

November 21, 2014

VIA RESS AND COURIER

Ms. Kirsten Walli
ONTARIO ENERGY BOARD
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Dear Ms. Walli:

Re: EB-2014-0158: Consultation on the Effectiveness of Part II of the *Energy Consumer Protection Act, 2010 (ECPA)*.

Initial Comments of Just Energy

We are legal counsel for Just Energy Ontario L.P. (Just Energy) in respect of the captioned consultation. By letter dated October 23rd to all participants in this consultation the Board has invited written comments on a set of questions attached to the letter.

The Board has indicated in previous communications regarding these consultations (in particular in its letter to interested parties dated July 21, 2014) that it has retained external expertise to support the Board's consideration of the effectiveness of the *ECPA*. Innovative Research Group has been commissioned to conduct extensive consumer research. Professor Donald Dewees has been retained "to assist with the evaluation of the *ECPA* and related market issues". In addition to this external input, the Board Staff has gathered from retailers an extensive amount of historical data, dating back to 2009.

The Board has indicated that the results of its consumer research are to be one of the topics of discussion at the stakeholder forum currently scheduled for December 8th and 9th. To date, the Board has not published any materials in respect of the outcome of any of its investigations.

It would be premature to provide comprehensive response to the Board's questions without information on what the Board is being told by its staff and experts about the effectiveness of the *ECPA*. Just Energy currently intends to provide more comprehensive response to the Board's questions, and any conclusions or recommendations provided to the Board by its external experts and staff, once such conclusions or recommendations, and the basis therefore, have been disclosed. Just Energy expects that, in accord with basic procedural fairness, the Board will provide further opportunity for interested parties to comment once the substance of its deliberations and concerns, and the information supporting those deliberations and informing those concerns, is made public.



In the interim Just Energy provides the attached initial comments, in support of an informed discussion at the upcoming stakeholder forum.

Yours truly,

A handwritten signature in dark ink, appearing to read "Cathy Sullo".

for: Ian A. Mondrow

IAM:cag
Attach.

- c. Jonah Davids (Senior Vice-President, Legal and Regulatory and General Counsel, Just Energy)
Nola Ruzycski (Vice-President, Regulatory Affairs, Just Energy)
Martine Band (Associate General Counsel, OEB)

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ONTARIO ENERGY BOARD

**Consultation on the Effectiveness of Part II
of the *Energy Consumer Protection Act, 2010 (ECPA)***

Initial Comments of Just Energy Ontario L.P. (Just Energy)

Introduction to Just Energy

1. Just Energy Group is a provider of energy solutions to residential and commercial customers. Just Energy's products include fixed and variable electricity and natural gas supply, green energy gas and electricity supply, home and commercial HVAC and related appliances including energy efficiency products and energy brokerage services for larger volume consumers. Just Energy is actively pursuing opportunities in the residential solar market.
2. The Just Energy Group currently serves 21 markets across North America (6 Canadian provinces and 15 U.S. states) and the U.K. market, providing energy solutions to approximately 2 million homes and businesses.
3. Established in 1997, Just Energy is a publicly traded corporation (NYSE:JE and TSX: JE) and parent to affiliate companies Amigo Energy, Commerce Energy, Hudson Energy, National Home Services¹, and Tara Energy.

¹ (Marketwired via COMTEX) -- Just Energy Group, Inc. ("Just Energy" or the "Company") announced that Reliance Comfort Limited Partnership ("Reliance") has received a "no-action letter" confirming that the Competition Bureau has reviewed Reliance's proposed acquisition of the shares of National Energy Corporation (which operates under the name National Home Services), Just Energy's water heater and HVAC home services business. The receipt of the "no-action letter" satisfies the *Competition Act* condition under the Purchase Agreement for the consummation of the transaction. Just Energy anticipates that the transaction will close prior to the end of November, 2014.

4. In Ontario, Just Energy employees over 700 people, in addition to the roughly 130 independent sales agents engaged in selling Just Energy's products across the province. We have 12 sales offices in Ontario and 3 corporate offices.
5. As is the case with other established energy and energy services retailers in the province, Just Energy is an active business, serving customers, transacting in the energy sector, and providing jobs to Ontarians.

