



**FINANCIAL SERVICES DEPARTMENT  
KITCHENER UTILITIES**

James A. (Jim) Gruenbauer, CMA  
Manager, Regulatory Affairs & Supply  
City Hall, P.O. Box 1118  
200 King St. West, 5<sup>th</sup> Floor  
Kitchener, Ontario  
Canada, N2G 4G7  
Phone: 519-741-3400 ext 3455  
Cell: 519-580-3568  
Fax: 519-741-2633  
TTY: 1-866-969-9994  
e-mail: jim.gruenbauer@kitchener.ca

**BY E-MAIL & COURIER**

September 3, 2010

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

Dear Ms. Walli:

**Re: EB-2010-0245 – Notice of Proposal to Revoke and Re-Issue a Code and to Amend a Rule**

Pursuant to the Ontario Energy Board's ("Board's") Notice dated August 12, 2010, The Corporation of the City of Kitchener ("Kitchener") respectfully provides the following comments for consideration with our appreciation to the Board for the opportunity to do so.

Kitchener operates a municipally owned distribution utility which provides natural gas supply and delivery services to energy consumers, including low volume consumers, within its franchise boundaries. Kitchener provides a default system gas supply on a cost pass through basis at rates approved by its City Council to consumers that are not supplied by energy retailers. Kitchener has an existing OEB Gas Marketer License GM-2009-0048 that contains exemptions from the Code of Conduct for Gas Marketers and Natural Gas Reporting and Record Keeping Requirements which reflect Kitchener's primary role as a municipally owned gas distribution utility. Kitchener also facilitates direct purchase arrangements under the Board's Gas Distribution Access Rule ("GDAR") for consumers that choose to be supplied by energy retailers.

It is in this context of providing natural gas services to energy consumers within its municipal utility framework that Kitchener wishes to comment. The Proposed Restated Code of Conduct for Gas Marketers ("Code") contains definitions and provisions related to "account holder" within the meaning of the Energy Consumer Protection Act ("ECPA"). Service Transfer Requests ("STR") submitted by an energy retailer to Kitchener, for example, to switch a consumer's supply from system to retailer supply or from retailer supply to another retailer's supply, are governed by GDAR.

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Ms. Walli

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As a municipal entity, Kitchener's gas utility is subject to the Municipal Act and the Municipal Freedom of Information and Protection of Privacy Act ("MFIPPA"). Section 14 of MFIPPA deals with personal privacy, as follows:

**"Personal privacy**

14. (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

(a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;"

Out of an abundance of caution, Kitchener wishes to comment that in complying with the Code and GDAR on a going forward basis, it cannot breach its obligation to preserve personal privacy under MFIPPA. Specifically, this situation may arise when processing STRs where the signatory to a retailer contract does not match the personal information for the account held by Kitchener in its consumer billing system. Under this circumstance, Kitchener is precluded by MFIPPA from either disclosing personal information to a third party (a retailer) or acting on it (by otherwise accepting and processing the STR) where it is unclear that the account holder has given consent.

As a municipal gas utility, Kitchener also wishes to note the potential for consumer confusion in the following extract from the proposed disclosure statement for natural gas contracts:

- The **Ontario Energy Board** regulates the natural gas supply price charged by your utility but **does not regulate the price charged by the Marketer.**

It may be helpful to insert the following footnote to the word "utility" above: "For customers served by Kitchener Utilities or Utilities Kingston, the utility gas supply price is regulated by City Council."

I hope these comments are helpful and thank the Board again for this opportunity to provide them.

Sincerely,



James A. Gruenbauer, CMA  
Manager, Regulatory Affairs and Supply

Cc: W. Malcolm (Kitchener)  
N. Taylor (Utilities Kingston)  
J. Alick Ryder, Q.C. (RWBH)