



**THE COMPETITIVE ELECTRICITY MARKET
FROM 1998:**

A CONSULTATION PAPER ON MARKETING ELECTRICITY

MARCH 1998

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1. This paper invites views on the issues surrounding the marketing of electricity by suppliers. In particular, it invites comments on OFFER's proposal to introduce a new licence condition to ensure responsible marketing of electricity.
2. From September 1998 the electricity market will be fully opened to competition. Initially, it is planned that four public electricity suppliers (PESs) will open their markets. A further four will follow in October and the remaining six in December. For each PES, its market will be opened in three broad phases based on postcode areas: the first will include around 10 per cent of all customers, plus all customers with maximum demand metering and those taking supply through half hourly meters. The second phase will comprise all remaining business customers and a further third of domestic customers. The third phase will comprise the remaining domestic customers. Depending on the performance of the systems being put in place to facilitate competition, it is expected that these phases will be completed over a six month period in each PES area.
3. In preparation for the opening of the market a number of suppliers have already commenced marketing electricity to customers. In addition, many of the companies expect to be active both in the electricity market and in the gas market where competition is presently being introduced across the country. Several companies are marketing, or expect to market, joint electricity and gas products.

Background

4. During 1996 OFFER initiated a series of consultations on revisions to the licences of electricity suppliers in preparation for full competition in 1998. In response to those consultations several customer representative bodies expressed concerns about marketing activities. OFFER urged suppliers to establish a voluntary code dealing with marketing issues. The objective was to have a code which became widely recognised by customers and which provided a protection against high-pressure salesmanship whilst not precluding the development of innovative marketing techniques. OFFER indicated that if a voluntary code was not widely adopted, the Director General would need to consider the introduction of a licence condition.
5. OFFER welcomed the steps taken by suppliers in discussion with customer representatives to establish such a code. In June 1997 the Association of Energy Suppliers (AES) was established under the auspices of the Electricity Association to focus work on the Code. The AES launched a Code of Practice for Marketing which defines minimum standards of good practice to be followed by members

when marketing energy supply services to domestic customers. The Code provides for complaints about members' marketing practices to be dealt with, ultimately by a Panel comprising representatives of energy suppliers, Electricity Consumers' Committees and the Gas Consumers Council. Sanctions levied against members can include a requirement to reimburse customers, adverse publicity or expulsion from the organisation.

6. Although membership is voluntary most suppliers have joined the AES and become signatories to the Code. Present members include all PESs except Eastern Electricity, plus British Gas Trading, and Independent Energy.

Marketing Practices

7. In the light of customer concerns in this area, OFFER issued in December 1997 a questionnaire to electricity suppliers that had previously indicated their intention to supply designated customers - that is domestic customers and small business customers using less than 12,000kWh a year. The questionnaire was designed to establish the extent to which suppliers expected to engage in doorstep selling of electricity and what safeguards they were putting in place for customers. OFFER indicated that it would consider licence modifications should suppliers' policies or practices be considered inadequate.
8. The quality of responses to the questionnaire varied considerably. In general suppliers responded positively to the points raised but in a number of areas plans seemed ill-developed or lacked important safeguards. In summary, responses to the questionnaire highlighted the following points.
 - All electricity suppliers which propose to supply into the designated markets indicated that they plan to use a range of methods to sell their services. Some, though not all, suppliers have indicated that they expect to use direct or doorstep selling techniques as part of their marketing efforts. This will, in the main, involve the use of specialist agencies.
 - Most companies which plan direct selling campaigns expect to cold call customers. Some specify the hours during which they will call, while others make reference to complying with the AES Code. One supplier has said it will write to customers before calling while one will phone to make an appointment beforehand. Those suppliers which propose to undertake personal visits to customers' premises state that their representatives will carry appropriate identification consisting of, at least, an identity card. This is reinforced in some cases by sales staff wearing clothing embossed with the company logo.
 - No company expects to seek payment in advance for advice on, or for entering, contracts. One company however has not ruled out the option of

some of its potential affinity partners seeking a payment in advance from the final consumer for entering into a contract. It says that arrangements involving energy clubs or local authorities or deals with credit card companies could require an up-front payment.

- All bar two respondents who are using or say they are to use agents have said that they have selection or recruitment processes in place or under development with their agents. These range from an exam based approach to personnel assessments and psychometric testing, the taking up of references and other forms of vetting.

