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Director, GB Markets - Ofgem

25 January 2008

Dear Philip,

Regulation of marketing to domestic customers

Thank you for the opportunity to respond to your letter inviting views as to whether Condition 25: 'Marketing Electricity to Domestic Customers', should be removed from the Supply Licence.

The Energy Retail Association (ERA), formed in 2003, represents domestic electricity and gas suppliers in the domestic market in Great Britain. All the main energy suppliers operating in the residential market in Great Britain are members of the association - British Gas, EDF Energy, npower, E.ON, Scottish Power, and Scottish and Southern Energy.

Members will be responding on an individual basis. This response represents the majority view of our members.

Ofgem made major strides in the Supply Licence Review at reducing any unnecessary and outdated Conditions, in line with their commitment to Better Regulation. Removing Condition 25 – Marketing to Domestic Customers – would be an appropriate step, based on the facts outlined below.

In May 2003 the AES Code, or the Code of Practice for the Face-To-Face Marketing of Energy Supply, was launched. This is now known as "The EnergySure Code" ("The Code"). The EnergySure Code was set up to address the problems of mis-selling when competition opened up in the domestic sector, and all ERA members signed up to the Code. Appendixes 1 and 2 provide further information on the Code.

Since EnergySure was setup, sales complaints recorded by energywatch have fallen to 3% of the 2002 level - from 0.87 to 0.04 complaints per thousand transfers in May 2003 and October 2007 respectively. Annually, Code members approach approximately 35 million people about switching their energy supplier each year, and fewer than 1 in 100,000 approaches results in an energywatch complaint about Direct Selling.

Evidence of the significant success of the Code was first recognised in the Office of Fair Trading's (OFT) Market Study On Doorstep Selling in 2004, which acknowledged the efforts made by the energy suppliers, notably the EnergySure Scheme, the Code and their contribution to the fall in selling complaints. The OFT report specifically noted that "since May 2002, complaints have fallen by more than 70%... Given the above, the OFT do not make any direct recommendations for further actions in relation to energy sales."

Most recently Ofgem, who were consulted on the development of the Code highlighted in January 2006 that "the industry has made significant steps towards preventing unfair marketing activities and it is possibly only a matter of time before self regulation provides a viable alternative to the marketing conditions"¹. We strongly believe this time has now come.

¹ Letter from Joanne Tackley entitled "The regulation of gas and electricity sales to domestic customers: notice of the proposed modification of standard licence conditions 48 (marketing conditions) and consultation on their continuation"
<http://www.ofgem.gov.uk/Licensing/Work/Notices/ModNotice/Archive/12554-SLC48.pdf>

The Code is rigorously audited on a regular basis by an independent third party auditor. As the independent auditor KPMG, who was appointed Code Auditor in 2004, note:

“One of the other ways in which the success of the Code can be measured is in terms of the strength of the controls and procedures members have in place to achieve compliance with the Code. Over our three year appointment as Code Auditor we have observed significant progress by the members in terms of their controls and procedures in place to achieve compliance with the requirements of the Code.

“During the course of our work nothing has come to our attention to suggest that the Members have not shown commitment towards compliance, for example through the allocation of dedicated resources with responsibility for ensuring compliance with the Code. As part of the audit we have worked with the Members to ensure any areas of non compliance that are identified are addressed as part of their drive for continual improvement in the overall levels of compliance across the industry.”

In September 2007 Deloitte and Touche were appointed as the auditors of the Code. They will continue, as KPMG did, to carry out annual audits.

In its open letter dated 30 March 2006² Ofgem implied that its view on self- regulation providing a viable alternative to SLC 48 might change were the EnergySure Code be enhanced to closely match the requirements of the OFT Consumer Codes Scheme. Specifically, Ofgem identified four examples of how they would like to see the EnergySure Code enhanced. Here we outline examples of how this has been done, and plans we have in place to develop these further. We are happy to discuss these, and others, in more detail if required.

