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September 3, 2010

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

Dear Ms. Walli:

**Re: EB-2010-0245 - Notice of Proposal to Revoke and Re-Issue a Code - Proposed Revocation and Re-Issuance of the Electricity Retailer Code of Conduct
and
Notice of Proposal to Revoke and Re-Issue a Rule and to Amend a Rule - Proposed Revocation and Re-Issuance of the Gas Marketer Code of Conduct and Proposed Amendments to the Gas Distribution Access Rule**

Written Comments of the London Property Management Association

A. INTRODUCTION

These are the written comments of the London Property Management Association ("LPMA") in response to the Board's August 12, 2010 letter in which the Ontario Energy Board ("Board") gave notice under section 45 and section 70.2 of the *Ontario Energy Board Act, 1998* of its proposal to:

- i) revoke and re-issue the Electricity Retailer Code of Conduct;
- ii) revoke and re-issue the Code of Conduct for Gas Marketers; and
- iii) amend the Gas Distribution Access Rule.

The purpose of the proposed revisions to the regulatory instruments noted above is to implement the provisions of the *Energy Consumer Protection Act, 2010* ("ECPA") in relation to the activities of licensed electricity retailers and gas marketers.

The Board has invited interested parties to submit written comments on the proposed restated Retailer Code, the proposed restated Marketer Code and the proposed amendment to the GDAR set out in Attachments A, B and F, respectively, to the Notice. The Board has also invited written comments on the proposed disclosure statements, verification call scripts and renewal/extension call scripts set out in Attachments C, D and E, respectively, to the Notice.

As indicated the LPMA Cost Eligibility letter of August 4, 2010, many LPMA members are low-volume energy consumers and will be impacted by the proposed changes and re-issuance of the Retailer Code and the Marketer Code.

In the Board's August 4, 2010 letter that set out an overview of the consultation process that the Board intended to follow to implement the consumer protection provisions of the ECPA that related to the activities of suppliers. In that letter the Board indicated that it believed that it was in the best interests of consumers and of the retail sector that amendments to the regulatory instruments in furtherance of the new legislative regime be in place, if not all in force, as long as possible in advance of the coming into effect of that regime. LPMA agrees with this approach, even though the changes are based on the proposed regulations.

While it would be preferable to wait for the final regulations to be known, LPMA submits that the Board should move ahead as quickly as possible based on the best information currently available to it. If there are substantial changes to the regulations the Board can reconvene this consultation process to address these changes. Of more importance to the LPMA is that the changes to the Retailer Code and the Marketer Code be known by all parties affected by changes.

The comments below have been organized by Attachment.

B. ELECTRICITY RETAILER CODE OF CONDUCT (Attachment A)

LPMA has reviewed the Proposed Restated Electricity Retailer Code of Conduct attached the Board's Notice as Attachment A. LPMA believes that the proposal, for the most part, adequately and accurately reflects the provisions of the ECPA. LPMA further submits that the Board should not make any changes to the proposals that could potentially reduce or dilute the provisions of the code.

LPMA does have some comments on various sections of Attachment A. The following comments are based on Part B of Attachment A.

Section 1.1

With respect to section 1.1, part (e) which states that no "undue pressure" should be exerted on a consumer, LPMA does not believe it is appropriate for any pressure to be exerted on consumers, especially by a salesperson that shows up uninvited at a doorstep in person or over the telephone. Some consumers may be easily intimidated by an individual on their doorstep if any pressure at all is being applied to sign a contract. Therefore, LPMA submits that the word "undue" should be replaced with "any" so that part (e) states "not exert any pressure on a consumer".

LPMA submits that part (f) of section 1.1 should be amended to read "allow a consumer sufficient opportunity to read all documents provided without interruption or distraction". In order to properly read and comprehend the documents, the Board should ensure that a salesperson does not provide any distraction to the consumer, including any verbal distractions as the customer is attempting to read and understand the documents provided to them. The objective is to ensure that the customer has the opportunity to read and understand the documents.

