



PUBLIC INTEREST ADVOCACY CENTRE
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October 29, 2010

VIA MAIL AND EMAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
26th Floor
2300 Yonge Street
Toronto, ON
M4P 1E4

Dear Ms. Walli:

**Re: Implementation of Consumer Protection (Retailer/Marketer)
Provisions of the *Energy Consumer Protection Act, 2010*
Board File Number EB-2010-0245**

Please find enclosed the comments of VECC.

Yours truly,

Original signed

Michael Buonaguro
Counsel for VECC
Encl.

**VECC COMMENTS RE CHANGES TO THE “AUGUST PROPOSED
AMENDMENTS
October 29, 2010
EB-2010-0245**

These are the comments of VECC on the proposed changes to the “August Proposed Amendments”. We have included the text from the October 15, 2010 notice describing each change from the original proposal, and added “**VECC COMMENTS**” after each change. As requested by the noticed we have not provided comments on the failure of the OEB to make certain other changes that may have been suggested by VECC or others.

**C. Proposed Revisions to the August Proposed Amendments
I. Issues Where Revisions to the August Proposed Amendments are Proposed**

(a) Large Volume Consumers

The Board is therefore proposing to revise the August Proposed Amendments (sections 1.1, 2.1 to 2.5 and 5.1 to 5.4 of the proposed restated Retailer Code) to confirm that the proposed requirements regarding business cards, identification badges and training requirements do not apply when retailing to large volume electricity consumers.

Consistent with this revised approach, the Board is also proposing to revise the August Proposed Amendments to confirm that the compliance monitoring provisions do not apply when retailing or marketing to large volume electricity consumers (sections 7.4 to 7.6 of the proposed restated Retailer Code). As stated in the August Notice, however, the Board expects all licensed suppliers, including electricity retailers that transact only with large volume consumers, to have and maintain a formal process or program that enables them to monitor their compliance and to identify any need for remedial action.

VECC COMMENTS

VECC has no comments with respect to the changes related to retailing to large volume electricity consumers.

(b) Training

The August Proposed Amendments included new provisions in relation to the obligations of suppliers to ensure successful completion of training by salespersons and verification representatives. Specifically, a minimum pass mark of 90% was proposed for training tests. A number of suppliers expressed objections to the proposed pass rate for training tests, and noted that a more

appropriate minimum pass mark would range from 60% to 75%. The Board remains of the view that appropriate training and testing plays an important role in ensuring that the conduct of suppliers is in compliance with all applicable legal and regulatory requirements. However, the Board is persuaded that the proposed 90% rate may be too high to set as a standard at this time. The Board is therefore proposing to revise section 5.6(c) of the proposed restated Retailer Code and the proposed restated Marketer Code to reduce the minimum pass mark for training tests to 80%.

VECC COMMENTS

VECC is concerned that, in light of the lower threshold for passing the required training test, there is more opportunity for trainees to pass without understanding potentially critical material, even though they may have acquired 80% or more the relevant knowledge. Accordingly VECC submits that retailers should be specifically required to review mistakes with trainees, notwithstanding passing marks, to ensure that the trainee has corrected their knowledge.

(c) Disclosure Statements

A number of stakeholders expressed concerns about the proposed disclosure statements. Specifically, stakeholders recommended changes to the disclosure statements contained in the August Proposed Amendments to make them more “consumer friendly”. The Board agrees that the disclosure statements should be clear to consumers, and has taken these comments into consideration in revising the proposed disclosure statements. The Board is proposing a number of revisions to each of the proposed disclosure statements with a view to simplifying them as much as possible without detracting from the key pieces of information that the Board believes should be provided to consumers.

Suppliers recommended that the Board remove the reference to salesperson name and identification number on the proposed disclosure statements, indicating that these items would not be applicable for general mailings (i.e., direct mail), internet contracts or contract renewals. The Board is proposing to amend the disclosure statements accordingly. The revised proposed disclosure statements no longer make provision for any supplier-specific or contract-specific information.

VECC COMMENTS

VECC respectfully submits that requiring references to salesperson names and identification numbers for at least door to door disclosure statements remains a critical tool for linking retailer activity to particular salespersons. Anecdotally there have been and could potentially be situations in the future wherein the same retailer, through several salespersons, has successfully, albeit inappropriately, signed the same consumer to multiple overlapping contracts.

