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September 2, 2010

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, ON M4P 1E4

Re: EB-2010-0245: Notice of Proposals to Revoke and Re-issue the Electricity Retailer Code of Conduct and the Gas Marketer Code of Conduct, and Proposed Amendments to the Gas Distribution Access Rule

Shell Energy North America (Canada) Inc. (“Shell Energy”) submits these comments in response to the notice issued by the Ontario Energy Board (“Board”) on August 12, 2010. Shell Energy sells natural gas and electricity to large consumers in Ontario.

For the reasons discussed below, Shell Energy objects to the proposed application of the new requirements in the Electricity Retailer Code of Conduct and the Gas Distribution Access Rule to large consumers.

Comments Overview

On page two of the notice, the Board states, “The purpose of the proposed revisions to these regulatory instruments is to implement the provisions of the Energy Consumer Protection Act, 2010 (the “ECPA”) in relation to the activities of licensed electricity retailers and gas marketers (“suppliers”).” Despite this stated purpose, and the fact that the ECPA is intended to protect smaller consumers (consumption of less than 50,000 m³ per year for natural gas, and less than 150,000 kWh per year electricity) with regards to the activities of suppliers that serve them, the Board has chosen to expand the scope of some elements of their regulatory instruments to activities involving large consumers. The Board has chosen to use the term “supplier” in the most generic sense rather than as it is defined in the ECPA, as being limited to smaller consumers. This choice to expand the scope to large consumers is not explained or supported in the notice, and could not be explained or defended by Board staff when faced with the question during the stakeholder meeting held on August 20th at the Board.

There is no need for these new requirements and no benefit derived from them. The Government of Ontario purposely and clearly took steps to address the issues related to only small consumers. There also have not been any issues identified by Board staff in relation to large consumers

during periodic meetings they hold with marketers and retailers to discuss trends in consumer complaints and matters of concern in the sector. The notice does not provide any evidence of any need, and within the section of “Anticipated Costs and Benefits”, the only benefits described are those stemming from the ECPA and the amended instruments as they relate to the protection of low volume consumers and having them better informed to make choices about their energy supply. Based on Shell Energy’s experience, large commercial, industrial, and institutional customers do not need, and do not benefit from, the proposed new requirements, such as having the staff of the retailer wear an identification badge. These companies negotiate and enter into contracts that contain detailed commitments and protections, in addition to the protections under commercial contract law.

While the need and benefit of the proposal are not defined or do not exist, imposing these requirements could have a negative impact, as there will be a burden and cost of compliance that will result. Those that sell to both small and large consumers will need to change how they operate if they have structured their sales efforts, internal functions, and compliance activities based on the size of consumers. And companies like Shell Energy, that only serve the large consumer segment, will need to establish and fund new processes related to compliance with the proposed new requirements. These new costs need to be recovered, and will result in higher energy prices paid by consumers. There will also be resources dedicated, and costs incurred, by the Board in order to monitor and enforce these unnecessary requirements. These resources will either be incremental or taken from those resources otherwise dedicated to monitoring and enforcing the protections of small consumers. These costs will be yet another new cost increase being imposed on all consumers.

Should the Board decide that some requirements might be necessary for large consumers, they must be carefully crafted to meet the real needs of that customer segment and developed only after retailers and large consumers have had adequate opportunity to comment on the proposed rules and potential impacts on their businesses. The following comments address specific comments as well as errors that Shell Energy has found and corrections that are needed irrespective of the broader direction taken with respect to large consumers.

Electricity Retailer Code of Conduct (“Code”)

Part A, Sections 1.1 and 1.3 Purpose and Applicability: The Board should rectify the current incongruence between this Code and the Gas Marketer Code of Conduct. Despite their similarities, this Code currently has elements that apply to all sizes of consumers, while the equivalent gas code, by definition, is limited to activities related to low volume consumers. Shell Energy suggests that this should be rectified by putting the qualifying reference to “low volume consumers” in each of these sections along with the necessary consequential amendments to the other sections.

In the event the Board does not implement the request immediately above, Shell Energy requests the specific changes to the subsequent sections of the proposed amendments that would return the Code to the current state of scope.

