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NOTICE OF PROPOSAL TO AMEND CODES

**PROPOSED AMENDMENTS TO
THE ELECTRICITY RETAILER CODE OF CONDUCT AND
THE CODE OF CONDUCT FOR GAS MARKETERS**

OEB FILE NO: EB-2018-0335

**To: All Licensed Electricity Retailers
All Licensed Gas Marketers
All Other Interested Parties**

The Ontario Energy Board (OEB) is giving notice of a proposal under sections 45 and 70.2 of the *Ontario Energy Board Act, 1998* (OEB Act) to amend the Code of Conduct for Gas Marketers (Marketer Code) and the Electricity Retailer Code of Conduct (Retailer Code) (collectively, the Codes of Conduct). The proposed amendments relate to the process for responding to consumer complaints by licensed electricity retailers and licensed gas marketers (collectively energy retailers). Similar amendments were made on [March 14, 2019](#) to the Distribution System Code, Unit Sub-Metering Code and the Gas Distribution Access Rule through a separate [initiative](#). Those amendments came into force on July 1, 2019. The OEB is now completing the initiative to introduce these regulatory requirements for energy retailers.

Background

The OEB currently has a process in place for dealing with consumer complaints received by the OEB regarding the business practices or conduct of energy retailers. The process includes steps that an energy retailer is expected to follow when responding to a complaint that is forwarded to it by the OEB. However, the process is not currently a mandatory one.

Input from consumers indicates that they want an easy and accessible way to make a complaint to their energy retailer. Consumers also want an easy and accessible way to bring unresolved issues to the OEB, and have identified a need for the OEB's role in complaint handling to be brought to the attention of consumers.

The OEB believes that codifying the complaint response process will ensure that consumer complaints are handled in a consistent and timely manner. It will also ensure that there is consistency and equality of treatment of consumers regardless of energy retailer.

The OEB therefore is proposing to codify requirements regarding how energy retailers respond to consumer complaints forwarded by the OEB. The OEB also notes that the Codes of Conduct contain provisions on how energy retailers should respond to complaints under certain circumstances that are received directly from the consumer. The proposed requirements for the consumer complaint response process set out in this Notice will not supersede the existing requirements. This process is meant to apply only to complaints that are received by the OEB from a consumer and then forwarded to the energy retailer by the OEB for response.

The proposed amendments to the Retailer Code are set out in Attachment A and the proposed amendments to the Marketer Code are set out in Attachment B.

Summary of Proposed Amendments

On December 3, 2014, the OEB issued a Bulletin providing a definition of what constitutes a "complaint" in relation to reporting and record keeping requirements for retailers and marketers. For the purposes of this complaint response process, the OEB proposes to build on the guidance in that Bulletin and define a "complaint" as an allegation by a consumer of a breach of an "enforceable provision" (as defined in section 3 of the OEB Act) by an energy retailer.

While the focus of the proposed amendments is on responding to complaints forwarded to an energy retailer by the OEB, the proposed amendments do require each energy retailer to provide a consumer who makes a complaint with contact information for the OEB and to explain that the consumer may contact the OEB at any time. This will ensure that consumers who make a complaint directly to an energy retailer know that they may contact the OEB for assistance.

The OEB also often has cause to forward consumer concerns that are not related to an enforceable provision to energy retailers. In such a case, the energy retailer will be required to follow up directly with the consumer..

With respect to complaints that are forwarded to energy retailers by the OEB, the proposed amendments would require that the energy retailer provide a response within the following timelines:

- (a) two business days, where the complaint relates to an allegation of egregious agent conduct or is otherwise identified as urgent by the Board when forwarding the complaint to the energy retailer; or
- (b) 10 business days, in any other case.

The proposed 10-day timeline is shorter than the current expectation of 21 calendar days. However, in most cases energy retailers will have had prior knowledge of a consumer's complaint before the complaint is escalated to the OEB by the customer and forwarded by the OEB to the energy retailer for follow-up. Moreover, consumers deserve a more timely response to their complaints than is presently often the case. The proposed two-day timeline for complaints associated with more severe issues is reflective of the standard that is currently being applied as a matter of practice.

The more information the OEB has at its disposal, the more effective it can be in ensuring that a complaint is handled in a manner that is transparent and reasonable for all parties. The OEB is therefore proposing that:

- (a) an energy retailer's response to the OEB include certain prescribed information; and
- (b) an energy retailer provide a response to any follow-up questions from the OEB within five business days.

To ensure that there are clear communication paths between the OEB and an energy retailer, the OEB is proposing that each energy retailer designate staff to manage consumer issues and provide the OEB with dedicated points of contact, including an e-mail address that is monitored at all times during business hours. The OEB is also proposing that energy retailers communicate through the OEB's E-portal in relation to complaints that have been forwarded to them by the OEB.

