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Our File No. 145230

VIA RESS, EMAIL AND COURIER

Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario
M4P 1E4

Attention: Kirsten Walli,
Board Secretary

Dear Ms. Walli:

Re: Board File No. EB-2014-0158

Please find attached Written Comments of BOMA.

Yours truly,

FOGLER, RUBINOFF LLP

Thomas Brett
TB/dd

cc: Martine Band (*via email*)
Marion Fraser (*via email*)

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O, 1998, c. 15, Schedule B;

AND IN THE MATTER OF the consultation to review Part II of the Energy Consumer Protection Act, 2010.

**Written Comments of
Building Owners and Managers Association, Greater Toronto ("BOMA")**

General Comments

The *Energy Consumer Protection Act* should be merged with Ontario's *Consumer Protection Act* and be dramatically broadened to cover the full range of relationships and transactions between energy and energy service providers and their consumers. The current legislation was designed to deal with a flood of complaints to MPPs and others with respect to the business practices of specific electricity retailers and gas marketers. It was also political expedience that resulted in the inclusion of suite metering in the legislation when it most assuredly belonged in *The Residential Tenancies Act*.

With respect to commodity sales for electricity there is more than a decade of such experience and for natural gas, more than 2 decades. Yet consumers are still falling prey to sales people taking advantage of their confusion, limited skills in the English language, fear of authority, etc. With respect to this matter, the Ontario government should conduct a study to determine how much economic rent retailers and marketers are extracting from the energy economy and make informed decisions about the future of these elements in the energy sector.

However, it is not only the contracts for sale of the commodity that presents problems. Consumers in Ontario are woefully unprotected not just from door to door commodity hucksters, but also the whole energy supply chain that enables consumers to purchase energy and transform it into the energy services that what consumers really want – hot showers, cold beer and a comfortable home at the least cost. On the electricity side, the market price of the commodity makes up only a small fraction of cost to consumers. The lack of transparency and lack of price signals with respect to the Global Adjustment, the seemingly never-ending debt retirement charge, postage stamp transmission rates, high fixed customer charges, confound consumers' understanding of their electricity bill. Increasingly, consumers who install energy efficient products or diligently take advantage of time of use electricity rates are frustrated because they do not see the results in their bills.

A ground breaking International Energy Agency report asserts the following¹:

¹ <http://www.ieadsm.org/Files/Exco%20File%20Library/Country%20Publications/SAvedoc.pdf>

The cost-effective supply of end-use energy (e.g. gas, electricity) is only a necessary, not a sufficient condition for an efficient allocation of resources. End-use energy is not the end product, but only an intermediate product. Final consumers in industry, the private and public service, and the residential sector do not benefit directly from end-use energy, e.g. gas or electricity, but from genuine (physical) energy services, e.g. properly lit and heated rooms, "hot pizza and cold beer". Therefore these genuine energy services, not energy ("kilowatt-hours") have to be provided with as little damage to health and environment and at the least cost.

...

It is not sufficient to limit market reforms (or consumer protection) to only a part of the market by stopping at end-use energy. This is a clear result of economic theory: Only the optimisation over all stages of the production process of genuine energy services leads to efficient allocation, i.e. to a least-cost provision of genuine energy services. Thus, an integrated consideration of the market for the basic factors of production, the markets for primary, secondary and end-use energy, the market for energy efficiency technologies and services which are used to transform end use energy into genuine energy services, and the market for genuine energy services itself is needed, taking care of the interdependencies of the markets.

Consumer protection with respect to the safe use of energy and energy using products is well developed in Ontario and Canada from product standards and safety to building codes and to Measurement Canada's rules to ensure the integrity and accuracy of measurement in the Canadian marketplace. Consumer protection with respect to the cost and efficacy of energy services is not.