Tracking the activity of the retailer and its salespersons, in part, by being able to identify the retailer and person circulating the disclosure statement is useful in the case of disputes. Similarly it is not unreasonable to assume that multiple retailers may contact the same customer; requiring retailers to identify the disclosure statements they are responsible for distributing is useful in examining the conduct of the retailer in the wake of a dispute.

The Final ECPA Regulation requires that disclosure statements be signed to acknowledge receipt, and further specifically contemplates that, in the case of contract renewals or extensions, the acknowledgement is to the effect that the consumer has read and understood the disclosure statement. In furtherance of these provisions, the Board is proposing to include a signature space on each of the revised proposed disclosure statements.

VECC COMMENTS

This change appears to strictly meet a new requirement under the ECPA, such that VECC had no comments.

The proposed disclosure statements included in the August Proposed Amendments contained statements regarding the “Provincial Benefit”. The Board notes that, on August 27, 2010, the government posted for comment a “Proposal to Make a Regulation under the Electricity Act to Amend O. Reg. 429/04” that would change the way that the global adjustment is recovered from electricity consumers. One element of this “Proposal” is that bills issued to low volume consumers that are customers of retailers would no longer refer to the “Provincial Benefit”, but instead would refer to the “Global Adjustment” effective January 1, 2011. The Board is therefore proposing revisions to the proposed electricity disclosure statements to reflect this potential change in nomenclature. Should this potential change in nomenclature not be adopted or be revised, the Board will modify the electricity disclosure statements accordingly.

VECC COMMENTS

This change appears to strictly meet a new definition under the Electricity Act, such that VECC had no comments.

Representatives of low volume consumers and vulnerable energy consumers raised concerns regarding the impact on equal billing of entering into a retail contract. Among other things, it was suggested that the disclosure statements should include a warning to the effect that a change in supplier could have significant financial consequences in the event that the consumer is on an equal billing plan.

The Board is currently further examining issues relating to equal billing for retailer-enrolled customers in its on-going consultation on electricity distributor

customer service rules (consultation process EB-2007-0722) and will consider as part of that consultation the concerns raised by these stakeholders. However, the Board believes that this notice and comment process is the appropriate forum in which to deal with the more specific issue of disclosure.

Based on information obtained as part of the customer service rules consultation, less than half of the electricity distributors that make an equalized billing or equalized payment option available make that option available to consumers that have a contract with a retailer. As such, in many cases one of the consequences of entering into a contract with a retailer is the loss of the equalized billing or equalized payment option. The Board believes that this potential outcome is one that should be brought to the attention of consumers, and is proposing to revise the disclosure statements applicable to new electricity contracts accordingly. In the event that the outcome of the consultation on customer service rules necessitates a change to this approach, the Board will revisit the issue at that time.

It is the Board's understanding that the large rate-regulated gas distributors currently make their equal billing or equal payment options available equally to both their system gas customers and to consumers that have a contract with a gas marketer. As such, the Board does not believe that the disclosure statements applicable to new gas contracts need to be revised to address the equal billing issue.

VECC COMMENTS

The current proposed statement with respect to the availability of the equal billing plan is as follows:

Check with your utility to see **whether you will still be eligible** for your utility's **equal payment plan** if you switch to a Retailer.

VECC raised the concern about warning consumers about the interaction between switching retail contracts and equal billing plans, and is pleased to see some warning language has been included. However part of VECC's concern is that customers on equal billing, when switching to a retail contract that has a materially higher commodity price than what is assumed for the purpose of the prevailing equal billing amount, may, precisely as a result of the continuation of equal billing under the retail contract, not experience the full impact of the change in price until material amounts have accrued for true up under the equal billing scheme.

This concern persists for natural gas contracts. A consumer may sign up for a natural gas price in the middle of the winter season that is materially higher than the prevailing system gas price, but because they are on and will continue to be

under an equal billing plan they will not experience the higher price until material “true up” charges have accrued for payment.

Accordingly, at a minimum, the disclosure statement (which should apply to both electricity and natural gas contracts) should include language to warn consumers to investigate the impact of switching to a retail contract on their equal billing plan payments, both in the immediate term and in the “true up” period.