Just Energy Green Energy Products

6. As a retailer of natural gas, electricity, and related energy services products, Just Energy is particularly proud of its green energy/energy conservation offerings. These offerings support government green energy and conservation policies, and respond to customers' increasing demands for green products and services.
7. In the case of "green" natural gas and electricity supply, Just Energy is among those sector participants meeting a consumer need that the regulated suppliers do not fulfill.
8. Just Energy is one of the largest green energy retailers in North America. Just Energy's green products and programs have helped to offset over 4.2 billion pounds of carbon emissions to date, the equivalent of taking over 400,000 cars off the road for a year. Just Energy has purchased over 8 million MWh of renewable energy to supply its customers; enough to power 500,000 homes for a year.
9. Just Energy's JustGreen Gas product purchases and retires independently certified carbon credits to offset 1.8 kgs of CO₂ for each cubic meter which the customer consumes, adjusted by the "JustGreen % Offset Gas" chosen by the customer in their agreement (ranging from 0% through 100%, depending on customer category and sales channel).

10. Just Energy's JustGreen Electricity product purchases and retires a block of renewable energy certificates or attributes equivalent to the customer's electricity use, multiplied by the "JustGreen % Renewable Energy" chosen by the customer in their agreement (ranging from 0% through 100%, depending on customer category and sales channel). The customer can discontinue the green electricity component of their agreement at any time.
11. In support of its Ontario JustGreen Electricity product, Just Energy commits to; a) obtaining carbon credits or green energy produced in the year, or in the preceding or following year; and b) sourcing its green energy supply, on a best efforts basis, from Ontario based green energy projects.
12. In support of its green electricity supply obligations, Just Energy purchases green power and/or green attributes from a variety of renewable sources including wind, solar and hydroelectric.
13. Through the Just Energy Conservation Program (JECF) product, Just Energy offers fixed monthly rate electricity and natural gas supply combined with a "SmartStat" smart thermostat. This product responds to customer's desire for predictable monthly energy payments (like they have for phone or cable services) while at the same time providing mechanisms and incentives to encourage efficient energy consumption.
14. The SmartStat which is supplied, installed and serviced without additional charge as part of the JECF product is an advanced user interface which is controllable through wifi and the internet. The algorithms programmed into the SmartStat take into account factors such as weather, size of home, number of occupants and type of HVAC system to maximize energy efficiency. The JECF product further incents energy savings by providing a \$200 customer rebate for natural gas consumption reductions of 10% or more and electricity consumption reductions of 5% or more. The service also includes monthly report cards grading a customer's energy efficiency relative to the average Ontario household.

Just Energy Corporate Social Responsibility

15. Just Energy also supports the communities in which it operates. Apart from job creation and participation in the commercial transactions at the wholesale and retail levels of the energy sector, Just Energy and its employees engage in energy and environment related event sponsorships, charitable donations and community and corporate fundraising.
16. As part of its corporate social responsibility program, Just Energy donates green energy and carbon offsets to Earth Rangers. Earth Rangers is an Ontario based not for profit organization that works with children to save animal habitats. Each year Earth Rangers visits schools across Canada to educate children about the environment, endangered species and ways they can help make a difference. As the official offset provider of the tour, Just Energy has ensured that the transportation emissions of the tour have been completely offset by local emission reduction projects. Just Energy also works with Earth Rangers to ensure that the equivalent of the energy they consume that they are unable to produce on their own is generated by local renewable energy sources such as wind and hydro power.
17. With the establishment of the Just Energy Foundation in December 2013, Just Energy has so far partnered with the following charitable organizations in Ontario: Daily Bread Food Bank (Toronto), the ALS Association (Canada), the Scott Mission (Toronto), Family Life Resource Centre (Brampton), Big Brothers Big Sisters of Toronto, and Free the Children. The Foundation was established to help registered Canadian and U.S. charitable organizations secure the resources required to promote the health and well-being of communities in need. Funded entirely by Just Energy, the Foundation invests in local programs that work to enhance the quality of life in Just Energy's operating markets towards building stronger and supportive communities.

