

Our Ref
Your Ref

Direct line: 020 7752 2200
Fax: 020 7752 2128

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



17 October 2003

Dear Annette

**MAKING MARKETS WORK FOR CONSUMERS:
THE REGULATION OF GAS AND ELECTRICITY SALES AND MARKETING:
A REVIEW OF STANDARD CONDITION 48**

We welcome the opportunity to comment on the above document. This response represents the views of EDF Energy which includes the retail brands of London Energy, SWEB Energy, Seeboard Energy and Virgin HomeEnergy. I can confirm that our response can be treated as non-confidential and may therefore be placed on your website.

EDF Energy agrees with Ofgem that gas and electricity customers should be confident and have fair access to a competitive market in which sales and marketing activity is carried out. We have made huge improvements in our own sales practices, across all brands, and have been active in our support for the AES Industry Code of Practice and the nationally recognised EnergySure training scheme for sales agents. All EDF Energy's field sales staff, including those employed by our agents, are accredited by EnergySure and are also fully trained to certificate level for the foundation award of the Institute of Sales Marketing Management (ISMM).

We are fully committed to making these industry self governance arrangements work and believe this is the best means of providing protection for customers whilst allowing suppliers to differentiate their service activities. The proposed changes to Licence Condition 48 would remove the opportunity to offer a differentiated sales proposition and would significantly increase the already high

EDF Energy plc
Registered in England and Wales
Registered No. 2366582
Registered Office:
40 Grosvenor Place Victoria
London SW1X 7EN

www.edfenergy.com

costs of acquisition. This is likely to have a detrimental effect on competition, by encouraging existing suppliers to focus on retention rather than acquisition and raising barriers to entry for new and small independent suppliers. Furthermore, some of the measures proposed, such as the introduction of a 14 day cooling off period and mandatory third party sales verification, contradict the aims of the Customer Transfer Programme, by making it harder rather than easier for customers to switch supplier.

We do, however, recognise that the public perception of the energy industry, driven by media reports and press announcements, can be negative. Until such time as industry complaints are seen to continue to be at a low level and the associated media interest has fallen away, we accept that it would be difficult for Ofgem to remove Licence Condition 48 altogether. We would, therefore support the extension of the existing Licence Condition, in unaltered form, for a further period of two years, until March 2006. This will allow the industry time to establish effective self-governance arrangements in which customers, consumer bodies and Ofgem can be fully confident. At that time, therefore, when the effectiveness of those self-governance arrangements should have been adequately demonstrated, the marketing condition should fall away completely, in line with the original intention.

Our views on the specific issues raised by Ofgem for discussion are attached.

I hope you will find our comments helpful. If you have any queries on them please do not hesitate to contact Ann Neate on 01273 428464 or myself.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Linford', with a long horizontal flourish extending to the right.

Denis Linford
Head of Regulation

Attachment

EDF Energy comments on specific proposals

Extending Protection to Industrial and Commercial Customers

The Industrial and Commercial (I&C) market is very diverse and it would be impossible to introduce a “one size fits all” Marketing Licence condition that is relevant to all types of I&C customer.

EDF Energy shares the concern expressed by Ofgem and consumer committees over the recent increase in the numbers of complaints raised by Small and Medium Enterprise (SME) customers. We have also received complaints from some of our own SME customers that have been approached by other suppliers. However, such complaints are still very low compared with domestic selling complaints. The Industrial and Commercial (I&C) customer base is diverse and, while there may be some merit in extending protection to SME customers that behave more like domestic customers, e.g. small corner shops, there is no easy means of differentiating between these and other I&C customers.

The use of consumption levels to segment one group of business customers from another is not an accurate guide and segmentation by tariff or contract is no longer relevant. Many quarterly billed customers have already switched from the Former Tariff Customer Scheme to the standard contract terms of either their incumbent supplier or another supplier. Since the removal, in 2001, of the “designated” and “domestic” definitions by consumption in the Standard Electricity and Gas Supplier Licences, suppliers have aligned their database segmentation in line with their sales and marketing strategies rather than by an arbitrary regulatory definition. To change this approach would be costly, difficult to implement and would remove a means by which suppliers can differentiate their activities. For example, all sales agents appointed by EDF Energy, including those operating in the SME market, are accredited by EnergySure.