Alternatively it may be appropriate to include an appropriate warning about the impact of switching suppliers in the midst of an equal billing plan in the newly proposed price comparisons.

(d) Price Comparisons

Many stakeholders also provided comments regarding the proposed disclosure statements in relation to price comparisons. Representatives of low volume consumers and vulnerable energy consumers favoured the inclusion of price comparisons in the Board’s proposed disclosure statements. In contrast, suppliers objected to the inclusion of price comparisons in the proposed disclosure statements.

Suppliers objected to the Board requiring line-by-line price comparisons between utility rates and retail offerings. Suppliers suggested that this would create a requirement that will be difficult, if not impossible, to comply with and will not provide consumers with accurate and timely data or relevant comparisons. The suppliers stated that they would fully support a requirement that consumers, at the time of sale, be provided with the Board’s website address and directions on accessing the Board’s online bill calculator. It was the suppliers’ view that it was unnecessarily burdensome to require suppliers to essentially duplicate something that is provided by the regulator.

The Final ECPA Regulation contains a new provision that states that a disclosure statement must be accompanied by a price comparison that contains such information as may be required by a code, order or rule issued or made by the Board. The Final ECPA Regulation also contains provisions similar to those applicable to disclosure statements in relation to the signature of the price comparisons.

Therefore, the Board is proposing to include requirements in the proposed restated Retailer Code and the proposed restated Marketer Code (sections 4.6 to 4.9) relating to price comparisons. Specifically, the Board is proposing that suppliers use a template developed by the Board which contains some explanatory text regarding the price comparison document as well as details regarding utility pricing and assumptions regarding consumer consumption levels and electricity consumer time-of-use consumption profiles. In developing the

templates, the Board has considered the comments received from stakeholders regarding price comparisons.

Different versions of the price comparison templates are proposed for each of the following:

- i. residential electricity consumers;*
- ii. non-residential low volume electricity consumers;*
- iii. residential gas consumers served by rate-regulated gas utilities (a different price comparison sheet for each will be required to accommodate different system supply prices);*
- iv. non-residential low volume gas consumers served by rate-regulated utilities (again, a different price comparison sheet for each will be required to accommodate different system supply prices); and*
- v. residential and non-residential low volume gas consumers served by non rate-regulated gas utilities (notably, Kitchener Utilities and Utilities Kingston), similar to (iii) and (iv) above.*

Different versions of the proposed price comparison templates have been prepared for use in the gas sector to accommodate situations where transportation and/or storage costs are covered in a gas marketer's contract. If gas marketers confirm that their business practices are such that one or more of these versions is not required, the version(s) in question may not be required on a going-forward basis.

The Board is proposing to populate the utility pricing information included in Part A of each price comparison template, and to make revised versions of each template available as and when the utility pricing information changes (semi annually for electricity under the Regulated Price Plan and, as a general rule, quarterly for gas as part of the QRAM process).

The Board is also proposing to populate the consumption and time-of-use consumption profile information included in Part A of the price comparison templates, and to update that information from time to time (as and when required, these updates would be made at the same time as the Board issues revised versions of the templates to accommodate changes in utility pricing).

For the residential electricity consumer template, the Board is proposing to use consumption and time-of-use consumption profile information that the Board believes is representative of a typical residential electricity consumer (this also being the information used by the Board for the purposes of its interactive on-line bill calculator) at the relevant time. For the residential gas consumer templates, the Board is proposing to use consumption information obtained from the rate regulated gas utilities at the relevant time (taken from their respective QRAM filings).

VECC COMMENTS

VECC has reviewed the various proposed price comparison documents and notes only its previous comment that some warning with respect to the impact of changing commodity prices in the midst of an equal billing cycle may be included in the price comparison document rather than the disclosure statements.

Non-residential low volume consumers can have consumption levels and time-of-use consumption profiles that differ considerably from one to the other. Consumption and time-of-use consumption profile data comparable to that available in relation to residential consumers does not appear to be readily and systematically available for non-residential low volume consumers in either the gas or the electricity sector. The Board is therefore proposing the following for non-residential low volume consumers:

(a) for consumption, the Board is proposing to use three illustrative consumption levels, one that is close to the level for a residential consumer, another that is close to the level beyond which the consumer ceases to qualify as a low volume consumer, and another that is the mid-point between the two; and

(b) for time-of-use consumption profile, the Board is proposing to use the same profile as that used for residential consumers, and to include in the price comparison template a statement that highlights this for the consumer.