Discussion

9. At present OFFER has received only a small number of complaints and enquiries about marketing activities. These have primarily concerned the joint marketing of electricity and gas. OFFER has been keeping closely in touch with developments in the gas market where complaints have been more numerous. It is clear that some marketing practices by some companies have been unsatisfactory and have given rise to justifiable concerns on the part of customers.
10. OFFER is concerned by the indications that marketing practices may disadvantage electricity customers. Doorstep selling and other direct forms of marketing, if carefully monitored and undertaken in a responsible manner can be helpful to many customers. It is important therefore that customers can have confidence that marketing practices will be of a high standard. Customers need clear protection and rights of recompense if things go wrong.
11. In response to the problems experienced in the gas market Ofgas has recently introduced a new licence condition on marketing. This condition deals with a range of issues associated with marketing gas including a prohibition on suppliers contracting with agents which seek payments in advance for arranging the contract, conditions on the employment and training of staff, requirements to maintain contact with customers where early contracts are signed, provisions for the auditing of sales activity and arrangements to compensate customers where the supplier has not followed the requirements of the new condition.
12. When the Director General proposes a change to the conditions following a review the licence provides for his proposal to be adopted if at least 90 per cent of suppliers by number and by sales to designated customers agree to the proposals. If less than 90 per cent of suppliers, either by number or by sales, agree with the proposals then the Director General would need to consider the normal licence modification route under the Electricity Act.
13. OFFER considers that all suppliers have a responsibility to ensure that in marketing their services, whether directly or through agents, they maintain the highest

standards. The AES Code has an important role in ensuring that this objective is achieved. This should be an area where, as in other industries, self-regulation should in due course be the best approach. However, the Director General has made clear that he would review the situation in the light of experience and take further action if this was required to protect customers.

14. Notwithstanding the AES Code it is clear that some problems with marketing practices have continued. Not all suppliers are members of the Code at present and the Code seems not to have been sufficient to deal promptly with the poor marketing practices which have been observed. The introduction of a licence condition in the gas market has provided powers for the regulator to take prompt action where necessary. To provide customer confidence and to assure competing suppliers that all suppliers are subject to the same restrictions in respect of marketing, it seems appropriate to take similar steps in electricity to reinforce the Code with a new licence condition. As many suppliers will be marketing both electricity and gas, it seems appropriate to replicate the terms of the new marketing condition recently adopted in gas licences.

Proposals

15. In the light of the preceding analysis the Director General concludes that a new licence condition on marketing should be introduced. The most appropriate mechanism for doing this is through a revision to the Contract Terms Conditions of the electricity supply licence. These conditions include provisions dealing with the terms that suppliers can offer designated customers but can include conditions concerning “any dealings with customers by or on behalf of the Licensee prior to and for the purpose of offering or entering into contracts for the ‘supply of electricity to Designated Premises”.¹ The licence provides for amendment to the Contract Terms Conditions following a review initiated by the Director General which may include specific proposals for changes to the Conditions. The Director General must consider representations received as part of the review prior to putting a formal proposal for any change to the conditions to licensees.
16. Accordingly, the Director General concludes that it is timely to review the provisions and operation of the Contract Terms Conditions to determine whether any revision to the conditions should be made to all supply licences to provide for new conditions concerning marketing to designated customers.
17. Subject to representations the Director General is minded to propose a modification to the Contract Terms Condition in accordance with the draft condition at Annex A. The main provisions of the proposed condition are outlined below. These are

¹England and Wales PES Licence Condition 33 paragraph 10(c)
England and Wales Second Tier Licence Condition 4 1
Scottish PES Licence Condition 28 Part V
Scottish Second Tier Licence Condition 42

modelled closely on the new gas licence condition to ensure that in so far as is practicable suppliers and customers have the same rights and obligations in the two industries.

a) **Duration**

8. Marketing issues are likely to be of particular concern at the opening of the market when customers may be uncertain about the concepts involved in competition in electricity and when any self regulation by the industry through a code of practice will not be widely recognised by customers. In due course however it will be sensible to remove special restrictions on marketing in electricity. The condition provides for its own termination in March **2000** unless the Director General otherwise directs following consultation. This will allow the proposed licence condition to be reviewed at the same time as the review of PESs' price controls in 2000.

b) **Employment and training of sales staff who are in direct contact with designated customers**

19. Suppliers and their marketing agents should ensure that appropriate arrangements are used to employ or engage sales staff to market directly to designated customers, either by telephone or face to face. What would be regarded as appropriate will depend on the exact circumstances of the marketing activity - the requirements in the case of staff contacting customers by telephone might be different from those approaching customers in their homes. Sales staff generally should conduct themselves well and good selection procedures are necessary for this purpose.
20. It is also important that suppliers should ensure that the sales staff whom they and their agents employ are sufficiently trained so that the explanations that they give to customers about the fundamental features of the competitive electricity market and the issues associated with it, such as the change of supplier process, safety issues, and customer rights, are not misleading. Their advice should also be accurate as respects the terms and conditions of supply by the supplier they represent, particularly in relation to pricing, methods of payment, duration of contracts and termination fees. Where savings are claimed in comparison with other suppliers, these should be explained accurately.
21. The nature of the training must be appropriate in content and length to the nature of the marketing activity that the sales staff will undertake. Such training must take place before sales staff embark on marketing activity and suppliers must ensure that sales staff continue to receive appropriate training on an on-going basis.