All of these proposals are based on processes already in place on an informal basis.

B. Anticipated Costs and Benefits

The proposed amendments codifying the consumer complaint response process build on the process that is currently in place.

Therefore, OEB anticipates that this new process can be implemented readily and without material incremental cost to energy retailers. An updated, timely and binding process for responding to consumer complaints forwarded to an energy retailer by the OEB will provide benefits to consumers in the form of more timely resolution of their complaints, improved service and enhanced consistency of treatment, and will more generally promote a more consumer-focused culture amongst energy retailers. The OEB expects that the consumer benefits of the proposed amendments will outweigh any implementation costs.

C. Coming into Force

The OEB proposes that the proposed amendments to the Codes of Conduct come into force three months after the date that the OEB publishes the amendments by placing them on the OEB's website.

D. Invitation to Comment

All interested parties are invited to submit written comments on the proposed amendments as set out in Attachments A and B **by August 23, 2019.**

All filings to the Board must quote the file number, EB-2018-0335 and be made electronically in searchable / unrestricted PDF format through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed. Filings must clearly state the sender's name, postal address and

telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <https://www.oeb.ca/industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a USB flash drive in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Registrar at the address below, and be received no later than 4:45 p.m. on the required date.

ADDRESS

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

E-mail: registrar@oeb.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

If the written comment is from a private citizen (i.e., not a lawyer representing a client, not a consultant representing a client or organization, not an individual in an organization that represents the interests of consumers or other groups, and not an individual from a regulated entity), before making the written comment available for viewing at the OEB's offices or placing the written comment on the OEB's website, the OEB will remove any personal (i.e., not business) contact information from the written comment (i.e., the address, fax number, phone number, and e-mail address of the individual). However, the name of the individual and the content of the written comment will be available for viewing at the OEB's offices and will be placed on the OEB's website.

This Notice, including the proposed amendments to the Retailer Code and the Marketer Code, as set out in Attachments A and B, and all written comments received by the OEB in response to this Notice will be available for public viewing on the OEB's website at www.oeb.ca/industry and at the office of the OEB during normal business hours.

The OEB will not be offering cost awards for this matter as stakeholders had the opportunity to comment on the proposals in the previous consultation.

If you have any questions regarding the proposed amendments described in this Notice, please contact industryrelations@oeb.ca.

DATED at Toronto, August 1, 2019

ONTARIO ENERGY BOARD

Original Signed by

Kirsten Walli
Board Secretary

Attachments: Attachment A – Proposed Amendments to the Retailer Code
 Attachment B – Proposed Amendments to the Marketer Code

Attachment A

Proposed Amendments to the Electricity Retailer Code of Conduct

August 1, 2019

EB-2018-0335

Note: The text of the amendments is set out in italics below, for ease of identification only.

1. Section 1.2 of Part A of the Electricity Retailer Code of Conduct is amended by adding the following definitions, in alphabetical order:

“business day” means any day other than a Saturday or a holiday;

“holiday” means a holiday described in section 88 of the Legislation Act, 2006, S.O. 2006, c. 21, Sched. F as well as the August Civic Holiday;

2. Section 7.2 of Part B of the Electricity Retailer Code of Conduct is replaced with the following:

After a consumer directly contacts a retailer and makes a complaint, if the complaint is not resolved to the satisfaction of the consumer within 10 business days, the retailer shall inform the consumer that the consumer may contact the OEB at any time, and shall at the same time provide the consumer with either the OEB’s designated toll-free telephone number or local telephone number (as requested by the consumer), and the website address designated by the OEB for that purpose.

3. Section 7.3 of Part B of the Electricity Retailer Code of Conduct replaced with the following:

7.3 *For the purposes of sections 7.2 and 7.3A to 7.3I:*

“complaint” means an allegation by a consumer of a breach of an enforceable provision by a retailer;

“Consumer Complaint Response Process” means the requirements set out in sections 7.3A to 7.3I;

“enforceable provision” has the meaning given to it in section 3 of the Act; and

“OEB E-Portal” means the OEB’s electronic communication tool used to communicate with a retailer for the purposes of the Consumer Complaint Response Process.

7.3A *A retailer shall, within five business days of the coming into force of this section, provide the OEB with an e-mail address for the purposes of the Consumer Complaint Response Process. The retailer shall ensure that the e-mail address is monitored at all times during the retailer’s regular business hours.*

7.3B *A retailer shall, within five business days of the coming into force of this section, provide the OEB with the name, title, direct telephone number, direct e-mail address, and mailing address of:*

(a) the person designated by the retailer as the retailer’s contact person for purposes of the Consumer Complaint Response Process; and

(b) the person that the person in paragraph (a) reports to.