VECC COMMENTS

VECC has no comments with respect to the non-residential low volume price comparison documents.

The Board is not proposing to prescribe the specific format to be used by suppliers in describing their contract price offers. The Board cannot reasonably anticipate the different offers that may be developed by suppliers over time, and believes that suppliers are in the best position to describe their contract price offers to prospective customers. However, the Board is proposing to mandate certain minimum requirements for supplier contract price disclosure, including in relation to the data to be used for purposes of disclosure of the Global Adjustment in the electricity price comparisons.

The Board is inviting comment on the proposed price comparison templates that are set out in Attachment F to this Notice. The Board will be particularly interested in alternative proposals that stakeholders may wish to bring forward regarding the consumption and time-of-use consumption profile information to be used in the price comparison templates for non-residential low volume consumers.

In the coming weeks, the Board will be addressing issues of format and graphic design, and interested parties should therefore be aware that the overall

appearance and form of the price comparison templates may change substantially as a result of that exercise.

VECC COMMENTS

The critical information that the price comparison should convey is the accurate identification of the components of the bill the retailer is offering to provide a price on, and the difference between the retailer's price and the customer's current price for each of those components. In addition, it should be clear from the comparison the circumstances under which each price changes. It appears to VECC that the draft templates and instructions provided by the draft templates may achieve these goals, but VECC suggests that the ultimate price comparison presentation used by any particular retailer be subject to review by the Board.

(e) Verification Scripts and Renewal/Extension Scripts

A number of stakeholders recommended changes to the verification scripts and renewal/extension scripts contained in the August Proposed Amendments to make them more "consumer friendly", and also suggested that the renewal/extension scripts accommodate the possibility that multiple renewal/extension offers might be made to a consumer at the time of renewal/extension. The Board has taken these comments into consideration when developing the revised proposed verification scripts and renewal/extension scripts set out in Attachments G and H to this Notice.

A number of suppliers recommended that, where both gas and electricity supply contracts are sold and are to be verified, a supplier should be allowed to verify both products using a combined script that meets the criteria established by the Board as it pertains to each commodity rather than being required to read the script twice, once for each fuel type. The same comments were made in regards to the renewal/extension scripts. The Board sees merit in the approach suggested by suppliers and is therefore proposing to make provision for "dual fuel" verification and renewal/extension scripts. The Board is inviting comment on the proposed "dual fuel" scripts set out in Attachments G and H to this Notice.

VECC COMMENTS

VECC has no comments with respect to the dual fuel scripts.

In addition, the Board is proposing to add to each of the verification and renewal/extension scripts new statements pertaining to the price comparisons that are now required by the Final ECPA Regulation.

VECC COMMENTS

VECC notes that the verification scripts do not inquire of the customer as to whether they understood the disclosure statement and price comparisons, in addition to asking whether the statements and comparison documents were received and signed.

The Final ECPA Regulation also contains a new provision to the effect that a consumer must be advised of the reason why the verification process is being discontinued in certain cases (where an unfair practice has or may have occurred or where the consumer did not receive a text-based copy of the contract or disclosure statement). The Board is proposing to revise the verification and renewal/extension scripts to include provisions that require the verification representative or salesperson to provide such an explanation in each relevant case. Consequential revisions to sections 4.11 and 4.14 of the proposed restated Retailer Code and of the proposed restated Marketer Code are also proposed.

VECC COMMENTS

These changes appear to have been made in order to comply with the ECPA, such that VECC had no comments on their inclusion.

The Board is also proposing to include, as part of the renewal/extension script for gas contracts, a requirement that the salesperson remind the consumer of the fact that the contract may be automatically renewed. The Board is proposing that this statement be made where the marketer is offering automatic renewal and where the consumer wishes to terminate the call because the consumer needs more time to make a decision.