c) **Audit of Sales Activity**

22. This requires the undertaking of an independent audit of the activity of such sales staff, to establish within **14** days of a visit or telephone call resulting in a contract having been enforced, that the customer knows that he or she has signed a contract, that he or she is content to have done so and is happy with the way in which the sale was conducted. Such an audit of sales concluded in the course of any direct contact with customers is fundamental to ensuring that sales staff behave properly in obtaining that contract. The proposed licence condition therefore requires suppliers to undertake an audit in all cases where contracts have been entered into during either doorstep sales or telemarketing.
23. It is important that the audit is conducted by staff independent of the marketing agencies which were involved in making the initial sale. This requirement is set out in the proposed licence condition. The licence condition also sets out the requirement that such audits may be undertaken only by letter or telephone and that they should be made within a reasonable time period which will be sufficient to allow the customer to consider his or her decision before being contacted and not so long after the date on which the sale was conducted that he or she may not understand the purpose of the audit contact.
24. The adoption of this procedure will also ensure that the sales staff know that their performance is constantly being monitored. It will alert suppliers to any behaviour by sales staff which does not comply with the obligations set in the licence condition.

d) **Maintaining Customer Contact**

25. It is likely that a large number of customers will contract to change supplier before they can be registered with, or supplied by, a new supplier. Experience in the gas market has shown that unless the new supplier maintains contact from time to time during that period it is possible that the customer may forget that he or she has already entered into a contract and may subsequently contract with another suppliers which can cause confusion or lead to customer difficulties and disruption.
26. If a customer signs a contract more than 60 days in advance of the date when the supplier proposes to supply him, then the supplier should take steps to maintain contact with the customer to keep him or her informed of progress towards transfer and to remind the customer that he has entered into a contract. The condition is intended to require licensees to keep in contact with all customers with contracts under which electricity is not to be supplied before the expiry of 60 days from the date of the contracts, even if the contracts were entered into before this condition comes into effect.

e) Activities of Agents and Brokers

27. There is some evidence that a number of customers have been asked to make advance payments to companies which seek to act as their agent. Payments in advance may be subject to abuse and are an understandable cause of concern to customers. Under the terms of the proposed licence condition, licensed suppliers will be prevented from contracting with, or through, agents which have sought advance payments from customers for arranging a supply of electricity.
28. The licence condition provides for exceptions to be made with the approval of the Director General. This might apply, for example, where the advance payments relates primarily to services other than the supply of energy. The condition also excludes payments properly required by agents as security deposits.

f) Complaints and compensation

29. Where the licensee has failed to perform or abide by its obligations under the licence condition, customers should be compensated. Accordingly the condition requires that complaints procedures required to be established elsewhere under the licences enable licensees to identify cases where compensation would be appropriate and cases which highlight potential weaknesses in marketing policy or practice.

g) Reporting requirements

30. The proposed condition includes reporting requirements to enable the Director General to monitor compliance with the condition. In particular reports must be submitted to the Director General and the Relevant Consumers' Committees every three months by each supplier showing how it has complied with its obligations under the condition.

Comments Invited

31. OFFER invites views on issues related to the marketing of electricity and, in particular:
- the need for a licence condition to regulate marketing in view of the existence of industry self-regulation measures;
 - the scope and terms of the proposed licence condition; and
- a whether any changes are required to the proposed licence condition to reflect the particular circumstances of the electricity market.

32. Views are invited by 3 April 1998 and should be sent to:

Mrs H Goldsmith
Supply Competition
Office of Electricity Regulation
Hagley House
Hagley Road
Edgbaston
Birmingham B16 8QG

33. Responses will be published by placing them in the OFFER Library.

Draft Condition 42. Marketing of electricity to Designated Customers

1. This Condition applies to the marketing activities of the Licensee in respect of the supply or the proposed supply of electricity to the Designated Premises.
2. This Condition shall cease to have effect on a date (the “termination date”) which shall be 31 March 2000, provided that:
 - (a) if the Director, after consultation with the Licensee, all other Electricity Suppliers, the Electricity Consumers’ Committees and such other persons or bodies as in the opinion of the Director are representative of those likely to be affected, gives notice for the purposes of this Condition generally:
 - (i) by publishing the notice in such a manner as the Director considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
 - (ii) by sending a copy of the notice to all Electricity Suppliers and Electricity Consumers’ Committees,

that he considers that the development of competition in electricity supply is such as to require the continuation of any part of this Condition until such date - not later than two years from the termination date - as may be specified in the notice (the “new termination date”), then such part of this Condition as may be specified in the notice shall continue to apply as if for the termination date there were substituted the new termination date; and
 - (b) notice under sub-paragraph (a) may be given on more than one occasion.