LPMA submits that part (h) of section 1.1 would be strengthened through the addition of an explicit statement related to the appearance of the salesperson. There should be no doubt in the mind of the consumer that the salesperson is not associated with a distributor, the OEB or the government. LPMA submits that the wording should be

changed to "... or take any measure *or present any appearance* that is false or is likely to mislead a consumer." This would eliminate the potential for a consumer to assume that the individual was an employee of a distributor, for example, because that individual is wearing a hat or jacket with a logo that is identified with or similar to that of a distributor. This restriction would also extend to any other objects that may mislead a consumer to believe that the salesperson is associated with a distributor. This could range from vehicles to free golf balls that have a distributors name or logo imprinted on them. Jean Chretien might be amused, but the Board should not.

Sections 2.2 and 2.4

With respect to the business cards and identification badges noted in sections 2.2 and 2.4, LPMA believes the information provided on the identification badge is appropriate. However, LPMA has a concern with the interpretation of "clear and legible" in section 2.4. In particular, it may be possible to interpret that an identification badge made from clear plastic is clear. LPMA does not believe that this is the intent of the section. Further, the definition of legible may be different depending on one's eyesight. LPMA believes that the Board should mandate a minimum font size and style for use on the identification badges.

LPMA recognizes that the Board has stated at page 10 of the August 12, 2010 Notice that it is not proposing to establish supplementary requirements related to such matters as the minimum size of business cards or identification badges or the font style or size that must be used. However, LPMA notes that in Part III of the Proposed Regulation there is a requirement for contracts to be in Times New Roman style and have a font size of not less than 12. LPMA believes that if it is appropriate to have these requirements for a contract that it is reasonable to have the same requirements for the business cards and identification badges.

With respect to the content of the business cards, LPMA believes that the identification number for the salesperson that has been issued by the retailer for that purpose (and included on the requirements for the identification badge) should be required to be

included on the business card. LPMA sees no valid reason not to include the identification number of the salesperson on a piece of paper given to the consumer to identify the individual.

Section 3.1

Section 3.1 lists three items that should be clearly stated in a contract between a retailer and a low volume consumer. LPMA submits that a fourth item should be added. This fourth item is the cancellation fee that may be applied. A contract should clearly identify the costs **and potential costs** that may be incurred as a result of entering into it. Cancellation fees are potential costs that may be incurred under the contract and should not be hidden in the fine print.

Sections 3.3 and 3.4

The headings in bold immediately before sections 3.3 and 3.4 are both missing the right parenthesis.

Section 3.8

LPMA submits that section 3.8 should be expanded to require retailers in the situation described to not only identify any cancellation fees that may be applicable, but also provide a description of how the cancellation fee has been calculated. When this notification is text-based, LPMA submits that the calculation of the cancellation fee should be provided. When the notification is by telephone, the verbal description should include any rates used (per kWh, per month, etc.) and the quantum of the units that these rates are applied to (kWh, months remaining on contract, etc.).

Section 4.3

LPMA is concerned that this section puts the onus on the consumer to ask whether a Board-approved disclosure statement is available in a language other than English. If the consumer does not speak and/or read English, the consumer is not likely to be ask this specific question.

LPMA submits that the onus should be on the retailer to inform the consumer of the availability of the disclosure statement in the languages other than English that are available from the Board. This could be accomplished by referring the consumer to the disclosure statement near the beginning of the sales call. LPMA has further comments on the content of the disclosure statement in Part D below.

Section 4.4

LPMA submits that when a retailer provides a consumer with a disclosure statement in a language that is not available from the Board with a translation of the Board-approved disclosure statement a copy of that translated disclosure statement should be provided to the Board along with a signed affidavit from an executive of the retailer verifying that the translation is true, accurate and complete. The Board will then be able to verify the accuracy of the translation and include it the list of languages for which the disclosure statement is available from the Board.