- **Improving transparency over how breaches of the EnergySure Code are dealt with**

To demonstrate how the EnergySure Code is becoming more transparent, we invited a number of stakeholders to a meeting to discuss the Code Audit Report. Ofgem, energywatch and Citizens Advice Bureaux (“CAB”) attended. The ERA is committed to making this an annual occurrence, to sit alongside other meetings we have with stakeholders. Improved transparency of the Code for stakeholders is a key feature of our forward plan. However it remains an important aspect of the governance framework of the Code that suppliers are able, in confidence, have honest and frank discussions with the Code Manager about their performance and any improvements that they may have to make.

- **Increasing the involvement of consumer bodies**

Consumer bodies have always played a key role in building the success of the EnergySure Code.

In 2007 we have built on existing activity and engaged with a number of consumer bodies and stakeholders inviting them to review the overall 2007 Code Audit report produced by KPMG. This includes CAB, energywatch, and Ofgem.

We communicate as and when necessary with stakeholders, such as energywatch and Ofgem, to ensure that they are aware of the progress the Code has made and members’ performance.

- **Building awareness of the Code**

- *Trading Standards Institute Conference*

EnergySure had a stand at the Trading Standards Institute Conference, from 25-28th June 2007, held at the Manchester Central Convention Complex. This was the first time EnergySure had been promoted at such an event. A prominent position was held at the conference. The success of promoting the Code and having the opportunity to directly explain the Code, was encouraging and we hope to attend more in the future.

- *Communications Campaign*

A substantial budget has been made available by the Code Board to be spent on communications and improving Code awareness in 2008. We are currently outlining how we intend to take this forward and look forward to sharing our plans with Ofgem and receiving input from them. We also intend to step-up our activity with stakeholders including the media and representative groups.

² Letter from Joanne Tackley entitled Decision document: Continuing standard licence condition 48 and proposed modifications to that condition <http://www.ofgem.gov.uk/Markets/RetMkts/Compl/DirectMktng/Documents1/13475-5406.pdf>

- **Attracting signatories beyond the big six major suppliers**

Wherever possible, the costs associated with the Code are in proportion to the number of sales agents registered in the EnergySure scheme and central costs reflect the provision of Code Administration of a robust and detailed Code. New signatories may be reluctant to join for reasons of cost. We work hard to minimise all costs of the scheme but believe that costs are reflective of running a robust scheme with few members. (Can we make a point that we are happy to work with potential new members to overcome this?)

Finally both before and subsequent to Ofgem's letter dated 30 March 2006, we have maintained a continuous dialogue with the OFT on the feasibility of the Code being approved under the OFT's Consumer Codes Approval Scheme. We were disappointed about OFT's need to include areas outside of the Code within the scheme, such as billing. However we are still exploring ways forward with OFT.

In the last review of this Licence Condition, in March 2006, Ofgem included the proposal to remove the application of the licence condition to telesales, "in recognition of the improved performance by the industry and the introduction of the Distance Selling Regulations". We believe that both these key criteria have now also been met in relation to the wider requirements of SLC 25.

As referenced in the open letter, there are a number of changes occurring to consumer representation in the energy sector. However to date there is no clear demonstration of how removing this Licence Condition will impact customers. The main domestic energy suppliers are fully committed to the EnergySure Code.

Our members have also included sales complaints within the Energy Supply Ombudsman, and took the step to reduce the time to refer customers to the Ombudsman from twelve weeks to eight weeks. They have shown that they are keen to be closely involved in the transition period from energywatch to the new NCC, to enable them to put in place any necessary measures internally.

We strongly believe that customers' experiences will not be adversely affected if Ofgem removing this License Condition, and that by doing so Ofgem will continue to show their commitment to Better Regulation.

Yours sincerely,

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Appendix 1:

- An outline of the Code

The code provides a set of requirements which its members must abide by. The requirements are divided into sections and cover the following areas.

- Recruitment:

This section details the requirements on members to ensure that they engage only suitable individuals as sales agents and that they obtain and check references, properly assess their skills and knowledge, have due consideration that individuals will be the public face of the industry, and that appropriate security checks are carried out given the role places the Sales Adviser in direct contact with members of the public.

