

5 February 2004

Ref: LD/AA/040204/jdw

Marie Cawley
Department of Trade & Industry
Consumer and Competition Policy Directorate
Bay 417
1 Victoria Street
London
SW1 0ET

Dear Ms Cawley

Application for designation as 'super-complainant' under Enterprise Act 2002

I am writing on behalf of energywatch to apply for designation by DTI as a 'super-complainant' under section 11 of the Enterprise Act 2002.

energywatch as an organisation undertakes a wide range of activities which all focus on the needs and requirements of consumers. We provide advocacy on behalf of individual or groups of consumers. We have a comprehensive complaint handling system and have developed wide-ranging information such as price comparison sheets to help consumers effectively take part in the market. We undertake educative events for consumers and others to inform them about their rights in the energy market. We hold structured liaison meetings with energy companies to address specific and industry-wide issues. We undertake analysis and research on issues such as the state of competition through the monitoring of prices, market shares and customer acquisition strategies.

In order to be a successful consumer organisation, energywatch not only needs to be efficient and effective at resolving individual complaints from consumers, we also need to ensure that industry prevents the problems from happening in the first place.

Much of energywatch's Work Programme for 2004 and beyond seeks to address the systemic causes for consumers' complaints in the energy market. Retail market practices, consumer information and possible underlying structural problems for example are all proposed targets for the energywatch Corporate Strategy over the next three years. We will be commissioning a series of research reports to support our work and will be

working constructively with others who are also concerned at the issues facing gas and electricity consumers.

Being designated as a super-complainant will place energywatch in an even stronger position to address market issues that are harming the interests of consumers and to ensure that markets function effectively for consumers and work well for industry and the country as a whole.

Attached to this letter is an annex which sets out how energywatch achieves the criteria for being a super-complainant and additional information to support our application.

Yours sincerely



Allan Asher
Chief Executive, energywatch

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Annex: energywatch achievement of criteria for super-complainant status

Criterion 1

The body is so constituted, managed and controlled as to be expected to act independently, impartially and with complete integrity.

energywatch is the representative and advocacy body for all gas and electricity consumers in Great Britain including business consumers. The organisation was set up in November 2000 under the Utilities Act 2000 which gave us the following powers and duties:

- the duty to make proposals or provide advice and information about consumer matters and to represent the views of consumers on such matters;
- the duty to investigate and seek to resolve consumer complaints against companies;
- the duty to have regard to the interests of individuals who are disabled, chronically sick, of pensionable age, on low incomes or who reside in rural areas;
- the duty of giving advice and information to ministers, regulatory authorities (particularly Ofgem); licence holders, and any other body whose activities may affect the interests of consumers;
- the duty to publish information on the performance of licensed gas and electricity companies against any statutory service standard set by Ofgem;
- the duty to publish information on complaints made against energy companies (or their agents) both directly to **energywatch** and also to the relevant licensee;
- the power to investigate any matter which appears to us to be a matter relating to the interests of consumers in relation to gas conveyed through pipes or electricity conveyed by distribution systems;
- the power to publish information where we think it would be in the consumer interest to do so;
- the duty to make an annual report to the Secretary of State on our activities; and
- the duty each financial year to publish a forward work programme containing a general description of projects (other than routine activities) that it plans to undertake in the following year (attached at Appendix 1).

energywatch supercedes the Gas Consumer Council and Electricity Consumer Consultative Committees. These organisations were established in 1986 and 1990 respectively when the gas and electricity industries were privatised. The Utilities Act 2000 abolished these organisations.

We are a non-departmental public body, funded by grant aid from the Department for Trade and Industry via monies raised from companies licence fees and ultimately consumers. **energywatch** is wholly independent from energy companies and from Ofgem, the energy sector regulator.

The governing body of **energywatch** is its Council whose members are appointed by the Secretary of State for Trade and Industry in accordance with the Office of the Commissioner for Public Appointments Code of Practice for Public Appointments.

