Annette Lovell
Head of Customer Contact and Compliance
Office of Gas and Electricity Markets
9 Millbank
London
SW1P 3GE

17/10/03

Dear Annette,

Making markets work for consumers – The regulation of gas and electricity sales and marketing: a review of Standard Licence Condition 48

ScottishPower welcomes this opportunity to comment upon the issues raised within Ofgem's recent consultation on the current and future operation of Standard Licence Condition (SLC) 48.

In general terms ScottishPower believes that SLC 48 has fulfilled a necessary and important role in the emerging competitive market that has both given guidance to suppliers and protection to consumers. Irrespective of this we strongly believe that SLC 48 should continue to be seen as a temporary measure that will ultimately lapse when other market driven mechanisms can be shown to be delivering equal or potentially greater protection to consumers.

The development of *Energysure* and the Association of Energy Suppliers' (AES) Code of Practice for the Face to Face Marketing of Energy Supply are examples of such mechanisms which - while still fairly recent - are a significant step forward in terms of demonstrating the willingness of energy suppliers to develop successful forms of self regulation. However, while such self-regulation is still growing in scope and effectiveness we recognise the need to maintain SLC 48 in it's current form or modified should this be deemed necessary following Ofgem's consultation with relevant stakeholders.

We have provided below some detailed comments on the proposals made within the consultation. For ease of reference we have cross-referenced these with the relevant sections within the document itself.

4. The legal framework

4.10 – 4.12 The consultation document provides a comprehensive account of not only the sector specific legislation affecting marketing and sales activity but also the significant amount of general consumer protection legislation which covers this area in addition to the impending developments in European law which will impact on such activity in the future. It is more than clear from this catalogue of primary and secondary legislation that SLC 48 is only a small element of a much larger framework of consumer protection legislation relevant to the energy market. Although SLC has a role to play in this

framework we would support any attempt to increase harmonisation with existing legislation and remove areas of duplication.

Indeed we would greatly welcome more clarity on the current myriad of legislation particularly in terms of the concurrent powers between the Authority and the Office of Fair Trading. It would also be helpful to understand what if any relationship Ofgem may require to develop with other governing bodies such as the Independent Television Commission or the Broadcast Advertising Clearing Center particularly in relation to advertising.

4.13 The statement that the "relationship between suppliers and their agents is regulated by the Commercial Agents Regulations (Council Directive) 1993" is not correct. The Regulations apply only to certain parts of the relationship and in the main to compensation/indemnity rights available to the agency. The general laws of agency and contract are the main "regulations" applying to the supplier/agency relationship.

However, we agree that the Regulations do make it more difficult to terminate agencies as they are sometimes used as a "bargaining tool" by agencies in trying to obtain more advantageous settlement terms than would otherwise be the case. Such negotiation can hold up the termination of an otherwise unwanted relationship.

4.15 As indicated above, in addition to the Advertising Standards Authority (ASA) dealing with "non-broadcast advertisements" it should be noted that there are also the broadcasting organisations such as the Broadcast Advertising Clearance Centre and the Radio Advertising Clearance Centre (soon to be replaced), and other entities, whose regulations suppliers are required to comply with.

6. The case for change

6.5 In addition to the use of terms such as "reasonable steps" and "reasonable endeavours" the SLC also uses the concept of a "reasonable period of time". Clearly this term is unhelpful because it is open to different interpretations by consumers and suppliers. Other legislation quotes specific periods such as "7 days" or "7 working days". As is discussed in 7.15 below we believe that there is in fact no need for this condition as there is already significant legislation in place that provides for cooling-off periods. This condition is simply a layer of uncertainty in knowing clearly when a contract has been finalised between a customer and a supplier.

7. Review of licence condition 48

7.6 Misselling to vulnerable consumers is clearly a major concern for all suppliers. However, we believe that significant difficulty would arise in trying to create a workable definition of "vulnerable" that would effectively capture those legitimately targeted without creating broad generic definition that would undoubtedly cover many non-vulnerable consumers who may quite rightly object to being classified in such a way.

We clearly recognise the importance of not subjecting any consumer to inappropriate selling activity and to that end we would encourage Ofgem to focus on ensuring that a robust, quality assured and effective sales regime is in place for all domestic consumers rather than focussing on individual groups within this definition.

7.7 It is clear that some smaller I&C consumers could be subject to inappropriate selling activity by suppliers. To remedy this we would wholly support Ofgem in encouraging that all suppliers adopt the best practices currently operating in the domestic market to their dealings with e.g. Small and Medium Enterprises (SMEs). For example, ScottishPower currently utilises the *Energysure* database of sales representatives for SME business as well as domestic and we would encourage such practices amongst other suppliers.

However, we do not believe that the creation of a mandatory threshold within the licence to deal with this issue is justified or indeed would prove workable in practice given the diversity inherent in the I&C market. In addition any attempt to create a standardised definition for such customers would – as Ofgem have recognised – clearly create additional complexity and cost for suppliers in terms of modifying internal systems, monitoring compliance and renewing training and procedures. In the past such definitions – e.g. designated customers – have proved problematic to introduce, have resulted in "grey areas" and have been difficult to completely eradicate once deemed to be unnecessary. Consequently we would regard any move to encompass I&C customers in SLC48 as a regressive step taken in reaction to "recent feedback" rather than – as would seem to be more appropriate – a sustained period of concern. We would suggest that OFGEM keep this matter under review rather than make changes to arrangements that they felt were appropriate in October 2001.