7.3C *If any of the information required under section 7.3A or 7.3B changes, the retailer shall provide the OEB with updated information as soon as possible upon becoming aware of the change and in any event no later than five business days of the change taking effect.*

7.3D *Where a non-complaint issue from a consumer is forwarded to a retailer through the OEB E-Portal, the retailer shall respond directly to the customer, in a timely manner. In such a case, the*

retailer is not required to follow the process set out in sections 7.3E to 7.3H.

7.3E Where a complaint is forwarded to a retailer through the OEB E-Portal, the retailer shall provide, through the OEB E-Portal, a response to the complaint that meets the requirements of section 7.3F within:

- (a) two business days of the date of receipt of the complaint, where the complaint relates to an allegation of egregious agent conduct or is otherwise identified as urgent by the OEB when forwarding the complaint to the retailer; or*
- (b) 10 business days of receipt of the complaint in all other cases.*

7.3F The retailer's response referred to in section 7.3E must include the following:

- (a) all pertinent information regarding the complaint, including any relevant background information;*
- (b) the steps taken by the retailer to investigate the complaint;*
- (c) the steps taken by the retailer to resolve the complaint;*
- (d) any other information that is reasonably necessary to enable a good understanding of the circumstances surrounding the complaint;*
- (e) if the complaint has not been resolved to the satisfaction of the consumer, the reasons why the complaint remains unresolved;*
- (f) if the complaint has been resolved to the satisfaction of the consumer, a description of the resolution and, if any further steps are required to implement the resolution, a timeline for when those steps will be completed; and*

(g) a copy of all relevant documents and communications between the consumer and the retailer in relation to the complaint.

7.3G Within five business days of being requested to do so, a retailer shall provide, through the OEB E-Portal, such additional information beyond the information required by section 7.3F regarding the retailer handling of a complaint as may be required by the OEB in order to review and assess the matter.

7.3H Where section 7.3F(f) applies and the steps for implementing the resolution were not all completed at the time the retailer provides its response under section 7.E, the retailer shall confirm through the OEB E-Portal once the full resolution has been completed. Such confirmation shall be provided as soon as possible, but in no event later than five business days after the date on which the resolution is completed.

7.3I For the purposes of the Consumer Complaint Response Process, where there is a reference to a number of days between two events, the days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens.

4. Item 8(A) of the form of Certificate of Compliance set out in Appendix A to the Electricity Retailer Code of Conduct is amended by adding the following at the end of that item:

and, where applicable, are in accordance with the Consumer Complaint Response Process set out in the OEB's Electricity Retailer Code of Conduct

5. Item 8(B) of the form of Certificate of Compliance set out in Appendix A to the Electricity Retailer Code of Conduct is amended by adding the following after the words "in a timely manner":

and, where applicable, are in accordance with the Consumer Complaint Response Process set out in the OEB's Electricity Retailer Code of Conduct,

6. Item 8(A) of the form of Certificate of Compliance set out in Appendix B to the Electricity Retailer Code of Conduct is amended by adding the following at the end of that item:

and, where applicable, are in accordance with the Consumer Complaint Response Process set out in the OEB's Electricity Retailer Code of Conduct

7. Item 8(B) of the form of Certificate of Compliance set out in Appendix B to the Electricity Retailer Code of Conduct is amended by adding the following after the words "in a timely manner":

and, where applicable, are in accordance with the Consumer Complaint Response Process set out in the OEB's Electricity Retailer Code of Conduct,

Attachment B

Proposed Amendments to the Code of Conduct for Gas Marketers

August 1, 2019

EB-2018-0335

Note: The text of the amendments is set out in italics below, for ease of identification only.

1. Section 1.2 of Part A of the Code of Conduct for Gas Marketers is amended by adding the following definitions, in alphabetical order:

“business day” means any day other than a Saturday or a holiday;

“holiday” means a holiday described in section 88 of the Legislation Act, 2006, S.O. 2006, c. 21, Sched. F as well as the August Civic Holiday;

2. Section 7.2 of Part B of the Code of Conduct for Gas Marketers is replaced with the following:

After a consumer directly contacts a gas marketer and makes a complaint, if the complaint is not resolved to the satisfaction of the consumer within 10 business days, the gas marketer shall inform the consumer that the consumer may contact the OEB at any time, and shall at the same time provide the consumer with either the OEB’s designated toll-free telephone number or local telephone number (as requested by the consumer), and the website address designated by the OEB for that purpose.

