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Annette Lovell
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Our Reference:

Your Reference:

Date: 17/10/03

Dear Annette,

**Marketing Gas and Electricity: A Review of Standard Licence Condition 48**

Thank you for the opportunity to comment on the above paper. We are fully committed to measures which afford adequate protection to customers, whilst allowing companies to undertake responsible marketing practices in the competitive energy market.

Doorstep selling is seen by the majority of customers as a worthwhile and informative experience. It is the single most important source of information on competition available to customers, particularly lower income and other disadvantaged groups. In addition, direct selling is a vital part of suppliers' marketing strategies. In common with many suppliers active in the gas and electricity markets, we employ large scale doorstep sales forces, because it is the most effective and economical means of winning new customers.

As a consequence, the need to protect customers' interests and the reputation of the competitive market, through the marketing licence condition, needs to be balanced with the significant benefits to be gained from direct selling and the actual size of the problem overall. It is vital to the success of competition that Ofgem manage this balance correctly. In particular, increasing (and costly) regulation of direct marketing through the marketing licence condition could lead suppliers to pull out of doorstep selling altogether. This would greatly damage the prospects for future competition.

Against this background, we have commented on the specific suggestions for reviewing the marketing licence condition in Chapters 7 and 9 of the consultation in the attached paper. In summary, however, we do not see a need to further modify the marketing licence condition as we believe that it is effective in ensuring that suppliers adopt a responsible, practical approach to marketing. This is supported by the low level of observed marketing complaints in relation to the scale of sales activity undertaken by suppliers and the fact that such complaints have fallen by over 20% in the last six months. In addition, we are firmly opposed to current obligations on suppliers contained in general consumer protection legislation being replicated

in the marketing licence condition and we do not believe that such an approach would be reasonable or represent transparent regulation.

Finally, the AES Code of Practice for the Face-to Face Marketing of Energy Supply has only recently been launched and appears to be delivering a reduction in direct selling complaints overall. This Code was developed by suppliers, Ofgem, Energywatch and DTI. At the very least, therefore, we firmly believe that the Code must be given a reasonable chance to work and we would therefore urge Ofgem not to consider further regulatory intervention at this time.

Should you wish to discuss any of the above points further, please call.

Yours sincerely,

Rob McDonald
**Director of Regulation**

Review of Standard Licence Condition 48

Response by Scottish & Southern Energy

*Two-yearly review of the marketing licence condition*
We agree that it is remains appropriate to retain the requirement to renew the licence condition at regular intervals of two years.

*Alignment of the gas and electricity marketing licence conditions*
Subject to there being no significant impact by such drafting changes, we would support alignment of the gas and electricity marketing licence conditions.

*Extending scope to industrial and commercial customers*
On balance, we do not believe that it would be appropriate to extend the scope of the marketing licence condition to cover industrial and commercial customers. In particular, we do not believe that the majority of such customers would welcome this additional "protection" as there would clearly be cost-implications for suppliers in complying with the extended condition which would feed through to customers. Moreover, we do not believe that such protection is necessary for business customers.

*Specific reference to vulnerable customers*
In our view, it would not be desirable to make specific provision for vulnerable customers within the marketing licence condition. Moreover, it should not be necessary as suppliers who are complying with the principles contained in the marketing licence condition should not be selling to minors etc. In addition, specific reference to particular customer groups would be subjective and extremely difficult to define.

*Extending the licence condition to cover other channels of communication*
We do not agree that the scope of the marketing licence condition should be extended to cover other channels of communication. We would certainly expect Ofgem to put forward firm evidence about the need to include other channels of communication before bringing forward changes to the licence condition. The purpose of the audit is to ensure that the customer was not mislead or pressurised in any way by the salesman and that they are content to proceed with their contract. It is clearly inappropriate to include internet and/or direct mail sales in the audit, as it is not a form of direct selling (so the customer is not acting under pressure from a salesman) and the customer can take as much time as they wish to consider all the terms on offer before choosing to enter into an agreement with a supplier. As a consequence, including contracts entered into over the internet or by direct mail within the requirement to audit contracts would serve no purpose other than to increase suppliers' costs of complying with the condition and antagonise customers who had taken the time to make an informed decision on their own.

*The need to balance the optimal level of protection to customers with the need to maintain consistency and avoid unnecessary complexity*
We are not clear what specifically Ofgem are proposing under this heading, but we support the need to minimise the complexity and costs involved in complying with the licence condition while maintaining an adequate level of protection for customers. In particular, we would be firmly opposed to any suggestion that existing obligations contained in general consumer protection legislation (and therefore already applicable to suppliers and enforceable by Ofgem) are replicated in the marketing licence condition. This would serve no purpose other than to unnecessarily increase complexity and confusion by creating a dual route to

regulation. It would also significantly increase risk for suppliers by introducing "double jeopardy" into the regulatory framework.

