

January 12, 2015

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; invests \$1.9 billion in annual capital spending and \$1.6 billion in annual operational spending; and generates hundreds of millions in direct contributions to both municipal and provincial revenues.

The EDA welcomes the opportunity to provide supplementary comments to the OEB's ECPA consultation particularly focusing on the "value proposition" of energy retailers in the province. Based on the evidence filed by the OEB's retained experts, OEB staff and intervenors, we strongly encourage the OEB that, while it is assessing the effectiveness of the ECPA, it needs to first examine the value of electricity retailers in the province of Ontario.

The EDA has consulted with its membership on the supplementary questions posed in the OEB letter to stakeholders dated December 15, 2014. The response to the questions is attached.

Sincerely,



Teresa Sarkesian
Vice President, Policy and Government Affairs

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

The EDA welcomes the opportunity to provide supplementary comments to the OEB's ECPA consultation, particularly focusing on the "value proposition" of energy retailers in the province and whether there is an actual benefit to residential customers from having the choice to sign up with an electricity retailer. We strongly believe that sufficient evidence has been filed by Mr. Bruce Sharp, Professor Don Dewees from the University of Toronto, and from Innovative Research Group (IRG) to indicate that the benefit to Ontarians, especially residential customers, from signing up with a retailer to save money on their electricity bills, is highly questionable.

In the Auditor General (AG) of Ontario's 2011 Report titled "Electricity Sector- Regulatory Oversight", the AG pointed out that electricity retailer customers could be paying anywhere between 35% to 65% more for their electricity bills. He also pointed out that the majority of customer complaints to the OEB are regarding retailers, specifically about misrepresentation during sales, and forging signatures. In his follow up report in 2013, the AG indicated that while the ECPA has been implemented by the OEB, actions taken by the Board to curb retailers was limited in nature. The AG also highlighted that Ontarians were paying more for their electricity when they were under a retail contract.

The OEB will note that the EDA is on record recommending eliminating fixed rate retailer contracts for residential customers. We strongly encourage the OEB that while it is assessing the effectiveness of the ECPA, it needs to first examine the value of electricity retailers in the province of Ontario.

Please see below responses to the OEB's supplementary questions.

1. What standard(s) should the Board use to measure the effectiveness of Part II of the *Energy Consumer Protection Act, 2010* (the "ECPA")?

a. Which standard(s) proposed by Professor Dewees are most appropriate?

EDA Response:

The EDA agrees with all the four approaches that have been proposed by Professor Dewees to assess the effectiveness of Part II of the ECPA. The standards that have been proposed by him are objective in nature and address the fundamental question of whether the implementation of the ECPA is actually working and also whether retail offerings are actually adding any value to customers.

b. Are there other standards that the Board should consider?

EDA Response:

The OEB needs to assess how effective the ECPA has been as a consumer protection legislation by basing it on the a clear definition of consumer rights in relation to a service. For more details, please refer to the EDA's response to Question no.1 in its November 20th submission.

2. What features of the broader market evolution or market structure should the Board consider in its assessment of Part II of the ECPA and in making its recommendations to the Minister?

a. Do you agree with the analyses conducted by Professor Dewees and Mr. Sharp regarding the economics of electricity and gas contracts? If so, why? If not, why not?

EDA Response:

The analysis conducted by Professor Dewees on both 5-year and 3-year retailer contracts was based on data he retrieved from EnergyShop, a public website that posts energy retailer rates, and was further substantiated by the OEB's database of RRR filings completed by energy retailers.

In the comparison of the 5-year contract and the RPP costs, Prof. Dewees not only compared TOU rates and retailer rates for an average customer, but also for a customer that is highly "peaky" in usage, and was able to reflect the fact that the retailer customer is paying a premium over the RPP/TOU customer. The premium ranges between \$2400 and \$1400 for 5 year contracts, depending on the customers' peak time usage. His comparisons of 3-year contracts were also conducted the same way and yielded the same results, though not as large of a premium was shown. Professor Dewees' research and analysis was based on real data and not based on hypothetical numbers. Therefore, the results he presented were concrete and conclusive in nature and are strongly supported by the EDA.