If **energywatch** were to be designated as a super-complainant, any prospective super-complaint would need to satisfy Council scrutiny that it was a proper and reasoned application of the duties and powers of **energywatch**. We will implement rigorous processes to assess the efficacy of any proposed super-complaint.

Operationally **energywatch** is organised on a regional basis within England with offices in London, Bournemouth, Birmingham, Manchester and Newcastle. We also have national offices for Scotland in Glasgow and for Wales in Cardiff. **energywatch** Head Office is located in London.

Our Annual Report and Accounts 2000/02 and 2002/3 are available at Appendices 2 and 3.

Criterion 2.

The body can demonstrate considerable experience and competence in representing the interests of consumers of any description.

Our experience of representing consumers

energywatch came into being in November 2000 and we derive from a long tradition of consumer representation which can be traced back at least to the privatisation of the gas and electricity industries. **energywatch** can demonstrate experience of representing the interests of consumers in several inter-related ways.

We act on consumer complaints against energy companies

In 2002/03 **energywatch** dealt with over 250,000 complaints and enquiries lodged by consumers against gas and electricity companies. We handle complaints which cover the full gamut of energy services across competitive and monopoly markets.

energywatch provides a one-stop service for consumers whereby a consumer need only contact **energywatch** once, whether by phone, web, letter or in person, and we take forward their complaint with the company, dealing with all correspondence, pressing the case for the consumer and negotiating satisfactory and reasonable redress. We also refer consumers to other advice and information agencies (such as Energy Efficiency Advice Centres) when it is appropriate to do so.

While most of our complaints fall into the categories of billing, transfers and marketing, we deal with complaints regarding forced entry to disconnect from energy supply, compensation claims, service agreements, terms and conditions of contracts, customer service, connections to gas or electricity supply and interruptions to supply, for example. Taken all together, our complaints database provides us with a profound depth of knowledge of the issues that matter to gas and electricity consumers.

We provide dedicated services to consumers

We also provide dedicated services so that price and service information reach specific groups of consumers who as a result are able to exercise more informed choices in the market. In 2002/03 we conducted over 300 outreach events where our trained staff went into local

communities to give advice and information to targeted groups of consumers who we felt might not otherwise know of our services or approach us for help.

energywatch also represents the interests of industrial and commercial consumers. In 2002/03 we received 10,000 complaints from business consumers. We are setting up a dedicated Business Unit to improve the services we provide to these consumers.

We campaign on behalf of consumers

Around half of all **energywatch** complaints relate to account and billing issues. The **Better Billing** campaign has the objectives of ensuring that consumers receive bills that are accurate, timely and easy to understand and contain an annual statement of consumption. These objectives will not only ensure that consumers are better able to take part in the competitive energy market but they will also facilitate government's Energy Policy aspirations.

Our **Smarter Switching** campaign is designed to achieve a more effective transfer process to improve consumer confidence in switching. In June 2003 we brought industry together in a summit jointly hosted with Ofgem to gain commitment to improving the transfer process. This commitment was achieved and industry set up the Customer Transfer Executive Board to develop a programme of work.

We have continued work to stamp out mis-selling as part of our **Stop Now** campaign by working with suppliers on the development of their voluntary code of practice and by pressing and succeeding in getting a commitment to the payment of compensation for the worst cases of mis-selling. **energywatch** complaints regarding mis-selling have reduced significantly this year.

We lobby opinion formers

We have regularly given evidence to Parliamentary Committees on issues such as fuel poverty, energy policy and electricity supply interruptions during the storms of October 2002. We have taken an active role in key Government groups such as the Fuel Poverty Action Group, the Energy Services Group and the White Paper Group for Energy Policy.

We intervene in regulatory processes

We have worked with Ofgem at several levels to ensure that the industry regulator is aware of the issues that are affecting consumers. These have included frequent liaison meetings, the provision of information, specific events targeted at an industry or company specific issue and working together on common objectives. We respond to consultation documents. We have worked together on several key projects including debt guidelines for industry and the Customer Transfer Process. **energywatch's** Council meets regularly with the Gas and Electricity Markets Authority to discuss joint priorities for both organisations.

