



PUBLIC INTEREST ADVOCACY CENTRE
LE CENTRE POUR LA DEFENSE DE L'INTERET PUBLIC

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September 3, 2010

VIA MAIL AND EMAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
26th Floor
2300 Yonge Street
Toronto, ON
M4P 1E4

Dear Ms. Walli:

**Re: Implementation of Consumer Protection (Retailer/Marketer) Provisions
of the *Energy Consumer Protection Act, 2010*
Board File Number EB-2010-0245**

Please find enclosed the comments of VECC.

Yours truly,

Original signed

Michael Buonaguro
Counsel for VECC
Encl.

**EB-2010-0245: Comments of VECC Implementation of Consumer Protection
(Retailer/Marketer) Provisions of the *Energy Consumer Protection Act, 2010***

General Issues

Consumers' prior obligations under Existing Contracts

In VECC's view, in general, the proposals do not adequately inform and protect consumers from the consequences of the early termination of a pre-existing contract. The nature of the existing marketplace for retail electricity is such that many consumers become unaware, over the course of multi-year contracts, that they are being supplied by a retailer; indeed many consumers specifically (and mistakenly) believe that their retailer is the distributor. While it appears that consumers will have the option of cancelling new contracts once it is discovered and communicated to them that there is a pre-existing contract, VECC submits that it would be much more desirable to engage consumers in this potential issue before it manifests several days or weeks after the consumer signs a new contract. We have tried to point out in the comments below areas wherein specific measures might address this issue.

The Impact of Equal Billing

Even if a consumer is satisfied with the concept and pricing behind a retail contract, the implementation of that new contract can have material consequences on the consumer when one considers the impact of the new contract on pre-existing equal or budget billing plans. VECC has made comments below within the areas where additional requirements or protection may be useful in terms of bringing the risks associated with switching suppliers in the middle of an equal or budget billing process; however VECC also believes that there should be a specific review concerning how the impact of a new contract on equal billing should be handled. To that end VECC submits that the Board should consider how material increases in bills resulting from switches to a retail contract may be automatically handled by distributors in order to minimize bill shock.

Comparing prices under Time of Use pricing for Electricity

With the implementation of Time of Use pricing for consumers on the RPP, it has become harder for consumers to meaningfully compare the offering of retailers to the RPP service, since retailers do not, so far as VECC is aware, offer their services based on Time of Use pricing. In VECC's view it would be very helpful if, in addition to setting out on the monthly bill a consumer's consumption for each Time of Use Price under the RPP, distributors also include a calculation of the effective rate per kWh for the billing period. In this way consumers could more easily compare their current effective price, based on their consumption profile, to any retail offering they might be considering. The comparison would be even more meaningful if the Provincial Benefit were also separately detailed on the bill, rather than subsumed as part of the Time of Use rates.

Proposed Restated Electricity Retailer Code of Conduct (the "Electricity Code")

(Note: to the extent that the Proposed Restated Code of Conduct for Gas Marketers (the "Gas Code" mirrors the Electricity Code, we ask that VECC's comments on the Electricity Code be read as applying equally to the Gas Code)

Section 3.6

Part of the obligation of the retailer in explaining the non-compliance and offering a new, compliant contract should be to explain that the consumer is under no obligation to sign the new contract, and that the “cooling off” period under the Act within which the consumer can cancel the contract will run in relation to the deliverance and acknowledgement of the executed “new” contract. VECC submits that it is important for retailers to be clear that the consumer has no obligations to the retailer as a result of the latter executing non-compliant contracts, and that the rights of the consumer to cancel the replacement contract have not been compromised as a result of having executed a non-compliant contract.

Section 3.8

This section raises a potential timing issue with respect to the notification to the consumer of the proposed transfer from one retailer to another. VECC understands that under the proposed regulation there is a further period for consumers to cancel a new contract when being notified of a pre-existing contract, but remains concerned that consumers may end up committed to a new contract, having paid the penalties associated with the old contract, and not realize until beyond the first bill the full impact of the switch; this concern arises in part because of the possible effect of equal or budget billing plans, wherein the financial impact of a switch from one contract to another, including the change in price and the cancellation fees, may not be experienced by the consumer in a bill until 2 or more bills after the switch is made, at which point all the without prejudice cancellation rights of the consumer will have been exhausted. (Equal Billing issues are discussed further below) In VECC’s view the consumers right to cancel a new contract and revert to the old contract without penalties should subsist until the full impact of the new contract is known, including not only the fees associated with cancellation, but also the impact that may be had in the implementation of the new contract.

