how the agreement will be effective if I&C Suppliers are not mandated to accede to SPAA, in particular where Ofgem are proposing that the I&C Supplier role remains constituted and active within the agreement.

It is obvious that there is a requirement for I&C Suppliers to be fully engaged in the management and change of the RGMA baseline and indeed Ofgem note this requirement under 3.8 of the consultation document. It is therefore unclear how Ofgem can secure that this happens if there is not a Licence Condition on I&C Suppliers. Equally we see that if I&C Suppliers are able to choose to sign SPAA, that there is a potential for processes to diverge and costs to escalate for RGMA adoption.

We would urge that Ofgem re-consider the prospect of a Licence Condition for I&C Suppliers and also consider more fully the risks of having some, but not all I&C Suppliers involved, but not mandated in SPAA. As an I&C Supplier, ScottishPower would be willing to sign onto SPAA, subject to the same caveat detailed below on the Domestic Licence Condition.

Licence Condition – Domestic Suppliers

ScottishPower is of the opinion that the best way to introduce SPAA and ensure that it is fully effective is to mandate accession via a Licence Condition, irrespective of the party involved. With this in mind, we support the introduction of a Licence Condition for Domestic Suppliers, but caveat this with our comments on customer representation below.

Customer Representation

As outlined within our previous response and explained above, ScottishPower has been involved in gas industry governance discussion since the outset. It therefore

came somewhat as a surprise to us that Ofgem, who also took part in all of these discussions, left the proposal for customer representation until after the agreement had been drawn up and significant funding had been invested in it. In our previous response, we had sought clarification from Ofgem on what additional protection would be delivered by including a role for customer representatives in the SPAA, when Ofgem clearly already had an authoritative role within the agreement, which was strengthened through the last consultation process.

To date we remain unconvinced that a customer representative, be that energywatch or any other representative, should have the ability to raise modifications to the SPAA. In tandem with this we are concerned that the SPAA gives greater participation to the customer representative than to other funding parties. Over and above these concerns, we would question why the customer representative should be able to attend the Executive Committee, which in effect has the duty to manage the SPAA Company Limited, as well as derogations to the agreement. Here we have specific concerns of confidentiality and ensuring that information cannot be used for other purposes other than that of the objectives of SPPA Company Limited.

We note that Ofgem have not justified the role outlined for customer representative since the last consultation document and therefore with our concerns in mind ScottishPower will not support the Licence Condition proposed for Domestic Suppliers if the customer representative remains constituted in the manner currently drafted. We would however find it acceptable to allow a customer representative to attend the change control board and where appropriate Forum meetings.

Implementation – RGMA Change Control

At the SPAA seminar, Ofgem outlined a variety of options for change control post RGMA cut over of 12th July, given that an SPAA service provider will not be in place at that time. It is ScottishPower's view that the option of freezing the baseline from this date, until the appointment of a service provider, is not a viable option, given that there are already changes backed up to support effective operation. Instead we would support using the SPAA framework from 12th July, with Ofgem performing the role of a change control administrator, with an overriding objective on parties to ensure that only changes that are absolutely necessary are proposed.

If in the event SPAA does not come into effect for 12th July, we would propose that the RGMA Change Control Board takes over the ongoing governance of the baseline meantime.

Implementation – SPAA

We have reviewed the SPAA document itself and have some comments on the drafting on the document and we attach this as matrix of comments. We envisage that some of these will have to be factored into the document ahead of it being designated and a consultation on the Licence Condition being carried out. As SPAA has to be finalised ahead of the Licence Condition consultation, we recommend that a short

Licence Condition for Suppliers is applicable, in line with Electricity Supply Licence Condition 20.

We believe that subject to agreeing a Licence Condition, that SPAA could be operated ahead of a service provider being in place. Our only concern here would be to ensure that confidentiality of Suppliers' market share is maintained. Again ScottishPower is willing to work with other interested parties to ensure that the SPAA document and process are fit for purpose.

The above represents the view ScottishPower and for clarity we can confirm that we are fully supportive of SPAA and its objectives. However, as stated above the role of customer representative will have to be changed to enable ScottishPower to support any Licence modification proposal.

Should you wish to discuss any of the points outlined above or any related matter then please do not hesitate to contact me on the telephone number above.