Similarly, Mr. Sharp's analysis, while based on a forecast, shows a similar trend in the pricing comparisons and further substantiates Professor Dewees' argument that retailer customers are paying a premium by moving away from RPP/TOU rates. The EDA is also supportive of Mr. Sharp's analysis.

b. Are there any other price analyses or comparisons that the Board should consider in addition to those provided by Professor Dewees and Mr. Sharp? If so, please provide.

EDA Response:

During the December 8 stakeholder session, intervenors such as Superior Energy questioned the validity of Professor Dewees' data by stating that the price he retrieved from the public website EnergyShop was not reflective of actual retailer rates and that there were more reasonable rates in the market at that time. If the OEB is in a position to retrieve the lower prices that Superior Energy claims were available in the market in 2009, 2010 and 2011, then an analysis should be conducted to see if the claims made by the intervenor can actually be substantiated. The OEB can also direct the retailers to file the evidence to show alternate

results to Professor Dewees' analysis. We have yet to see that evidence which indicates that competition is beneficial for the customers, as reiterated by retailers in their written and oral statements.

c. What is the "value proposition", if any, for retail electricity contracts in the current Ontario market? Is the value proposition different for non-residential consumers than it is for residential consumers?

EDA Response:

As noted above, the EDA is on record recommending that retailer contracts should be eliminated for residential customers as we have not seen value for customers. The comparative analysis completed by both Professor Dewees and Bruce Sharp substantiates the EDA's position that there is currently no "value proposition" from giving customers, specifically residential ones, the choice and ability to switch to a retailer contract. Customers who sign up with retailers pay for the global adjustment (GA) in addition to the fixed retailer rate, as opposed to the GA being included in the RPP/TOU rates, and therefore do not see any improvements and/or savings on their electricity bills from signing up with a retailer. Non-residential customers, such as commercial and industrial facilities that are billed on the wholesale electricity price plus the global adjustment, may benefit by negotiating a contract with the retailer that fixes the wholesale electricity price in order to offer cost savings and stability over a longer term. The Auditor General's 2013 report Electricity Sector- Regulatory Oversight further substantiates that residential customers pay between 35% to 65% more under a retailer contract than a customer under RPP/TOU rates. The data presented by Professor Dewees is consistent with the Auditor General's report, indicating customers are paying between 40% to 70% more under a retailer contract (Slide 32 of Professor Dewees' presentation).

In summary, the EDA stands by its recommendation that the electricity retail market offers no "value proposition" to residential customers and therefore should be banned from offering and renewing fixed rate contracts to residential electricity customers in Ontario.

d. What is the "value proposition", if any, for retail natural gas contracts in the current Ontario market? Is the value proposition different for non-residential consumers than it is for residential consumers?

EDA Response:

No comments.

e. Should the Board look at natural gas contracts differently than electricity contracts? If so, why and in what respect(s)?

EDA Response:

No comments.

3. What guidance should the Board take from the qualitative and quantitative findings of the consumer research undertaken by Innovative Research Group in assessing the effectiveness of the ECPA and in making its recommendations to the Minister?

Note: To the extent that you believe that the findings are indicative of an issue that needs to be addressed, please identify options for how the issue could be addressed in your responses to question 4. Please indicate in those responses the finding(s) that each option is designed to address.

Key consumer research findings include the following in relation to residential consumers:

- a material proportion of current and former contract holders are unaware that they are or were enrolled in a retail electricity or natural gas contract
- a majority of current contract holders (a) identified the primary reason for entering into a retail electricity or natural gas contract as being to save money; and (b) believe that they are saving money under their contracts
- a material proportion of former contract holders chose to cancel or not renew their contracts due to the high cost
- the value that some consumers attach to “choice”, that is, the opportunity to enter into an electricity or natural gas contract if they want one
- differences between contract holders and non-contract holders with respect to indicia such as household income, impact of energy bills on household finances, financial knowledge, education levels, and cognitive self-assessment
- a material proportion of consumers found their door-to-door sales experience with a retailer or marketer to be worse than their sales experience with providers of other goods or services