3. Section 7.3 of Part B of the Code of Conduct for Gas Marketers is replaced with the following:

7.3 *For the purposes of sections 7.2 and 7.3A to 7.3I:*

“complaint” means an allegation by a consumer of a breach of an enforceable provision by a gas marketer.

“Consumer Complaint Response Process” means the requirements set out in sections 7.3A to 7.3I;

“enforceable provision” has the meaning given to it in section 3 of the Act; and

“OEB E-Portal” means the OEB’s electronic communication tool used to communicate with a gas marketer for the purposes of the Consumer Complaint Response Process.

7.3A *A gas marketer shall, within five business days of the coming into force of this section, provide the OEB with an e-mail address for the purposes of the Consumer Complaint Response Process.*

The gas marketer shall ensure that the e-mail address is monitored at all times during the gas marketer’s regular business hours.

7.3B *A gas marketer shall, within five business days of the coming into force of this section, provide the OEB with the name, title, direct telephone number, direct e-mail address, and mailing address of:*

(a) the person designated by the gas marketer as the gas marketer’s contact person for purposes of the Consumer Complaint Response Process; and

(b) the person that the person in paragraph (a) reports to.

7.3C *If any of the information required under section 7.3A or 7.3B changes, the gas marketer shall provide the OEB with updated information as soon as possible upon becoming aware of the*

change and in any event no later than five business days of the change taking effect.

7.3D Where a non-complaint issue from a consumer is forwarded to a gas marketer through the OEB E-Portal, the gas marketer shall respond directly to the customer, in a timely manner. In such a case, the gas marketer is not required to follow the process set out in sections 7.3E to 7.3H.

7.3E Where a complaint is forwarded to a gas marketer through the OEB E-Portal, the gas marketer shall provide, through the OEB E-Portal, a response to the complaint that meets the requirements of section 7.3F within:

- a. two business days of the date of receipt of the complaint, where the complaint relates to an allegation of egregious agent conduct or is otherwise identified as urgent by the OEB when forwarding the complaint to the gas marketer; or*
- b. 10 business days of receipt of the complaint in all other cases*

7.3F The gas marketer's response referred to in section 7.3E must include the following:

- (a) all pertinent information regarding the complaint, including any relevant background information;*
- (b) the steps taken by the gas marketer to investigate the complaint;*
- (c) the steps taken by the gas marketer to resolve the complaint;*
- (d) any other information that is reasonably necessary to enable a good understanding of the circumstances surrounding the complaint;*
- (e) if the complaint has not been resolved to the satisfaction of the consumer, the reasons why the complaint remains unresolved;*

- (f) if the complaint has been resolved to the satisfaction of the consumer, a description of the resolution and, if any further steps are required to implement the resolution, a timeline for when those steps will be completed; and*
- (g) a copy of all relevant documents and communications between the consumer and the gas marketer in relation to the complaint.*

7.3G Within five business days of being requested to do so, a gas marketer shall provide, through the OEB E-Portal, such additional information beyond the information required by section 7.3F regarding the gas marketer handling of a complaint as may be required by the OEB in order to review and assess the matter.

7.3H Where section 7.3F(f) applies and the steps for implementing the resolution were not all completed at the time the gas marketer provides its response under section 7.E, the gas marketer shall confirm through the OEB E-Portal once the resolution has been completed. Such confirmation shall be provided as soon as possible, but in no event later than five business days after the date on which the resolution is completed.

7.3I For the purposes of the Consumer Complaint Response Process, where there is a reference to a number of days between two events, the days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens.

4. Item 8(A) of the form of Certificate of Compliance set out in Appendix A to the Code of Conduct for Gas Marketers is amended by adding the following at the end of that item:

and, where applicable, are in accordance with the Consumer Complaint Response Process set out in the OEB's Code of Conduct for Gas Marketers

5. Item 8(B) of section 8 of the form of Certificate of Compliance set out in Appendix A to the Code of Conduct for Gas Marketers is amended by adding the following after the words "in a timely manner":

And, where applicable, are in accordance with the Consumer Complaint Response Process set out in the OEB's Code of Conduct for Gas Marketers,

6. Item 8(A) of the form of Certificate of Compliance set out in Appendix B to the Code of Conduct for Gas Marketers is amended by adding the following at the end of that item:

and, where applicable, are in accordance with the Consumer Complaint Response Process set out in OEB's Code of Conduct for Gas Marketers

7. Item 8(B) of the form of Certificate of Compliance set out in Appendix B to the Code of Conduct for Gas Marketers is amended by adding the following after the words "in a timely manner":

and, where applicable, are in accordance with the Consumer Complaint Response Process set out in OEB's Code of Conduct for Gas Marketers,