

COMMENTS OF THE CONSUMERS COUNCIL OF CANADA

RE: RETAILER CODE OF CONDUCT, GAS MARKETER CODE OF CONDUCT AND PROPOSED AMENDMENTS TO THE GAS DISTRIBUTION ACCESS RULE - EB-2010-0245

On August 4, 2010, the Ontario Energy Board has ("Board") initiated a consultation process to implement certain consumer protection provisions of the *Energy Consumer Protection Act, 2010* ("ECPA"). The ECPA will, when proclaimed into force, establish a new framework for the regulation of the activities of licensed electricity retailers and gas marketers. Many of the new provisions will be implemented through supporting regulations. The Ministry of Energy and Infrastructure posted draft regulations for comment on July 2, 2010. The regulations have not yet been finalized.

The draft regulations address a number of issues including: (i) what constitutes an "unfair practice"; (ii) the content of contracts; (iii) a requirement for a "disclosure statement" to accompany certain contracts; (iv) the contract verification and renewal processes; (v) contract cancellation ; (vi) training for persons acting on behalf of suppliers; and (vii) a requirement for suppliers to submit a self-certification to the Board as a condition of entering into or renewing contracts.

The draft regulations also contemplate that the Board will develop rules relating to the following: (i) the form and content of "disclosure statement" that must accompany new contracts and contract renewal offers; (ii) the steps to be taken to verify new contracts; (iii) the form and content of telephone renewals; (iv) details of the training that must be completed by persons acting on behalf of suppliers; and (v) the form of self-certification that must be filed with the Board by a supplier as a condition of entering into, renewing, amending or extending a contract once the ECPA has come into force.

On August 12, 2010, the Board issued a series of documents revoking, re-issuing and/or amending the Electricity Retailer Code of Conduct ("Retailer Code"), the Gas Marketer Code of Conduct ("Marketer Code") and the Gas Distribution Access Rule ("GDAR"). The Board is seeking comments on the proposed changes to the Codes and the GDAR and on the proposed disclosure statements, verification call scripts and renewal/extension call scripts. These are the submission of the Consumers Council of Canada ("Council").

General Comments:

The Council is supportive of most facets of the new legislation, and is of the view that significant changes are needed in the Ontario energy retail marketplace. The Council believes that in order to promote choice in retail energy markets it is paramount to provide transparency for residential energy consumers and to ensure that consumers are protected from hidden contract costs, excessive cancellation fees, negative option contract renewals and other unfair industry practices. The anticipated legislation, associated regulations and Board amendments to its Codes and Rules should provide an enhanced consumer protection framework. From the Council's perspective, it is unfortunate that industry practice has dictated the need for such a comprehensive framework to be mandated.

The Council notes that the regulations have not been finalized by the Government and to that end the Board's proposals may have to be changed. From a process perspective the Board should include a step that allows parties to provide further comments in the event the regulations are changed

in any significant way, and the resulting Board proposals are changed as well. In addition, given parties have not had a an opportunity to review the submissions of others a second comment phase should be considered. The Board may also wish to consider a further stakeholder session where parties can better understand the various proposals and alternatives put forward by others.

The Council has assumed that the Board's proposals are consistent with the provisions set out in the regulations. Accordingly, the Council has not undertaken a comprehensive review of the draft regulations and compared them to the Board's proposals. Our starting point has been the documents provided by the Board and the proposals therein. In addition, we are not commenting on all components of the Codes and Rules, only on the elements where we see issues or the need for enhancements.

ELECTRICITY RETAILER CODE OF CONDUCT:

Part B - Section 1

(c) Section c states that the retailer or salesperson should not exert undue pressure on a customer. Although the Council supports this requirement it is a difficult thing to prove. The Board, should through its definition section define what is meant by "undue pressure".

(d) Section d requires the retailer or salesperson to state the price to be paid under the contract for the supply of electricity. What should go hand in hand with this is a statement about the Provincial Benefit/Global Adjustment. One of the current problems in this marketplace is a misunderstanding about the Global Adjustment - what it is, how for retail contracts it represents an adjustment over and above the contract price, etc.

(d) Section d requires that the retailer disclose the price to be paid under the contract. The Council supports the addition of a requirement to provide a side by side price comparison. This was originally proposed in the draft regulations and in recent weeks the Minister of Energy and Infrastructure has urged the Board to require such a comparison. As suggested below such a comparison should accompany the Disclosure Statement.

Part B- Section 3

Section 3.1 sets out what should be stated in a contract between a low volume consumer and a retailer. What appears to be missing is the contract price. This should be explicit and there should be a requirement to include the fact that the Provincial Benefit/Global Adjustment will be in addition to the retailer's contract price.

Part B - Section 4

As noted above, the Council supports the inclusion in any disclosure statement of a side by side price comparison.

