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

OEB FILE NO: EB-2018-0335

October 29, 2019

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

The Ontario Energy Board (OEB) is giving notice under sections 45 and 70.2 of the *Ontario Energy Board Act, 1998* (OEB Act) of the adoption of final amendments to the Code of Conduct for Gas Marketers (Marketer Code) and the Electricity Retailer Code of Conduct (Retailer Code) (collectively, the Codes of Conduct).

The 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.

A. Background

On August 1, 2019, the OEB issued a [Notice of Proposal to Amend Codes](#) (August Notice) for comment. The OEB proposed to codify requirements regarding how energy retailers respond to consumer complaints. 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 issues addressed by the proposals included the following:

- a requirement for energy retailers to provide consumers with the OEB's contact information
- a description of the type of information expected in the energy retailer's response to the OEB
- the timelines for responding to the OEB
- establishing dedicated points of contact between energy retailers and the OEB

All of the proposals were based on processes already in place on an informal basis.

The OEB received three letters of comment on the August Notice. Two of these comments were from energy retailers ONIT Energy Ltd. (ONIT) and Planet Energy and the third was from the Electricity Distributors Association (EDA). A summary of the comments received and the OEB's response has been included in the discussion below. The comments themselves are available on the OEB's [OEB Consumer Complaint Response Process](#) web page.

The OEB has reviewed the comments received on the August Notice and determined that no changes are necessary. The complete text of the final amendments to the Codes of Conduct is set out in the attachments to this Notice.

Providing OEB Contact Information

The August Notice included a requirement for energy retailers to advise

consumers about how to contact the OEB, if the consumer's complaint is not resolved within 10 business days.

ONIT did not support this requirement. ONIT's view is that by forcing energy retailers to provide OEB contact information any time a consumer complains will dramatically impede the energy retailer's ability to satisfy consumer concerns when the consumer will more than likely go directly to the OEB. ONIT also expressed the concern that many complaints are not related to any enforceable provisions (i.e. complaints regarding the global adjustment). By giving consumers with these types of complaints the OEB contact information it would create an influx of complaints for the energy retailer and would create undue hardship as a result of the new and unnecessary complaints.

The OEB notes that the proposed amendment does not require energy retailers to provide OEB contact information to every consumer who has a complaint. The requirement is to provide OEB contact information only if the complaint is not resolved to the satisfaction of the consumer within 10 business days. This provides the energy retailer the opportunity to resolve the consumer's complaint prior to needing to inform the consumer about the OEB.

The OEB also believes ONIT's concerns about complaints not related to any enforceable provision are not an issue. Part of the OEB's complaint handling process is to determine if the complaint relates to an enforceable provision. In fact, the definition of a complaint includes a specific reference to an allegation by a consumer of a breach of an enforceable provision. If a consumer contacts the OEB with a concern that does not relate to an enforceable provision, OEB staff will only forward the matter to the energy retailer as a consumer service issue; no further interaction with the OEB on this matter is necessary. (This situation is covered under section 7.3D of the proposed amendments.) If a consumer contacts the energy retailer directly with a concern that does not relate to an enforceable provision, there is no requirement in the proposed amendments to provide the OEB contact information.

As a result, the OEB does not believe any changes to the proposal are necessary.

Timing of Responses

Planet Energy stated the view that the proposal to require responses to complaints deemed to be urgent by the OEB within two business days is

unreasonable and may prove to be counterproductive, as retailers and marketers may end up submitting responses that are not as complete as the OEB would want. ONIT also expressed concern over the two-day deadline. Both Planet Energy and ONIT suggested that the two-day deadline be revised to five days.

The OEB notes that the proposed two-day deadline for complaints associated with more severe issues is the standard that has been applied as a matter of practice by the OEB for several years.

The OEB believes that any matter that has been identified as urgent, like egregious agent conduct, should be dealt with immediately. Even a response simply stating that the agent has been relieved of his or her sales duties until the matter has been reviewed could be considered sufficient. A more in-depth review can be completed in the days following. The OEB also notes that the number of times a matter has been deemed urgent in the past has been minimal. As a result, the OEB does not believe this requirement will be a burden. As such, the OEB does not believe any changes to the proposal are necessary.

Similar to concerns expressed over the two day response requirement, Planet Energy stated that the requirement to provide additional follow up information within five days appears to grant an ambiguous and perhaps unlimited right to request any information while not being based upon any guiding standards, all within a standard complaint response. Planet Energy noted that current regulations permit review through the OEB's investigative powers. Therefore, they stated that should a complaint require additional review and/or investigation, the path for that review should not be via a standard complaint response, but within an official investigation.

