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January 12, 2015

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, Ontario, M4P 1E4

Dear Ms. Walli:

Re: EB-2014-0158 - Consultation on the Effectiveness of Part II of the *Energy Consumer Protection Act, 2010* - Responses to Questions for Supplementary Written Comment of the London Property Management Association

I. Introduction

The Ontario Energy Board ("Board") invited interested stakeholders to provide written comments on the questions set out in Appendix A of the December 15, 2014 letter dealing with the above noted consultation.

This letter is the response to this invitation from the London Property Management Association ("LPMA"). In the August 26, 2014 Decision on Cost Eligibility, the Board noted that LPMA represents both low and high volume customers and emphasized that this consultation pertains to a legislative and regulatory regime that applies to low volume consumers and that cost awards would only be granted for participation that relates to low volume consumers. LPMA confirms that the comments that follow are related to low volume consumers. LPMA further notes that the majority of its members are low volume consumers.

Three paper copies have been provided to the Board and an electronic version has been filed through the Board's web portal at www.errr.oeb.gov.on.ca.

LPMA appreciates the opportunity to participate in this consultation and provide its comments on the questions posed in the Board's December 15, 2014 letter below.

II. Questions for Supplementary Written Comment

As requested in Appendix A to the December 15, 2014 letter, LPMA has provided written comments on the questions posed.

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?

LPMA believes that each of the four approaches set out in the presentation of Professor Dewees are appropriate. Each deals with a different component of consumer protection and are all important to those consumers.

Measuring the reduction in certain behaviour is clear and direct measure of the effectiveness of the ECPA. Thus this is an important measure that should be used to measure the extent to which the ECPA has achieved, or failed to achieve, the legislative goals.

The measurement of compliance with formal regulatory requirements is also important. Without this measurement, it is not possible to determine if the regulatory requirements are being met. Problems may exist because of non-compliance with the formal regulatory requirements. Without an appropriate measurement, the link would not be known.

Measuring consumer satisfaction with supplier dealings is a key measure. This is the area where most of the complaints appear to be generated. If the level of consumer satisfaction is more measured over time, it will be impossible to determine the effectiveness of Part II of the ECPA. Measuring consumer satisfaction over time will provide a significant insight into whether or not consumers are becoming more, or less, satisfied with supplier dealings.

Finally, LPMA believes that the most important measure is the objective evaluation of the economics of retail offerings for consumers. LPMA also submits that this standard is currently underutilized, to the detriment of consumers.

Throughout the remainder of these comments, LPMA provides some comments on other steps that the Board, and indeed the Province, should implement in order to enhance consumer protection.

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

The most obvious standard that the Board should consider is the measurement of consumer understanding. Throughout the presentation it became obvious that a significant portion of customers believe they are saving money if they sign a contract

with a retailer, yet as the presentations of Professor Dewees and Mr. Sharp indicate, this seems unlikely. However, as the research indicates, the main reason for signing a contract is to save money. Clearly there is a disconnect between the goal of saving money and reality for many consumers.

Further, a significant portion of customers who have direct purchase contracts, or have had them in the past, are not aware that they have or had such contracts. Again, this points to a lack of consumer understanding and awareness.

LPMA believes that the Board, and the Government, should ensure that consumers have the information they need to make the right decisions about electricity and natural gas contracts. This will provide the consumers, the regulator and the Government with a higher level of confidence that the consumers are protected by fair business practices. Without the necessary information, consumers cannot make informed choices.

LPMA believes that an additional standard that should be used is the measurement of consumer understanding. Improvements in this area over time would indicate that consumers are better informed, and better equipped to make informed choices.

Nobody likes to make a choice and then find out later that the basis for their decision was not correct to begin with. When this happens consumers feel betrayed and mistrust grows. These negative feelings are not directed solely to retailers, but also to distributors, the Government and the regulator. In this latter case, this mistrust can be carried forward into other regulatory areas such as the setting of just and reasonable distribution rates.

The goal of the regulator and the Government should be to ensure customers are well informed so that there is no sense of betrayal or mistrust.