*Win-back and save activity*
We do not believe that there is any requirement to make explicit reference to win-back or save activity within the licence condition. Indeed, any attempt to define such activities would be likely to exclude particular instances of such activity.

*Minimum requirements for information*
We support the view that customers should be confident and informed participants in the market. However, we do not agree that there is a need to strengthen or formalise the requirements for information that is provided to customers at the time of the sale (or as soon as possible thereafter). Indeed, all of the information listed by Ofgem in paragraph 7.12 as minimum requirements for information that should be specified in the licence condition are already required to be provided to customers under existing licence conditions, consumer protection legislation and codes of practice. More specifically, the relevant obligations are contained in standard licence condition 44, The Consumer Protection (Cancellation of Contracts Concluded Away From Business Premises) Regulations 1987 as amended, The Consumer Protection (Distance Selling) Regulations 2000 and the AES Code of Practice for the Face to Face Marketing of Energy Supply. As a consequence, we would be firmly opposed to such information requirements being reproduced in the marketing licence condition.

*Mandatory 14 day cancellation period*
We do not believe that a mandatory 14 day cancellation period would be in the interests of customers or competition. Where a customer enters into a contract as a result of an unsolicited doorstep sales visit, they have seven days in which to change their mind and cancel the contract without penalty. Where a customer enters into a contract by post, telephone, via the internet, etc. they have seven working days in which to change their mind. Existing consumer protection legislation places obligations on suppliers to ensure that customers are informed of the cancellation period and how they can effect a cancellation should they wish to do so. These cancellation periods apply to all competitive markets and are specifically designed to provide customers with an adequate level of protection. We do not therefore accept that energy customers in particular require a longer period in which to reconsider their decision compared to customers in other markets.

In addition, we do not believe that customers *want* a longer cancellation period and that this would simply confuse customers who would be subject to different cancellation periods for different products / sales. Moreover, such a change would have significant IT system implications throughout the industry with associated costs. It would also undermine the customer transfer process and would be difficult to reconcile with Ofgem and Energywatch's stated aims of simplifying and speeding up the transfer process.

*Existing drafting of licence condition / focus on outcomes and outputs*
In our view, an obligation on licensees to take "all reasonable steps" to ensure that their marketing activities are responsible is an appropriate term to retain within the marketing licence condition. In particular, it is not overly prescriptive and allows suppliers to undertake their own management style. Moreover, we would not support the inclusion of specific prohibitions within the licence condition as this would clearly pre-empt the AES Code of Practice which the industry, Ofgem, Energywatch and DTI have all backed.

*Positive confirmation that a customer wishes to transfer*
A requirement to obtain positive confirmation that a customer wishes to transfer or to obtain a signature from a customer before processing a transfer would be complicated and costly, would slow down the transfer process significantly and, ultimately, would not be in customers' interests. We therefore welcome Ofgem's view that they are unlikely to propose to extend the licence condition in this way. Similarly, we agree that third party verification would be costly and, in many cases, would bring the transfer process to a complete halt. Moreover, we do not believe that customers who have taken the time to make an informed decision to change supplier would welcome such potentially intrusive verification.

However, some time ago, the DTI proposed *"the introduction of arrangements whereby consumers (or, in the case of the vulnerable, their representatives) could register with their supplier automatically to block any transfer, until such time as the customer requested the removal of that block"*. We also receive numerous requests and complaints from customers who have been erroneously transferred asking why we (as their chosen supplier) are unable to stop another supplier from taking their supply without their consent. While Customer Requested Objections will go some way to helping such customers, it will not fully address such cases of mis-selling and/or erroneous transfers. We therefore believe that the possibility for customers to lodge "permanent objections" until they specifically agree to change supplier should not be discarded by Ofgem without proper consideration being given to the potential benefits to customers and competition overall (through the eradication of erroneous transfers and mis-selling).

*Compensation payments*
Ofgem request views on whether compensation payments should be specified in the marketing licence condition. We would strongly reject such an approach as, if introduced, we believe that this would create inappropriate incentives which could potentially result in a significant increase in (fraudulent) mis-selling complaints. Rather, we believe that suppliers should be required to focus on minimising mis-selling per se and where it does occur, resolving it quickly and smoothly. Indeed, we believe that the majority of customers would choose such an approach over and above a reliance on compensation in pre-determined circumstances. As a consequence, we firmly believe that compensation should remain at the discretion of suppliers, depending on the individual circumstances of each case.

*Information made available to the public*
We believe that the information currently monitored and reported to Ofgem and made available to the public, coupled with other data that is published such as Energywatch complaints statistics, is sufficient to adequately inform customers of suppliers' performance in this area.