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Dear Colleague

Changes in consumer representation – licence conditions and industry codes

As you may be aware we have recently been consulting on changes to consumer representation in the energy sector as a result of the Consumers Estate Agents and Redress Act 2007 ("the CEAR Act"). energywatch, the current consumer body, will be replaced this October with a three tier system:

- Consumer Direct providing a single point of contact for consumers covering all markets for information and advice;
- the extension of redress schemes, approved by the Gas and Electricity Markets Authority ("the Authority") to cover unresolved energy complaints against electricity suppliers and distributors and gas suppliers and transporters; and
- a new consumer advocacy body (the National Consumer Council ("NCC")) which also deals with individual complaints relating to disconnection or involving a vulnerable customer.

This letter sets out proposed licence changes which would replace current references to energywatch in licences with reference to the NCC (see schedule of relevant licence conditions as appendix 1). In relation to gas and electricity supply licences, this letter seeks comments as to which organisation's details should go on the back of bills, to replace the existing requirement where energywatch's details are given. This letter also sets out the situation in relation to industry codes (see appendix 2). We seek views on the changes that will be required due to the replacement of energywatch.

The CEAR Act amends ¹ section 8(5) of the Utilities Act 2000. The effect of this amendment is to allow the Authority to make incidental or consequential modifications of licence conditions² or codes or agreements relevant to licence conditions, as it considers necessary or expedient, in consequence of, or in preparation of the establishment of the NCC or the abolition of energywatch.

Where changes are made under the amended section 8(5) of the Utilities Act 2000, we will be issuing a notice which sets out the nature of the change and the reasons for making it and we will consider any comments received within 28 days of publication of this notice before making the proposed modification.

¹ Schedule 1, Part 5, Paragraph 29(6)

² Other than payment conditions

energywatch's details on the back of bills

Standard licence condition 31.1(a) and (b) of the gas and electricity supply licences, requires suppliers to inform domestic customers on a bill or statement of account that energywatch can assist in resolving complaints and how to contact them.

Consumer Direct from 1 October 2008 will become the first point of contact for any consumers seeking advice. It will provide advice, signposting the consumer to the supplier in the first instance, and where appropriate will provide details of the complaint to the supplier for the supplier to resolve in accordance with its procedures. Consumer Direct will give the consumer details of the redress scheme if deadlock with the supplier has been reached or of 8 weeks since the complaint was made has passed. There is therefore a case for requiring suppliers to include Consumer Direct's number as a direct replacement for energywatch's. We understand that Consumer Direct fully support including their details being on the back of bills.

We are aware that a number of suppliers have already started including the details of the Energy Supply Ombudsman on the back of bills.

A conclusion from our review of the Energy Supply Ombudsman was that "signposting" of it was important. We welcome the inclusion of the redress scheme on the back of bills (although we are still to formally approve a redress scheme under the CEAR Act) but we also want to ensure that consumers are signposted to the right organisation to provide assistance at the appropriate stage of the complaints process.

The NCC will only deal with individual consumer complaints which arise from disconnection cases or those which involve a vulnerable consumer. However, given the very limited role for NCC our initial view is that it would not be appropriate to include their details on the back of bills.

We would be grateful for comments as to which contact details should be required to go on the back of bills to inform customers where they can seek advice in resolving complaints and whether any other information should be required.

We intend to make modify this licence condition under section 8(5) of the Utilities Act 2000.

In the meantime we want to remind suppliers of their current licence obligation to include how energywatch can assist in resolving complaints which have not been resolved to the satisfaction of the consumer and how to contact them on the back of bills. We are aware that energywatch will no longer be providing their existing level of service for new cases from July, but will be modelling their service on the new consumer arrangements that will apply from 1 October 2008. Up to October 2008 it is important that consumers continue to be given energywatch's details as the first point of contact for complaints.

Licensees will need to be aware of the need to change other references to energywatch, for example on websites and literature, at the appropriate time.

Payments by the licensee to the Authority

Standard licence conditions for gas transportation, electricity transmission and distribution, require licensees to pay an annual licence fee to the Authority (payment conditions), which currently includes the estimated costs of energywatch for the forthcoming financial year.

The CEAR Act³ amends section 8(4) of the Utilities Act 2000, giving the Authority the ability to modify these payment conditions where it is necessary or expedient to do so in consequence of or in preparation of the establishment of the NCC or the abolition of energywatch. Section 8(3A) of the Utilities Act 2000 (again amended by the CEAR Act)

³ Schedule 1, Part 5, Paragraph 29(4)

indicates that these conditions can provide for certain expenses to be provided for in these payment conditions. These expenses are:

- (a) the appropriate proportion of the expenses of the NCC including expenses relating to its establishment;
- (b) the appropriate proportion of the expenses of the Secretary of State which relate to the establishment of the NCC;
- (c) any expenses of the NCC, the Secretary of State or energywatch which relate to a transfer scheme made in respect of energywatch under the Utilities Act 2000 or the CEAR Act;
- (d) the expenses of the Secretary of State which relate to the abolition of energywatch;
- (e) the expenses of the Office of Fair Trading (OFT) which relate to the expansion of Consumer Direct to enable it to cater for gas and electricity consumers; and
- (f) the appropriate proportion of expenses of the OFT on, or in connection with, the support of Consumer Direct.

