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Delivered by email and post

September 6, 2010

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, Suite 2700
Toronto, Ontario 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
Comments on Proposed Electricity Retailer Code of Conduct, etc.

(This revised set of comments corrects an error in the comments submitted on September 3. The error relates to the side-by-side price comparison.)

I am writing to provide comments on the proposed Electricity Retailer Code of Conduct (Attachment A to notice of proposal), electricity disclosure statements (Attachment C) and to also share my recent input to the Ontario government on the proposed ECPA regulation.

I work in the Ontario energy industry as a consultant. My employer does not represent residential consumers and so is not participating in this process. They have however graciously allowed me to participate in this process on my own.

Electricity Retailer Code of Conduct

Part B

Section 1, Fair Marketing Practices

1.1d) – The Provincial Benefit should also be clearly identified and some (standardized, backward or forward-looking) value provided.

1.1, addition # 1 – There should be no statement concerning savings of any kind. In fact, there should be a statement that “The resulting future cost of electricity could be higher or lower”.

1.1, addition # 2 – Provide the disclosure statement / side-by-side price comparison prior to customer signing a contract and leave, whether prospect signs contract or not.

Section 4, Disclosure Statements, Verification and Renewals or Extensions

4.1 – Use of the word “offer” implies addition # 2 above but it would be helpful to provide additional emphasis.

4.5 – No redaction of disclosure statements should be allowed, except in very rare instances.

Section 7, Consumer Complaints and Compliance Monitoring

Insertion following current 7.1 – Retailers should provide on a monthly basis a standardized report on complaints, with the content and format to be determined by the OEB.

7.2 – Concerning the word “expeditiously”, the OEB should set related standards.

Disclosure Statement – Electricity

When the Ontario government introduced the proposed ECPA legislation in early December 2009, one of the documents posted on the Ministry of Energy (and Infrastructure, at the time) web site on December 8 was a 3-page background. The third page of the backgrounder was an “Electricity Retail Contract Information” sheet. This side-by-side price comparison was a breath of fresh air as it had the potential, if effectively put into practice, to right a lot of the things wrong with electricity retailing. However sometime after the February 6, 2010 closing date for EBR-010-8556 comments, the original backgrounder (pages 5 – 7 of this document) was removed from the MoE web site and replaced with another one. The new backgrounder (page 8 of this document) had the same file name as the original (bg20091208_ecpa.pdf). Curiously, this also included the original issue date of December 8, 2009, even though this new and much later backgrounder was substantially different. In addition to some minor changes, the new backgrounder contained no evidence of the previous Information sheet.

It was very disappointing to see the backgrounder change and the side-by-side price comparison disappear but it is heartening that these events recently came to light and that Minister Duguid has stated his strong desire to see the side-by-side price comparison.

I offer the following comments related specifically to the Door-to-Door version, though I feel the following comments apply to all versions of the OEB’s proposed disclosure statements.

- The currently-proposed disclosure statement should be a set of notes that accompany a side-by-side price comparison.
- Point # 5 – A word should be inserted in the first sentence, so that it reads “You will also see a new separate line on your utility bill called the Provincial Benefit”.
- Point # 6 – Some backward or forward-looking value for the Provincial Benefit should be maintained and it should be consistent with whatever is shown on the side-by-side price comparison.
- Point # 9 – There should be no statement of any kind concerning savings. In fact, there should be a statement that “The resulting future cost of electricity could be higher or lower”.

Side-by-Side Price Comparison

The Electricity Retail Contract Information sheet proposed earlier showed “Utility” and “Retailer” scenarios. For both scenarios it included charges for delivery, regulatory and debt retirement. While these charges help to paint a complete picture of a customer’s bill, they are also identical under both scenarios (with the exception of the Standard Supply Service administration charge – a \$ 0.25/month fee that is part of Regulatory charges on non-retail bills) and so can complicate the picture and also provide an opportunity for tampering. For those reasons, the side-by-side comparison should focus on the “total electricity price”, i.e. the combined price paid for electrical energy and the Provincial Benefit.

- a) total electricity price, Utility – For these values, current Regulated Price Plan (RPP) rates should be used. Both conventional / two-tier and Smart Meter / TOU RPP prices are possible. The former is straightforward; for a residential consumer with monthly consumption of 800 kWh (no losses), the blended rate for one year is 6.66 cents/kWh (including the SSS fee). For the latter, the on-, mid- and off-peak energy proportions stated in the OEB’s Regulated Price Plan reports should be used. As the OEB is aware, these reports look forward one year and are published every six months, in mid-April and mid-October. Using rates and energy proportions from the most recent report, the blended Smart Meter / TOU RPP price is 6.95 cents/kWh (including the SSS fee).