The OEB notes that the proposed amendment is intended to set a timeline for response when the OEB has identified a need for additional details or clarification to understand the material originally provided. The OEB does not believe it is necessary to engage in an enforcement inspection just to review all relevant details of a consumer's complaint. In order to fulfill the objective to protect consumer's interests as set out in the OEB Act, the OEB must be able to obtain all relevant information in order to try to full review the complaint. As a result, the OEB does not believe any changes to the proposal are necessary.

Required Information in Responses

The August Notice included a requirement for energy retailers to provide the OEB with the following information after being advised of a consumer complaint from the OEB:

- all pertinent information regarding the complaint
- the steps taken by the energy retailer to investigate the complaint
- the steps taken by the energy retailer to resolve the complaint
- any other information that is reasonably necessary to enable a good understanding of the circumstances surrounding the complaint
- if the complaint has not been resolved to the satisfaction of the consumer, the reasons why the complaint remains unresolved
- if the complaint has been resolved, a description of the resolution
- a copy of all relevant documents and communications between the consumer and the energy retailer in relation to the complaint

Planet Energy stated the ambiguity and breadth of the document production required at this very early stage in the complaint resolution process is unfair, inappropriate and overreaching. Planet Energy recommends these requirements should be deleted from the proposed amendments or, in the alternative, be reduced in scope.

The OEB notes that the gathering and disclosure of information set out in these proposed amendments is at a level the OEB has always expected. One of the key reasons these amendments are being proposed is because licensees often do not provide the extent of information required to allow the OEB to properly assess a matter. The proposed amendments simply set out in a formal manner the OEB's expectations.

The OEB also notes that it is standard practice when a consumer approaches the OEB with a complaint to ensure the consumer has already discussed the matter directly with the energy retailer. If the consumer has not done this, staff will direct the consumer to contact the energy retailer first. This provides the energy retailer with the opportunity to do their own investigation into the complaint and attempt to resolve the matter. As such, the energy retailer should already have the information being requested on file. Therefore, providing this information to the OEB should not be onerous.

The OEB does not agree with the view the proposals are ambiguous. The wording is written with the intention to try to capture all possible information that may be available. In regards to the comment that the requirements are “over reaching”, the OEB disagrees. The OEB expects licensees to be willing and able to provide all details of their interaction with a consumer, especially in relation to actions that lead to a complaint. The OEB also notes these same requirements have been in place for other utilities and unit sub-meter providers since July 1, 2019, and no implementation issues have arisen.

Co-ordinating with the *Energy Consumer Protection Act, 2010*

The EDA expressed the concern that “[i]t would be unfortunate if a consumer mistakenly complains to a retailer when they should have availed themselves of the protections of the *Energy Consumer Protection Act, 2010* (ECPA).” The EDA suggests that the OEB should anticipate this situation and identify a process so that consumers are appropriately protected. Until such a process is provided, the EDA proposes that only those matters that are clearly outside the scope of the ECPA be processed through the proposed consumer complaint resolution process.

The OEB notes that the ECPA is administered by the OEB. It is the OEB’s role to ensure that consumers receive the full protection due them under the ECPA. The proposed consumer complaint resolution process is designed to address issues related to compliance with the ECPA and all other OEB regulatory requirements. The requirement to provide consumers with the OEB’s contact information is intended to ensure consumers know that they may approach the OEB for protections under the ECPA. As a result, the OEB does not believe any changes to the proposal are necessary.

Co-ordinating the Consumer Complaint Response Process with Energy Retailer Licences

The EDA reviewed both the Electricity Distribution licence and the Electricity Retailer Licence. The EDA suggests that sections 16 and 9 of the licences respectively are “dated” as they do not align well with the amendments that were previously made to the DSC or with the amendments that are the subject of this consultation.

The OEB notes that amendments to licences are not within the scope of this initiative, but may be considered in the future.

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 August Notice proposed that the 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. There were no stakeholder comments related to this proposal.

As such, the amendments set out in this Notice will come into force on February 1, 2020.

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

DATED at Toronto October 29, 2019

ONTARIO ENERGY BOARD

Original Signed by

Christine E. Long
Registrar and Board Secretary

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

Attachment A

Final Amendments to the Electricity Retailer Code of Conduct

October 29, 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 1.10 of Part A of the Electricity Retailer Code of Conduct is amended by adding the following:

1.10.6 The amendments to this Code made by the OEB on October 29, 2019, come into force on February 1, 2020.

3. 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.

4. 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 consumer, 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.

5. 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

6. 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,

7. 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

8. 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

Final Amendments to the Code of Conduct for Gas Marketers

October 29, 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 1.10 of Part A of the Electricity Retailer Code of Conduct is amended by adding the following:

1.10.6 The amendments to this Code made by the OEB on October 29, 2019, come into force on February 1, 2020.

3. 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.

4. 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 consumer, 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.

5. 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

6. 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,

7. 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

8. 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,