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Gas Transporters, Gas Suppliers and  
Interested Parties

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Our Ref: Net/Cod/LPY/11  
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11 June 2004

Dear Colleague,

**Licence modifications to require accession to and compliance with the Supply Point Administration Agreement**

On 30 April Ofgem issued statutory notices under section 23 (3) of the Gas Act 1986 together with an accompanying document<sup>1</sup>, setting out proposed modifications to the standard conditions of the gas transporters and gas suppliers licences. Ofgem considered these modifications were necessary in order to mandate accession to, and compliance with, the Supply Point Administration Agreement ("SPAA").

The licence modification consultation period closed on 2 June 2004.

The Authority has today directed the modifications of the gas transporters and gas suppliers licences and designated a document to be known as the Supply Point Administration Agreement for the purpose of those conditions, to be implemented with immediate effect. This letter is intended to accompany the Directions.

**Background**

Ofgem proposed modifications to the standard conditions of both the gas transporters and gas suppliers licence, with the effect of mandating accession to and compliance with the Supply Point Administration Agreement ("SPAA"). The modification to the gas suppliers licence relates to Section C and will therefore only be applicable to domestic suppliers, though Ofgem encourages I&C suppliers to accede to the SPAA and thereafter participate fully, on a voluntary basis.

In April 2004 Ofgem published its Gas Retail Governance: Decision Document, which set out Ofgem's conclusions, in particular the view that the SPAA, aimed at improving upon the current

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<sup>1</sup> Gas Retail Governance: Decision Document, April 2004

governance arrangements of the gas retail market, should be introduced. It is envisaged that the SPAA will provide governance for standard industry procedures, such as are contained within the RGMA Baseline documentation and the Domestic Code of Practice.

## **Section 23 Consultation**

Ofgem, in light of the broad support for the proposals contained in its previous consultation documents, gave notice on 30 April pursuant to section 23(3) of the Gas Act 1986 to modify standard condition 14 of the gas transporters licence (previously not used) and introduce new standard condition 34A to the gas suppliers licence in order to mandate accession with, and provide a means of enforcing compliance with, the SPAA.

In total, Ofgem received responses from 21 licensees (though in several cases multiple licences are in common ownership). Of these, 14 responses were from gas suppliers licence holders, and 7 from gas transporters licence holders. A list of respondents is appended to this letter and non-confidential responses have been placed on the Ofgem website.

8 responses constituted formal objections to the proposed standard condition 34A of the gas suppliers licence that were not withdrawn. There were no formal objections to the proposed modification to standard condition 14 of the gas transporters licence.

## **Drafting of the licence condition(s)**

### Respondents' views

One respondent (holding 3 gas supply licences) questioned whether the drafting of the proposed licence modification would shift the responsibility for the maintenance of the customer transfer process and place fundamental new duties on suppliers, such as obligations in respect of promoting competition.

### Ofgem's view

The particular drafting to which the respondent referred (paragraph 4) does not place obligations upon licensees that they must individually discharge, but sets out relevant objectives against which Ofgem and others will be able to assess the suitability of a given change proposal, thereby securing the future scope of the agreement. As discussed in the Ofgem April 2004 Decision Document, it is intended that these relevant objectives will operate in the same way as those of the Network Code(s) or the Balancing and Settlement Code.

## **The RGMA Baseline**

### Respondent's views

In discussions with Ofgem and in subsequent responses, iGTs in particular raised concerns that if they accepted a licence condition mandating accession to and compliance with SPAA, they would be required to comply immediately with the RGMA Baseline. There was also an assumption that compliance with the baseline would require iGTs to develop the same type of IT systems as have been developed by Transco.

## Ofgem's view

As discussed with iGTs, participation in the SPAA will not in itself be taken as agreement to any of the potential developments that may be progressed under SPAA, all of which must be subject to separate change proposals.

The RGMA Baseline is intended to provide a set of industry standard procedures to facilitate metering competition, particularly in the context of future transfers of consumers (and therefore the in-situ meter) between suppliers. It does not seek to impose an industry standard IT system by which to implement those procedures.