EDA Response:

The EDA strongly believes that despite the implementation of the ECPA since 2010 and the enforcement actions that have been taken by the OEB, Ontario’s electricity customers are still being misled into signing retailer contracts and end up paying more (sometimes knowingly but more often unknowingly) for their electricity bills. The evidence filed by IRG, by Professor Dewees and by Bruce Sharp substantiate that retailers offer no worthwhile “value proposition” to Ontarians and the “choice” they make in signing up with a retailer leads to minimal benefits and higher electricity bills. The OEB’s survey also highlights that Ontario’s consumers continue to be given false information by door-to-door salespeople and their aggressive sales practices have not changed despite the ECPA’s implementation.

Part I of the *Ontario Energy Board Act, 1998* states that one of the OEB’s main objectives is “To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.” With that responsibility in mind and taking into account the evidence that has been filed by the OEB’s own commissioned experts and other intervenors, the EDA urges the OEB to critically assess if there is any actual value from electricity retailers offering contracts to residential customers. With customers still receiving incorrect information about retailer operations four years after the implementation of the ECPA and paying higher electricity bills, it is clear that electricity retailers offer little or no benefits to Ontario’s

electricity residential customers. The EDA strongly recommends that the OEB moves towards eliminating fixed rate retailer contracts for residential customers.

Based on the key consumer research findings in relation to residential consumers, the EDA further recommends that the OEB take the following into consideration when it comes to guidance for further actions:

- There is a clear lack of knowledge amongst Ontario's electricity customers about the electricity retail market, i.e., how they are different from the customer's LDC and what exactly they are offering;
- Since customers are indicating that a majority of them are under the impression that they will be saving money under a retail contract, there is a certain level of misrepresentation and misinformation being provided by the retailers for customers to have that impression;
- Customers who are not highly educated, who are financially vulnerable and who have English as a second-language are more likely to be susceptible to the marketing messages from a retailer; and
- The OEB's presentation shows that door-to-door sales account for 50% of the sales of electricity retail contracts (slide 6) and despite the implementation of the ECPA, the numbers have not changed (52.86% in 2010 compared to 50.27% in 2013). Yet customers continue to have the worst sales experience with door-to-door salespersons. This issue needs to be addressed immediately by the OEB.

4. What recommendations should the Board consider making in relation to the current legal and regulatory regime applicable to retailers and marketers?

Stakeholders should not limit themselves to commenting on the potential changes listed below, and should propose other consumer protection measures for consideration by the Board in light of the analyses conducted by Professor Dewees, the consumer research findings of Innovative Research Group and input provided by stakeholders. Please be specific in relation to any change that you propose, identify in each case whether the proposed change relates to one or both of the commodities and to residential consumers, non-residential consumers or both, and discuss the risks or benefits of making or not making the proposed change at this time.

Potential Changes to Enhance Consumer Understanding and Awareness:

- require that retailers and marketers post contract prices and other contract details on a website overseen by the Board
- enhance the price comparison template, disclosure statement, verification scripts and/or renewal scripts
- require all new retail energy contracts to be billed by a means other than distributor-consolidated billing, or implement alternative requirements to ensure greater awareness of the fact that a consumer has been enrolled in a retail energy contract
- require that retail energy contracts be in a standard Board-approved form and contain Board-approved provisions dealing with issues of key concern to consumers

- enhance oversight or verification in respect of retail energy contracts that claim that the energy provided has or is associated with certain environmental attributes

EDA Response:

The EDA is supportive of the above recommendations for all customers, except for the third bullet on alternate billing. The EDA is not supportive of new retailer contracts being billed by a means other than distributor-consolidated billing as this will create customer confusion and add further costs to customers. Given that LDCs are the distributor of electricity to the customer and have the responsibility to provide reliable service and handle issues such as electrical safety, emergencies, disconnections, collections and other customer service issues, all customer bills should remain with the distributor. Please see the EDA's recommendation below on how to create greater awareness for customers who have signed up with an energy retailer.

