Atlantic Electric and Gas

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

30 January 2004

Dear Annette

Re: The regulation of gas and electricity sales and marketing: proposals for the amendment of standard licence condition 48.

Atlantic welcomes this opportunity to comment further on Ofgem's proposals in relation to its review of the Marketing Licence Condition.

As we have stated in previous responses, Atlantic believes it is critical that Ofgem acts to restore consumer confidence in the competitive energy market. This can, in part, be done by creating a regulatory environment in which suppliers are clear about their obligations together with the penalties available to Ofgem and other statutory bodies when these obligations are not met.

However, this increase in confidence must not come about at too great a cost. The regulatory burden for all suppliers (but, in particular, for new entrants) must not be increased to such an extent that marketing and direct sales become uneconomic. This would not be in the interests of consumers who by Ofgem's own admission, have "received significant benefits….in the form of lower prices and differentiated service" from this channel to market. Without a brand name to fall back on, the costs of direct sales for small suppliers are already very high. Further increases in these costs will make the activity of direct sales uneconomic, thus cutting off the life-blood of the competitive market. This will reverse the current flow of customers away from BGT and the ex-PESs and will have disastrous consequences for customers in the form of increased prices once the competitive pressure is removed.

Difficult as it is to do, Ofgem must find a way to achieve a balance between continuing to promote and encourage retail competition and piling additional regulatory cost on to suppliers.

Contd/…

Atlantic Electric and Gas Ltd
Southgate House
Southgate Street
Gloucester GL1 1UW
Tel 01452 551155
Fax 01452 551156

Registered in England and Wales No 3547417

Atlantic has the following comments to make in respect of Ofgem's specific proposals:

6.5 Atlantic welcomes Ofgem's proposal for the revised licence condition to explicitly include all sales and marketing activities by suppliers and their agents. As we have consistently argued in previous responses, it is essential that customers have full, transparent and accurate information presented to them when they are making a decision as to their choice of supplier. This applies as much to a "winback" or "save" situation, as to the original sale.

6.6 Atlantic agrees that, given the current definition of a domestic customer, it would not be possible to extend the scope of the licence condition to some, but not all, industrial and commercial customers. However, Atlantic does believe that some businesses at the smaller end of the SME scale would benefit from the additional protection currently only afforded to domestic customers.

6.9 Atlantic believes that it should only be mandatory to provide this information where the contact with the customer results in a contract being signed. To extend this obligation to all contacts would result in an unacceptably high level of costs being imposed on suppliers, without a proportionate benefit being received by customers. The cost of providing this information would also be significantly higher for new entrants whose conversion rates would be lower than for a company that is trading heavily on a well-established brand name.

6.10 Atlantic cannot support Ofgem's proposal to introduce a mandatory 14 day cooling-off period as this would significantly disadvantage Atlantic in its arrangements to pay commission to its agents. At present, Atlantic pays commission within 14 days on all contracts submitted. However, we have a facility in place to "claw-back" within 31 days any commission relating to contracts that do not come on supply with us at the end of that timescale. If the cooling-off period was to be extended to 14 days, the number of contracts completing the transfer within 31 days would be significantly reduced, thus eating into the time in which we can successfully claw-back commission payments. It is highly unlikely that Atlantic would be able to re-negotiate the terms of its contracts without exposing itself to the very real risk of a compensation claim from its agencies.

Contd/……..

In addition, changing the cooling-off period from 7 – 14 days would cause Atlantic to incur additional costs as contracts would have to be scrapped and re-printed and agents, as well as directly-employed staff, would have to be re-trained. The scale of the inconvenience, disruption, cost and potential risk to Atlantic does not bear any relation to the benefit received by the customer. The Customer Transfer Programme, which is currently looking at ways of improving the transfer process, has been told by several customer representatives (including Ofgem) that there are great benefits to the customer in reducing the time that currently elapses between the sale and the transfer. The introduction of a longer cooling-off period is inconsistent with this.

Furthermore, we already find that, despite being one of the quickest suppliers to transfer customers, we receive complaints from customers who would like the process to be shorter. We find it surprising that Ofgem has any evidence that extending the cooling-off period would be compatible with the wishes of customers.

Far from reducing confusion amongst consumers as Ofgem asserts in the Consultation document, this proposal will increase it as the cooling-off period relating to energy contracts will then be longer than for other goods and services. It would perhaps be more beneficial for customers for Ofgem to concentrate on ensuring that cooling-off periods are properly explained and communicated to customers. We would agree with a respondent to an earlier version of this consultation who said that the effectiveness of a cooling-off period did not relate to its length, but to its clarity and its implementation.

6.21 Whilst Atlantic already has its own contract verification process in place, it does not believe that this should be imposed on other suppliers via an obligation in the Marketing Licence Condition. This would be too prescriptive and, as indicated in previous responses, Atlantic believes that the management of each supplier should be allowed to find their own way of complying with a set of general obligations laid out in the licence condition.

As a final point, it is worth noting that Atlantic has voluntarily joined the AES and complies with its Code of Practice for the Face-to-Face Marketing of

Contd/……..

Annette Lovell
29 January 2004

Energy Supply. This in itself has involved Atlantic in significant additional expenditure. (We would be happy to provide you with this cost information if it would be useful.) It has already been demonstrated (by the significant reduction in energywatch sales complaints since it was introduced in May 2003) that the Code has been a success. Atlantic has, therefore, clearly proved its commitment to responsible marketing. We would now urge Ofgem only to review the drafting, objectives and clarity of the current Licence the margins of new entrants. At the same time, the AES Code of Practice should be allowed to run alongside Condition 48 until the Condition is reviewed again in 2 years' time. In this way, the industry's ability to self- regulate could be fully evaluated before the protection offered to consumers by the Licence Condition is removed.

We urge you to think very carefully about the actual (as opposed to hoped for) benefits that will be accrued by customers before imposing additional costs on suppliers. The long-term success and structure of the competitive market rely on the decisions you take in relation to this review.

I trust that you will find these comments a helpful contribution to this debate. If you would like to discuss any aspect of this response, please contact me.

Yours sincerely,

Siobhan O'Loughlin
Regulation Officer

cc: Wendy Davies, Director, energywatch Wales.

Contd/…