

January 13, 2015

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

Dear Ms. Walli:

Re: EB-2014-0158 – ECPA Review Consultation Process

Please find, attached, the Submissions of the Consumers Council of Canada for the above-referenced Ontario Energy Board Consultation Process.

Yours truly,

Julie E. Girvan

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CC: Ken Whitehurst, Consumers Council of Canada

SUBMISSIONS OF THE CONSUMERS COUNCIL OF CANADA

ONTARIO ENERGY BOARD CONSULTATION ON THE EFFECTIVENESS OF PART II OF THE *ENERGY CONSUMER PROTECTION ACT, 2010*

EB-2014-0158

INTRODUCTION:

The Energy Consumer Protection Act, 2010, (“ECPA”) came into effect on January 1, 2011. The ECPA was intended to protect low-volume (residential and small business) electricity and gas consumers with respect to their dealings with natural gas and electricity retailers (“energy retailers”). Part II of the ECPA, along with Ontario Energy Board (“Board”) regulations and rules set out specific obligations that energy retailers must comply with when offering or signing contracts with low-volume consumers for the sale of electricity or natural gas.

By letter dated December 18, 2013, the Minister of Energy requested that the Board undertake a review of the ECPA. The Board initiated a consultation in response to the Minister’s request on April 8, 2014. In conducting its review the Board undertook the following steps:

- It retained Innovative Research Group (“Innovative”) to provide expert advice and assistance eliciting the views of consumers on retail energy markets and the ECPA. Innovative developed an on-line workbook, held focus groups and conducted telephone surveys;
- It retained Professor Donald Dewees to assist in the evaluation of the ECPA and related market issues;
- It sought written comments on a number of questions regarding the ECPA; and
- On December 8, the Board held a stakeholder forum to present the findings of the Innovative research that was conducted, to allow parties to make presentations, and to provide an opportunity for discussion regarding the effectiveness of the ECPA.

On December 15, 2014, the Board set out a list of questions for further comment. These are the submissions of the Consumers Council of Canada (“Council”) regarding the ECPA. The Council will set out some high level observations regarding

the ECPA review and the retail energy markets. In addition, the Council will provide responses to some of the Board's specific questions.

GENERAL COMMENTS:

The Board's review is focused on assessing how effective the ECPA has been in protecting the interests of energy consumers. The Board is seeking input from stakeholders in the following four areas:

1. What standard(s) should the Board use to measure the effectiveness of Part II of the ECPA?;
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?
3. What guidance should the Board take from 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?
4. What recommendations should the Board consider making in relation to the current legal and regulatory regime applicable to retailers and marketers?

These are important questions that, from the Council's perspective, need to be considered by the Board in its assessment of the ECPA. However, in light of the consumer research produced by the Board's consultants, Innovative Research Group, and the analyses provided by Dr. Dewees and Mr. Bruce Sharp, the Council urges the Board to make recommendations to the Minister that go beyond a narrow assessment of the "effectiveness" of ECPA in protecting Ontario's energy consumers. The Council submits that based on the findings presented at the stakeholder meeting on December 8, 2014, the Board should recommend that the Minister consider whether continued energy retailing is in the best interests of Ontario's low-volume energy consumers. Energy retailing (both electricity and natural gas) should not be continued in the absence of clear benefits to consumers and appropriate mechanisms in place to ensure the interests of those customers are sufficiently protected.

BOARD QUESTIONS:

- 1. What standard(s) should the Board use to measure the effectiveness of Part II of the ECPA?;**

In terms of assessing the effectiveness of the ECPA professor Dewees set out four standards. The Council agrees that these are all appropriate.

The first one – to measure the extent to which the ECPA has achieved its legislative goals is clearly relevant. Has the ECPA protected consumers from hidden costs, excessive cancellation fees and other unfair industry practices? Has it provided greater fairness and transparency for consumers? Has it ensured that consumers have the information they need to make the right decisions regarding natural gas and electricity contracts?

Professor Dewees concluded that there was not much data regarding the extent to which those goals have been achieved. 30% of contract holders did not know they actually had a contract (Tr. p. 78). In addition, the majority of customers believe they are saving money, but in most cases they are not (Tr. p. 78).

With respect to the goal of ensuring customers have all of the information needed to make the right decision – this is difficult to assess. However, given the fact that many customers were unaware of the fact they had contracts in place, this would imply that the legislation has not gone far enough.

The legislation and its many provisions have enhanced consumer protection to some extent, but we would agree with Professor Dewees that it is questionable whether the goals advanced by the Government in introducing the legislation have been achieved.

The second one – compliance with regulatory requirements is also important. To what extent are retailers complying with those regulatory requirements? Professor Dewees did not have adequate data to assess this, but it is something the Board should evaluate. To what extent has compliance been achieved?

The third one – customer satisfaction – is critical. To what extent are customers satisfied? The data suggests a great deal of dissatisfaction particularly from previous contract holders (Tr. p. 82). In addition, with 30% of customers not aware of their contracts it is difficult to assess how satisfied contract holders really are. Given the Board's enhanced focus on customers, assessing customer satisfaction with retail contracting should be an ongoing activity undertaken by the Board. It appears that with the ECPA customer satisfaction with energy retailers has not been enhanced.