The CEAR Act provides that the Secretary of State will specify the appropriate proportions of expenses, relating to (a), (b) and (f) above, to be collected through the payment conditions.

We intend to make modifications to the payment conditions under the amended section 8(4) of the Utilities Act 2000, to cover the above expenses. We will be issuing a notice which sets out the nature of the changes and the reasons for making them. We will consider any comments received within 28 days of this notice before making the proposed modification.

Our expectation is that we would then collect this money from the network licensees apportioned between licensees on the same basis as set out in our current guidance⁴ on the issue. Changes will also be made to this guidance to reflect the changes made to expenses that will be covered.

Definition of the Consumer Council

Currently licence conditions define the Consumer Council as meaning “the Gas and Electricity Consumer Council as defined under section 2 of the Utilities Act 2000”. While no amendment is strictly necessary, as the replacement of energywatch with the NCC is captured by the terms of the licence, we intend to make a change to the definition of “Consumer Council” in all licences to ensure clarity that it refers to the NCC. We consider this will be necessary as a consequence of the establishment of the NCC and the abolition of energywatch. Accordingly, we propose to modify the definition of Consumer Council in the licences using the powers to do so in section 8(5) of the Utilities Act 2000.

Please note that the Gas Distribution Price Control Review and Electricity Distribution Licence Review are proposing a number of changes to licence conditions referring to the Consumer Council. These proposed changes are indicated in appendix 1. However, these proposed changes do not alter the definition of the Consumer Council at this stage.

At this stage we would be grateful for any comments on the lists of energywatch references in licence conditions, in particular if any references to energywatch have been overlooked.

In our view no other amendments are necessary as a result of intended abolition of energywatch and establishment of the NCC.

⁴ Licence fee cost recovery principles (December 2005)
<http://www.ofgem.gov.uk/Licensing/Work/Documents1/12424-Licence%20fee%20cost%20recovery%20principles%20December%202005.pdf>

Industry codes

Consumer representation on the industry code panels is important. While not yet confirmed we are assuming that NCC will take over the role from energywatch, and we will be discussing this further with the NCC. At this stage we are not envisaging any change to the consumer representation arrangements under each code apart from making changes for a successor to energywatch.

Depending on the relevant code there may be various routes for providing for a successor to energywatch. These include:

- designation by the Authority of a successor to energywatch under the relevant code provisions,
- modification by the Authority of the relevant code under the amended section 8(5) of Utilities Act 2000,
- modification proposed by the code parties, and
- no modification of the code where none is necessary.

We invite comments on the approach to be used for each code as set out in appendix 2.

Next steps

The deadline for any comments to this letter is **17 March 2008**.

Following this we intend to issue notice setting out the licence modifications we propose to make under section 8(4) and (5) of the Utilities Act 2000 in April. We will allow 28 days for comment. Having considered comments, we intend to issue a final notice in June setting out any licence modifications that are being made. We anticipate that most modifications will be given effect on 1 October 2008. However, changes to payment licence conditions may need to have effect earlier. This will depend on the expenses to be determined by the Department for Business, Enterprise and Regulatory Reform.

If you would like to discuss this further please do not hesitate to contact me on 020 7901 7118 or michael.knowles@ofgem.gov.uk, or Marcus Clements on 020 7901 7200 or marcus.clements@ofgem.gov.uk

Yours sincerely,

Michael Knowles
Corporate Affairs

Appendix 1 – energywatch references in licence conditions

References to Consumer Council (energywatch) in SLCs and SSCs)

