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Dear Tim,

energywatch Confidence Code: decision document

Thank you for the opportunity to comment on the Confidence Code decision document. We welcome that you have considered in depth the responses received and believe that the revised Code has the potential for a better self regulatory model in a highly competitive market.

However, there are number of unresolved issues that call into question the Code's fitness for purpose. In particular, we are disappointed that some of the concerns raised in our response related to self regulation have not been addressed. For the purposes of this response we will not revisit these specific matters, as requested, but we would be pleased to meet to discuss this with you.

The decision document states that "at times compliance has been difficult to manage". The principle of a robust Code is that it is constructed in such a way that it can be complied with and the management of such compliance can be achieved.

We recognise that the governance has been made clearer, but the revised Code continues to fall short on its governance structure. For example, it is not clear who will undertake auditing of the Code. The Code should include an assurance that this will be a firm of Registered Auditors. It should also be explicit on the timing of an initial audit and annual audits thereafter with a detailed explanation of the audit procedure.

Equally, essential is the provision of an appeal procedure where there is a dispute between a service provider and energywatch. The Code does not currently offer a course of mediation or redress and it is not appropriate for the organisation which manages the Code to assume this responsibility.

Requirement 1 - Enforcement Procedure

"The revised enforcement procedure gives service providers the platform for contesting any potential breach in this area and we believe that the involvement of a third party to determine the outcome, would mean energywatch relinquishing ownership of the Code"

This assertion undermines a principle feature of a self regulated code. We do not understand how in this situation the involvement of a third party in this situation would compromise

Energywatch's ownership of the Code. There are already examples in the energy supply industry where third parties are involved in the enforcement procedures of self-regulatory Codes. Examples include the EnergySure Code where the involvement of an independent firm of auditors and an independent Code Panel are fundamental aspects of the governance framework. This is not a costly exercise but instead adds transparency and credibility to the governance of the Code.

Requirement 2 – social tariffs

The decision to exclude social tariffs appears to be in contradiction of energywatch's public demand for more social tariffs. In light of the Government's recently stated desire for additional support from energy suppliers for social tariffs, the decision to omit social tariffs needs further consideration. Currently suppliers offer social tariffs to consumers meeting specific criteria, but this may be extended depending on the outcome of discussions with Government.

Page 24 - *Future management of the Confidence Code*

“Under the government's arrangements for the new National Consumer Council, early indications would appear to suggest that the Confidence Code will have a life after September 2008.”

We share the serious concerns of other respondents that the above wording gives no firm assurance that there are any plans in place for the future administration of the Confidence Code. We have made similar representations to the Government. Our concern is realised by the drafting of the application agreement, which assumes that energywatch is the enduring party responsible for the Code. This will not be the case after September 2008. The new Code and agreements should be redrafted to anticipate this and make reference to energywatch or “such body as energywatch assigns its responsibilities under this agreement to” and make it clear that there can be an assignment process.

Page 25 - *Future management of the Confidence Code*

“We are still proposing to compile and publish our annual Confidence Code report, which will highlight those service providers which have been found to be in breach of the Code and have been required by energywatch to make changes to their website.”

In the interest of good Code practice there should be a firm commitment to publish this report within a defined timescale. We would welcome specific details to strengthen this element of the Code.

Page 27 – *The Enforcement Procedure*

“Our overriding objective this year has been not to penalise or name and shame service providers at every opportunity we have had, which would do little for improving consumer confidence, but instead to investigate the allegation and, where required, work with them in helping to address the shortfalls that had been identified.”

This is contrary to energywatch's normal practice when dealing with energy suppliers. As the Code manager operating in this sector there should be consistency in energywatch's activities. We have long shared energywatch's newly stated view that naming and shaming

does little for improving consumer confidence. Energy suppliers continue to welcome constructive engagement and take this comment in the decision document to be energywatch's ambition for its wider consumer representation activities in the future.

Finally, as a general comment we are encouraged that the Confidence Code is being revisited because there is clearly a role for self regulation of comparison sites. We also welcome the detailed analysis that is being carried out. We are confident that at the end of the exercise the Code will be fit for purpose and will be an additional service for both consumers and energy suppliers. However, this is dependent on how some important principles of self regulation are properly addressed and incorporated into the Code. The ERA considers that it has developed a degree of expertise in the area of self regulation on behalf of its members and we reiterate our willingness to share this expertise in revising the current Code.

Yours sincerely

Russell Hamblin-Boone
Director of Corporate Affairs