LPMA also believes that this section should be re-worded so as to make the consumer the driver rather than the retailer. As currently worded, it is the retailer's choice of whether or not it wishes to provide the Board-approved disclosure statement in a language other than English. LPMA submits that it should be the consumer that has the choice to receive a Board-approved disclosure statement in a language other than English when such a disclosure statement in that language is available.

Section 5.6

Part (b) of section 5.6 indicates that the training test questions may be fixed. LPMA has significant concerns with this if it is meant to allow retailers to keep the training test questions fixed from one training/testing session to another. It could be easy for an individual to obtain the test questions from someone who took an earlier training/testing session with the knowledge that the same questions would be asked. LPMA submits that the training test questions should be take randomly from a sufficiently large test question repository so as provide a reasonable level of change in the questions asked from one testing session to another.

Section 9.3

LPMA fully supports the intent of this section, but believes the section should be improved. In particular a retailer should only be able to use consumer information obtained for one purpose from a consumer for any other purpose with the express written consent of the consumer and this express written consent should be separate from any other written consent and only after this specific request is fully explained to the consumer.

C. CODE OF CONDUCT FOR GAS MARKETERS (Attachment B)

LPMA has reviewed the Proposed Restated Code of Conduct for Gas Marketers attached the Board's Notice as Attachment B. LPMA believes that the proposal, for the most part, adequately and accurately reflects the provisions of the ECPA. LPMA further submits that the Board should not make any changes to the proposals that could potentially reduce or dilute the provisions of the code.

LPMA does have some comments on various sections of Attachment B. The following comments are based on Part B of Attachment B.

Section 1.1

LPMA re-iterates its comments on parts (e), (f) and (h) of section 1.1 provided above in Part B related to the Electricity Retailer Code of Conduct. The concerns expressed by LPMA in relation to electricity retailers are equally of concern with respect to gas marketers.

Sections 2.2 and 2.4

LPMA has the same concerns and comments with respect to the business cards and identification badges in the gas marketer code as were expressed in the electricity retailer code noted above in Part B.

Section 3.1

Similar to the comments provided in Part B above related to section 3.1 of the Retailer Code, LPMA submits that a fourth item should be added. This fourth item is the cancellation fee that may be applied. The contract should clearly identify the costs **and potential costs** that may be incurred as a result of entering into it. Cancellation fees are potential costs that may be incurred under the contract and should not be hidden in the fine print.

Sections 3.3 and 3.4

The headings in bold immediately before sections 3.3 and 3.4 are both missing the right parenthesis.

Section 3.6

As in the Electricity Retailer Code, LPMA submits that this section should be expanded to require marketers in the situation described to not only identify any cancellation fees that may be applicable, but also provide a description of how the cancellation fee has been calculated. When this notification is text-based, LPMA submits that the calculation of the cancellation fee should be provided. When the notification is by telephone, the verbal description should include any rates used (per m³, per month, etc.) and the quantum of the units that these rates are applied to (m³, months remaining on contract, etc.).

Section 4.3

LPMA re-iterates its comments provided for the same section in Part B above for the Electricity Retailer Code.

Section 4.4

This section is mislabeled as section 44.

LPMA re-iterates its comments provided for the same section in Part B above for the Electricity Retailer Code.

Section 5.6

LPMA re-iterates its comments provided for the same section in Part B above for the Electricity Retailer Code.

Section 9.3

LPMA re-iterates its comments provided for the same section in Part B above for the Electricity Retailer Code.

D. PROPOSED DISCLOSURE STATEMENTS (Attachment C)

LPMA has reviewed the various disclosure statements included in Attachment C and has the following comments.

Electricity Disclosure Statements

The following comments are applicable to the Proposed Door-to-Door Disclosure Statement (Electricity), the Proposed Direct Mail Disclosure Statement (Electricity), the Proposed Disclosure Statement in person following request (no verification) (Electricity) the Proposed Internet Disclosure Statement (Electricity) and the Proposed Renewal Disclosure Statement (Electricity).