Licence type	Condition	Summary of reference
SHIPPER	SLC 1 - Definition & Interpretation (paragraphs 1 and 3)	<p>"Consumer Council" means the Gas and Electricity Consumer Council established under section 2 of the Utilities Act 2000.</p> <p>Authority to consult with the Consumer Council (among others) regarding security standards</p>
GAS SUPPLY	<p>SLC 1 - Definition for Standard Conditions (paragraph 1.2)</p> <p>SLC -25 Marketing gas to domestic customers (paragraph 25.12(a) and 25.13(b))</p> <p>SLC 31 - General information for domestic customers (paragraph 31.1(a),(b))</p> <p>SLC 32 - Reporting on performance (paragraphs 32.1 and 32.3)</p>	<p>"Consumer Council" means the Gas and Electricity Consumer Council established under section 2 of the Utilities Act 2000.</p> <p>Authority required to consult the Consumer Council before setting a new termination date for this condition and send copy of relevant notice to the Consumer Council</p> <p>Licensee required to inform domestic customers of assistance available from the Consumer Council and how to contact them</p> <p>Licensee required to provide relevant information to the Consumer Council</p> <p>Authority required to consult the Consumer Council regarding content and format of statistical record to be provided by licensee.</p>
TRANSPORTER	<p>SLC 1 - Definition & Interpretation paragraph 1)</p> <p>SLC 3 - Payments by the licensee to the Authority (paragraphs 2(b), 2(d)(bb) and 5(a)(ii))</p> <p>SLC16 - Pipe-line system Security Standards (paragraph 2)</p>	<p>"Consumer Council" means the Gas and Electricity Consumer Council established under section 2 of the Utilities Act 2000. (Has become part of proposed licence condition 1 as part of the Gas Distribution Price Control Review)</p> <p>Payments to include estimated costs of the Consumer Council</p> <p>Authority to consult with the Consumer Council (among others) regarding security standards</p>

	SLC 22 - Preparation, Review and Compliance with Statements and Codes (paragraphs 2, 5, 6 and 7(a))	Requirement for licensee to submit codes/statements to the Consumer Council and have regard to comments. (Note - this requirement is likely to be removed as part of the Gas Distribution Price Control Review)
	SLC 23 - Record of and Report on Performance (paragraphs 3 and 4)	Licensee must to provide record of performance details to the Consumer Council (Has become proposed licence condition 21 (1) and (3) as part the Gas Distribution Price Control Review)
SSCs - PART A (Applicable to NTS and DN Licenses)	SSC A2 - Private Collective Licence Modification Procedure in respect of Standard Special Conditions applicable to both NTS and DN licensees (paragraph 3b(ii))	Authority required to send copy of Private Collective Licence Modification notice to the Consumer Council
	SSC A3 - Definition & Interpretation (paragraph 1) SSC A9. Pipe-Line System Security Standards (paragraph 2)	"Consumer Council" means the Gas and Electricity Consumer Council established under section 2 of the Utilities Act 2000. (Has become part of proposed licence condition A3 as part of the Gas Distribution Price Control Review) Authority to consult with the Consumer Council (among others) regarding security standards
	SSC A24 - Preparation, Review and Compliance with Statements and Codes (paragraph 2,5,6 and 7(a))	Requirement for licensee to submit codes/statements to the Consumer Council and have regard to comments (Note - this requirement is likely to be removed as part of the Gas Distribution Price Control Review)
	SSC A25 - Record of and Report on Performance (paragraph 4)	Licensee must provide record of performance details to the Consumer Council (Has become part of proposed licence condition D16 as part of the Gas Distribution Price Control Review – see below)
	SSC A30 – Regulatory Accounts (paragraph 11a)	Licensee to provide copy of accounts to the Consumer Council (Has become proposed licence condition A30(11) as part of the Gas Distribution Price Control Review)
SSCs – PART B (Applicable to NTS Licence)	SSC B2 - Private Collective Licence Modification Procedure in respect of Standard Special Conditions applicable NTS licensees	Authority required to send copy of Private Collective Licence Modification notice to the Consumer Council
SSCs – PART D (Applicable to DN Licence)	SSC D2 - Private Collective Licence Modification Procedure in respect of Standard Special Conditions applicable to DN licensees	Authority required to send copy of Private Collective Licence Modification notice to the Consumer Council
	Proposed licence condition 16(1) and (3) – Reporting of Performance	Licensee to report information to the Consumer Council on; provision of services for specific domestic customer groups, arrangements of access to premises, and procedure for dealing with complaints.

