



November 20, 2014

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

Via web portal and by post

Dear Ms. Walli:

Re: Board File No. EB - 2014- 0158
Consultation on the Effectiveness of Part II of the *Energy Consumer Protection Act, 2010*

The Electricity Distributors Association (EDA) is the voice of Ontario's local electricity distribution sector, which consists primarily of municipally and privately owned local distribution companies (LDC). The distribution sector delivers power to Ontarians through 4.9 million residential, commercial and institutional customer accounts. The sector employs 10,000 people directly and holds \$19 billion in assets; it has \$1.9 billion in annual capital spending and \$1.6 billion in annual operational spending; and makes hundreds of millions in direct contributions to both municipal and provincial revenues.

The EDA has consulted with its membership on the questions posed in the OEB letter to stakeholders dated October 23 regarding the review of the *Energy Consumer Protection Act, 2010*. The response to the questions is attached. The EDA looks forward to participating in the stakeholder discussion to be held on December 8 and 9.

Sincerely,

"Original Signed"

Teresa Sarkesian
Vice President, Policy and Government Affairs

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Electricity Distributors Association Submission on Effectiveness of Part II of the Energy Consumer Protection Act, 2010

On April 8, 2014 the Ontario Energy Board (OEB) issued a letter that indicated the Minister of Energy, through a letter dated December 18, 2013, had requested the OEB to undertake a review of Part II of the *Energy Consumer Protection Act, 2010* (ECPA) and report back.

The April letter noted that the OEB would consult broadly and engage the services of consultants with expertise in consumer research and in the history, development and evaluation of the retail energy markets. The letter indicated that in undertaking its review of the effectiveness of the current legislative and regulatory regime, the OEB would have due regard to a number of considerations, including: (i) consumer experience with suppliers; (ii) the OEB's experience with oversight of the retail energy sector; (iii) the conduct of suppliers; (iv) the nature of products offered by suppliers; and (v) the state of the retail energy markets having regard to developments since their inception.

On July 21, 2014 the issued a letter that provided details on the consultation and the OEB's approach to the review. The OEB retained Professor Donald Dewees, Professor Emeritus of Law & Economics at the University of Toronto, to assist with the evaluation of the ECPA and related market issues and retained Innovative Research Group to provide expert advice and assistance in eliciting the views of consumers on the retail energy markets and the ECPA.

On October 23, 2014 the OEB issued a letter announcing a stakeholder forum in December and a request for stakeholders to respond to nine questions on consumer protection issues. The EDA response to these nine questions follows.

The October letter noted that the stakeholder forum will allow stakeholders an opportunity to discuss the findings from the consumer research activities and discuss the effectiveness of Part II of the *Energy Consumer Protection Act, 2010* and opportunities for improvement. The OEB has not indicated whether or when it would provide an opportunity to discuss the evaluation of the retail energy market and state of the retail energy markets since its inception given the developments in the Ontario's electricity market. After Ontario moved away from the open market concept for the electricity industry, the OEB developed the Regulated Price Plan (RPP) that provided stable and predictable electricity pricing. That diminished the need for electricity retailers in Ontario by addressing the consumer's desire for predictable electricity rates. In the Ontario Auditor General's 2011 Annual Report, it noted that electricity customers who signed with electricity retailers were paying between 35 to 65 per cent more than customers paying the standard RPP rates. The EDA understands that some customers pay premiums to acquire supply from renewable generation, but the vast majority of retailers primarily offer a fixed rate service on the basis that it avoids volatility and commodity price increases, even though bill increases recently have been primarily driven by changes in the global adjustment which cannot be fixed through a retail contract. The EDA believes the role of retailers in the electricity market in Ontario must be reviewed to assess the actual value they bring to Ontario consumers. As you know, the EDA is on record to eliminate fixed price contracts for residential customers. While

efforts to assess the effectiveness of the ECPA are beneficial, the issue of the role of electricity retailers needs to be examined as soon as possible.

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

The EDA reviewed the *Consumer Protection Act* of Ontario, the *Fair Trading Act* of Alberta, the *Business Practices and Consumer Protection Act* of B.C and the *Consumer Protect Act* of Quebec.