Later in these comments, LPMA makes a number of specific recommendations that it believes would provide consumers with more information and more transparency that would allow for greater fairness and ease of rate comparisons.

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?

In general, LPMA agrees with the analyses conducted by Professor Dewees and Mr. Sharp regarding the economics of electricity and gas contracts.

While comparisons will differ for specific customers, the analyses are robust enough to reflect outcomes that would be applicable to the majority of consumers, especially residential consumers.

This belief is also based on the high level of non-renewals that was apparent in the surveys performed and provided in this consultation. In general, consumers sign contracts with the belief that they will be saving money. Then, by the end of the contract term, a significant number of consumers realize that those savings never materialized and that they, in fact, paid a premium relative to the standard RPP or system gas costs. Hence the high level of non-renewals. As the old saying goes, 'Fool me once, shame on you; fool me twice, shame on me.'

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.

LPMA believes that the Board should mandate a comparison between the contracted price and the standard supply price (both electricity and natural gas) on each monthly bill sent to the customer. This is the most direct and most transparent way for each and every direct purchase consumer to see what savings, or premiums, are being paid. There is no better way to educate consumers than to let them see what the results are based on their own consumption.

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?

From a residential consumers point of view, LPMA submits that there is little value in retail electricity contracts in the current Ontario market. As noted elsewhere, these contracts tend to result in premiums being paid, despite these consumers entering into the contracts with the belief that they will be saving money.

For small volume non-residential consumers, LPMA submits that there is some value in retail electricity contracts for some consumers. The primary value for these consumers is the ability to lock in prices and avoid time of use prices. This is important in commercial and industrial sectors that cannot shift their load to any great extent. The ability to lock in prices/price increases for 1, 3 or 5 years adds a level of predictability that does not exist with the system supply costs.

Further, some small volume non-residential consumers are better equipped to make an informed choice as to whether or not to enter into contracts than are residential consumers.

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?

LPMA submits that the comments in part (c) above are equally applicable to the retail natural gas market as they are for the retail electricity market, with the elimination of the time of use issue.

As the Board is aware, the number of small volume customers that choose direct purchase has fallen significantly over the last number of years. LPMA submits that this is the result of consumers realizing through experience that while contracts reduce the variance in gas costs on a quarter to quarter basis, this benefit comes with a cost in that the overall cost of gas is higher under a contract than under system gas.

This trade-off mirrors a similar trade-off with mortgage rates. Short term variable rate mortgages are less expensive than longer term rates, but can be much more volatile.

In a period of increasing supply, such as shale gas, the risk of sudden and sustained increases in gas costs is minimal. As such, consumers have come back to the lower cost alternative, system gas.

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

LPMA believes that the Board should look at natural gas contracts differently than electricity contracts. Natural gas contracts, from a consumer perspective, are easier for consumers to understand and compare to the system supply cost than for electricity contracts. This is because the system electricity costs are different by time of use, while no such differential exists for natural gas use.

It is, therefore, easier for consumers to compare system supplied gas costs to direct purchase contracts. However, as noted below there is still considerable issues with what the appropriate costs should be used in this comparison.

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.

In making its recommendations to the Minister, LPMA submits that the Board should be guided by the findings of the consumer research undertaken by Innovative Research Group. Each of the findings listed and in aggregate point to a number of issues, most of which revolve around the lack of information and transparency that consumers require in order to make informed decisions.

As noted in earlier comments, a large portion of the consumers that enter into contracts do so in order to save money. However, a material portion of consumers chose to cancel or not renew their contracts due to the high costs relative to system supply. LPMA submits that these are the customers that take the time to monitor their costs versus the cost of system supply throughout the contract term and realize they are paying a premium rather than generating savings.

LPMA submits that the Board and the Minister should also take guidance from the fact that a material proportion of current and former contract holders are not aware that they are or were enrolled in a retail electricity or natural gas contract. Clearly the ECPA is deficient if consumers are not aware that they have signed a contract.

LPMA notes that some consumers attach a value to having a "choice" of supplier if they want one. Some of this choice would be for consumers who want to contract from a "green" energy supplier, while others may want this choice in order to lock in rates and avoid quarterly (gas) or semi-annual (electricity) commodity price changes.