- b) total electricity price, Retailer – electrical energy component – This value should be all-inclusive and no additional fees should be allowed
- c) total electricity price, Retailer – Provincial Benefit component – Two options exist – backward and forward-looking. The latter is probably preferable. A ready number already exists, in the OEB Regulated Price Plan report. This report is published every six months and the Provincial Benefit value from the most recent report should be used. The current forward-looking value for the Provincial Benefit is 2.772 cents/kWh.

Below is a side-by-side comparison example for a residential customer with monthly consumption of 800 kWh / month. The comparison shows Utility costs and rates under the conventional / two-tier Regulated Price Plan and excludes utility losses. The retailer pricing is taken from www.energyshop.com and is their best published 5-year rate available to residential customers served by Toronto Hydro (on September 3, 2010). All costs and rates exclude the HST.

Utility - Conventional / Two-Tier Regulated Price Plan	annual \$	cents/kWh	Retailer	annual \$	cents/kWh
total electricity - includes electrical energy, Provincial Benefit and SSS administration fee	\$ 639.00	6.66	electrical energy	\$ 699.84	7.29
			Provincial Benefit	\$ 265.92	2.77
			total	\$ 965.76	10.06

Complaints from retailers are inevitable and predictable. To account for typical residential contract terms of five years, Provincial Benefit forecasts that look further into the future are more than possible, though a more rigorous approach would also require forecasting of the stand-alone electrical energy price. These forecasts are likely well within the capabilities of the consultant the OEB uses for the RPP Price and other related reports.

Recent Comments submitted through EBR on Proposed ECPA Regulation

The following comments were submitting on the proposed ECPA regulation. References related to sections in the proposed regulation.

Unfair Practice - Pricing

Section 4. (1) (a) (v) states that is an unfair practice to make a misleading statement concerning “The contract price or the commodity price payable by a consumer who is not under a contract or the regulated rates payable by a consumer whether or not under a contract”.

A common and clearly unfair practice is for a retailer to offer an energy price less than the on-peak Smart Meter or TOU RPP price, while ignoring or misrepresenting the portion of energy (20%) typically consumed at the on-peak price.

A standard reference SM/TOU price based on typical consumption proportions should be provided as a comparator. (The current such price is 6.9 cents per kWh.)

Unfair Practice – Savings

Section 4. (1) (a) (vii) states that is an unfair practice to make a misleading statement concerning “The fact that a consumer will save money ...”.

The retailer should be required to state that the consumer, by choosing the retailer’s offer, may ultimately pay more or less for electricity. Use of the word “savings” should be forbidden.

Contract Price

Section 6. (1) (h) states that an electricity contract must contain “a statement of the contract price for the purchase of electricity”. There is no mention of a “balancing fee” – a fee that is currently evident in virtually all electricity contracts aimed

at residential or similarly less-sophisticated consumers. Such balancing fees are positioned as a possible credit or debit and yet they are always a debit; they are also habitually and drastically underestimated. They can be up to 1 cent per kWh and are used to stealthily add margin to deals.

Balancing fees should not be allowed.

Section 6. (1) (j) (ii) (A) & (B) reference statements required for electricity contracts. If the information sheet or some similar version of it contained in the original backgrounder released by the MoEI were detailed in the regulation or the “form (and) content” (see section 8. (3)) of the disclosure content determined by the OEB, uncertainty related to these statements would be greatly reduced.

In either the regulation or the Disclosure Statement, there should be a side-by-side comparison of costs on the Regulated Price Plan and with the Retailer. The focus be should the energy commodity charge. i.e. wires and regulatory charges should be excluded. The commodity charge should include the price for energy, the Provincial Benefit (backward or forward looking) and any other charge(s) that make up the commodity charge for energy.

Cancellation Fees

Section 21. (1) (a) states that the cancellation fee for a residential electricity contract should be no more than \$ 50 per remaining year or any part thereof. For a typical residential consumer with annual consumption of 10,000 kWh, that equates to 0.5 cents per kWh.

Section 21. (2) (a) states that the cancellation fee for a non-residential electricity contract should be 1.5 cents per kWh. This rate is arbitrary and three times the residential rate.

All cancellation fees for electricity contracts, whether they are for residential or non-residential accounts, should have a similar cancellation rate (or equivalent).

Section 21. (3) provides thresholds above which electricity and natural gas consumers are considered to be non-residential consumers. These thresholds are much too low and while high and/or excessive consumption is generally frowned upon, such residential consumers should be treated the same

The thresholds used to identify non-residential electricity and natural gas users should therefore be removed or significantly increased (by 100% or more).

