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## KITCHENER UTILITIES

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### BY RESS FILING & COURIER

27 October 2016

Ontario Energy Board  
Attn: Ms. Kristen Walli, Board Secretary  
P.O. Box 2319  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, Ontario, M4P 1E4

Dear Ms. Walli:

**RE: EB-2015-0268 - The Corporation of the City of Kitchener - Kitchener Utilities ("KU") Comments on Issuance of The Board's "Notice of Revised Proposal to Amend a Code and to Amend a Rule" and "Supplementary Materials in Consultation on Giving Effect to the Ontario Energy Board's Report on the Effectiveness of the Energy Consumer Protection Act, 2010"**

Pursuant to the Ontario Energy Board's ("OEB") "Notice of Revised Proposal to Amend a Code and to Amend a Rule" dated September 8 2016 and the "Issuance of Supplementary Materials..." dated October 14 2016, please find attached KU's comments.

KU wishes to thank the OEB for providing the opportunity to comment on this report as the proposed changes will have a significant impact on KU's customers and customers throughout Ontario.

Kind Regards,

Danny Persaud

Encl.

## Comments Regarding the “Notice of Revised Proposal to Amend a Code and to Amend a Rule”

### *OEB Proposed Amendments to the GDAR Mandating a Written notice of Switch*

*“The notice shall be sent within 5 business days of the date on which processing of the STR has been completed or such later date as may be required to ensure that the notice is not sent to the low volume consumer until the next bill to be issued to the low volume consumer reflects the change in supply.”*

As described in a prior submission to the Board, KU currently provides written notice of switch to customers within 5 days of processing the STR request from the retailer.

KU is of the position that sending the notice later than 5 business days from the process completion of the STR request does not allow the consumer sufficient time to follow up with their new supplier. In addition, systems changes to allow for both options would be highly complex to implement.

Further, in previous comments, KU advised of a billing system change scheduled for January 4, 2016. This change did not occur until April 4, 2016. At this time and until the end of March 2017, a corporate-wide blackout period is in effect for changes to the system. Only after the blackout period would KU be in a position to engage its IT support group to review the requirements and provide a timeline of when changes could be implemented.

KU does not agree with a mandated form of notice as this has not been prior practice and is restrictive in offerings across various utilities. Provided in Appendix A is a sample letter that is sent to customers when an STR to switch suppliers is processed. This letter is consistent with the content and themes of the OEB proposed form of notice. In addition, KU does not agree with the words “*on your next gas bill*” as there could be multiple bills issued to the customer between the time the STR is processed and the effective date of the switch.

In the event that the OEB Proposed Amendments are effective January 1, 2017, KU would be unable to comply due to the system change blackout period and therefore requests an exemption on the proposed compliance date of January 1, 2017. KU would endeavor to make the appropriate changes and advise the OEB of the effective date of the changes upon completion of the IT review of the requirements.

### *OEB Proposed Amendments to Make Retail Contracts More Visible on the Bill*

*“...the OEB will only mandate that an energy retailer’s telephone number and website address be included on the bill.”*

The GDAR Schema does not currently include a field for a retailer’s website address. The GDAR working group would need to be reconvened and the details regarding making the change fully vetted and tested.

KU’s billing system would also require changes. As indicated above, due to the blackout period, KU would be unable to complete the changes for implementation July 1, 2017 as changes required for the Jan 1<sup>st</sup> implementation would be addressed first. Therefore, KU requests an exemption on the compliance date of July 1, 2017. KU would endeavor to make the appropriate changes and advise the OEB of the effective date of the changes upon completion of the IT review of the requirements.

## Comments Regarding the “Issuance of Supplementary Materials...”

*Item i - Attachment A: Dual fuel contract terms and conditions for a renewed or extended contract, version for residential consumers.*

1. These comments are regarding section 3.1

KU has concerns regarding the definition of “*account holder*” for residential customers.

KU is currently in compliance with the term “*account holder*” as defined in the Energy Consumer Protection Act (see Appendix B) in that KU only corresponds with the account holder. Any person other than the account holder, including a spouse or agent must have explicit written approval from the account holder before KU is able to correspond and make account changes. KU is therefore unable to process requests to enroll a customer with a retailer or extend/renew an existing contract when signed by a spouse or other authorized person without explicit written approval from the account holder. As KU is owned and operated by the municipality of the Corporation of the City of Kitchener, KU must comply with the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) and is unable to comply with the “*account holder’s agent*” definition in the ECPA as KU cannot collect or share this type of information due to overarching restrictions with the MFIPPA section 14(1)(a).

In contrast, the Ontario Energy Board extends the definition of account holder to include “*spouse*” or other authorized person. The word “*spouse*” is not currently defined in the OEB proposed amendments. Taking the definition from other legislation such as the Family Law Act, there appears to be a significant problem with this proposal. For instance, a couple can be legally separated and living under the same roof, and still considered to be a “*spouse*”. This gives access to spouses who are separated the ability to sign the other up or renew a contact while divorce proceedings are taking place. A further example is that some people choose not to obtain a legal divorce, allowing the “*spouse*” to gain access to information that they should not be privy to. KU does not collect this type of information in order to determine marital or spousal status, which can also change at any time. Of note, KU has accounts where two spouses or multiple persons are listed on the account, and then there is no issue with sharing information to either each account holder.