VECC COMMENTS

VECC specifically supports the inclusion of this additional requirement. It is important, having engaged a customer in what appears to the customer to be an opportunity to express a choice, that on expressing a desire to defer that choice the consequences of the deferral, if the customer does not follow up on the deferred decision, is automatic renewal.

(f) Certification

Section 6.4 of the proposed restated Retailer Code and of the proposed restated Marketer Code contains a requirement that suppliers file a self-certification statement on compliance with applicable legal and regulatory requirements annually by April 30. Suppliers argued that, for those suppliers that certified their compliance in accordance with the Draft Regulations prior to January 1, 2011, they should not have to re-certify again before April 30, 2011. The suppliers requested that the Board direct that, where a supplier has certified within 6 months of April 30, 2011, they are deemed to have met the annual filing requirement for the initial year.

In accordance with the Final OEBA Regulation, a supplier may not conduct market activities in relation to low-volume consumers on or after January 1, 2011 until the supplier has filed a certificate of compliance with the Board and received acknowledgement of it. Since a supplier will have to file the certificate of compliance in order to be active in 2011, the Board agrees that it is not necessary for suppliers to also file a self-certification statement by April 30 of 2011 under the proposed annual certification requirement. The Board is therefore proposing to revise section 6.4 of the proposed restated Retailer Code and of the proposed restated Marketer Code to provide that the first annual self certification statement under the proposed restated Codes will not be required until 2012.

VECC COMMENTS

VECC has no comments on this proposed change.

The Board is also proposing to revise the form of the certificate of compliance set out in Appendix A of the proposed restated Retailer Code and of the proposed restated Marketer Code to confirm that a number of the certification statements made are applicable only on and after the later of the Effective ECPA Date and the date on which the certificate is signed by the supplier and filed with the Board (referred to in the Codes as the “Effective Certification Date”). The Board has also included in the form of the certification of compliance references to the price comparisons that are now required by the Final ECPA Regulation.

VECC COMMENTS

These changes appear to VECC to simply make the certificate consistent with the dates that they are legally effective, and include reference to new ECPA requirements.

(g) Other

Suppliers recommended that section 3.8 of the proposed restated Retailer Code and section 3.6 of the proposed restated Marketer Code be amended to allow suppliers at least 5 business days to notify customers of a pending transfer request when a customer signs a contract with another supplier. In the August Proposed Amendments, the Board had proposed a period of 2 business days for a supplier to fulfill this obligation. Suppliers indicated they will require 5 business days to notify customers to allow for:

- (a) text-based notifications to be processed by the supplier, sent for printing, and then sent to Canada Post for delivery; and*
- (b) attempts to contact the consumer by phone.*

The Board believes that this revision is warranted and is therefore proposing to amend section 3.8 of the proposed restated Retailer Code and section 3.6 of the proposed restated Marketer Code accordingly.

VECC COMMENTS

VECC has no comments on this particular amendment.

The Board is also proposing revisions to the August Proposed Amendments to account for changes between the Draft Regulations and the Final Regulations. These revisions include: (i) changing one of the defined terms in the proposed restated Retailer Code and the proposed restated Marketer Code and defining the "Effective ECPA Date" as January 1, 2011; (ii) changing "certification of compliance" throughout the proposed restated Retailer Code and the proposed restated Marketer Code to "certificate of compliance"; (iii) changing section 3.8 of the proposed restated Retailer Code and section 3.6 of the proposed restated Marketer Code to reflect the fact that the Final ECPA Regulation establishes a time limit beyond which a voice recording need not be provided to a low volume consumer within 10 days of the consumer's request; (iv) changing Part C of the proposed restated Retailer Code and of the proposed restated Marketer Code to reflect the transitional provisions that have been included in the Final ECPA Regulation (these provisions are discussed below); (v) removing the reference to the 15-day waiting period for renewal/extension calls from the proposed renewal/extension scripts, as the underlying provision in the Draft Regulations has not been carried over to the Final ECPA Regulation; and (vi) changing the proposed disclosure statements and the proposed verification scripts to reflect the fact that the window for verification under the Final ECPA Regulation is 10 to 45 days, rather than the 10-30 day window contemplated in the Draft Regulations.

VECC COMMENTS

All of these changes appear to relate to making the previous version consistent with the Final Regulation, such that VECC has no comments on the changes.