Yours Sincerely

Angela Love
Energy Commercial Manager

COMMENTS FROM SCOTTISHPOWER

Section	Document Reference	Comment
Definitions	Domestic Supply	The wording should be "Premises"
	Gas Transportation Database	The wording should be "Gas Transporters Licence". This is an issue elsewhere through the document
	Group of Parties	We would be concerned if the Group of Parties clauses contained within the agreement placed a restriction on the independent voting a representational rights of ScottishPower Energy Retail Limited due to the ScottishPower Group having an iGT company.
	I&C Supplier Member	Cross reference should read Clause 6.3.1 not 6.3
	Premises	Preferable to say "...land and any building or structure thereon".
	Voluntary Schedule	Cross reference should read Clause 5.17 not 5.18
2.0 Condition Precedent	2.3	It appears that this mirrors 2.1 and we would question the need for it
4.0 Additional Party	4.1 and 4.2	One clause uses the "additional party" the other uses "additional Party". Suggest that "additional party" is correct
	4.2	The obligation is to self certify re Mandatory and Elective Schedules. We suggest that this also applies to Voluntary Schedules if there is a possibility of one of these impacting on other Suppliers/Transporters.
5.0 Schedules	Mandatory Schedule	It is unclear what sanction or action will be take on the failure to comply with a mandatory schedule
	5.3	I should be made clear who has designated and by what procedure
	5.13	(A) and (B) talk about Party - whereas © talks about "non -complaint Party". Suggest that this changes to be consistent.
	5.13.5	(A) the font is different from the rest of the document text
	5.15	Third sentence "...any such decision..." the decision is going to be a refusal, which is a decision not mentioned in this clause. Suggest that there needs to be more detail covering the original reporting Party and the original Non compliant Party each being able to appeal a decision
	5.17	"or Transporter" change to "or a Transporter".
	5.17/5.18	It is questionable what point there is to referring to voluntary schedules within the agreement if it isn't noted how these and the Parties who are complying with them will be recognised
Constitution of SPAA EC	6.8 (i)	Where V means.... Cross reference 20.2 should read 21.2
	6.8 (ii)	Where V means.... Cross reference 20.2 should read 21.2
	6.8 (i)	Where SN means.... Cross reference 20.2 should read 21.2
	6.8 (ii)	Where SN means.... Cross reference 20.2 should read 21.2
	6.8 (i)	Where X means.... Cross reference 20.2 should read 21.2
	6.8 (ii)	Where X means.... Cross reference 20.2 should read 21.2
	6.10	Font is different from the rest of the document text
	6.10 (i)	Where N means.... Cross reference 20.2 should read 21.2

	6.10 (ii)	Where N means.... Cross reference 20.2 should read 21.2
	6.10 (iii)	Where N means.... Cross reference 20.2 should read 21.2
	6.10 (i)	Where X means.... Cross reference 20.2 should read 21.2
	6.10 (ii)	Where X means.... Cross reference 20.2 should read 21.2
	6.10 (iii)	Where X means.... Cross reference 20.2 should read 21.2
	6.18	It is unclear that the Alternate member will be receiving notices for meetings - we assume that he would be
EC Meetings	6.33	energywatch - please see our consultation comments
	6.37	This clause gives energywatch greater representation than non EC member companies
EC Appeals	6.44	Cross reference should be 5.13.4 not 5.4 (E)
	6.45.5	The reference to "...relevant section thereof" is vague. Suggest that this changes to specific Licence Condition
	6.49	Suggest that Party should only be liable for actions under their category of membership, in particular this would ensure that I&C Suppliers are responsible for their own actions, specifically where they, and for that matter Transporters, are not funding Parties. Equally the I&C and Transporters will probably have an issue over liability for the whole agreement which they view as Domestic
	6.54	Reference should be "person or persons"
	6.56	Suggest that there should be a reasonable test in this clause
Proceedings at meetings	7.7.2	How is an identifier given to a Party?
	7.10.3	Is the requisition to be given by the Notice Procedure?
	7.11	Is the further 20 working days to apply from the date of deposit of the end of the 15 working day period?
	7.12	Suggest the words "Subject to clause 7.11" be added at beginning
	7.17	Cross reference should be 21.2 not 20.2
	7.27	It would be advisable to add "...as its content may be amended from time to time" after "Schedule 4"
Recovery of Costs	8.8	"A = ..." change cross reference 20.2 to 21.2
	8.8	"T = ..." change cross reference 20.2 to 21.2
	8.10	The possibility of "lesser than the aggregate amount" is not mentioned - we believe that it should be.
	8.11	Is the guideline to be circulated to Suppliers to be approved by them?
Change Control	9.2.3	If Suppliers are expected to pay for the costs of the advice, then we suggest that there should be an upper limit here.
	9.5	A New Party shouldn't be able to raise a change proposal until an actual party to the agreement.
	9.5	Suggest that timescales should be set rather than relying on "Within a reasonable time of receipt".
	9.9	It is unclear that it is SPAA EC that ultimately determine interest in a change proposal.
	9.18	For clarity add "at the same time" after "provide" in the second line
Events of Default	10.1.7	Suggest for consistency the wording should be "not granted" rather than "refused".

Derogations	14.0	It could be envisaged that there would be a need for emergency derogations - we may wish to cater for this
	14.0	It is not clear if the appeals mechanism can be used on a derogation decision
Notices	20.1	Suggest that the word "relevant" should be underlined between "other" and "Parties". Question whether the word "all" should be noted, as the notice may not apply to all Parties
Annex Two		It may be appropriate to have definition of "material" in items (iv) and (vii)
Annex Three		It is unclear what the purpose of Annex 3 is.