Part B, Section 1, Fair Marketing Practices: Section 1.1(b) is a new requirement that needs to have the qualifier “low volume” added in front of the word consumer. Subsection (c) is an existing requirement that should revert to having the qualifier “low volume” for the consumer.

Part B, Section 2, Business Cards and Identification Badges: Each of sections 2.1 and 2.3 should contain the qualifier “low volume” in the sentence about retailing to a consumer. Item 2.2(d) is also worthy of particular note, since as proposed it would have all retailers include a toll-free telephone number on their business cards. This contradicts both the current requirement, as well as the proposed requirement in section 8.1, that appropriately only requires the provision of a toll-free number to low volume consumers.

Part B, Section 3, Contracts and Transfer Requests: In what appears to be a strange twist, it seems that proposed section 3.6 is almost identical to existing section 2.4, except that now it only applies to consumers who are not low volume. The existing section applies to all retailers despite the fact that it is only contracts with low volume consumers are subject to the many aspects of compliance requirements that are listed. This proposed section 3.6 should be moved, and made to apply only to low volume consumers.

Part B, Section 4, Disclosure Statements, Verification and Renewals or Extensions: As a minor matter, while it is clear based on the section titles that all of this section is intended to apply only to low volume consumers, the first sentence of section 4.5 lacks either a reference to low volume consumers or a reference to the preceding sections that do explicitly make reference to the limitation of applicability to low volume consumers. Some sort of reference to previous sections should be made in this sentence about redacting or altering disclosure statements.

Part B, Section 5, Training: Shell Energy appreciates the attempt by the Board to reflect reality by inserting the sentence at the end of section 5.2 about retailers to large consumers not having to train on matters that are specific to retailing to low volume consumers. Yet, this is an area where Shell Energy submits that there is no need whatsoever to have any requirements related to large consumers. This sentence should be struck, and each section should include the qualifier of “low volume” at each reference to consumer.

There is also a qualifying sentence at the end of section 5.4 regarding training for renewals and extensions. This sentence also must be deleted and replaced with the qualification that the section only applies to low volume consumers, since the legal and script requirements related to contract extensions and renewals only apply to low volume consumer contracts. None of this applies to larger consumer contracts, so even if the Board continues to desire to have some new elements of the code apply to larger consumers, this one cannot since it is simply not even applicable in any way.

In a similar fashion, all of the sections in this grouping are confusing and incorrect since they include the training of verification representatives as well as salespersons. This is done without recognition of the fact that verification requirements, and thus verification representatives, only exist with respect to contracting with low volume consumers. All of these logical and wording

problems would be eliminated by making the entire Code applicable only to low volume consumers and the retailers that serve them.

Part B, Section 7, Consumer Complaints and Compliance Monitoring: Proposed section 7.3 is a replacement of current section 3.3, and while the old section had applicability to all consumers, this was / is neither necessary nor appropriate and so the new proposal should contain the qualification for “low volume” consumers as is contained in sections 7.1 and 7.2. Similarly, new sections 7.4 through 7.6 are only relevant to low volume consumers, so this should be qualified in each of the sections 7.4 and 7.6.

Part B, Section 8, Services to be Maintained by a Retailer: The wording of proposed section 8.1 to replace existing section 4.1 is confusing. It says that all retailers need to have a toll-free phone number, but that it only needs to be provided to low volume consumers. The wording of existing 4.1 should be maintained in the proposal. There is no reason to mandate retailers serving large commercial, industrial, and institutional consumers to have a toll-free number.

Part B, Sections 9 and 10, Confidentiality and Transfer of Contracts: While both of these sections are continuations of existing language that has the requirements apply to all retailers and all sizes of consumers, Shell Energy submits that they, along with the rest of this Code, should only be applying to low volume consumers.

Cost Awards

Shell Energy supports the submissions of other marketers and retailers that cost awards within this proceeding should be recovered under the Board’s Cost Assessment Model, rather than directly from marketers and retailers. Additionally, given Shell Energy’s position that the amendments should maintain the purpose of implementing the ECPA as it relates to low volume consumers, and not be expanded to large consumers, if the Board decides to collect directly from marketers and retailers, the collection should be only from those serving low volume consumers, and be allocated based on the number of low volume consumers served.

All of which is respectfully submitted,

Original signed

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