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Our Reference:

Your Reference:

Date: 30/1/04

Dear Annette,

The Regulation of Gas and Electricity Sales and Marketing: Proposals for the Amendment of Standard Licence Condition 48

Thank you for the opportunity to comment on the above paper. Our detailed comments on the proposals are contained in the attached paper and we have summarised the main issues below.

We support the extension of the marketing licence condition in its present form for a further two years, in the hope that by April 2006 the market will have matured sufficiently to allow the removal of the condition altogether. However, we do not see a need to further modify the marketing licence condition as we believe that, coupled with appropriate and proportionate enforcement, it is effective in ensuring that suppliers adopt a responsible approach to sales and 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.

Moreover, the proposed changes represent a fundamental shift in the scope of the licence condition from the existing requirement to put in place robust processes to secure compliance to a very prescriptive regime with a significantly extended coverage of business activity. Not only does this significantly increase regulatory risk faced by suppliers but the prescriptive nature of the changes moves in the exact opposite direction from that intended i.e. the eventual removal of the licence condition altogether.

In addition, we have a number of concerns about the specific proposals contained in the paper which we believe would, if implemented, have a significant adverse impact on suppliers' sales and marketing activities. Our main concerns are as follows.

First, a number of the proposals would significantly increase suppliers' costs of compliance with the licence condition. In particular, the requirement to provide written confirmation of any price claims/comparisons, a mandatory 14 day cooling-off period and a requirement to obtain independent positive confirmation that a customer wishes to transfer would have significant IT system implications throughout the industry with associated costs. We also do not believe that these measures (particularly the 14 day cooling-off period) would be consistent with Ofgem's declared aim of simplifying the transfer process.

As you know, doorstep sales is currently the most effective and economical means of winning new customers but such changes, if introduced, would increase the costs of doorstep selling significantly to the point where it may become uneconomic to undertake this form of selling. This would have obvious implications for competition.

Second, many of the additional obligations proposed by Ofgem are already contained in general consumer protection legislation (and are therefore already applicable to suppliers and enforceable by Ofgem under the Enterprise Act). The proposed duplication of such obligations serves 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 which may ultimately be subject to legal challenge.

Third, many of the proposed "new" obligations are already requirements of the AES Code of Practice for the Face to Face Marketing of Energy Supply. The Code was developed by suppliers, Ofgem, Energywatch and DTI and is demonstrably delivering an overall reduction in direct selling complaints. We do not therefore believe that it would be appropriate for Ofgem to mirror the additional obligations contained in the Code in the marketing licence condition. This would undermine the role of the Code of Practice and would represent excessive regulatory intervention.

In conclusion, therefore, we support the continuation of the existing licence condition for a further two years. This would allow a reasonable opportunity to assess the effectiveness of industry self-regulation i.e. the AES Code of Practice and Energysure. Against this background, we could not support the proposed changes to the text of the existing licence condition.

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

Yours sincerely,

Rob McDonald
Director of Regulation

Proposals for the Amendment of Standard Licence Condition 48

Response by Scottish & Southern Energy

General

We support Ofgem's decision not to extend the scope of the licence condition to cover industrial and commercial customers or to make specific provision for vulnerable customers. The paper also states that the condition will define the activity that it is intended to regulate and that this will include all sales and marketing activity by suppliers. As we have stated earlier, we do not agree that the scope of the licence condition should be extended to cover other channels of communication.

In particular, 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 (with no involvement from a salesman). At the very least, therefore, we would expect Ofgem to put forward firm evidence about the need to include such channels of communication before implementing changes to the licence condition.

It is also proposed to explicitly include all 'winback' and 'save' activity within the licence condition. The existing licence condition applies to the marketing activities of the licensee in respect of the supply or proposed supply of energy. It defines marketing activities as follows:

> "means any activities of the licensee directed at or incidental to the identification of and communication with domestic customers supplied or to be supplied with electricity by the licensee, and includes entering into domestic supply contracts with such customers.

