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Dear Ms Lovell

**The Regulation of Gas and Electricity Sales and Marketing: Ofgem's Proposals for the Amendment of Standard Licence Condition 48 (December 2003)**

I am pleased to offer the following response to December's consultation document.

**Introduction**

The Energy Retail Association (ERA) established in October last year is the only dedicated trade association for UK energy suppliers. All the main energy suppliers operating in the domestic market in the UK are members of the new association - Atlantic Electric and Gas, British Gas, EDF Energy, npower, Powergen, Scottish Power, and Scottish and Southern Energy.

The purpose of the ERA is:

- to identify areas where the industry can collaborate for the common good without competitive advantage;
- to improve the profile of the sector with decision makers, opinion formers and consumers
- to protect the industry from regulation that stifles commercial development and assist the industry in the operation effective self-regulation procedures.

In December 2003 a second consultation document was published that proposed changes to the existing Marketing Licence Condition (SLC 48). This response represents the views of the ERA members.

**Overall view:**

The ERA welcomes the opportunity to comment and shares Ofgem's ambition to build a mature and competitive energy market. However, we believe that self-regulation is the best way to promote economic growth and ensure value for money for consumers. The proposed extension of the Market Licence Conditions will have a significant adverse impact on suppliers' sales and marketing activities to the detriment of our customers.

Energy suppliers already operate to self-imposed codes of practice based on best practice and consumer interest, in particular the AES Code of Practice for the Face-to-Face Marketing of Energy Supply. Despite being a relatively young market the industry has been successful in its actions to self-regulate energy retail activities and consumers have seen huge improvements in the services they receive, as evidenced by the rapid decline in complaints recorded by energywatch.

The existing Code sets out a clear framework within which responsible companies will conduct their retail activities. The Code, which was produced with input from Ofgem and energywatch, exceeds the standards of consumer protection currently required by law and aims to promote consumer confidence. The ERA is currently undertaking a wholesale review of the Code. As part of this initiative we shall be looking at best practice models of other service providers e.g. financial services and the travel industry. Ofgem will be consulted as part of the review. We would strongly suggest that this voluntary initiative to further improve the service to consumers must be a key consideration and should be reflected in the Ofgem consultation and in the recommendations of the OFT investigation results which are due in Feb 04.

We are concerned that the proposals will undermine the role of the Code of Practice and would represent excessive regulatory intervention. Clearly many of the proposals in the consultation are already contained in general consumer protection legislation (and are therefore already applicable to suppliers and enforceable by Ofgem under the Enterprise Act) or adequately addressed in the Code. Indeed, Ofgem's proposed changes would fundamentally shift the licence condition from a requirement to put in place robust general processes to secure compliance to a very prescriptive regime with much greater prospects for levying fines.

Energy suppliers consider that the modifications suggested by Ofgem, if implemented, are likely to increase selling and marketing costs, ultimately forcing suppliers to reduce sales and marketing activity and thus be detrimental to competition within the industry.

In our view the Marketing Licence Condition should be extended for a further two years in its present form. This would allow a reasonable opportunity to assess the effectiveness of the industry's ability to self-regulate and the ERA's review of the Code of Practice.

The attached appendix offers specific comments on the proposals.

Yours sincerely

Duncan Sedgwick  
Chief Executive

APPENDIX

<b>Consultation Document Paragraph ref</b>	<b>Suggested response</b>
5.5 ofgem is supportive of industry attempts to self-regulate and will welcome evidence that it has been effective and regulation can be relaxed.	The industry can demonstrate clearly that it has been successful in its actions to self-regulate. The industry introduced its EnergySure accreditation scheme for sales agents in July 2002, and this was followed In May 2003 by the launch of its Code of Practice for the Face-to-Face Marketing of Energy Supply (“the AES Code”). Since June 2002 the level of energywatch selling complaints has fallen significantly.from an industry average of 1.92 complaints per thousand transfers in June 2002 to a level of 0.62 in Nov 2003. This data, which is independently produced by energywatch is clear evidence that self-regulation in this area is effective.
5.9 Industrial and commercial consumers	Agreed that licence condition should not be extended to cover non-domestic customers.
5.10 Vulnerable customers	We do not consider there is any need for the licence condition to cover vulnerable customers when this matter is already adequately covered within the AES Code.
5.23 Consumer redress	We support the unchanged wording regarding consumer redress.
6.8 prohibitions	We consider that all of these prohibitions are either explicitly or implicitly already covered in the AES Code and it is therefore unnecessary to extend the licence condition as suggested.
6.9 provide info to customer in writing	We consider that bullet 1 “written confirmation of any claims (including price or savings claims and comparisons) that are relied upon during the course of any approach made face-to face” would, in practice, be extremely difficult to achieve in practice without considerable expense to the supplier who that agent is representing. It is the responsibility of the consumers, based on information that is supplied in respect of tarriffs and average estimated savings to draw their own conclusions as to what savings they could achieve.
6.9 other bullets	The AES Code (clause 7.4) already requires that the agent says who they are, shows their badge and says who they represent. When a contract is signed, agent details are included on the contract. Clause 7.7 We support the view that details of how to make a complaint should be left with the customer at the time of contact and we can modify the AES Code to include this. However, unless a contract is entered into we do not consider that it is appropriate for the contact

	<p>details for energywatch to be supplied as this could potentially increase those consumers directly contacting energywatch before attempting to contact the supplier.</p> <p>Details of cancellation period and how to cancel are included in Clauses 9.5.4 and 9.5.5 of the AES Code.</p>
6.11 Telesales	See Members individual comments
6.20 Reporting and audit	<p>In respect of the AES Code, there is an an Independent Code Administrator who carries out independent auditing and monitoring of Code Compliance.</p> <p>Also, the AES Code (Clause 12.3.1 ) currently requires its members to “make regular audits of systems, procedures and documentation to prove compliance with this code of practice”</p> <p>We do not consider there is a need for further regulation in this area.</p>
6.21 contract verification	We consider that the current licence condition is adequate.
6.22 Items removed	We support the removal of obligations with respect to training and recruitment of sales agents. This subject is extensively covered by the AES Code.