The fourth one - the economic merit of retail contracts is probably the most important standard to assess the ECPA. As both professor Dewees and Mr. Sharp have concluded customers (with varying load profiles) have signed contracts that have not saved them money relative to the Regulated Price Plan ("RPP"). If the main reason for entering into a contract is to save money, and consumers are not saving money are they being sufficiently protected? This is an important consideration for the Board in assessing the effectiveness of the ECPA and the overall merits of retail contracting.

Overall, given Professor Dewees approaches to assessing the ECPA it is clear that the legislation and related regulations have not gone far enough in terms of meeting one of the Board's most critical objectives – to protect the interests of consumers with respect to prices.

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?

The Council believes that the analyses provided by both Professor Dewees and Mr. Sharp regarding the economics of retail gas and electricity contracting were robust. Professor Dewees considered different load profiles and contract terms. There were no alternative analyses presented that would lead the Board to conclude that these analyses are not valid.

The conclusions must lead the Board to question whether continued retail contracting is in the best interests of Ontario consumers. Retail contracts have proven expensive relative to default supply. Customers enter into these contracts to save money. Many think they are saving money, but clearly they are not. Even with the enhancements provided by the ECPA, the interests of Ontario consumers have been compromised.

Going forward, if retail contracting continues, the Board should develop ways for customers to assess retail options relative to the RPP. The existence of the Global Adjustment Mechanism (“GAM”) has made relative price comparisons essentially impossible. Price comparisons really cannot be made given the current structure of the bill and the fact that all customers pay the GAM. Price comparison information is critical for customers when assessing whether to enter into a contract. The Board needs to consider the best way or ways to enable these price comparisons.

The Board is seeking input as to what, if any, is the “value proposition” for retail electricity consumers. The analyses provided by the experts demonstrate that small-volume consumers have paid significant premiums for their energy supply under these contracts. In addition, if customers have entered into these contracts for price stability they are not getting that stability. A portion of the bill is fixed, but all customers must pay the GAM, which has not been stable.

With respect to natural gas contracting, though simpler, it is still difficult for customers to assess their options. Gas prices vary with the market on a quarterly basis, and most retail offerings are based on fixed prices. Gas contracting is simpler to understand relative to electricity contracting, but assessing choices remains an issue for consumers. For both electricity and gas contracting the Board should focus on improving upon the stated goals of the ECPA. Providing customers with better information regarding their choices is a challenge, but it is the only way to ensure they are sufficiently protected.

3. What guidance should the Board take from 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?

As noted by the Board the key research findings arising out of Innovative's work include:

- 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 contract as being to save money; and (b) believed they are saving money under the contracts
- a material proportion of former contract holders chose not to cancel or not to renew their contracts due to the high cost
- some consumers attach value to "choice", that is, the opportunity to enter into an electricity for natural gas contract if they want one
- there are 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 to be worse than their sales experience with providers of other good and services

In making its recommendations to the Minister the Council urges the Board to present the findings listed above. These findings highlight the fact that despite the implementation of the ECPA the retail energy markets remain problematic.

One can conclude that there is still not sufficient information in the market to allow for adequate informed decision-making on the part of energy consumers. This is likely the result of how the products are marketed and offered (e.g. door-to-door commission sales), the complexity of the energy markets (regulated and unregulated components of one bill), bill design, and the existence of the GAM.

If a decision is made to continue to allow retail marketing for low-volume consumers the Board will need to demonstrate a benefit to customers other than "choice for the sake of choice". Information provided to customers must be enhanced and bill design changed. Even with the provisions of the ECPA in place it is clear that further changes are required.

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

The Board has set potential changes to the current legal and regulatory regime related to enhancing consumer understanding and awareness. The Council is supportive of those changes being made for both sectors, natural gas and electricity. The balance that will need to be struck is for the Board to impose further requirements to provide consumers with relevant information while at the same time not significantly inhibiting the ability of retailers to provide product offerings that might provide benefits to customers. While we question whether benefits to customers are actually being realized today based on the Dewees analysis and data provided by Mr. Sharp, retailers may develop product offerings that could bring benefits to customers (e.g. green power).

The Board has also set out potential changes to enhance consumer protection. The Council is supportive of these changes as well for both sectors. Again the balance will be to protect consumers while not completely inhibiting the ability of retailers to operate.

As noted several times above, the Board and the Minister must first carefully consider whether retail energy marketing should be continued. If a decision is made to continue the changes proposed with respect to enhancing consumer understanding and awareness and enhancing consumers protection seem reasonable. It will be incumbent on the retailers to demonstrate why each of those changes should not be implemented. The Board must, also continue, on an on-going basis to assess the market based on the approaches set out by Professor Dewees.

In addition to supporting the potential changes listed by the Board to enhance information and consumer protection, the Council submits that it would be appropriate for a working group to be established to “fine-tune” some of these changes. A working group comprised of Ministry of Energy staff, Board Staff, low-volume ratepayer groups, utilities and marketers would allow for balanced input as to how the changes should be implemented.

CONCLUSIONS:

1. Given the research findings undertaken by Innovative, and the work undertaken by Professor Dewees, the Council submits that the Board, in its report to the Minister, should suggest that the Government take a wholesale review of low-volume energy retailing and determine whether it should be continued;
2. In applying the approaches set out by Professor Dewees to assess the ECPA the Board should conclude that the provisions in the ECPA have fallen short

in terms of protecting the interests of consumers with respect to energy retailing;

3. The Council is supportive of the proposed changes to the legal and regulatory requirements for retailers set out by the Board;
4. The Council sees merit in establishing a multi-stakeholder working group to “fine-tune” the proposed changes for implementation.