The *Ontario Building Code* is a case in point. Only recently has energy efficiency and conservation been expressed as an objective of the Code. Based as it is on the federal Model National Energy Code for Buildings, the provincial code is dependent on municipal enforcement which remains focused on safety issues. In fact recent research by EnerLife Consulting has found no correlation between energy intensity in buildings and building vintage. Even the Green Building Council's LEED rating system may not be delivering on its promises. *"The LEED system has changed the market for environmentally friendly buildings in the US, but there is an enormous problem: the best data available shows that on average, they use more energy than comparable buildings. What has been created is the image of energy efficient buildings, but not actual energy efficiency."*²

In simple terms, the ECPA should cover all entities that sell energy and energy using system, equipment and buildings including government agencies to protect consumers from fraud, negligence, errors in information, billing, and errors in efficiency information. All buildings, including homes should have an energy rating such as Energy Star.

Responses to Questions for Written Comment

1. What are the hallmarks of effective consumer protection legislation against which the ECPA should be assessed?

BOMA suggests that the most comprehensive discussion of the objectives of consumer protection

² <http://built-envi.com/do-leed-buildings-save-energy-yes-no-it-depends/>

legislation reside in the OECD Guidelines.³ They are paraphrased below:

- **Transparent and Effective Protection**
- **Fair Business, Advertising And Marketing Practices**
- **Accurate, Clear and Easily Accessible Information about the Business**
- **Accurate, Clear and Easily Accessible Information about the Goods Or Services**
- **Accurate, Clear and Easily Accessible Information about the terms, conditions and costs associated with a transaction to enable consumers to make an informed decision about whether to enter into the transaction**
- **Transparent and Certain Confirmation Process to avoid ambiguity concerning the consumer's intent to make a purchase: The consumer should be able, before concluding the purchase, to identify precisely the goods or services he or she wishes to purchase; identify and correct any errors or modify the order; express an informed and deliberate consent to the purchase; and retain a complete and accurate record of the transaction.**
- **Secure Payment Process: easy-to-use, secure payment mechanisms and information on the level of security such mechanisms afford.**
- **Fair and Timely Dispute Resolution and Redress without undue cost or burden**
- **Fair and Timely Alternative Dispute Resolution and Redress without undue cost or burden**
- **Privacy**
- **Applicable Law and Jurisdiction**
- **Education and Awareness**

2. Is the ECPA providing an appropriate level of protection for Ontario's low-volume energy consumers? Please explain why.

Category	Electricity Retailers	Natural Gas Marketers
Transparent and Effective Protection	No	No
Fair Business, Advertising And Marketing Practices	No	No
Information about the Business	No	No
Information about the Goods or Services	No	No
Information about the transactions	No	No

³ <http://www.oecd.org/internet/consumer/34023235.pdf>

Confirmation Process	No	No
Secure Payment Process	No	No
Dispute Resolution and Redress	No	No
Alternative Dispute Resolution and Redress	No	No
Privacy	No	No
Applicable Law and Jurisdiction	No	No
Education and Awareness	No	No

3. What specific aspects of the ECPA are working well in terms of consumer protection? Please explain why and in what way you believe they are working well.

None

4. What specific aspects of the ECPA are not working well in terms of consumer protection? Please explain why and in what way you believe they are not working well.

- The legislation lacks basic objectives and focuses too heavily on the process. The legislation should leave the process to the Ontario Energy Board to develop and enforce.
- The high incidences of “Voluntary Assurances” and the few incidences of fines despite the negative reputation of the industry suggest that more is required on enforcement.
- It fails to protect consumers from higher than necessary bills leaving the Ontario Energy Board to focus on rate regulation.
- The scope of the legislation is too narrow. Even the marketers and retailers who also pursue product/services sales and rentals and use similar sales tactics as those addressed in the Act are free to do so.
- A greater emphasis must be put on education and awareness to achieve greater energy literacy in the province.

5. What changes do you think should be made to the ECPA at this time? For each change that is proposed, please identify the risks or benefits of making or not making the change at this time.