- Training:

This section details Sales Agent development of knowledge, their behaviour and appearance and their customer contact skills and that they meet the additional requirements laid out in the EnergySure scheme which includes a probationary period where Sales Agent performance on the doorstep can be assessed.

- Registration:

This section details the requirements for EnergySure scheme registration where accredited agents have completed the EnergySure training scheme and have their details entered on a database. Accreditation may be withdrawn if an agent fails to meet standards, and this is also entered on the database.

- Consumer Contact:

This section details calling times, agent identification, courtesy and avoiding misunderstanding. It also necessitates sales agents to voluntarily cease contact with a consumer who clearly indicates that contact is unwelcome.

- Providing Information:

The code provides for clear contract forms, explanation of essential provisions of a contract, explanation of cooling-off period and cancellation rights, contact details; suppliers will have procedures to verify and confirm to a consumer that they have entered a contract and are satisfied.

- Consumer Complaints:

Code members are required to establish complaint handling procedures and pay prompt attention to complaints. They record complaints and analyse causes to be used for managing agent performance and improving procedures.

- Compensation:

Where gross misconduct occurs, involving proven forgery, a compensation payment of £250 will be made.

The Code is available in its entirety on-line at www.energy-retail.org.uk/salespractice

Appendix 2:

- The Code Panel

The Panel is the means whereby appeals from Code Members against decisions of the Code Manager will be heard, and it will also take an overview of the operation of the Code and put forward recommendations.

The Members of the Code Panel are:

- Lord Dubs of Battersea (Former Chairman: Broadcasting Standards Council)
- Caroline Banks (Retired Director: Consumer Regulation Enforcement Division, OFT)
- Tina Tietjen (Chairman: Air Transport Users Council)
- Bryn Aldridge (Former Chairman: The Trading Standards Institute)
- Stuart Sweetman (Retired MD: Post Office Counters Limited)

The Code Panel meets each quarter though were not called upon to hear any appeals from Members. The opportunity was taken at its meetings to meet Member representatives and received detailed presentations on operational aspects of the Code. The presentations were welcomed by the Panel as a means of enabling them to maintain a close understanding of how the Code is operating in practice.

- Delivering and Monitoring compliance with the Code

AES and its Members have allocated significant time and resources to ensuring that Members are complying with the Code and that the Code has an impact on improving the face to face marketing of energy supply. Within each Member organisation there is a dedicated EnergySure Compliance Manager whose responsibility is to ensure that the organisation is complying with all the requirements of the Code.

Members are required to submit monthly returns to the Code Manager to demonstrate their levels of compliance with the Code. Where the returns indicate there may have been difficulties with compliance, the Code Manager will discuss a rectification plan with the Member.

The appointment of an independent Code Auditor has done much to raise the profile of Code compliance across the industry. An important part of the audit process is the identification of opportunities for Members to improve processes and procedures through devising and implementing agreed action plans.

- Enforcing a successful Code of Conduct

To ensure full disclosure and openness concerning the pro-active role that the Code Manager has taken within respect to alleged breaches of the Code and subsequent investigations of such alleged breaches, the Code Manager presents a quarterly report to the AES Board and to the Code Panel containing full details of Code investigations and emphasising the areas in which Members have not complied with the Code.

There has been no area identified during 2006 where Members Code compliance has been identified as falling short of the required standard.

In one incident where a member voluntarily indicated a potential compliance breach, the investigation showed that no breach of the Code had actually taken place. In 2006 in comparison to 2005, the Code Auditor reported a significant reduction in the number of areas where members were noncompliant with the Code in the 12 month period since the last audit. Such non-compliances are typically of a temporary nature in the year and are typically rectified by members in the course of normal operations.

Appropriate corrective action plans from the 2005 audit were reviewed by the Code Manager and similar action will be taken on actions undertaken as a result of the 2006 Code Audit. There were no appeals made to the Code Panel in 2006. The Code Manager works closely with all Members and strives to assist Members to comply with the Code without the need to apply formal sanctions. However, where necessary, the Code Manager will continue to take a strong line in order to protect the integrity of the Code.