



January 12, 2015

VIA EMAIL: BoardSec@ontarioenergyboard.ca

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

RE: EB-2014-0158

Consultation on the Effectiveness of Part II of the *Energy Consumer Protection Act, 2010*- **Questions for Supplementary Written Comments**

Dear Ms. Walli:

On October 23rd, 2014 the Ontario Energy Board (The "Board") provided a series of questions to interested stakeholders inviting them to provide written comment pertaining to the overall effectiveness of the *Energy Consumer Protection Act, 2010* ("ECPA").

In its November 25, 2014 letter, the Board indicated that stakeholders would have an opportunity to submit supplementary written comments on presentations made and issues discussed during the stakeholder forum that was held on December 8, 2014.

On December 15, 2014 the Board issued a letter to all stakeholders requesting supplementary written comments on presentations made and issues discussed during the stakeholder forum. In its letter the Board provided an Appendix 'A' which listed several questions for supplementary written comment.

Summitt Energy LP. ("Summitt Energy") respectfully submits the following comments with respect to above noted matter.

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?

Professor Dewees did not provide any definitive standards for which the to asses the appropriateness of the ECPA.

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

Summitt Energy submits that the standards that the board should consider include:

- Customer satisfaction

- Price transparency regarding customer alternatives and options between regulated prices (including true ups) and fixed price products.
- Effective competition providing customers with alternatives.

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?

Summitt Energy does not agree with the analyses conducted by Professor Dewees and Mr. Sharp regarding the economics of electricity and gas contracts. Their analyses were applied to a period in which the market rates were declining. Fixed price contracts entered into at a period of high prices in 2009 (For a 5 year contract) and 2010 (For a 3 year contract) provided protection against price volatility but may not have provided actual savings when compared to a variable price in a declining market.

Retailers cannot predict the direction of commodity markets. The effectiveness of the ECPA should not be evaluated based on the snap shot of one particular period of time. Since the initiation of deregulated markets in Ontario consumers have experienced both rising and falling commodity prices and the economics of electricity and gas contracts should not be based on one selected period of time that did not encompass both raising and declining markets.

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.

As above.

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?

The value proposition in the Ontario market has been diminished by the current market structure by which the majority of the electricity cost is now in the global adjustment.

The absence of a breakdown of electricity costs for customers on the RPP is misleading to consumers causing many consumers to believe that the global adjustment is a “supplier only” charge, which creates significant confusion and misrepresentation to consumers.

It is Summitt Energy’s experience that this confusion and misrepresentation drives consumer complaints and cancellations, not because the information is not disclosed to the consumer at the time the contract is entered into but rather because the presentation of the global adjustment is not transparent on the consumer’s utility bill prior to entering into a retailer contract.

Summitt Energy is of the opinion that a proper assessment of the “value proposition” of retail electricity contracts would have to encompass more than a 3 to 4 year assessment as conducted by Professor Dewees and Mr. Sharp. A more accurate assessment should include a longer period and specifically examine the market rates compared to the retail contracts over a longer period of time in different retail market conditions. This would provide a more accurate analysis of the benefits customers would realize over periods when the market rates were increasing as well as declining.

- 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?**

As above.

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

Summitt Energy is of the opinion that both natural gas and electricity contracts provide protection against commodity price volatility and should be looked at in a similar light.

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?**

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**

Responses received by Innovative Research Group are for a narrow period of time. Consumers provided a variety of reasons for signing a retailer contract, i.e. saving money, price stability and choice. Consumer’s satisfaction would be different depending on the period in which they entered into a retailer contract.

Summitt Energy submits that the results of the survey would have been different if the survey was conducted at a period of time when market rates were low and subsequently increased after a consumer signed a retailer contract. The results should be taken into consideration as to the market conditions for the period the survey was conducted.

Although these responses were reflective of consumers views at the time, they may be considerably different under different economic conditions.

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

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**

Summitt Energy would be in support of a consumer website overseen by the Board where consumers can shop for retail energy prices and view contracts offered by retailer's marketers for both electricity and gas commodity supply. This proposal is consistent with Summitt Energy's previous submission to the Board on November 20, 2014, where Summitt Energy proposed that the Board become more actively involved in consumer education and awareness of the retail energy markets through the Board website.

The implementation of the aforementioned should apply to both of the commodities and to both residential and non-residential consumers.

- **enhance the price comparison template, disclosure statement, verification scripts and/or renewal scripts**

Summitt Energy would be in support of enhancing the price comparison template, disclosure statement, verification scripts and/or renewal scripts to make them more streamlined and consumer friendly.

The current format of having a separate price comparison and disclosure statement is costly for retailers and marketers and confusing for consumers. The amount of text and content can be daunting on a consumer, not to mention the fact that the information on the price comparison and disclosure statement is not written for the lay member of the public and is not conducive to the demographics and educational levels identified in Innovative Research Group's survey.