ELECTRICITY SUPPLY	<p>SLC 1 - Definition for Standard Conditions (paragraph 1.3)</p> <p>SLC -25 Marketing electricity to domestic customers (paragraphs 25.12 and 25.13(b))</p> <p>SLC 31 - General information for domestic customers (paragraphs 31.1(a),(b))</p> <p>SLC 32 - Reporting on performance (paragraph 32.1 and 32.3)</p>	<p>"Consumer Council" means the Gas and Electricity Consumer Council established under section 2 of the Utilities Act 2000.</p> <p>Authority required to consult the Consumer Council before setting a new termination date for this condition and send copy of relevant notice to the Consumer Council</p> <p>Licensee required to inform domestic customers of assistance available from the Consumer Council and how to contact them</p> <p>Licensee required to provide relevant information to the Consumer Council</p> <p>Authority required to consult the Consumer Council regarding content and format of statistical record to be provided by licensee.</p>
DISTRIBUTION	<p>SLC 1 - Definition & Interpretation (paragraph 1)</p> <p>SLC 3 - Payments by the licensee to the Authority (paragraphs 2(b), 2(d)(bb) and 5(a)(ii))</p> <p>SLC 9B - Distribution Code and Use of System Agreement (paragraph 11(a))</p> <p>SLC 22 - Preparation, Review and Compliance with Customer Services Codes (paragraphs 2,5,7 and 7(a))</p> <p>SLC 23 - Record of and Report on Performance (paragraphs 3 and 4)</p> <p>SLC 42 - Regulatory Accounts (paragraph 10(a))</p>	<p>"Consumer Council" means the Gas and Electricity Consumer Council established under section 2 of the Utilities Act 2000. (Has become part of proposed licence condition 1 in the Electricity Distribution Licence Review)</p> <p>Payments to include estimated costs of Consumer Council (Has become proposed licence condition 3 in the Electricity Distribution Licence Review)</p> <p>Specifies Consumer Council powers to raise amendments to DCUSA (Has become proposed licence condition 22.5(a) in the Electricity Distribution Licence Review)</p> <p>Requirement for licensee to submit codes/statements to the Consumer Council and have regard to comments (Note – this requirement is likely to be removed as part of the Electricity Distribution Licence Review)</p> <p>Licensee must to provide record of performance details to the Consumer Council (Has become proposed licence condition 11.1 in the Electricity Distribution Licence Review)</p> <p>Licensee to provide copy of accounts to the Consumer Council (Has become proposed licence condition 45.11 in the Electricity Distribution Licence Review)</p>
GENERATION	<p>SLC 1 - Definition & Interpretation (paragraph 1)</p>	<p>"Consumer Council" means the Gas and Electricity Consumer Council established under section 2 of the Utilities Act 2000.</p>
TRANSMISSION	<p>SLC 1 - Definition & Interpretation (paragraph 1)</p> <p>SLC A4 - Payments by the licensee to the Authority (paragraphs 2(b), 2(d)(bb)and 5(a)(ii))</p>	<p>"Consumer Council" means the Gas and Electricity Consumer Council established under section 2 of the Utilities Act 2000.</p> <p>Payments to include estimated costs of Consumer Council</p>

Appendix 2 – energywatch representation on industry codes

	<i>UNC</i>	<i>IGT UNC</i>	<i>SPAA</i>
<i>Panel attendance</i>	2 non voting members (known as consumer reps)	By invite	Can attend SPAA forum and speak. Cannot vote.
<i>Make reps?</i>	Yes	Yes	Yes, but only on derogations
<i>Raise proposals?</i>	Yes. Scope is limited to amendments to annex V1 – ‘Operational & Market data’.	Yes. But scope is limited to annex k – part 1.	Yes.
<i>Designated as a third party participant?</i>	Yes – modification rules define “third party participant” as “ <u>any person or body</u> who is not a user but who is representative of interested third parties, <u>as may be designated in writing for this purpose by the Authority</u> ... and maintained on a register held by the Authority”.	Not yet - modification rules refer to a “Consumers’ Representative” - the individual if any from time to time <u>notified</u> to the representative by the Gas and Electricity Consumers Council (<u>energywatch</u>) or <u>any successor body thereto in the absence of the same</u> , such individual as may be designated by the Authority.	Yes – energywatch specifically mentioned in SPAA in particular part 9.

	<i>BSC</i>	<i>CUSC</i>	<i>DCUSA</i>	<i>STC</i>	<i>MRA</i>
<i>Panel attendance</i>	2 voting panel members	1 voting panel member	Can attend and speak but no voting rights	No panel member	No explicit mention of energywatch or other consumer body.
<i>Make reps?</i>	For proposals for modification to be made by the licensee- BSC parties <u>and such other persons or bodies as the BSC may provide.</u>	For proposals for modification to be made by the licence- CUSC users <u>and such other persons and bodies as the CUSC may provide.</u>	Possible but may not be aware of consultations.	Possible but may not be aware of consultations.	No. Only states that the "licensee" will be a party to the MRA.
<i>Raise proposals?</i>	Yes. Scope is not limited.	Yes. Scope is not limited.	Consumer council can raise proposals.	No.	No.
<i>Designated as a third party participant?</i>	Yes. The Code makes various references to energywatch. However, the definition says that it is the <u>"forum of that name...or such other body or bodies, designated for the purposes of the Code by the Authority, as may replace such forum from time to time."</u>	Yes. Condition C10, para 6 (a) of the Transmission Licence states as above under representations.	Yes. DCUSA Sch1 Part E Para 11(a) "proposals for the amendment of the DCUSA may be made by...the Gas and Electricity Consumer Council".	No.	No.