29 May 2009

Office of Gas and Electricity Markets
9 Millbank
London
SW1P 3GE

Dear Mr Barnes

RE: Energy Supply Probe – proposed retail market remedies

ACS (the Association of Convenience Stores – Annex 1) is a trade association representing over 33,000 local shops throughout the UK. We offer our members lobbying, networking and advice. ACS welcomes Ofgem's intervention in the relationships between energy companies and small businesses and we think that many effective and powerful recommendations have been made. Over the past few years ACS has been giving increasing amounts of advice to our members on disputes over energy contracts. Retailers are keen to see action to create better regulation and bring openness to the practices of energy companies that can appear disconnected and secretive. The effect is significant harm to retail business and particularly small business. If energy companies do not change their practices following the outcomes of the Probe then ACS fully supports a referral to the Competition Commission.

In our previous submission to Ofgem we laid out our main concerns which included:

- Retailers do not have a single contact at energy companies to discuss a case.
- Energywatch was little use and that retailers felt alone in these expensive 'David and Goliath' style legal disputes.
- Energy companies quickly contract out to debt collecting companies who would come to businesses in the middle of the day wearing jackets saying 'bailiff' and bullying retailers into paying up.
- Energy companies change the terms of contracts with little advice given to retailers who then find themselves trapped in poor and often unreasonable terms.
- We supported action to stop the rolling over of contracts.

ACS believes that many of the recommendations that Ofgem has made for non domestic customers are as appropriate for local shop retailers. Many local shop owners have just one or two premises therefore their energy needs are very similar to domestic customers. We have included in Annex 2 a range of case studies demonstrating the difficulties that some of our members have come across.

<u>Micro-Business</u>

ACS is concerned over Ofgem's proposal to target its remedies at Micro- businesses, defined in Article 2(1) of The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 as "including businesses that employ fewer than ten people; or which use less than 200,000 kWh of gas per year or 55,000 kWh of electricity per year; or which have an annual turnover of less than 2 million euros." This matches the definition of businesses qualifying for assistance from the Energy Ombudsman.

The convenience sector is a staff-intensive industry as it employs a large number of part time staff. Therefore the vast majority of businesses employ more than 10 people, even in very small businesses. Convenience stores' reliance on refrigeration systems can also lead to very small stores having unrepresentively high energy use to their business size. Convenience stores are also high turnover relative to their profits, and their ability to resource specialist support on matters such as energy disputes, because net margins tend to be around 1-2%. Therefore each of the three qualifying criteria for the proposed remedies are not inclusive enough for the diverse nature of many convenience stores.

In addition, that this is the qualifying definition for those gaining assistance from the Energy Ombudsman is not a compelling reason to set the remedies at this level. The Energy Ombudsman is not far reaching enough in its remit and many businesses are left without any assistance, even though for the vast majority of policy they are classed as a small business. Therefore it would be detrimental to use this as the scope for businesses that will benefit from Ofgem's remedies.

Ideally we would like to see all businesses given the opportunity to use the structures described by Ofgem. However, we recognise that Ofgem's remit is for small businesses, and thus recommend that the remedies should apply to businesses that qualify under the European Commission definition of small and medium-sized enterprises (SMEs): which is below a 250 employee staff count and 50M Euros turnover. This would then sufficiently take into account industries with the characteristics of our business as described above.

Rolling over of contracts

ACS supports ending roll over contracts because this has been a problem for many of ACS' members who find themselves locked into a contract with unjustifiably high terms for long periods. This has been caused through complex procedures over changing contracts, gaps in information and a lack of contact between energy companies highlighting the notice periods in which new contracts can be negotiated.

ACS is aware of concerns regarding price hikes on lapsed contracts. While many energy companies already hike up energy costs following the lapse of a contract, at least companies would not be locked into these contracts. In addition this risk can be reduced by providing non domestic costumers with sufficient information. Non domestic customers will need to receive a letter informing them of the new rates they will pay and directly comparing the cost of energy in their old contract to what they will be paying if they do not renegotiate, such as suggested in paragraph 3.34 for domestic customers.

There is also concern that ending contract rolling will result in less competitive deals. However the market is clearly not currently working and is uncompetitive already. We believe that by ending rolling contracts this will lead to increased activity and switching therefore making the market more competitive.

Billing

The recommendations around introducing informational remedies will in theory lead to business customers being better informed of their contract terms. However, we are concerned that the current practice of phantom letters, where the energy company claims that letters are sent but they are never received, will continue. There needs to be

a duty placed on energy companies to prove the delivery of any letters regarding contracts or legal disputes.

Legal Disputes

Since the demise of Energywatch ACS believes that there is a gaping hole in assistance to small businesses in legal disputes with energy companies. Energywatch was seen by many as a toothless organisation and whilst it is early days in seeing how Consumer Focus works there is no dedicated body to assist businesses. The Energy Ombudsman only has a remit to intervene in cases disputing amounts under £5,000 however many retailers that come to ACS for advice are over much higher amounts. Our evidence shows that only effective recourse for SMEs is to hire legal teams out of their own pockets to defend themselves.

We find it unacceptable that there are cases where an energy company has undercharged a business for a period of several years and then presented the retailer with a backdated bill, on one occasion for £35,000. When the retailer disputed this they were bullied and threatened (see Annex 2). If the energy company is a fault then there should be effective safeguards against unreasonable demands and ultimately the retailer should not face hardship to foot the bill for someone else's mistake. This doesn't happen in any other industry and is completely unacceptable.