LPMA supports this choice for consumers. However, this choice needs to be made on the basis of sufficient and transparent information. LPMA submits that consumers lack both at this time. Consumers may well choose the contract option in order to lock in rates if the premium to be paid for this is \$100 a year. However, this option would become less acceptable, if the annual cost was projected to be \$300 or more. Without sufficient and transparent information, this choice is being made based on perceptions rather than reality.

With respect to door-to-door sales, LPMA notes that there are very few other industries that continue to utilize this method to gain residential customers. Those that do, are generally not held in high esteem. Given the numerous ways to market to residential consumers (newspapers, internet, radio, tv, direct mailing, etc.) LPMA questions why door-to-door sales are needed in the residential market. This sector of the market seems

to generate a disproportionate number of consumer complaints. When these complaints result in media exposure, the entire retail marketing industry is adversely affected.

Marketers have numerous ways to reach the residential consumer other than through door-to-door sales. Each of these ways involves the consumer initiating contact with the retailer rather than the other way around, as in the case of door-to-door sales.

LPMA submits that when a consumer approaches a retailer for their service, there is a higher probability of that consumer signing a contract and a lower probability of a consumer complaint.

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

LPMA provides the following comments related to potential changes to enhance consumer understanding and awareness.

Having reviewed a number of websites that purport to provide a comparison of electricity and natural gas prices available from retailers as compared to the default system supply, LPMA strongly recommends that the Board require that retailers and marketers post contract prices, other contract details, and price comparisons, on a website overseen by the Board.

LPMA submits that an average consumer has a difficult time trying to figure out the price offerings of retailers relative to the standard supply option. For example, on the electricity side, based on a review of current prices on websites, rates available from retailers range from 3.7 cents to more than 5.0 cents and in all cases do not include the Global Adjustment ("GA"). When one attempts to find the current GA rate, links on the website direct consumers to other websites, which for the average consumer are difficult, if not impossible to understand. There is a description of different classes of customers for GA purposes and it is almost impossible to find a rate so consumers can compare the RPP prices, excluding the GA to the prices offered by retailers.

One way to overcome this problem would be for the Board to publish not only the RPP prices, but all those prices excluding the GA. In addition, the Board should publish a standard weighted average RPP that shows the weighted price based on a typical residential consumer, again with and without the GA. This at least provides a better source to compare to the retailer prices than is currently available.

Similarly, the natural gas prices provided by retailers are confusing to most residential and small volume consumers. Many retailers offer a fixed rate for the commodity, but also provide fixed or variable rates for transportation. For a typical small volume consumer, it is difficult to compare the price for the gas commodity and transportation with that charged by the distributor for system gas. Again, the potential retail consumer is left to figure out what comparisons are correct.

Hopefully, with a website overseen by the Board, such comparisons would be provided to consumers.

Based on the above, LPMA also supports the enhancement of price comparison templates, disclosure statements and verification scripts and/or renewal scripts. In all cases a complete and relevant price comparison should be provided to consumers.

LPMA believes that requiring all new energy contracts to be billed by a means other than distributor-consolidated billing would be an effective means of pointing out to retail consumers that they are actually purchasing their gas and/or electricity under a contract with someone else than the distributor.

LPMA notes, however, that this could add costs to the retail consumers, especially if the retailer has to develop its own billing system, or contract out to a third party to do the billing and deal with accounts payable and receivable for their customers.

At the same time there would be a reduction in the commodity costs collected by the distributors. This would reduce the working capital requirements of the distributors and result in lower distribution rates. This would be a minor benefit on the natural gas side because the lag between payment for the gas commodity and when the utility receives payment from customers is relatively short, but given the long lag between when a distributor pays the IESO and when the distributor collects the money from its ratepayers, the reduction in the amount payable and collected could result in a significant reduction

in the working capital requirements of electricity distributors, which if passed on to consumers (as it should) could be significant.