Part B - Section 5

Sections 5.2 and 5.3 sets out the training requirements for both a salesperson and a verification representative. Included are reference s to the electricity market structure and "how electricity pricing

works." One of the most confusing aspects of the market is the inclusion of the Provincial Benefit/Global Adjustment. The training should explicitly address this to ensure that staff know the importance of explaining this pricing component to potential customers.

It not clear to what extent training materials are to be reviewed by the Board. The Council sees value in some form of Board review to ensure that the materials are in compliance with the Code.

Part B- Section 10

This section deals with the sale, transfer and assignment of contracts. One of the provisions is that a retailer must notify the Board of any sale, transfer or assignment of contracts within 10 days. The customer must be notified within 60 days. The Council submits that the customers should be notified at the same time as the Board that their service provider has changed. What are the customer's rights if their contract has been sold or transferred? Are there any restrictions as to what the new retailer can do? Are the all of the original contract conditions maintained?

DISCLOSURE STATEMENT - ELECTRICITY:

The Council has the following suggestions regarding the Disclosure Statement:

1. The third point states "You do not have to enter into a contract for electricity supply. Your electricity will continue to be provided as it is now, without interruption." We suggest the following changes, "You do not have to enter into a contract for electricity supply. You have the choice of doing so or to continue to be supplied by your local utility, XXXX. Whether you choose to be supplied by a retailer, or your local utility your electricity will continue to be provided as it is now, without interruption.
2. In the section that refers to the Provincial Benefit it would be useful to add in the following: " To compare what you are paying through your utility, XXXX, to the offer from the retailer you need to add the Provincial Benefit to the contract price."
3. Unless the retailers are providing Time of Use Pricing there should be some reference to the fact that TOU pricing will be provided by the utility, but not the retailers.
4. As noted above the Disclosure Statement should be accompanied by a side by side price comparison. In order to provide a comparison to the TOU rates, some form of a blended price should be used.

CODE OF CONDUCT FOR GAS MARKETERS:

We have reviewed the proposed Code of Conduct for Gas Marketers and have no suggested changes other than to make the parallel changes, where applicable, that we have suggested above.

DISCLOSURE STATEMENT - NATURAL GAS:

The Council has the following suggestions regarding the Disclosure Statement:

1. The third point states, "You do not have to sign a contract for natural gas supply. You natural gas will continue to be provided as it is now, without interruption." We suggest the following changes. "You do not have to enter into a contract for your natural gas supply. You have the choice of doing so or to continue to be supplied by your local utility, XXXX. Whether you choose

to be supplied by a retailer or you local utility you natural gas will continue to flow without interruption."

2. The fourth point states, "The contract is for the cost of the gas itself. You will see other charges on you bill such ad delivery and customer charges. You must pay these charges whether or not you sign a contract." We suggest the following changes, "If you sign a contract it is for the cost of the gas itself, which represents approximately 2/3 of your overall bill. There are other charges on your bill including delivery (the cost of bringing the gas to your home), transportation (the cost of bringing the gas to your utility) and your monthly customer charge (for fixed costs such as billing and meter reading). If you sign with a retailer you will continue to pay the delivery charge and the customer charge. The contract price may or may not include a transportation charge. You should ask the Marketer if the contract price includes a transportation charge."
3. A side by side comparison should also be required as a part of the disclosure statement.
4. There should be some reference to the fact that the gas supply charge of the utility changes on a quarterly basis every three months whereas the contract with the marketer will change according to the terms of the contract.
5. There should be some reference to the fact that under either arrangement you may qualify for an equal billing plan. Under the equal billing plan you pay equal monthly instalments over the course of a year, with an adjustment in late summer to reflect what you have actually consumed.
6. There should be some reference to the fact that although you may choose to be served by a marketer you will still be receiving your bill from you local utility, XXXX.

GAS DISTRIBUTION ACCESS RULE:

The Board is proposing to amend the Gas Distribution Access Rule to facilitate additional cancellation rights for low-volume customers as proposed in the ECPA and draft regulations. The Council supports the amendments as proposed.

ADDITIONAL POINTS:

The Council hopes that the changes proposed by the ECPA, related regulations, Codes and Rules will provide energy consumers with the necessary additional consumer protection measures that to date have not been a part of the retail energy marketplace. Over time further changes or enhancements will likely be required. The Council urges the Board to continue to monitor the extent to which this new framework is appropriate and, going forward, consider how it might be enhanced.

The Council notes that the Board has indicated that it intends to undertake a significant customer outreach initiative designed to inform low-volume energy consumers of the new rights and obligations set out in the ECPA and in associated regulations and Board regulatory instruments. The Board is also developing a comprehensive plan for monitoring compliance by suppliers with their obligations under the new legal and regulatory requirements. The Council looks forward to reviewing the details of these proposals and potentially providing input to the extent that would be helpful to the Board.