Whilst it will be for SPAA parties themselves to determine the nature of the change proposals they raise, Ofgem understands that the RGMA Schedules sub-group of the Gas Industry Governance Group is currently minded to raise a proposal with the effect of introducing the RGMA Baseline simply as a 'product' of SPAA. This means that ownership of the document (which is currently a technical, rather than contractual document) will rest with SPAA and all future changes proposals need to be progressed through the SPAA change control mechanisms. To the extent any of the RGMA provisions require enforcement these will be subject to separate change proposals setting out in clear terms the 'rules' to be applied.

### **Pre-designation changes to the SPAA document**

Since the publication of the latest draft version of SPAA in April, various issues have come to light which Ofgem has considered appropriate, being non-material, to address prior to designation. These changes are discussed below.

As originally drafted, clause 6.18 would preclude a SPAA EC Member from appointing an alternate from the same company, or its affiliates. It is understood that the intention of this clause was to prevent the possibility of a company having more than one representative on the SPAA EC at a given time, with the obvious implications this would have for equitable decision making. However, it has become apparent that rigid application of this clause could have implications for the SPAA remaining balanced and quorate, particularly as the situation already exists whereby there is only one company within a particular category, namely that of the large GT. Following discussion at the constitution group<sup>2</sup> and the provision by that group of alternative text, this clause has now been amended to allow alternates from the same company, whilst safeguarding the balance of the SPAA EC.

A further concern was raised and discussed at the constitution group concerning the rights of new parties to raise change proposals, as originally set out in clause 9.5. One party expressed a strong concern that this provision may be open to abuse, and lead to spurious and otherwise inappropriate change proposals, particularly as the definition of *New Party* may include individuals or companies who are neither a party to SPAA or confirmed as a licensee. Whilst the group did not consider the risk to be material and largely safeguarded against by existing provisions, nor did it consider the addition of *New Party* within this clause to add any value. Given the above, clause 9.5 have been amended.

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<sup>2</sup> a sub-group of the Gas Industry Governance Group

It also appears that the drafting of clause 9.1.4 is ambiguous when read in isolation, as it seems to imply that all changes to SPAA products will be subject to the consent of the Authority. However, when read in conjunction with the definition of *SPAA products* it is clear that only changes to the *list* of SPAA products as set out in Schedule 6 require consent of the Authority. This is a further measure against the scope of the SPAA being extended beyond that which was intended. The drafting of clause 9.1.4 has been amended to clarify this point.

## Conclusion

Having carefully considered the responses summarised above, the Authority has concluded that the licence modifications can be incorporated under section 23 of the Gas Act. The Authority has given notice of the proposed modifications to the Secretary of State for the Department of Trade and Industry, the Welsh Assembly, the Scottish Executive, the Health and Safety Executive and energywatch and did not receive any objections to the proposed modifications from these parties.

In this context, the Authority has today issued a Direction to implement the proposed modifications to the gas transporters and gas suppliers licences and the modification shall take effect from 11 June 2004. The Authority has today also designated a document to be known as the Supply Point Administration Agreement for the purposes of those licences.

If you would like to discuss any matter contained in this letter, please contact Jonathan Dixon on 020 7901 7354, email [jonathan.dixon@ofgem.gov.uk](mailto:jonathan.dixon@ofgem.gov.uk)

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Neilson'.

John Neilson  
Managing Director, Corporate Affairs

### List of Respondents

The proposed modification to introduce standard condition 34A received formal objection from 8 licence holders, as follows:

- North Sea Gas Ltd (Warwick Energy)
- Opus Energy Limited
- Telecom Plus Plc
- Pan-Utility Limited
- 730 Energy Limited
- SME Energy Limited
- Utilitease Limited
- Affinity Power Limited

In aggregate, those licensees objecting to the modifications proposals account for 8% of gas suppliers licence holders and around 0.15% of supply points. Seven of the eight licensees currently have zero market share.

There were no formal objections to proposal to modify standard condition 14 of the GT licence.

In addition to the formal objections, Ofgem received responses from the following:

- EdF
- British Gas Trading
- East Surrey Pipelines
- Scottish Power
- SSE Pipelines Ltd
- SSE Energy Supply Ltd
- Southern Electric Gas Ltd
- SWALEC Gas
- Independent Pipelines Ltd
- Quadrant Pipelines
- National Grid Transco
- The Gas Transportation Company

Non-confidential responses have been placed on the Ofgem website at [www.ofgem.gov.uk](http://www.ofgem.gov.uk)