We have made effective representations to Ofgem on the state of competition in the domestic and industrial/commercial energy markets. We have represented the consumer interest regarding the operation of the wholesale electricity market arguing the full benefits of wholesale electricity prices had not been passed on to consumers who had not changed supplier.

We engage in industry dialogue

We meet regularly with gas and electricity companies to address their and the industry's performance. We undertake this liaison at several levels within **energywatch**. Operational staff

in the regions and nations will meet to discuss company response time to **energywatch** complaints and the accuracy of complaint categorisation by both sides. Regional and national directors will meet to review company performance and set targets for improvement. Policy and Communications staff who work on **energywatch** campaigns will meet with companies to discuss campaign objectives and the role that companies might play in their delivery. Finally, the Chief Executive and Chairman maintain a regular liaison programme which is used both as a means of delivering strategic change but also as a means of addressing serial poor performance by companies.

We have also brought industry together on several occasions to address cross industry issues. We have held two summits on mis-selling out of which the industry code of practice on doorstep selling was developed along with the commitment to compensation for the worst cases. We also led a summit with Ofgem on the Customer Transfer Process (referred to above) which we will be revisiting in early 2004.

We are advocating strategic change

In our Work Programme for 2003 (as mentioned above) we established a series of campaigns within **energywatch** to address strategically the problems faced by consumers in the market which we would focus on over the coming three years. Our Work Programme consultation for 2004 (attached at Appendix 10) builds on this and puts more emphasis on creating culture and policy changes within the energy industry. Our aim is to create an environment in which assertive consumers are able to engage with the energy market fairly and confidently by working to deliver for consumers, the following connected themes:

- Delivering effective consumer services
- Confident and assertive consumers
- Championing the interests of vulnerable consumers
- Promoting an effective market
- Achieving consumer rights through compliance and enforcement; and
- Secure, efficient, accessible and safe energy networks and supply.

Our competence at representing consumers

energywatch has regularly undertaken research to establish consumers' satisfaction with the service that we provide. Our most recent work, undertaken in February 2003, showed an 84% satisfaction rate. Given that many problems faced by consumers are intractable in the short term or where the bad experience of consumers may result in unreasonable expectations of redress, we believe 84% is an excellent result. We are however continually striving to increase this by making our own service more accessible and quick. This research will be undertaken again in early 2004.

Criterion 3

The body has the capacity to put together reasoned super-complaints on a range of issues.

energywatch is in a good position to construct reasoned super-complaints across all issues relating to the energy industry.

Evidence base

We possess a unique evidence source that provides a commentary on the performance and behaviour of companies toward consumers. Our 250,000 complaints in 2002/03 were logged on a database that allows us to identify problem trends across the industry, by geographical areas, by company and by demographic consumer groups.

The accuracy of our complaint database is reinforced by a complaint dispute process which allows companies to challenge complaints logged against them. Therefore the evidence that would contribute to an **energywatch** super-complaint would be derived from one of the most extensive sectoral complaint databases in the UK and confirmed through a rigorous complaint dispute process.

The data produced by this process of logging and collating is subject to stringent data and policy analysis by our Policy and Research Department to identify any trends or development that cause significant consumer detriment in the gas and electricity markets.

Trained and competent staff

energywatch's Policy and Research Directorate has the relevant experience and skills to construct a reasoned super-complaint. The Directorate includes 2 economists, a trained lawyer, and a statistician. **energywatch** policy staff are also members of industry codes such as the Balancing and Settlement Code. Our staff are in great demand for many co-regulatory initiatives, industry and policy platforms, because of their knowledge and competence in the field. **energywatch** economists are expert in fields which include the development of competition in both the domestic and the industrial and commercial energy markets and have particular specialism in competition within the wholesale markets. The decision of other significant consumer bodies to withdraw from the energy policy arena is recognition of our standing as the leading consumer body in the field.