The general comments above include the recommend changes and the rationale. However, realistically such drastic changes are not expected. Recommended changes to the existing legislation are as follows:

- Include a clear statement of objectives for the legislation to help consumers understand the fundamental principles behind the legislation
- Expand the scope of the legislation to include all entities that produce/sell/deliver energy to consumers to ensure broader protection of consumers.
- Require the Ontario Power Authority (including its successor company) to disclose full the components of the Global Adjustment and require that the Global Adjustment be allocated on a time of use basis so that the differential between peak and off peak rates are is greater and

customer have a better opportunity to achieve savings by switching their use to off peak times.

- Include additional bill protection for low income consumers and consumers who are required to use medical devices in their homes.
- Require all covered entities to file prescribed company information for public access on the Board website including information on affiliated companies. The current approach, access to the companies' websites" alone creates an unspecified endorsement of their advertising messages.
- Lengthen the verification period for contracts to include at least one full billing period so that consumers understand the impact of the contract.
- In the signing a document section, the legislation should be revised include all electronic communication devices including tablets and smart telephones rather than only computers to reflect the use of such devices enable mobile data.

6. What are the key aspects of the Ontario retail energy markets that the Board should consider in assessing how effective the ECPA has been in protecting the interests of Ontario's low volume energy consumers and in considering options for change? Please explain why these aspects are important considerations for the Board.

The Board should develop a full range of recommendations for the government including the pros and cons of abandoning the retail option the low volume market and replacing the current regulatory regime with one that includes greater consumer protection with respect to bills and conditions of service.

7. Are there lessons to be learned from experience with consumer protection in retail energy markets in other jurisdictions that can be applied to Ontario?

Given the low participate rate of residential consumers, in the United States; perhaps Ontario should abandon retail energy markets for low volume customers.

In the US seventeen states and the District of Columbia have adopted electric retail choice programs that allow end-use customers to buy electricity from competitive retail suppliers. While residential customer participation rates are low in almost all of these states, a majority of commercial customers have signed up with competitive suppliers in 9 states and a majority of industrial customers have signed up in 12 states. Overall, competitive retail suppliers provided 16% of total U.S. retail sales by volume in 2010.

8. Are there lessons to be learned from experience with consumer protection in other markets that can be applied to the retail energy markets in Ontario?

The State of New York is engaged in "Reforming the Energy Vision⁴". It entails a fundamental re-think of

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[http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/26be8a93967e604785257cc40066b91a/\\$FILE/ATTKOJ3L.pdf/Reforming%20The%20Energy%20Vision%20\(REV\)%20REPORT%204.25.%2014.pdf](http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/26be8a93967e604785257cc40066b91a/$FILE/ATTKOJ3L.pdf/Reforming%20The%20Energy%20Vision%20(REV)%20REPORT%204.25.%2014.pdf)

the relationship between consumers and energy companies regulated by the State. Its objectives are as follows:

While the bulk power system has seen major regulatory changes in recent decades, the basic cost-of-service paradigm for regulating distribution utilities remains in place. Current ratemaking provides few incentives for utilities to innovate or to support third-party innovation, to address the current challenges in ways that promote a more efficient system and benefit consumers. Programs to encourage efficiency and clean energy are funded through surcharges and programs that are not directly integrated with utility business models. Although the existing paradigm served adequately for many years, it now falls short of the pace of technology development that defines many parts of our economy.

This report proposes a platform to transform New York's electric industry, for both regulated and non-regulated participants, with the objective of creating market based, sustainable products and services that drive an increasingly efficient, clean, reliable, and consumer-oriented industry. One key outcome of the transformation is to address the Commission's stated objective to make energy efficiency and other distributed resources a primary tool in the planning and operation of an interconnected modernized power grid. Under the customer-oriented regulatory reform envisioned here, utilities will actively manage and coordinate a wide range of distributed resources to accomplish the policy objectives described by the Commission. Markets and tariffs will empower customers to reduce and optimize their energy usage and electric bills, and will stimulate innovation and new products that will further enhance customer opportunities.

9. What other questions should the Board consider including as points for discussion at the stakeholder forum?

- **Protecting Ontario consumers from non-retail entities in the energy sector.**