The hallmarks of effective consumer protection legislation are based on a clear definition of consumer rights in relation to a service.

In each province the consumer protection legislation identifies and deals with:

- Salesperson's representations
- 'Cooling-Off' Period (defined in days etc)
- Absolute cancellation right
- Extended cancellation in certain circumstances
- Method of cancellation
- Effect of cancellation of contract
- Responsibilities on cancellation
- Recovery of refund and trade-in allowance
- Contents of sales contract
- Proper Explanation of Fees and Penalties by Suppliers
- Cancellation of optional services
- Default charges
- Invitation to defer payment
- Manner of determining prices

Consumer protection legislation identifies and deals with any of the following, as an example of a deceptive act or practices:

- that the supplier has a sponsorship, approval, status, affiliation or connection that the supplier does not have,
- that a service, part, replacement or repair is needed if it is not,
- that the purpose or intent of a solicitation of, or a communication with, a consumer by a supplier is for a purpose or intent that differs from the fact,
- that a consumer transaction involves or does not involve rights, remedies or obligations that differs from the fact,
- about the authority of a representative, employee or agent to negotiate the final terms of a consumer transaction if the representation differs from the fact,
- that uses exaggeration, innuendo or ambiguity about a material fact or that fails to state a material fact, if the effect is misleading,
- that a consumer will obtain a benefit for helping the supplier to find other potential customers if it is unlikely that the consumer will obtain the benefit,

In terms of remedy options available to consumer, the legislation identifies and deals with:

- Court action available to consumer
- Regulator Options
- Provincial Court Options
- Arbitration Options
- Court action by consumer organizations
- Advertisement guidelines of judicial decisions

With respect to issues related to the compliance of suppliers, the legislation identifies and deals with:

- Compliance of Suppliers
- Consequences of Non-compliance with the Act
- Consequences of Non-compliance with regulations
- Consequences of Non-compliance with orders, etc.
- Penalty Structure for Suppliers
- Vicarious liability
- Time limit for prosecution
- Restitution Process
- Whether negotiated settlements are accepted
- Appeals Process

The ECPA could provide greater clarity on the consequences of non-compliance and the penalty structure for suppliers.

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

The number of customer complaints over the past few years is an indication that despite the added protection from the ECPA, there are still issues with the existing rules. Consumers still do not have the right information to make an informed decision.

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.

The ECPA helped reduce some customer complaints by providing a 10 day 'cooling-off' period, and a 30 day period after the first bill to cancel the contract. In addition, the rules requiring the salesperson to provide a business card and identify who they represent have assisted in reducing some customer confusion, but problems remain.

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 aspect not working well is ensuring customers have the right information to make an informed decision. Customers do not have a good understanding of how the RPP includes the

global adjustment and that the global adjustment would be separated out if one signs with a retailer. Customers do not understand what parts of the bill are projected to increase and to what extent signing a contract would not protect the customer from most of the projected increases.

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 following proposals were developed by the EDA based on input from members and practices in other jurisdictions on what may improve consumer protection:

- Require retailer, including door-to-door salesperson to provide an OEB prepared pamphlet/guide to customer highlighting the bill changes, bill comparators, the treatment of the global adjustment, and rights to opt out, and where additional information is available on the OEB website;
- Customers should be provided a bill comparator in the pamphlet showing how the contract price plus the global adjustment compares to the RPP in information provided by the retailer;
- Post on OEB website customer service record of each retailer with listing of complaints, fines and poor practices;
- Fines and penalties should be predefined for each type of offence, be more severe for repeat offenders, and include when licence would be suspended or revoked;
- Increase period to allow cancellation of contract from 30 days to 60 days;
- Require low income customers participating in utility low income assistance programs to only sign contracts that guarantee savings over what the customer would have been charged by the utility.
- Limit contracts to 5 years – contracts cannot be renewed without signed written confirmation of the new contract.
- Require retail contracts to follow a format with explanation of all the contract terms; Set out mandatory wording that must appear in contracts to disclose key consumer rights; Set out a plain-language disclosure cover page for door-to-door contracts.