It is therefore our understanding that the existing licence condition covers both 'winback' and 'save' activity at present. Clearly, however, in the case of 'save' activity where a customer does not change supplier and therefore does not re-enter into a domestic supply contract (as is the case in 'winback' situations) the provisions of paragraphs 3, 4 and 5 of condition 48 do not apply.

Against this background, we are not clear what specific changes (if any) Ofgem are proposing by explicitly including all 'winback' and 'save' activity within the licence condition. It is therefore difficult to comment in detail without sight of the proposed wording. However, we do not believe that there is a need to make more explicit reference to 'winback' or 'save' activity within the licence condition. Indeed, any attempt to define such activities would be likely to exclude particular instances of such activity that are captured by the existing definition.

Doorstep and Other Face-to-Face Channels

The prohibitions listed under the above heading are all covered by the AES Code of Practice. As a consequence, we do not believe that it is either necessary or appropriate to incorporate them in the marketing licence condition.

The paper proposes that written confirmation of any claims (including price or savings claims and comparisons) that are relied upon during the course of any approach are provided to the customer at the time of the contact. This would be extremely difficult to achieve in practice as each supplier has numerous tariffs and payment methods. As a consequence, we leave written details of our prices with new customers which they can compare with their current supplier's rates if they wish. In our view, this represents an appropriate balance between providing adequate information to customers and maintaining a practical and viable doorstep sales force.

The AES Code of Practice already requires that sales agents state who they are, show their badge and clearly state who they are representing. In addition, when a contract is signed the agent's details are given on the contract. Our contact details are given on the written material left with customers in the event that they wish to make a complaint, but we do not believe that providing contact details for Energywatch at this stage would be appropriate. This would simply encourage customers to contact Energywatch directly before attempting to contact the supplier concerned in the first instance.

Telesales Channels Including all Out-Bound and In-Bound Calls

A requirement to send written confirmation of any price claims or comparisons would involve significant (and costly) IT changes to our systems. This would, in turn, raise questions over the continued viability of telesales. As with doorstep sales, we believe that sending written confirmation of our prices is adequate to allow customers to undertake their own comparison if they so wish. Again, we do not support providing contact details for Energywatch before customers have attempted to resolve the issue with the supplier concerned in the first instance.

Internet, On-Line or Electronic Sales Channels

In the absence of firm evidence that customers are experiencing problems with this means of communication, we do not support the extension of the marketing licence condition to cover internet or electronic sales channels.

Direct Mail Channels

We believe that a distinction should be drawn between direct mail marketing and sales processes. The purpose of direct mail shots is to generate customers' curiosity about our product and it is only when customers respond (often less than 1% response rate is achieved) and subsequently enter into the sales process that such detailed information about cancellation rights etc. should be (and currently are) provided. The information that is required to be provided to customers at the point of entering into a contract, i.e. during a sale should not therefore be required to be provided on all marketing communications sent to customers.

Mandatory 14 Day Cancellation Period

Ofgem propose that the condition will provide for a standard cooling-off period of 14 days. 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.

Reporting and Audit

Under the AES Code of Practice there is an independent Code Administrator who undertakes independent auditing and monitoring of suppliers compliance with the requirements of the Code. We do not therefore consider that there is a need for further regulation in this area.

Contract Verification

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 (and in many cases stop) the transfer process and, ultimately, would not be in customers' interests. 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.

In addition, such an approach would be difficult to operate in practice as it would be impossible to obtain positive confirmation for all customers. Indeed, we generally receive an average response rate to mail communications of around 1-2% and our average successful contact rate by telephone is 30 - 35%. It is therefore clear that such a requirement would simply prevent at least half of all customers that genuinely want to transfer supplier from actually transferring and would have a very negative impact on customers experience of the transfer process and competition in general.

However, as stated in our earlier response, we believe that the possibility for customers to lodge "permanent objections" until they specifically agree to change supplier should not be discarded by Ofgem out of hand. In our view, the potential benefits of such an approach to customers and competition overall (through the reduction in erroneous transfers and misselling) should be given real consideration.

Compensation Payments

As discussed in our earlier response, we firmly believe that compensation should remain at the discretion of suppliers, depending on the individual circumstances of each case.