18. Just Energy has traditionally supported charitable organizations in Canada and the United States that make positive contributions to energy consumers. These organizations have included the Salvation Army's Share the Warmth Fund, Gift of Warmth, and Neighbor For Neighbor Heat Fund, through which Just Energy provides financial aid to low income residents in need of energy bill payment assistance. Just Energy has provided similar assistance through the Mustard Seed organization in Alberta, The Heat & Warmth Fund (THAW) in Michigan, EnergyShare in New York, and Sheltering Arms Senior Services in Texas. Through such support, Just Energy will continue to help local organizations through the Just Energy Foundation that work to ensure the community's most vulnerable residents do not have to forego basic human needs, such as warm shelter.
19. Just Energy has also contributed towards building a stable and positive future for children. In California, Just Energy also supported the Orangewood Children's Foundation in Orange County through the donation of servers that help maintain and improve databases to better manage client cases, and assist foster youth in locating housing and community resources. Through a partnership with Tim Horton Children's Foundation, Just Energy provided local, economically-disadvantaged youth with the opportunity to High Five the Toronto Raptors basketball team as players enter the game court moments before tip-off. This provided children in our community with a chance to get up close to some of their biggest sports heroes and role models. Just Energy donated 2,000 Toronto Marlies tickets to the Tim Horton Children's Foundation to enable approximately 500 economically disadvantaged youth and their families attend a Toronto Marlies game.
20. In summary, as an active and socially responsible member of the business communities in the retail markets in which it remains active, Just Energy contributes to the health, well-being, education and vulnerable energy consumer support services in those communities.

Commitment to Consumer Protection

21. The energy retail sector has a bad reputation among many. Energy is a complex business for the average consumer, and attitudes of incumbent institutions towards innovative, entrepreneurial and different approaches to provision of energy services is not always positive.
22. Given this context in particular, Just Energy takes consumer protection very seriously. It has invested in excess of \$1 million to date, and continues to invest time and resources, in a number of leading edge internal quality assurance, monitoring and compliance processes in order to support its customers' experience. Both the operations teams (through Just Energy's quality assurance initiatives) and the compliance teams (through Just Energy's detailed compliance processes) are trained and engaged in support of these processes. All of Just Energy's external sales offices are contractually bound to support and adhere to these processes.
23. These leading quality assurance and compliance processes include:
 - a. Daily reports from each Just Energy sales office outlining any complaints received the previous day involving sales people dispatched by the subject office.
 - b. Weekly reports of complaints by sales agent, providing metrics to evaluate the subject sales agent's conduct including numbers of contracts submitted and accepted, previous complaints and findings regarding those complaints.
 - c. Daily reports to Just Energy's compliance team listing terminated or suspended sales agents and cross-coding any continuing enrollments of customers whom the subject sales agent engaged so that the compliance team can track the customer experience for those sales and take mitigative action as appropriate.
 - d. Bi-weekly conference calls with each Just Energy sales office to review recent statistics and reports, address complaints, take applicable remedial actions, reiterate customer experience and compliance expectations, address coaching opportunities and provide guidance to address any

areas of customer experience or compliance weakness identified through the reports generated.

- e. On a weekly basis, letters are generated for each sales agent subject to a customer complaint to sign, acknowledging internal compliance findings, associated consequences, and expectations going forward.
 - f. In support of all of the foregoing activities, Just Energy applies a “point” system to transparently track the number of customer complaints received regarding any sales agent, and to ensure that continuing or recurring issues with a particular sales agent are readily identified, appropriate communicated and decisively addressed.
 - g. Compliance team members are required to complete, monthly, Quality Assurance forms, designed to ensure that these compliance specialists remain accurate and consistent in their approaches to investigation and resolution of complaints.
 - h. A monthly compliance team review of an escalated complaint chosen by management, including its investigation and resolution, to facilitate consistency in future complaint handling and resolution.
 - i. Daily compliance team complaint pending reports and time tracking to facilitate meeting complaint resolution deadlines and other metrics.
24. In support of all of the foregoing activities, and additional compliance initiatives and responsibilities, Just Energy’s Ontario operations and compliance teams commit more than 80 person hours per week on quality assurance and monitoring activities.
25. Just Energy has also voluntarily adopted “best practices” gleaned from its experience across jurisdictions in support of a robust and positive consumer experience. For example:
- a. Just Energy utilizes a full two day, in class training program, which program incorporates, and extends, the OEB’s training requirements, and uses “role playing” techniques to model expected sales agent behaviour.
 - b. Part of Just Energy’s training protocols are “field shadowing” requirements for new sales agents by more experienced and trained supervisors.
 - c. Just Energy sales representatives are required to wear Just Energy branded clothing.