3. The Licensee shall:

- (a) set up appropriate procedures for the selection of staff employed or engaged in roles the principal duties of which involve oral communication with Designated Customers for the purposes of the marketing activities of the Licensee;
- (b) take all reasonable steps to ensure that each such person is trained so as to have a sufficient understanding of
 - (i) the arrangements for competition in electricity supply in England & Wales; and
 - (ii) the Principal Terms of Designated Supply Contracts made available by the Licensee;

such that any relevant advice given by him to Designated Customers is not misleading;

- (c) take all reasonable steps to ensure that:
 - (i) a Designated Customer may readily identify the Licensee whenever he is contacted by a representative of the Licensee; and
 - (ii) any unsolicited contact made on behalf of the Licensee with any Designated Customer takes place at a reasonable time; and
- (d) take all reasonable steps to ensure that any agents or sub-contractors of the Licensee set up equivalent procedures and take equivalent steps to those set out at sub-paragraphs (a), (b) and (c).

4. Where a contract has been entered into by a Designated Customer in the course either of a visit to his premises by a representative of the Licensee or of a telephone conversation between him and a representative of the Licensee, the Licensee shall, through a representative who is not engaged in activities leading to the making of contracts between the Licensee and customers, and not less than 24 hours nor more than 14 days after the date of the contract:

- (a) use its reasonable endeavours to contact the customer by telephone or by letter seeking his confirmation that:
 - (i) he understands that he has entered into an electricity supply contract;

- (ii) he is content to have entered into that contract; and
 - (iii) he is content with the way in which the marketing activities of the Licensee were conducted;
- (b) if in the course of such telephone contact, or within a reasonable period of the despatch of such a letter, the customer indicates that he is not content to have entered into the contract and wishes to terminate it, take all reasonable steps to ensure that the contract is terminated and, where reasonably practicable, that the Licensee does not commence a supply to the customer; and
- (c) if the response of the customer, alone or when considered with the responses of other customers, suggests weaknesses in the methods, systems or personnel employed or engaged by the Licensee or its agents or sub-contractors for the purpose of its marketing activities, ensure that all reasonable steps to remedy the matter are taken.
5. Where electricity is not to be supplied to Designated Premises before the expiry of 60 days after the date of the contract, the Licensee shall take reasonable steps during the period after that date and prior to the commencement of supply to keep the customer informed that he has entered into an electricity supply contract with the Licensee.
6. The complaint handling procedures to be established by the Licensee in accordance with Condition 23 shall provide in appropriate cases for the payment of compensation to Designated Customers adversely affected by failure by the Licensee to perform its obligations under this Condition.
7. The Licensee shall keep a record of its compliance with its obligations under this Condition including-
- (a) the contacting of customers in pursuance of sub-paragraph 4(a) and the response of customers to such contact;
 - (b) the termination of contracts in pursuance of sub-paragraph 4(b); and
 - (c) compensation paid in pursuance of paragraph 6.
8. Except as the Director may for the purposes of this Condition determine, as soon as reasonably practicable after the end of each period of three months ending on 31 March, 30 June, 30 September and 31 December in every year, the Licensee shall submit to the Director and to all Relevant Electricity Consumers' Committees a report dealing with the matters specified in paragraph 7 in that period and shall:

(a) publish the report so submitted in such manner as will in the opinion of the Licensee secure adequate publicity for it; and

(b) send a copy of it free of charge to any person requesting one,

except that, in performing its obligations under sub-paragraphs (a) and (b), the Licensee shall exclude from the report such information as appears to it to be necessary or expedient to ensure that, save where they consent, individual customers referred to therein cannot readily be identified.

9. Reports in pursuance of paragraph 8 shall be presented by the Licensee, in so far as is reasonably practicable, in a standard format submitted to and approved by the Director for the purposes of this Condition.

10. Except as the Director may approve:

(a) for the purpose of protecting the interests of any Designated Customer who, prior to the date on which this Condition came into force, may have made a payment in advance with a view to arranging a supply of electricity; or

(b) where any payment in advance is wholly or mainly for services other than arranging the supply of energy,

the Licensee shall not enter into any commercial relations connected with the supply of electricity to Designated Premises with any person who has sought, after the coming into force of this Condition, payment in advance (other than a security deposit) from any Designated Customer with a view to arranging a supply of electricity, and the Licensee shall not enter into a contract for the supply of electricity to any such customer made through the agency (either for the Licensee or for any customer) of such a person.

11. In this Condition:

“marketing activities”

means any activities of the Licensee directed at or incidental to the identification of and communication with Designated Customers supplied or to be supplied with electricity by the Licensee, and includes entering into contracts with such customers.

“representative”

in relation to the Licensee, means any person directly or indirectly authorised to represent the Licensee in its dealings with customers.