Section 5.2 and 5.3

Training should explicitly ensure that salespersons and verification representatives are knowledgeable about the common rights of retailers upon early termination of contracts, so that they can explain to potential customers that they should confirm whether they are in an existing contract before entering into a new contract that will cause an early termination. In VECC’s experience it is quite common for consumers to be unaware that their current supplier of gas or electricity is not their distributor. For example, many consumers, VECC asserts, believe that they are obtaining their gas supply from Enbridge Gas Distribution Inc., not realizing or remembering that they signed a retail contract with Direct Energy and that Direct Energy is not a subsidiary of or synonymous with Enbridge.

Training should explicitly ensure that salespersons and verification representatives understand how consumers are billed for electricity, with specific emphasis on the impact of equal billing on a transfer of supply responsibility. VECC notes that the transfer of responsibility for supply from, for example, a distributor to a retailer at a peak time of the year for consumption for a consumer that is on an equal billing plan can have catastrophic consequences when the impact of the transfer is realized in the true up period. For example, VECC is aware of consumers that were on equal billing with their gas distributor, and who entered into long term natural gas contracts with a retailer in the heating season at a price that was materially in excess of the prevailing system gas offering, presumably on the theory that over the course of the contract the system gas price would overtake the contract price. Because of equal billing, however, the impact of the

immediate spike in the consumers' price was deferred for several months, such that a material lump sum payment became due when true up was required. In VECC's view this possibility should be one that salespersons are required to explain to consumers, and verification representatives should be prepared to explain.

There should be a requirement in the training phase that will develop some sensitivity in salespersons and verification representatives for identifying particularly vulnerable consumers. VECC is aware of situations where consumers that clearly could not understand the terms of the contract they were being asked to enter into were, nevertheless, signed up by a retailer. VECC notes that the verification scripts specifically identifies the inability to understand English as a bar to verification of a contract; in VECC's view that is simply the most obvious bar, and the two Codes should reflect, to some degree, the expectation that retailers are training their personnel to recognize other barriers and treat other vulnerable customers appropriately.

Section 6 (in relation to section 2)

VECC submits that retailers, in filing their certifications, should supply standard samples of the business cards and identification badges required under section 2; in VECC's view the Board should specifically approve both the business card format and the identification badge format for each retailer as part of the certification process, and retain samples on file in case of future compliance issues.

Section 10.3

Consumers should be made aware before they enter into contracts that their contracts may be sold, transferred or assigned to another person before they enter into the contract, beyond the inclusion of such a notice in the body of the contract. This can be done as part of the disclosure statement.

PROPOSED DISCLOSURE STATEMENTS

The following comments apply equally to all the different forms of disclosure statements except as noted:

1. Consumers should be specifically notified that information from the OEB can help them evaluate the retailer's offer against the current utility supplied price, in addition to the existing statements as to the information available from the OEB.
2. As noted above, the fact that a retail supply contract may be sold, transferred or assigned to another person should be made clear to consumers in the disclosure statement.
3. As discussed above, consumers should be warned by the disclosure statement that the change in supplier could have significant financial consequences in the event the consumer is on an equal billing plan.
4. The disclosure statement does not warn consumers to ensure that they are not already in a contract with another retailer, or explain that if the consumer is already in a contract with another retailer there may be financial consequences associated with terminating that contract early; VECC asserts that these two issues are of critical importance and should be brought to the attention of consumers in the disclosure statement. (VECC acknowledges that this information is not likely relevant in the context of a renewal)

VERIFICATION SCRIPT

For all the verification scripts other than renewals, the script should include verification that the consumer understands that if they are in an existing contract with another retailer there may be financial consequences as a result of terminating that other contract early.

With respect to particularly vulnerable consumers, as noted above, there should be a requirement that the call be terminated without having verified the contract in the event it becomes apparent that the consumer may not understand the contract they are being asked to verify. Similar to how “The call must also be terminated if the verification representative knows or ought to know that the consumer is not reasonably able to protect his or her interests by reason of inability to understand English.”, in VECC’s view there should be a similar obligation if, generally speaking, it becomes clear that the consumer is not reasonably able to protect his or her interests for any other reason.