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Dear Nigel,

Regulation of marketing to domestic customers

This is the response of RWE npower to Philip Davies' letter of 3 December 2007 on the above subject, on behalf of its retail energy supply activities under the npower brand.

Fundamentally you are asking whether we agree with the proposal to extend the marketing conditions (SLC 25) until March 2009 or alternatively, do we consider that industry self-governance arrangements, including the EnergySure Code are sufficiently robust for their removal in April 2008?

In short our response can be summarised as no to the proposed extension of SLC 25. Consequently we agree to the regulatory obligations and burden in this area being centred on a self-regulatory code that is effective and has delivered clear and positive outcomes, alongside an existing body of consumer law and the forthcoming consumer protection and unfair trading regulations.

Following the Supply Licence Review we commended Ofgem for the way they conducted the exercise and a targeted and proportionate outcome that demonstrated both their embracing of and adherence to better regulation principles. We would suggest that the proposal to continue with SLC 25 beyond this March does not apply the same principles and relies instead on a less rigorous 'wait and see' approach in terms of the forthcoming April regulations.

By doing this Ofgem underplay the strength of the EnergySure code of practice, its impact on complaint levels, the quality of the energy sales experience and principally that in terms of compliance and the associated costs, it goes beyond the reasonable endeavours requirements of SLC 25. This is supported by the fact that it is subject to an independent external annual audit and an extensive framework for the training and recruitment of agents and ensuring that they approach and deal with consumers appropriately.

We therefore believe reliance on the Code is more in keeping with the principles of better regulation, in particular being proportionate and complementary to the continued development of competition. Conversely the retention of SLC 25 is not in keeping with Ofgem's de-regulatory agenda.

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In addition the retention of SLC 25 might potentially leave suppliers with a form of triple jeopardy in subjecting it simultaneously, for the best part of a year, to formal regulation (SLC 25); self-regulation (AES Code) and general consumer law (in the form of the new unfair trading/practices regulations). Again this is not in keeping with better regulation principles and creates a very busy regulatory space, that creates considerable regulatory uncertainty given the different forms of regulation and the application of them by different stakeholders, including local authorities in the case of the latter.

We believe this to be wholly inappropriate and a potential constraint on direct sales activity that would appear to be a fundamental part of the success story Ofgem reference in their Domestic Retail Market reports and record levels of consumer switching. We believe the Energysure Code to be fit for purpose to stand in place of formal regulation and have been extremely disappointed by the OFT's reluctance to reinforce this by providing approval under its code approval scheme because of its insistence on linking it to, and the views they are taking on, billing matters.

To conclude we believe that it is now appropriate to remove SLC25 in March. This would reduce the regulatory burden in direct sales to the Energysure code, general consumer law, the fact that the ESO already covers sales complaints and the introduction in April of new regulations, broad in scope, that will apply. Not least because the Code is a more rigorous in compliance terms than SLC 25 and in that sense retaining the latter does not correspond with better regulation principles and in particular ensuring that if formal regulation is retained it is targeted in its protection of customers, proportionate and therefore required.

I hope you find the above a constructive contribution and look forward to your further views on the subject. Please note we have also had input into and approve the contents of the response from the ERA, including a fuller brief on the AES Code and how it has addressed Ofgem's suggested further improvements.

Yours sincerely,

Alan Hannaway
Economic Regulation