7.8 Internet and direct mail sales are initiated proactively by a consumer choosing to approach a supplier. In such circumstances we do not accept that a standardised approach can be adopted or indeed would be desirable given the differing expectations of the customers concerned. In addition it is entirely reasonable to expect that any customer choosing to complete a sale on-line or by returning a paper application form would have thoroughly understood the consequences of their action.

7.12 The proposal to specify minimum requirements for the provision of customer information within the licence is not necessary as these requirements are already covered under other legislation, with which suppliers have to comply. To now propose including them within SLC 48 is clearly an unnecessary increase in the regulatory burden in that a supplier has to deal with those requirements as legislative obligations and as licensee obligations. Such a proposal would appear to run counter to paragraph 6.9 where Ofgem "considers that in a competitive market suppliers should be targeted on desired outcomes, leaving them free to determine how these will be achieved within their own corporate environments".

We believe that rather than being over-prescriptive within the licences Ofgem should deal with those areas of key concern that are clearly not covered under other legislation. In general terms we believe that suppliers should be given the flexibility to provide consumers with information at a time and in a format chosen by them. If Ofgem are concerned that consumers are either not receiving appropriate information from suppliers or – as is more likely – not recognising the key pieces of information provided, it is worth considering ways of minimising or simplifying the current requirements to place the emphasis on those areas of greatest importance to the consumer.

7.15 ScottishPower is strongly opposed to the proposal to increase the minimum standard cancellation period to 14 days. Such a proposal would lead to an obligation which is greater than that currently imposed by Parliament i.e. 7 days for "doorstep" selling and 7 working days for distance selling. We believe that the current minimum

period of 7 days provides ample opportunity for the consumer to cancel the contract if they wish but does not cause undue delay in the transfer process. A cancellation period of 14 days would result in an undesirable amount of time being required for consumers to switch supplier.

In a study commissioned by ScottishPower in September 2001 it was found that on average customers expected the transfer process to take 31.8 days. This is already significantly lower than the actual timescales for switching which currently stands at 6 – 8 weeks. To extend the cooling off period would only serve to exacerbate this issue by increasing suppliers' inability to meet consumer expectations.

Clearly any discussion around the cancellation period must also take in to account the on-going work of the Customer Transfer Programme and the outcome from the OFT market investigation into doorstep selling.

7.20 – 7.21 It is unclear how OFGEM views the voluntary *EnergySure* scheme working within the marketing area. The suggestions for specific prohibitions made by OFGEM in these paragraphs are covered in the Code of Practice that forms part of that scheme and therefore are unnecessary as licence conditions as well. This is again unnecessary duplication of obligations placed on licence-holders and appears to demonstrate a significant lack of faith from Ofgem in the effectiveness of such self-regulatory mechanisms.

7.23 We believe that "reasonable steps" can be an effective term if OFGEM is willing to provide guidance in advance, rather than investigating a supplier on an "after the event" basis, which is invariably unhelpful. In relation to the focus on outcomes and outputs it is clear that both rely solely on the quality of the inputs to the process in the first place therefore making it difficult to recognise the value in this significant change of emphasis.

7.28 We do not support the addition of what would be an extra contractual step in the change of supplier process in terms of obtaining a positive confirmation that a customer wishes to transfer. Such an additional step is not required when buying more substantial items e.g. cars, houses, and would seem to be disproportionately burdensome if applied to energy. Such a requirement would also decrease
the certainty of when a contract is fully in place, which is clearly undesirable.

7.30 The proposal for third party verification of consumer requests to transfer is, in our opinion, an unnecessary addition that will serve to stifle the market and provide less incentive for suppliers to attain new customers. In addition any requirement requiring suppliers to capture a signature for internet and telephone sales would significantly increase costs and the time it takes to transfer a new customer and could ultimately result in increased prices for consumers.

7.32 – 7.33 We accept that in some instances misselling can be extremely distressing to the consumer involved. However, as OFGEM has acknowledged compensation is already provided for under the *EnergySure* scheme. If compensation was also provided for as part of SLC 48 it would again not only undermine the effectiveness of the *Energysure* scheme but also place the licensee in a potential double jeopardy situation.

7.37 - 7.38 Ofgem's regular and ad hoc reporting requirements can put a significant burden on suppliers particularly where this information is not routinely collected in the

normal course of business. It is also questionable whether Ofgem utilise all of the information collected or are collecting excessive amounts of data that is often not required. For example, Ofgem have recently established a process for collecting market share data on a monthly basis for the purposes of having this data available for licence modification purposes. Licence modifications are clearly not a monthly occurrence yet Ofgem have requested this data to be provided monthly. This would appear to exemplify excessive collection of data for no justifiable purpose.

With regard to reporting concerning SLC48 we would urge Ofgem to adopt a pragmatic approach to reviewing the information currently provided particularly in terms of increasing or widening the scope of the requirements only where there is a clear and justifiable benefit to the collection of additional data. We would also ask Ofgem to review the current requirements particularly in terms of placing requirements on suppliers to publish reports that should be made available to the public. Such requirements may be of benefit to Ofgem and energywatch but offer little interest to the general public and in our experience are seldom if ever requested.

If you wish to discuss further any of the issues raised in this letter please do not hesitate to contact me at stephanie.tobyn@scottishpower.com or on 0141 568 3207.

Yours sincerely,

Stephanie Tobyn
Regulation, Legal and Commercial Manager