- d. Just Energy sales representatives must wear a lapel pin which states: *“Hi, We are NOT the utility.”*
 - e. Just Energy has developed a “plain language” consumer contract, which has been reviewed and approved by Service Alberta, that province’s ministry of consumer services, whose mandate is to *“ensure a fair marketplace for both buyers and sellers... investigate consumer complaints, enforce consumer protection legislation, license and register regulated businesses and charitable organizations... provide an appropriate regulatory framework and inform consumers and businesses of their rights and responsibilities”*.
 - f. In Ontario Just Energy sales people are required to undergo a compliance recertification process after 60 days of sales inactivity.
26. Just Energy is also a participant in “EnergyShop.com”, a web based clearing house through which 39 energy suppliers active in Ontario currently offer their competitive retail energy products to the public in a manner that facilitates price comparisons and transparency regarding competitive retail energy offerings.
27. In summary, through sizeable investments of money and person hours, and state of the art compliance systems and processes, Just Energy seeks to ensure a positive, transparent and compliant customer experience.

Initial Comments on Board’s Questions

Is the ECPA providing an appropriate level of protection for Ontario’s low volume energy consumers?

28. Yes.
29. Interested parties should remain cognizant of the extensive protocols prescribed by the *ECPA*, including the detailed regulation there under, the Board’s own retailer codes of conduct, and the detailed notifications and call scripts promulgated by the Board pursuant to the codes.
30. These extensive protocols include; i) tightly proscribed disclosure obligations; ii) extensive customer “cooling off” and cancellation rights; iii) a full list of “unfair

practices” the occurrence of any of which allow customers to not only cancel their supply agreements if they so choose, but to a full refund of monies paid under the agreement; iv) the need in the case of in person sales for subsequent recorded verification of the customer’s desire to proceed with the contract; v) caps on cancellation charges; and v) tightly proscribed renewal notifications and protocols. In fact, Ontario’s is the most heavily proscribed retail energy market of which Just Energy, which operates in 20 jurisdictions, is aware. Just Energy suggests that parties critical of retailing activities in the province should familiarize themselves with these instruments before embarking on criticisms and recommendations for more extensive consumer protections.

31. Ontario’s low-volume energy consumer protection requirements are exhaustive, to the point of being overly cumbersome and potentially confusing. Just Energy provides some suggested areas of reform that would simplify low-volume energy retailing in Ontario, enhance consumer understanding and experience with competitive and innovative retail energy products, and mitigate, to some extent, the transactional inconveniences presented by the current regime.

What specific aspects of the ECPA are working well in terms of consumer protection?

32. The introduction of the *ECPA* mandated new customer verification call, and the “reaffirmation call” before it, have all but eliminated retail energy contract forgeries in Ontario. In Just Energy’s view, this was one of the most helpful consumer protection measures in the retail energy sector. Just Energy does have some suggestions, below, to render this mechanism more customer informative and friendly, and less cumbersome for retailers, which will enhance the value and implementability of the procedure.
33. Just Energy notes that verification calls are not required for internet sales or other inbound marketing channels. Just Energy endorses these exceptions to the requirement as appropriate. The policy behind these exceptions is that in

instances where the consumer approaches the retailer, or responds to an earlier retailer promotion or contact, in an unpressured way, they clearly do so purposefully and with ample time to fully consider the products offered and their advantages and disadvantages. Just Energy believes that is sound policy, and strikes a balance between consumer protection and paternalism to the point of an unfriendly customer experience.