In light of the evidence filed by the OEB experts and other intervenors, the EDA recommends that the rest of the recommended changes come into effect within the next six months, with retailers required to provide evidence that they have been implemented as part of their 2016 license renewal process.

Further changes recommended by the EDA for residential electricity customers only are as follows:

- The OEB should develop a simplified document explaining the current market vs. the retailer market that the retailer can provide to customers at the door or refer the customer to during internet sales. The LDC can also make the document available to customers or can direct customers to the OEB's website when customers inquire about electricity retailers. The document needs to emphasize the line item differences the customer will see on their bill once they are with a retailer, the difference in prices (RPP/TOU vs. fixed rates) and that there is absolutely no guarantee that signing up with a retailer will save the customer money on their electricity bill;
- The OEB can also produce a bill insert or a separate statement with the information listed above, that gets mailed out to the customer when they receive their first bill after switching to a retailer;
- Post the customer service record of each retailer on the OEB's website; and
- The OEB should develop key performance indicators to ensure that actions taken to combat non-compliance in areas of high-priority risks are effective. This was recommended by the Auditor General in his 2013 report on regulatory oversight in the electricity sector (Chapter 4, Section 4.02)

Potential Changes to Enhance Consumer Protection:

- require verification of all internet contracts or a subset of internet contracts (such as contracts entered into over the internet that were preceded by any in-person contact by the retailer or marketer)
- prohibit the use of gift cards or similar inducements to enter into a retail energy contract

- require that the price charged by a retailer or marketer be determined in accordance with specific requirements (this is contemplated in section 9 of the ECPA in relation to electricity retailers)
- prohibit the automatic renewal of retail natural gas contracts
- prohibit door-to-door sales, or implement additional consumer protection measures in respect of the door-to-door and “friends and family” sales channels

EDA Response:

The EDA agrees with the changes recommended above by the OEB, specifically prohibiting door-to-door sales completely for residential customers. The following changes should be effective immediately for residential electricity customers:

- Prohibit door-to-door sales; and
- Prohibit the use of gift cards or similar inducements to enter into a contract.

The EDA recommends that the rest of the recommended changes come into effect within the next six months, with retailers required to provide evidence that they have been implemented as part of their 2016 license renewal process. Further recommendations for residential customers are as follows:

- The customer should also be allowed to cancel their contract with the retailer after they receive their first bill under the contract and are not satisfied with the bill amount;
- Retailers should not be allowed to use iPads or other electronic devices to sign up customers door-to-door and then refer to them as online sales with fewer restrictions;
- Retailers cannot sign up low-income customers for energy contracts, unless the contract truly will and clearly states that the customer will be saving money under the retailer contract;
- New retailer contracts should be limited to two years only;
- Existing retailer contracts should be cancellable without a penalty after two years, similar to current cell phone contracts in the province.

The EDA also developed a more detailed list of proposals based on member input and from practices in other jurisdictions on what may improve consumer protection in its November 20th submission. For those recommendations, please refer to the EDA’s response to Question no. 5 in its November 20th submission.

Other Potential Changes:

- changes to provide greater coordination and consistency between the rules governing retail energy contracts and the rules governing other energy or energy-related products and services that are not captured by Part II of the ECPA (for example, hot water tank rentals)
- changes to the enforcement provisions governing contraventions of Part II of the ECPA
- exempting certain types of retailers and marketers (such as co-ops) from Part II of the ECPA in whole or in part, with or without conditions.

EDA Response:

The EDA is supportive of the above recommendations for all customers. The EDA recommends that the above changes come into effect within the next six months, with retailers required to provide evidence that they have been implemented as part of their 2016 license renewal process.

Recent legislative changes to the 2002 Consumer Protection Act (CPA) has now allowed for longer cooling off periods for water heater rental agreements and mandating plain language disclosure for customers. The EDA recommends that the ECPA should be reviewed in line with the amended CPA to ensure consumer protection rules are consistent. Please refer to the EDA's response to Question no. 8 in its submission to the OEB on November 20th for more details.

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