The fourth point on the above noted disclosure statements refers to the "cost of electricity shown on the *Electricity* line of your utility bill." The word "Electricity" appears to in italics, giving the impression that this word appears as a line item on the electricity bill. This may not be the case. For example, a residential invoice from Chatham-Kent Utility Services shows the following line items under the heading "YOUR ELECTRICITY CHARGES:"

YOUR ELECTRICITY CHARGES:
Summer 1st Block
Delivery
Regulatory Charges
Debt Retirement Charge
H.S.T. #XXXXXX XXXX RT0001

As illustrated in this example of a there is no *Electricity* line on the bill. In other words, the consumer will not be able to locate the *Electricity* line on the bill because it may not be identified as such on the bill.

LPMA submits that the Board either needs to ensure that all utilities use the word *Electricity* on the appropriate line, alone or along with a further description, such as "*Electricity - Summer 1st Block*" or it needs to address this issue directly on the disclosure statement by indicating that the *Electricity* line may be identified by other words, such as *Summer 1st Block* and other wording used by utilities.

The fifth point on the above noted disclosure statements states that "You will also see a separate line on your utility bill called the Provincial Benefit." This statement is not correct. There is no "Provincial Benefit" shown as a separate line on the invoice from a utility where the consumer is under the RPP price plan and has not signed a contract with a retailer. LPMA notes that this group of disclosure statements are for consumers that are being offered a contract. Many of these consumers will not have been on a contract with a retailer and will not be able to find a Provincial Benefit line item on their bill. LPMA submits that the line noted above should read "Upon commencement of your contract, you will see a separate line on your utility bill called the Provincial Benefit."

LPMA notes the same issue with the Electricity line referred to in the fifth point as discussed above related to the fourth point in the disclosure statements.

LPMA notes that in the sixth point in the disclosure statements, a value of the Provincial Benefit is provided over a period. In the example it is a 2.9 cent per kWh charge in 2009. It is not clear how or how often the Board expects the retailers to update this figure. For example, when would retailers be required to show the average 2010 figure? Is the average 2010 figure relevant for a disclosure statement given to a consumer in late 2011? Should the Provincial Benefit figure that is shown on the disclosure statement be updated on a regular (monthly, quarterly, semi-annual) basis to reflect the average over as twelve month period? Should it show the average over a shorter period, such as the most recent

six or three months available? Should there be a link to the IESO (www.ieso.ca/imoweb/siteShared/electricity_bill.asp?sid=bi) where both historical and the most recent year-to-date figures are provided?

LPMA believes that a link to the IESO website would be useful and provide consumers with the most recent information available, and at the same time provide a historical perspective on the amount of the Provincial Benefit.

Natural Gas Disclosure Statements

LPMA's one comment on the five natural gas disclosure statements in Attachment C are similar in nature to that provided on the fourth point in the disclosure statements for the electricity consumers.

LPMA is concerned with the wording of the fourth point that states that the cost is "for the cost of gas supply itself".

A review of a residential and small commercial natural gas bill from Union Gas (rate M1) reveals that the words gas supply are not used. There is a line titled "Gas used" and a line titled "Gas price adjustment" . It may not be clear to a consumer based on the working of the disclosure statement that both of these lines are associated with the cost of the gas itself. It is particularly important, in the view of LPMA , that consumers understand this.

The "Gas used" rate shown on an August, 2010 Union gas bill is 17.2288 cents per m³. The "Gas price adjustment" rate on the same bill is (4.1373) cents per m³. It is essential that consumers not be misled by the wording on the disclosure statement. A consumer could well believe, or be led to believe, that the contract price with a retailer is replacing the "Gas used" charge on the utility bill, while the "Gas price adjustment" would remain as a credit to the consumer on his bill.