34. Just Energy also believes that the OEB's price comparison forms play an important and appropriate role in regularizing and ensuring appropriate retail energy customer disclosure. Subject to the modified practices suggested below, Just Energy endorses continuation of this approach.
35. Just Energy also endorses badging and business card presentation requirements for direct (door to door) sales agents. As noted above, Just Energy builds on, and adds to, these minimum requirements by mandating branded clothing and conspicuous (through the required button) disclaimer of relationship with a regulated utility.
36. In addition to the prescribed cancellation periods, Just Energy offers its new customers the first 30 days following receipt of their first Just Energy bill to cancel without reason or penalty.

What specific aspects of the ECPA are not working well in terms of consumer protection?

37. Just Energy offers a number of suggestions for modification of the Board's application of the *ECPA* to improve consumer information and the customer experience. None of these proposals require legislative change, or change to the *ECPA* regulation.
 - a. ***Price Comparison Forms.*** At present, discrete price comparison forms are required for residential and low-volume commercial customers. These forms are very proscribed, and changes by retailers are not permitted.

While it endorses the concept behind these forms, Just Energy has found a number of issues with the use of these prescribed forms.

The representative average volumes proscribed for the residential price comparison calculations are not representative of consumption for larger homes. In many instances, consumption in larger homes is more like consumption by small businesses.

The distinct forms for residential and low-volume commercial customers has created unnecessary confusion in particular when offering products to small business owners who are also interested in a retail energy supply arrangements for their home.

For retailers like Just Energy who sell gas and electricity products, as well as “dual fuel” offerings, the existence of multiple price comparison forms for the various gas distribution territories (Enbridge, Union North and Union South) necessitates that the sales agent carry, and present, a lot of paper during a sales discussion. The plethora of price comparison forms increases the risk of inadvertent non-compliance, in both presentation and preparation of forms.

Just Energy suggests that the foregoing issues could be mitigated by the consolidation of residential and low-volume commercial into one set of forms. In addition to decreasing the number of forms (and thus decreasing the risk of inadvertent non-compliance), the various volumes that would thus appear on each form would provide multiple price comparison points for would-be customers, enhancing the customer’s ability to obtain a price comparison point that is meaningful for them, as well as to better understand the immediate cost impacts of the retail offering at different consumption levels (i.e. how much energy costs would vary, under both the retail and the default supply scenarios, at different consumption levels).

b. ***Verification of multiple utility accounts registered to one customer in one consolidated verification call.***

The Board currently requires that the same, highly proscribed, verification script be run through multiple times for low-volume customers signing multiple contracts as a result of having multiple locations. This is a tedious, time consuming process that customers neither understand nor appreciate.

Just Energy suggests that the Board modify its requirements to allow verification for multiple, expressly listed accounts, through one recitation of the prescribed verification script.

- c. ***Review of verification call scripts for less repetition and redundancy and enhanced flow and understandability.***

While endorsing verification calls as a robust consumer protection initiative for direct (including door to door) retail energy sales, Just Energy customer service representatives do struggle with the degree to which the Board's compliance staff demand strict adherence to heavily proscribed call scripts. Just Energy has found the scripts to present repetition and redundancy in several respects, and to preclude a natural and informative interaction between the retailer representative and the customer.

Just Energy understands the imperative for the verification call to be clear, and free of promotional statements. However, ***Just Energy suggests that the Board consider a review of the prescribed scripts, with input from retailers, to; i) reduce repetition and redundancy; and ii) to allow customer service representatives to depart from the scripts in order to respond to customer questions and thereby normalize the flow and informative aspects of the verification call.*** Just Energy would be pleased to work with Board Staff in support of such a review exercise.

- d. ***Attention by Board Staff to the conduct and compliance of LDC staff in engaging with customers regarding competitive retail offerings in the province.***

Just Energy has received numerous indications (in some cases actual complaints) from its customers that the staff at a number of Ontario LDCs are providing negative, misinformation regarding competitive energy retailers and the benefits and costs of their products.