LPMA submits that retail energy contracts should be required to include a cost comparison between the rates being contracted for and the current default commodity costs. On the electricity side, the GA would be removed from the comparison, since it is payable by both sets of consumers. On the gas side, the comparison would be such that if transportation and/or is included in the retail contract the comparison would be on the same basis. This way, the consumer will have the comparison upon which to base their results throughout the life of the contract. This would assist consumers in making educated decisions about whether or not to renew their contracts.

LPMA submits that the Board should enhance its oversight and verification with respect to retail energy contracts that claim that the energy sold has or is associated with certain environmental attributes. This ensures that the consumers who sign up for this are actually receiving what they are paying for.

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

LPMA strongly supports the elimination of automatic renewals of retail contracts. This is for a number of reasons.

First, as evidenced in the survey information, many consumers are not aware they are on a contract with a retailer. As such, consumers would not be aware of the automatic renewal.

Second, LPMA submits that automatic renewals reduce the level of competition in the market. If consumers are free to move from one marketer to another at the end of their contract, they are more likely to seek out an alternative to their current marketers. Automatic renewal robs this choice from consumers.

As noted elsewhere in these comments, LPMA believes that the prohibition of door-to-door sales to residential consumers should be considered by the Board and by the Minister. Door-to-door sales is a large source of consumer complaints in the industry,

which, rightly or wrongly, cast a shadow on the distributors, the Board and the industry in general.

LPMA believes that it would be prudent for the Board and the Minister to require verification of a subset of internet contracts. This activity would identify any potential issues with specific retailers, and could provide the Board with information about issues that may be specific to the type of consumer (such as language barriers, age, income, etc.). Such information could be useful in subsequent reviews and improvements to the ECPA.

LPMA provides no comments on the need for gift cards or other inducements from retailers in order to convince consumers to enter into a contract. LPMA also has no comments related to any requirement that the price charged by a retailer or marketer be determined in accordance with specific requirements.

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.

LPMA supports the other potential changes listed above.

In particular, LPMA supports a partial exemption for co-ops. However, LPMA submits that the Board should hold a separate consultation to determine the type and number of exemptions and any conditions that should still be required from co-ops. This may extend to the type of contracts and their provisions (for example automatic renewals) and price comparisons. Being a member of a co-op does not negate the need for the consumer to have the appropriate information to choose the best option for them and have some idea of the savings/premiums associated with that choice.

Other Proposed Measures

In its December 15, 2014 letter, the Board invited stakeholders to provide such comments as they consider appropriate, in addition to responding to the questions noted above. These are the comments of the LPMA that are in addition to those above.

In order to enhance consumer understanding and enhance consumer protection, LPMA submits that the Board and the Minister should consider changes that enhance transparency of prices and costs.

The first change that should be considered is separating out the global adjustment charge on customer electricity bills. While this remains hidden within the RPP rates, it is virtually impossible for consumers to have the information they need to decide which option is likely to be best for them from a cost perspective.

As the research has indicated, the driver for consumers to move from standard supply to retailer supply is the belief that they will save money. As Professor Dewees and Mr. Sharp have indicated, this is not likely the case for the majority of consumers. LPMA believes that at least part of this is because consumers do not have easy access to the transparent information they need to make an informed decision. Any changes to the ECPA that does not separate out the GA cannot, by definition, enhance consumer understanding or enhance consumer protection.

Similarly, on the natural gas side, the comparisons provided to consumers should be the all in price from the retailer compared to that from the distributor or from other retailers. This all in price would be different depending on whether or not the service provided includes only the gas commodity or if it includes transportation and/or storage.

Secondly, if the Board continues to allow distributor consolidated billing, LPMA submits that the Board should consider mandating a cost comparison to be included on monthly bills to consumers that are under contract to a retailer or marketer. This cost comparison would show the cost payable to the retailer (already on the bill) and the cost to the consumer if they had remained with the standard system supply option provided by the distributor (RPP or system gas).

Over time this comparison would allow consumers to evaluate the savings and/or premiums associated with retailer contracts. What better way to protect consumers and enhance their understanding than to let them see the results of their past actions and to guide their future choices. An informed consumer is a smarter consumer and a smarter consumer should be the goal of the Board and the Minister.

Sincerely,

Randy Aiken

Randy Aiken
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