E. PROPOSED VERIFICATION CALL SCRIPTS (Attachment D)

Items #1 & # 4

LPMA submits that with respect to the verification call scripts, whether for outbound or inbound calls, once the verification representative has identified their name and the retailer name, the representative should immediately inform the consumer that the call is being recorded. In other words, item #4 in the proposed call script should be moved up to item #2 in the view of LPMA

Item # 3

With respect to item #3, it is not clear to LPMA why the call must be terminated if the consumer is not comfortable for the call to proceed in English. Specifically, it appears that the assumption is being made that the verification representative speaks only English. There are likely to be situations in which the representative may be fluent in the language that the consumer does feel comfortable proceeding with.

This raises the issue of whether the Board needs to have call scripts available in languages other than English for verification representatives to follow in those cases where a consumer requests the use of another language. The Board should consider developing the scripts in the same languages shown on the disclosure statements.

Item # 18

Item #18 has an option that should be explicitly provided to the consumer. A consumer should be told that they have a third option rather than simply yes or no when they are asked if they agree to verify the contract and proceed with the purchase of electricity or natural gas under the terms of the contract. This third option is to take more time to make a decision as to whether or not to proceed with the contract.

LPMA submits that the call script should be amended to read: "Do you agree to verify this contract and proceed with the purchase of electricity/natural gas under the contract

for a term of [x] years at a price of [price details] **or would like more time to make a decision as to whether or not to proceed with the contract?"**

If the consumers requests more time, the verification representative should ask the consumer when they would like to be contacted to follow up on the decision.

Item # 18A

With respect to item #18A, LPMA submits that the last sentence should amended as follows: "You will not have to pay a cancellation fee, an you will be transferred back to your local utility for your electricity supply with **no interruption in service.**"

General

LPMA further notes that in a number of places he call must be terminated for various reasons (for example item #11 requires termination of the call if the consumer did not receive a copy of the disclosure statement). First, LPMA believes that when a call is being terminated, the representative should explain to the consumer that their contract has not been verified. LPMA is further concerned that without an explanation of why the call is being terminated and the contract is not being verified, there may be confusion on the part of the consumer.

F. PROPOSED RENEWL/EXTENSION CALL SCRIPTS (Attachment E)

The same comments provided above in Part E above apply to the call scripts provided in Attachment E.

G. PROPOSED AMENDMENT TO THE GAS DISTRIBUTION ACCESS RULE (Attachment F)

LPMA has reviewed section 4.3.7.4 of the current Gas Distribution Access Rule which is proposed to be deleted as well the proposed replacement section 4.3.7.4 that is attached to the Board's Notice as Attachment F. LPMA submits that changes proposed are appropriate.

H. DIRECT PRICE COMPARISONS

LPMA notes that the disclosure statements proposed by the Board do not provide any direct price comparisons for consumers when they sign retail electricity contracts.

LPMA also notes statements from the Minister of Energy that he would speak to the OEB to make sure they require the marketers to provide price comparisons. LPMA strongly supports the need for price comparisons being provided to consumers, both for electricity and natural gas contracts.

The Board has not provided any documents that show a price comparison between the retailer's price and the Regulated Price Plan ("RPP") price (whether it is Tier pricing or TOU pricing). Nor has it provided any documents that show a price comparison between a marketer's natural gas price and the QRAM rates for the gas distributors.

These comparisons are likely to be difficult to provide. On the gas side, the regulated gas price changes on a quarterly basis. On the electricity side, the RPP prices change every six months. TOU rates will soon be widespread across the province and it may be difficult to compare TOU rates with a fixed price from a retailer. However, LPMA believes that the Board can provide relevant comparisons by making assumptions (based on historical data) of the weighted average cost of electricity for a typical residential or small commercial customer under TOU rates that would then be comparable to the fixed price offered by a retailer.

However, until LPMA sees a draft price comparison provided by the Board, LPMA is not in a position to provide detailed comments on the form, content and timing of any such comparison.

LPMA recommends that the Board develop a price comparison and provide it to parties as a second phase of this consultation for their comments and suggestions.

Sincerely,

Randy Aiken

Randy Aiken
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