In short, KU respectfully submits that the proposed amendments allow KU to be in compliance with both the ECPA and MFIPPA. This means that authorized account holder, which could be

more than one person, can only be the person who is on the account, unless there is explicit written approval from the account holder.

Note: All references to legislation can be found in Appendix B, attached.

2. These comments are regarding section 4.2

For natural gas, proposed wording says:

*Any other charge listed in section 1 as part of the Contract Price. This can include:*

- *The price for getting natural gas to your Gas Utility (this is called “transportation”)*
- *The price for holding on to the natural gas until you need it (this is called “storage”)*

KU has concerns regarding the reference to “*storage*” being a legitimate charge the retailer may provide. This charge may not be applicable to all utilities, including KU and information should be provided to alert customers to check with their local utilities. Example wording can be “*if applicable, check with local utility*”.

## Appendix A – Sample Letter to Customer for Switch

Date

Customer Address

Dear Sir/Madam:

Account#

Service Address

Kitchener Utilities recently received a request from [retailer] to change your gas supply from Kitchener Utilities (or current retailer in the event of a contest) to [retailer]. [Retailer] is an energy marketer licensed by the Ontario Energy Board. [Retailer] is not affiliated with the City of Kitchener or its Utilities Division.

The request names [retailer] as your supplier of natural gas at an approximate rate of \$x.xxxxx per cubic meter. This is the price of only the natural gas sold to you by the gas vendor. In addition to the \$x.xxxx, you will still be responsible for paying the transportation services provided by [retailer] and delivery services provided by Kitchener Utilities. The total rate for these services is approximately 9-11 cents per cubic meter.

The purpose of this letter is to inform you that Kitchener Utilities will be processing the request to change gas supply arrangements in the coming weeks and [retailer] will become your supplier on [effective date of switch]. When the transaction is completed, [retailer] will appear on your natural gas bill as your supplier. If you have any questions regarding your contract with [retailer], please contact them at [retailer's phone number].

If you have any questions regarding this letter or the process, please contact us at [phone number] or visit us online at [www.kitchenerutilities.ca](http://www.kitchenerutilities.ca).

## Appendix B

### ECPA 2010

#### Part II Electricity Retailing and Gas Marketing

##### Definition Item

“Prohibition re entering, etc, certain contracts:

(4) No supplier shall enter into, renew or extend a contract with such persons or classes of persons acting on behalf of the account holder as may be prescribed. 2010, c. 8, s. 11 (4).

##### Contract not binding

(5) A contract entered into by a supplier with a consumer that is not in accordance with subsection (4) is not binding on the consumer. 2010, c. 8, s. 11 (5).

##### Definition, account holder

(6) For the purposes of subsection (4),

“account holder” means the person in whose name an account has been established with a distributor for the provision of electricity or with a gas distributor for the provision of gas and,

(a) in whose name invoices are issued by the distributor or gas distributor, whether on its own behalf or on behalf of a supplier, in respect of the provision of the electricity or gas, or

(b) in whose name invoices would be issued by the distributor or gas distributor in respect of the provision of electricity or gas, if the invoices were not issued by a supplier. 2010, c. 8, s. 11 (6).

### **OEB Proposed Standard Contract Terms and Conditions in a Renewed or Extended Contract to buy Electricity and Natural Gas for a home**

#### Section 3 Your authority to agree to this Contract: Billing under this Contract

##### 3.1 You are the Account Holder or the Account Holder’s spouse or agent

You have told us that:

- a. You are the Account Holder for the Home;
- b. You are the spouse of the Account Holder for the Home; or

c. The Account Holder has given you permission to accept this Contract to supply electricity and natural gas to the Home.

#### OEB Proposed Contract Renewal/Extension Call Script for Residential Consumers – Natural Gas and Electricity Contracts

#### B. Mandatory Questions and Statements

1. Am I speaking with the person whose name is on the electricity and natural gas bills for the home at [address]? Y/N

If the consumer answers no, the salesperson may ask if the account holder is available for the call. If the consumer answers no, the salesperson may ask whether the consumer is the account holder's spouse and, if not, may ask if the consumer is authorized by the account holder to enter into a contract to buy electricity and natural gas for the home. When referring to the account holder, the sales person must always refer to "the person whose name is on the electricity and natural gas bills" for the home. If no person that is legally permitted to renew/extend the contract comes to the phone, the salesperson must end the call.

Any other charge listed in section 1 as part of the Contract Price. This can include:

- The price for getting natural gas to your Gas Utility (this is called "transportation")
- The price for holding on to the natural gas until you need it (this is called "storage")