Closing Statement

I trust this submission has made a significant contribution to the dialogue on this subject. I look forward to continued participation.

Yours truly,

Original signed








Bruce Sharp, P. Eng.

PROPOSED ENERGY CONSUMER PROTECTION ACT(ECPA), 2009





December 8, 2009

For three years, energy retailers have made the Ontario Government's "top 10 list" of consumer complaints. The Ontario Energy Board logs up to 150 complaints each week. The proposed ECPA is aimed at addressing these as well as other consumer concerns.


Retailers

Problem	Proposed Solution
1. Sales person practices	 Immediate verbal disclosure and ID Badges Sales person training and other standards
2. Consumer's don't have the information they need to decide; language barriers	 "Plain language" contract disclosure statement – available in various languages (See attached)
3. Verbal contracts (usually on phone); Contracts not with account holder	 "Text-based" contract and signature required Only the utility account holder or others specified by regulation can sign energy retailer contracts for a household
4. Consumers feel pressured into signing a contract	 Three possible cancellation alternatives: a 10-day cooling off period, upon third party verification (within 10-60 days of signing contract) and 30 days after receipt of first bill
5. Unfair cancellation policies and fees; automatic renewals for gas contracts	 Prevent excessive cancellation fees or in some instances, any fees – such as when people move or accidentally sign a second contract Eliminate negative option renewals
6. Electricity Retailer / Gas Marketer accountability	 Additional licensing conditions for retailers, including individual sales person training and background checks An assurance fund to assist in covering potential losses for consumers OEB randomly audits retailers Improved officer and director accountability
7. "Fixed contracts" don't clearly disclose all costs or offer products promoting conservation	 Energy Retailers required to clearly show all charges Time-of-Use products can be required

Suite Metering

Problem	Proposed Solution
1. No framework to install suite metering in rental apartment buildings	 Enable mandatory installation in new residential buildings Voluntary installation in existing buildings
2. No rules for individual billing in rental apartment buildings	 Consent required from sitting tenants Establish a framework for rent reduction if a tenant agrees to suite metering Prospective new tenants given prescribed information on suite energy use
3. Suite-metering companies not subject to the same rules as local distribution companies (LDCs)	 Suite-metering providers subject to rules paralleling LDCs concerning fee regulation, licensing, security deposits and disconnections
4. Tenants can't control major energy efficiency factors in their suites, things like windows or appliances	 Landlords required to meet certain energy efficiency standards for appliances and suites

Deposits and Disconnections

Problem	Proposed Solution
1. Gas and electricity companies work under different rules regarding invoices, disconnection and security charges	 OEB can regulate disconnection and security deposits for both electricity and gas companies, such as mandating alternatives to deposits or requiring specific standards for disconnections for vulnerable consumers Government can regulate utility bill requirements, for example, requiring the inclusion of information that would help consumers manage their energy use

Amy Tang, Minister's Office, 416-327-6747
Eric Pelletier, Communications Branch, 416-325-1810

ontario.ca/energy-news
Disponible en français

Electricity Retail Contract Information

What is being offered to me?

I understand

A contract for electricity with {Name of Company}

{Name of Company} is not associated with the Ontario Energy Board,
the Government of Ontario or the utility which currently provides electricity to you.

What will happen if I do not sign the contract being offered?

Your electricity will continue to be provided as it is now, without interruption.

How will this contract affect my bill?

Only the electricity portion of your bill will be affected by the contract being offered.
This is shown on your bill as cents/KWh.

All other charges will remain the same (delivery, regulatory and debt retirement).

How does the price I am now paying compare to the proposed contract price?

The sample tables below will help you estimate, based on forecast costs,
the impact of the proposed contract on your electricity costs.

**Forecast comparison of electricity costs for consumption of 800 KWh per month for the first year
(November 1, 2009 to October 31, 2010) of this contract:**

Your Utility		
Charge	Price	Yearly Cost
Electricity (includes Provincial Benefit)	¢ / KWh	\$
Delivery		\$
Regulatory		\$
Debt Retirement		\$
Total Electricity Charges		\$

Retailer		
Charge	Price	Yearly Cost
Electricity	¢ / KWh	\$
Provincial Benefit	¢ / KWh	\$
Delivery		\$
Regulatory		\$
Debt Retirement		\$
Total Electricity Charges		\$

If you enter into a contract with {Name of Company} you may be
required to pay a fee should you wish to cancel the contract in future.

I HAVE READ AND UNDERSTAND THE ABOVE INFORMATION.

Name of Customer

Signature of Customer

For more information, please call the
Ontario Energy Board at 1-877-632-2727
or visit www.oeb.gov.on.ca

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