Just Energy suggests that OEB compliance staff pay some attention to the conduct of LDCs in their roles as providers of unbiased and accurate information regarding retail energy issues, including the role of competitive retailers and their products. ***OEB compliance staff should audit utility calls for neutrality and compliance in respect of information provided on competitive retail offerings.***

What changes do you think should be made to the ECPA at this time?

38. In addition to the foregoing "practice" modifications that the Board could implement of its own accord, Just Energy suggests consideration of two legislative modifications of the competitive energy retailing regulatory framework in Ontario.

a. ***Decreasing minimum verification ability from 10 to 2 days.***

Just Energy has, subject to concerns about overly proscriptive scripting, endorsed the verification call mechanism as an important element in Ontario's energy consumer protection regime. The timing for such verification calls, however, has proven problematic.

Retailers are required to verify new contracts, but cannot initiate the verification call prior to 10 days after the date that the contract is signed. This mandated waiting period often has a negative impact on the customer experience. In an age of immediate purchase verification and one to two day product and service delivery, customers can't understand why Just Energy calls them 10 or more days after they have purchased a supply service to review questions the answers to which Just Energy has, or should have, by then.

Just Energy sees no reason why verification calls should not be permitted following a more reasonable "cooling off" period during which the customer can consider their decision if they are so inclined. ***Just Energy recommends changing the minimum amount of time prior to which retailers cannot verify new sales from 10 days to 2 days.*** Such change would not affect any of the other mandated "cooling off" periods.

b. ***Separate representation of the Global Adjustment charge on the low-volume electricity bill.***

The collapsing of global adjustment within the regulated price for default supply electricity customers in Ontario, and the requirement that the global adjustment charge be separately listed on the electricity bills to all other customers, continues to cause no end to customer confusion and to compromise comparability between low-volume default electricity supply and competitive retail options. Transparency, which should be a hallmark of consumer protection, is compromised by this artifice. Just Energy often receives calls from new customers who; i) see a new, significant and variable charge pop up on their bill immediately after signing for a fixed price retailer electricity supply contract; ii) report receiving "advice" from their local distribution utility that the global adjustment is unique to energy retailer customers; and/or iii) assume that the global adjustment is actually a switching penalty.

Just Energy recommends that the global adjustment be required to be separately represented and standardized on all low-volume customer bills, regardless of their supply choice.

c. ***Requirement to refund all monies paid under a cancelled contract.***

Several provisions of the *ECPA* and the regulation thereunder require that retailers refund to customers the full amounts paid by the customer under the contract in the event of contract cancellation. The circumstances in which this requirement applies includes cancellation of contracts based on relatively technical breaches of the legislation (failure to deliver copies of materials within the prescribed time, or in precisely the prescribed form, for example).

Just Energy acknowledges the importance of compliance, including technical compliance. Just Energy further acknowledges that breaches, even technical breaches, give rise to customer cancellation entitlements. Just Energy also acknowledges that in the event of such non-compliance driven cancellation customers are entitled to refunds of amounts paid under the contracts, even after the passage of a number of years, and even if the real reason for customer cancellation is not technical breach, but buyer's remorse (and this even in the face of retailer upstream commitments and associated costs to ensure energy supply to the customer). However, Just Energy sees no justification, in practice or policy, for refunds to customers beyond the difference, if any, between what a customer paid under their retail energy contract and what they would have paid under default supply pricing absent such contract. Indeed, the result of the application of such refund requirements is that customers use energy for free, not infrequently for a number of years.

Just Energy suggests that the ECPA refund provisions be reviewed and modified to limit refunds in circumstances of legitimate contract cancellation entitlements to the difference between payments under the subject contract and the default supply price applicable for the relevant periods.

Conclusion

39. Just Energy appreciates the opportunity to provide these submissions, and anticipates providing further input at the scheduled Stakeholder Forum and following review and consideration of the reports commissioned by the Board.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:
Gowling Lafleur Henderson LLP, per:

Ian A. Mondrow

Jou: Ian A. Mondrow
Counsel to Just Energy

November 21, 2014

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