A separate proposal that would address many issues would be an outright ban on door-to-door marketing of electricity contracts. The EDA believes the benefits of these proposals would be to reduce the number of customer complaints by increasing customer understanding. The risk of not making changes is the continuation of ongoing customer complaints, customer confusion and customers overpaying unnecessarily.

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 key measure for measuring the success of consumer protection is the reduction of customer complaints, not just overall, but in particular from the retailers who have had the most complaints in the past. Some retailers have noticeably much higher number of complaints than others. It is not clear from the OEB web posts on supplier complaints to what extent the higher number of complaints is caused by the number of customers signed. The OEB should have a target score based on the best performing retailers, and measure success based on the difference with the worst performers.

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?

The EDA has reviewed consumer protection rules in many other jurisdictions and believes the following rules would be beneficial in Ontario.

The Office of the Utilities Consumer Advocate was created in October 2003 to represent the interests of electricity and natural gas consumers (residential, small business, farm) in Alberta. Their rules include the following:

- Contract charges are not regulated, but competitive retailers are licensed by Service Alberta under the Fair Trading Act.
- Service Alberta reviews the companies' retail contracts before granting the license to offer competitive electricity and/or natural gas service
- Retailer must provide all relevant disclosure information prior to customer signing
- Customers who sign by telephone can cancel a contract without any cancellation fees up to 60 days after receiving their first bill
- Contracts cannot exceed 5 years
- Retailers are not allowed to contact customers in any form between 9 pm to 8 am for soliciting purposes

The NY Public Service Commission maintains the Energy Service Company Residential Complaint Rate Scorecard that reflects the residential customer complaint rate for the reporting period for each of the energy service companies (ESCOs) serving at least 1,000 customers in the New York State energy market. The complaint rate is based on an average of the total number of complaints received during the reporting period, irrespective of whether or not the ESCO was determined to be at fault or adequately resolved the consumer's complaint. Other provisions include:

- Low Income customers participating in utility low income assistance programs can only sign up for ESCO products that guarantee savings over what the customer would have been charged by the utility, or that provide energy-related services that are designed to reduce a customer's overall energy bill;
- Imposition of a requirement to record all telephonic marketing presentations, which shall be made available to the Department for review;
- Reimbursements to customers who did not receive savings promised in the ESCO's sales agreement/Customer Disclosure Statement or substantially demonstrated to have been included in the ESCO's marketing presentation or to customers who incurred costs as a

result of the ESCO's failure to comply with the marketing standards set forth in the regulations.

Massachusetts Attorney General has established Regulations 940 CMR 19.00 that competitive suppliers and electricity brokers must follow:

- Retailers are required to provide proper ID and disclosure statements to potential customers, including stating that signing up with a retailer will not necessarily lead to savings on their bills;
- Any violations can lead to formal notice from the Department of Public Affairs, a hearing between the customer and the company for dispute resolution and other necessary measures.

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?

Recently there have been similar concerns raised on “door-to-door” practices from water tank rental companies. Concerns have arisen on high pressure tactics and questions raised on what protections are needed for consumers from “door-to-door” salespersons. The Stronger Protection for Ontario Consumer Act, which amends the 2002 Consumer Protection Act (CPA) passed recently allowing for longer cooling off periods for water heater rental agreements and mandating key plain-language disclosure documents to be provided to customers. Given that the CPA is for overall consumer protection for Ontarians, the OEB should be reviewing the ECPA in line with the amended CPA to ensure consumer protection rules are consistent.

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

A key question is what is the role retailers play in the electricity market. Some retailers focus on providing customers the option to pay a premium price to support renewable generation. Others provide a long term fixed contract in order to make prices predictable and stable. The EDA believes the RPP already provides customers with a predictable and stable price. Customers should be made aware that signing a retail contract does not shield the customer from changes in other parts of the bill, in particular the global adjustment which at times can be very variable and has been increasing.

Again, we request that the OEB examine the state of the retail electricity market in Ontario, as it identified in its earlier correspondence this year.