There can be inevitability to legal disputes, with energy companies bullying their way into getting money. Some send bailiffs into shops, threaten retailers with their livelihoods and with cutting off their energy. If a bill is in dispute then energy companies should not be adopting any of these practices. In addition some energy companies add interest for the period that the amount is in dispute for. This makes businesses less likely to question a bill amount. Finally businesses find it very difficult to come to an agreement with energy companies outside of the courts as they will talk to different people every time they call to discuss their case so no one is versed in the situation.

Whilst the issue of enforcement and legal disputes is something that potentially falls outside the scope of Ofgem's work we think it is a vitally important point to be addressed. To even up the balance between small businesses and energy companies there need to be the following safeguards introduced:

- A dedicated body to assist businesses in legal battles.
- Where an amount is under dispute, for a period of time there should be no outsourcing to bailiffs, threatening letters and phone calls to retailers, and interest should not be added for that period.
- Energy companies should not be able to backdate payments where the energy company is a fault.
- There need to be records that all letters providing the information set out in the informational remedies are received by the business.
- When an amount is in dispute retailers need to have one main contact at the energy company rather than speaking to a different contact on every phone call.

TPIs

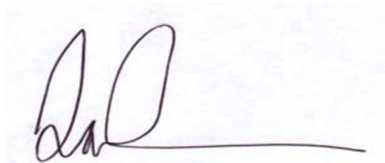
The market of Third Party Intermediaries (TPIs) is a highly unregulated leaving it open to abuse. Whilst organisations like the Utilities Intermediaries Association have developed a code of practice and accreditation there is low take up of this and very little awareness of the accreditation.

In the proposed code of practice therefore as additional protection to retailers we think that there should be some of same restrictions placed on door to door sales to businesses as to non domestic customers. For example a copy of a signed record of what was agreed should be left with the retail customer. If a TPI is found to have miss-sold and promised unrealistic prices then the contract should be immediately ended and the retailer refunded the difference to the prices that were promised to them. As there is likely to be a lengthy process to reclaim money the retailer should be able to claim interest on any money owed to them during the period the dispute goes on for. There should be no risk that the company's energy is cut off.

There are major problems within the energy sector that need to be addressed. Many energy companies currently lock small businesses into uncompetitive deals. In addition to increasing information to non domestic customers and ending rolling over contracts we call for a body to be created to oversee relations between energy companies and business and to assist businesses in legal cases. If this is brought in and is effective, alongside the other recommendations, it could potentially lead to positive changes in the energy market and a more competitive and fair deal for businesses.

If you would like any more information on the experiences of the convenience store sector and energy supply or on anything included in this letter please contact Helen Davies on helen.davies@acs.org.uk or on 01252 515001.

Yours sincerely



James Lowman
Chief Executive

Annex 1

THE ASSOCIATION OF CONVENIENCE STORES

ACS is the trade body representing the interests of over 33,000 convenience stores operating in city centres as well as rural and suburban areas. Members include familiar names such as Nisa-Today's, Thresher and Booker Premier, as well as independent stores operating under their own fascia. Our members operate small grocers, off-licence or petrol forecourt shops with between 500 and 3,000 square feet of selling space.

Annex 2

MEMBER CASE STUDIES

Retailer A

In June 07 this retailer moved his forecourt site from E.On to Southern Electric. In September he had received a call from E.On informing him that they had undercharged him for the previous four years and invoicing him for approximately £20,000.The invoice arrived asking for £35,000. The retailer refused to pay and some time later received a number of threatening phone calls warning him of impending Court judgements and that they were about to "wind up" his business. There has now been £2,500 worth of interest added to me whilst he disputes the bill amount.

Retailer B

This retailer took over his shop in 2000 and paid energy bills by direct debit to Powergen. In 2005 he received an invoice for £15,000 from NPower, dating back to 2000. NPower produced a contract signed in 1999 with the supplier Independent Electricity, who had been taken over by NPower. Powergen claim that they were the supplier until after around 12 months pressure from the shop owner they carried out an investigation and found that the meter they were supposedly supplying (although live) was not connected to anything in the shop. Powergen then agreed to refund £8460.00 without interest to the shop owner. NPower threaten to shut off the energy supply whilst the case was being investigated.

In April 2007 the retailer, who had not paid because the amount was still in dispute, received a letter stating that NPower had obtained a warrant, and that unless he paid £15,000 he would be disconnected. The shop owner sent a cheque for £10,000 to NPower by registered post. This was received and signed for by NPower at 8:12 on 12 April, yet at approximately 9.30 on 12 April NPower turned up at the store threatening to cut off the power. Despite acknowledging the receipt of the cheque they stated that a cheque was not acceptable because it would take 10 days to clear. Instead he was forced to pay £13,000 on the spot by credit card to ensure that he would not lose his power supply. NPower, through Power Debt, are now claiming an additional £19,000.

The mistake was between Powergen and NPower and yet it is the shop owner who has had to spend significant time and stress, not to mention the financial cost, of dealing with the problem. NPower have at no stage attempted to talk reasonably to the owner to resolve the problem, instead they have continually used threats, demands and bullyboy tactics whilst not replying to his questions regarding their claims. Nor would they accept the fact that the owner had stated that he had asked Powergen to carry out an investigation.