

Innogy plc

Economic Regulation, Oak House
1 Bridgwater Rd, Worcester, WR4 9FP
Tel 01905-340508 Fax 01905 340710
alan.hannaway@npower.com



Annette Lovell
Head of Customer Contact and Compliance
Ofgem
9 Millbank
London
SW1P 3GE

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Dear Annette,

Making markets work for consumers: Ofgem's approach to securing compliance with supply licence obligations and consumer protection legislation – consultation document (July 2003)

We welcome Ofgem's aim that supply compliance strategy is designed to complement the operation and development of a mature retail energy supply market. The principles of proportionality, accountability, consistency, targeting and transparency, are particularly appropriate in this context and to support market evolution.

From Ofgem's most recent review of the state of the market ('Recent developments' – June 2003) it is clear that consumers are exhibiting confidence and considerable numbers had or were intending to switch supplier. The general perspective is one of healthy market activity that was continuing to develop satisfactorily.

Ofgem maintain that they recognise the balance and trade-off between implementing, monitoring and enforcing regulation to protect and facilitate consumers in interacting with the market, and permitting and encouraging competitive differentiation as a means of meeting their needs. However, normal market operation, with suppliers free to differentiate wherever possible, should be allowed to progress with formal regulatory intervention being appropriate, justified and kept to a minimum.

It may be appropriate to evidence supplier compliance with appropriate obligations to maintain customer confidence. However, the means of creating incentives for and demonstrating supplier compliance should not be too formal or continue the current trend of playing out compliance issues in the public domain prematurely and without due rigour on the evidence and underlying causes surrounding any individual issue.

Consequently we do not concur with Ofgem that the consumer interest and the market's development will best be served by publicising the fact that an investigation is taking place on its web-site as outlined in section 6.12 of the document. We strongly object to the proposal on a number of grounds:

- It is wrong to publicise the fact that company x is 'under investigation' when the outcome of the exercise is still unknown but could conclude that there are not instances of non-compliance (as section 6.9 recognises);
- "Mud" will stick even if the complaint or investigation is not upheld;
- The trend of publicising issues of potential non-compliance is also dangerous as complaints, naturally, often emanate from consumer advocates. Here again a supplier may suffer from lack of rigour re data sources and facts of the case and that matters other than the consistency or proportionality of an investigation and how it is publicised may be the principal motive for such stakeholders;
- It follows that suppliers must be given the opportunity to know the complainant and to be able to challenge the validity of any supporting evidence;
- We note that the proposal to publicise a summary of formal investigations will not be limited to supply issues but will also extend to the Competition Act. In putting forward the proposal we are concerned that there is no commentary or supporting information on why it is relevant to the energy sector.

In summary we firmly believe the proposal would in fact be counterproductive in terms of serving the interest of consumers and supporting the evolution of the market.

We commend Ofgem's intent to avoid reliance upon the more formal elements of the regulatory framework and to develop relationships with suppliers to support ("both in private and in public") initiatives leading to compliance. We would support more informal arrangements involving senior staff on both sides earlier in the process so as to provide greater perspective and to ensure that the process of monitoring and enforcing compliance remain appropriate and proportionate.

To conclude we welcome the opportunity to discuss this important area of Ofgem activity and one which has a considerable impact on the activity of suppliers and the nature of the market's general development. The comments above are intended to be constructive in an attempt to ensure that supply compliance strategy and activity complements the considerable progress made already in liberalising the energy supply market and further encourages the engagement of consumers in that process.

It is important, as Ofgem indicate throughout the document, that the principles of the compliance programme and compliance activity should mirror the principles of good regulation in terms of due process and being proportionate, transparent, accountable, etc. For this reason we are opposed to the proposal to publicise that an investigation of a supplier's compliance is taking place before its outcome is known. This would appear to be inconsistent with the approach adopted by other regulatory authorities that we have contact with and as such has not been adequately justified in terms of its unique application to the energy sector as against other areas of retail activity. We are also concerned about the implications of publicising investigations before any firm decision is taken on the extent of any non-compliance, before the robustness of source data has been challenged and validated, and because of the negative PR impact on any company whatever the subsequent outcome.

We trust due account is taken of the issues raised above and look forward to further discussion on the subject in the near future.

Yours sincerely,

Alan Hannaway
Economic Regulation