Summitt Energy submits that the Board consider a "Contract Summary Sheet" to replace the current price comparison and disclosure statement, to be drafted in layman's terms and act as an overall summary of the details of the contract the consumer is entering into. It should also provide clarity regarding the difference between utility price to compare and the retailer price that would be consistent with a retailers fixed price fixed term offer.

This same approach needs to be applied to the current Board verification scripts and renewal scripts in order to make them less cumbersome and easier for the consumer to understand.

Summitt Energy is of the opinion that such changes should apply to both commodities and to both residential and non-residential consumers.

- **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**

Summitt Energy does not support having retail energy contracts billed by means other than distributor-consolidated billing. Customers prefer the convenience of receiving one energy bill regardless if they are on utility supply or a retailer 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**

Summitt Energy does not support a Board-approved form or format to the contract as this could potentially cause confusion for consumers amongst supplier contracts. A Board approved format would inhibit Summitt Energy from distinguishing ourselves from our competitors.

Summitt Energy is of the opinion that the current contract provisions under section 7(1) of Ontario Regulation 389/10 sufficiently deal 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**

Summitt Energy is of the opinion that the current provisions under section 5(1) of the Ontario Regulation 389/10 provide the OEB with adequate oversight and enforcement of energy contracts that claim that the energy provided has or is associated with certain environmental attributes.

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)**

Summitt Energy does not support the need for verification of all internet contracts as a consumer has consciously chosen to sign a retail contract having been afforded the time to research and make an informed decision as to the pros and cons of entering into a retail contract. The underlining purpose of reaffirming a retail contract is to provide the consumer with the opportunity to independently review and determine if they want to proceed with the retailer contract, without any influence of a sales representative being present. Consumers who decide to enter into a contract via the internet, direct mail or by attending the retailer or markers place of business should not be required to reaffirm the contract as they have initiated the purchase. This is consistent with the current provisions under section 17(1) 1 of the ECPA.

Summitt Energy does however support the need for the Board to better clarify with retailers and marketers when a verification call is required. Summitt Energy is of the opinion that section 17(1) 1 of the ECPA currently provides such a provision:

“A contract negotiated and entered into as a result of a consumer contacting a supplier, unless the contact occurs within 30 days after the supplier contacts the consumer.”

Summitt Energy is of the opinion that an internet contract that is entered into by a consumer is a “consumer contacting a supplier”. Where such contact was preceded by an in-person contact, by the same retailer or marketer within 30 days, it falls under the provision of section 17(1) 1 of the ECPA and requires a reaffirmation call.

- **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)**

Summitt Energy is of the opinion that the spirit of section 9 of the ECPA is to provide the Board with the ability to limit the price per kWh that can be charged by a retailer (whether for variable or fixed rate products) to a consumer in order to avoid price “gouging”. Section 9 of the ECPA states:

“In the case of a contract with a consumer with respect to retailing of electricity, the retailer shall determine the price it charges for electricity in the manner and in accordance with the requirements that may be prescribed.”

Summitt Energy is not aware of any situations where retailers are charging exorbitant amounts for electricity supply that would require the Board to prescribe how a retailer should determine the price it will charge for electricity to a consumer.

- **prohibit the automatic renewal of retail natural gas contracts**

Summitt Energy is unaware of any information provided by the stakeholders or the OEB during this consultation that would warrant the prohibition of 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**

Summitt Energy is of the opinion that the current provisions in the ECPA provide more than adequate consumer protections for door-to-door sales. The ECPA requires that retailers and marketers train, certify, badge and provide identifiable clothing for all sales representatives acting on the retailer or marketers behalf. Retailers and marketers are required to retrain these sales representatives on an annual basis and to monitor all sales submissions.

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)**

Summitt Energy is of the opinion that current consumer protections in place and finalized by the Ministry of Consumer Services regarding other energy or energy related products do not need to be incorporated into the ECPA.

- **changes to the enforcement provisions governing contraventions of Part II of the ECPA**

Summitt Energy is of the opinion that the current enforcement provisions provided the OEB with sufficient authority and enforcement powers for protecting the public.

- **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**

Summitt Energy submits that the current rules for low volume consumers apply to all marketers and retailers, regardless of whether the marketer or retailer is for profit or not for profit. AG Energy addressed their concerns with the current consumer protections for low volume consumers and the high cost incurred to marketers and retailers in order to do business with these consumers.

Summitt Energy does not support 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 as the issue of aggregation of locations for one customer applies to all retailers. Any exemption should be applied to all marketers and retailers.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Jeff Donnelly", written in a cursive style.

Jeff Donnelly, Licensed Paralegal

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