The Policy and Research Directorate has enabled **energywatch** to give expert evidence on customer, fuel poverty, service, competition and licence condition issues to parliamentary select committees as well as OFT investigations (including the servicing of domestic gas boilers) and to the Competition Commission hearing into Centrica's bid for Rough Storage facility.

energywatch staff have studied in detail the guidance provided by OFT on how to submit a super-complaint and we are certain that we would be able to fulfil all the requirements laid down. Our procedure for identifying a super-complaint would involve detailed analysis of relevant complaint and other data pertaining to issues of consumer detriment, analysis by the Policy and Research department, discussion across the organisation involving case officers and policy experts, discussion and possible review of data and analysis with outside bodies. The final decision would be taken by the Chief Executive with the agreement of the **energywatch** Council.

Criterion 4

The body is ready and willing to co-operate with the Office of Fair Trading (OFT), and/or with any other authority, body or person having responsibility for responding to super-complaint.

energywatch has a good working relationship with Ofgem and is building a closer relationship with OFT as part of their stakeholder development work. We also have in place a Memorandum of Understanding between the two organisations and this is available at Appendix 2.

energywatch complaint analysis is already used by Ofgem as the trigger for investigation into serious breaches of licence condition. In addition **energywatch** is a critical policy partner with Ofgem both as a contributor to policy consultations or as a partner in various co-regulatory initiatives.

We have given evidence to investigations by other bodies and government departments including OFT, Competition Commission, National Audit Office, DTI and Defra.

energywatch has carefully reviewed the requirements laid down by OFT in its guidance to making a super-complaint and is able to meet all those requirements and is fully ready and willing to cooperate with the OFT, and any other authority, body of person having responsibility for responding to super-complaints.

Criterion 5

The fact that a body has a trading arm will not disqualify it from being designated provided that the trading arm does not control the body, and any profits of the trading arm are only used to further the stated objectives of the body and the body has established procedures to ensure that any potential conflicts of interest are properly dealt with.

energywatch does not have a trading arm and engages in no significant commercial activity. We will notify the Secretary of State in the event of any change to this situation.

We believe that **energywatch** meets the criteria identified in the Enterprise Act 2002 and subsequent guidance. We hope to be designated as a 'super-complainant' in order that we can be more effective in representing the interests of gas and electricity consumers.

Appendix 1: Work Programme 2003-2004

Appendix 2: Memorandum of Understanding between energywatch and Ofgem

Appendix 3: DTI/Gas and Electricity Consumer Council Management Statement and Financial Memorandum

Appendix 4: energywatch Council Members and Register of Interests

Appendix 5: energywatch Council Members CVs

Appendix 6: Annual Report and Accounts 2000-2002

Appendix 7: Annual Report and Accounts 2002-2003

Appendix 8: Work Programme 2004-2005

Appendix 9: List of Major Policy Submissions from Energywatch 2001-03

- **Making markets work for consumers: Ofgem's approach to securing compliance with Supply licence obligations and consumer protection legislation – a response to the Ofgem Consultation – September 2003**
- **Resilience of the National Grid- energywatch written evidence to the Trade and Industry Committee – September 2003**
- **Making markets work for consumers: The regulation of gas and electricity sales and marketing: a review of standard licence condition 48 – a response to the Ofgem Consultation – August 2003**
- **energywatch submission to the Competition Commission regarding the Centrica/Dynenergy Storage Merger – August 2003**
- **The Accountability of regulators to citizens and Parliament – energywatch written response to the House of Lords inquiry – March 2003**
- **Erroneous transfer customer charter implementation review – response to the Ofgem Review – February 2003**
- **Preventing debt and disconnection – good practice guidelines produced by energywatch and Ofgem – January 2003**
- **Fuel poverty commitment for Wales- energywatch response to the Welsh Assembly Government Consultation – January 2003**
- **Energy Policy Review – energywatch response to the Government's Energy Policy – September 2002**
- **Review of domestic gas and electricity and competition and supply price regulation –energywatch response to the Ofgem Consultation – January 2002**
- **Improving customer transfer – the way forward – energywatch response to the Ofgem Consultation – June 2001**