Extending the Licence Condition to Cover Other Channels of Communication

Licence Condition 48 (LC48), which was introduced to address customer concerns, primarily over doorstep selling, already covers Telesales activities. The volume of complaints relating to Direct Mail and the Internet does not justify extending LC48 to include these channels, which require customers to be proactive in responding to sales and marketing activity. Customers that enter into contracts over the Internet or in response to Direct Mail are protected by existing consumer legislation. The inclusion of these channels in LC48 would be inconsistent with the way in which other goods and services are sold. This would not only add to the regulatory burden on suppliers but also potentially confuse customers concerning their rights more generally.

Ceasing to Mandate “Inputs” (e.g. Recruitment and Training) and Focussing Instead on “Outputs” (e.g. Information Given to Customers)

We agree that regulation should in principle concentrate on the “outputs” of the sales activity rather than the “inputs”. To a large extent the “inputs” have already been addressed through the creation of EnergySure and the AES Industry Code of Practice. The measure of a successful “output” will be an increase in the number of customers that can claim to have received positive customer experience when on the end of a sale and in energywatch receiving fewer sales complaints. At the same time, a significant amount of information is already given to customers in order to meet legislative and regulatory requirements. Ofgem should resist the temptation to be overly prescriptive in the information it requires suppliers to provide to customers, since this will increase supplier costs unnecessarily and there is little evidence that this is what customers want. Customers should be left to choose their supplier on the basis of the differentiated products and services available to them.

Introducing Further Checks in the Transfer Process, a 14 Day Cooling Off Period and Third Party Verification

The introduction of further checks in the transfer process, including the proposed introduction of a mandatory 14 day cooling off period and third party verification process is contradictory to current consumer legislation (seven days cooling off period) and to the aims of the Customer Transfer Programme (CTP). There is no good reason why the energy industry should be burdened with more onerous consumer legislation than other suppliers of goods and services. These proposals are potentially confusing to customers about their rights more generally, would automatically increase acquisition costs and may, in the case of third party verification, be viewed by some customers as patronising. The proposals are also inconsistent with the objectives of the CTP as they will have the ultimate effect of slowing down rather than speeding up the transfer process.

Whether to offer an extended cooling off period, no quibble policy or third party verification should be left for individual suppliers to decide as part of their differentiated service offering. Market forces will act as ultimate arbiter, with suppliers who do not put customers’ interests first losing out to their competitors.

Specific Provisions for Vulnerable Customers

EDF Energy shares Ofgem’s concern over selling to vulnerable customers and as an AES Code member adheres strictly to the guideline that “where there is sheltered housing contact should be made with the warden or other person in authority before making any approach to the residents.” Whilst sheltered accommodation customers are easy to define, it is more difficult to assess other vulnerable customers until contact is made on the doorstep or by telephone. Suppliers should not be encouraged to differentiate or discriminate against “vulnerable” customers as these customers can benefit from participation in the competitive energy market. Instead, suppliers should be encouraged through

their training procedures and product delivery to respond to the needs of all customers, whoever they are.

Introducing Compulsory Compensation

EDF Energy agrees with Ofgem that where suppliers fail customers it is appropriate to award some form of compensation. We were pro-active in working with other suppliers to introduce a compensation scheme for fraudulent misselling and agree that, where forgery is proven, a minimum payment should be applied. However, we continue to believe that compulsory compensation for other types of sales complaint would be difficult to enforce and could encourage false or vexatious complaints. Compensation for poor performance, either relating to selling or the resolution of other customer complaints should, therefore, largely be left to the supplier to determine on a case by case basis.

EDF Energy/17 October 2003