



**INFRASTRUCTURE SERVICES DEPARTMENT
KITCHENER UTILITIES**

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BY E-MAIL & COURIER

April 12, 2013

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

Dear Ms. Walli:

Re: EB-2012-0435 – Application by Just Energy (“JE”) for Licences Amendment to Reflect an Exemption from certain Sections of the Codes of Conduct for Gas Marketers and Electricity Retailers (“Codes”) – Comments of the City of Kitchener (“Kitchener”)

Pursuant to the Ontario Energy Board’s (“Board’s”) Notice of Application and Hearing dated March 13, 2013 (“Notice”), Kitchener wishes to provide the following comments.

Kitchener owns and operates a non-rate regulated natural gas distributor which currently provides service to about 65,000 end use customers in its municipal franchise area. The majority of these customers are small volume “consumers” as defined under the Board’s Code of Conduct for Gas Marketers (“GM Code”). As a distributor, Kitchener facilitates retail competition in the supply and transportation of gas in its franchise area by providing bundled direct purchase service arrangements to end users and retail energy marketers such as JE.

Kitchener has been granted a Gas Marketer License GM-2009-0048 with certain exemptions from the GM Code which reflect its role as a municipal distributor of gas that provides a default (non contract) supply service at cost to customers within its franchise area who do not choose retail supply options from gas marketers such as JE. In granting Kitchener these exemptions under the GM Code, the Board determined as follows in its EB-2010-0407 Decision and Order dated March 14, 2011:

“The Corporation [Kitchener] does not enter into gas supply contracts with its customers, nor does it employ salespersons who are marketing natural gas on its behalf. The Corporation is appropriately exempt from sections of the Code that impose requirements related to activities that the Corporation does not undertake.” [emphasis added]

On a plain reading of this finding by the Board, it is an eminently reasonable basis on which to grant an exemption. However, the exemptions under the Codes which JE seeks in its Application clearly relate to activities that it does undertake. These activities involve gas supply contracts and salespersons who are marketing natural gas on behalf of JE.

In this context, Kitchener tends to agree with the comments of Ag Energy dated March 27, 2013 in this proceeding, particularly those comments related to the need for marketers to maintain a disclaimer in their disclosures to consumers that energy cost savings under the contract are not guaranteed. Kitchener agrees with Ag Energy that fully supporting the spirit of the Energy Consumer Protection Act ("ECPA") is paramount. In Kitchener's view, it is unlikely that the spirit of the ECPA would contemplate the use of the phrase "guaranteed savings" in anything other than an absolute sense, i.e. without any requirement to meet certain conditions to "guarantee" the savings.

Kitchener would also observe that "savings" are typically measured against other options or price benchmarks, for example, a retail supply offer as compared to the default supply rate of a distributor. Attempts to measure and disclose the "savings" possible over a multi-year retail contract are problematic at best (and misleading at worst) when the default supply rate is subject to change and the extent of that change over the term of the retail contract cannot possibly be known at its outset. In our view, this is another reason for the Board to maintain under the Codes for JE (and other marketers) the existing disclaimers in their disclosures to consumers that energy cost savings are not guaranteed.

We hope these comments are helpful and thank the Board for the opportunity to provide them.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Gruenbauer', is written over a faint, circular official stamp.

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

Cc: N. Ruzycki (Just Energy)
W. Malcolm (Kitchener)
L. Baillargeon (Kitchener)