



October 19, 2015

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

Re: Proposed Exemption for Co-operatives from Part II of the ECPA

Dear Ms. Walli:

On behalf of Ag Energy Co-operative Ltd. and its 360+ agricultural, agri-business and rural members, I would like to request further refinements to the *Energy Consumer Protection Act, 2010*.

As indicated in the OEB Report, exemptions already exist under the ECPA for broader public-sector procurement agents based on the commonality of interest between such procurement agents and the members they serve. The logic of such an exemption could certainly be extended to OEB licensed co-operatives procuring energy for their members. Indeed, as Ag Energy Co-operative does not seek to obtain a special purpose exemption solely for itself, the logic for an exemption for entities owned and controlled by their members could be applied to any OEB licensed energy marketing co-operative incorporated under the *Co-operative Corporations Act* (Ontario) which markets natural gas or electricity to its members. Exemptions for such co-operatives should only be available for sales of energy to members; any non-member low volume consumers served by a co-operative should still be subject to the full regulatory regime as set out under Part II of the ECPA.

Such an exemption could be introduced by a simple amendment to Regulation 389/10 which is currently under review by the Government. In specific, subsection 27(1) of this Regulation could be amended by adding a new sub-section (3) which would exempt co-operatives incorporated under the *Co-operative Corporations Act* (Ontario) from Part II of the ECPA in respect of contracts they enter into with members for the provision of gas and electricity.

An alternative mechanism for providing co-operatives marketing energy to their members with an effective exemption from the requirements of Part II of the ECPA would be to amend the definition of "consumer" under Section 2 of the Act as follows:

“consumer” means,

(a) in respect of the retailing of electricity, a person who uses, for the person’s own consumption, electricity that the person did not generate and who annually uses less than the prescribed amount of electricity, *but does not include a member of an OEB licensed co-operative*, and

(b) in respect of gas marketing, a person who annually uses less than the prescribed amount of gas, *but does not include a member of an OEB licensed co-operative*;

An ancillary amendment to the ECPA could then be made to define a co-operative as a co-operative incorporated under the *Co-operative Corporations Act* (Ontario).

Whichever means is chosen for effecting an exemption for co-operatives marketing energy to their members, there are simple administrative procedures which the OEB could adopt to ensure that there is no abuse of the ECPA exemption.

In the first place, co-operatives marketing energy to their consumer members would need to satisfy the OEB that they are in good standing under the *Co-operative Corporations Act* and that their Articles of Incorporation permit the marketing of energy to their members.

Secondly, on an audit basis, the OEB could require energy marketing co-operatives to provide confirmation that any electricity or natural gas sold to low volume consumers has either been sold exclusively to members or, if sold to non-member consumers, has been sold to such non-members subject to all of the requirements under Part II of the ECPA.

Finally, if deemed necessary by the OEB, rules could be enacted to require that co-operatives obtain an acknowledgement from their members that they are not entitled to the consumer protections set out under Part II of the ECPA. In this context, it should of course be underscored that co-operative members have significant statutory rights and remedies available to them under the *Co-operative Corporations Act*.

Ag Energy Co-operative Ltd. believes that an exemption for energy marketing co-operatives from Part II of the ECPA is fully consistent with the important consumer protection principles underlying the ECPA. In fact, our experience shows that our low volume consumer members were better off prior to the enactment of the ECPA. In the year immediately preceding the enactment of the ECPA, Ag Energy marketed energy to approximately 1,200 low volume consumers who were introduced to the Co-operative through its participation in the various agricultural sector organizations which are members of Ag Energy. The Co-operative never engaged in door-to-door solicitation of consumers. In a quick survey of 400 of its low volume agricultural consumers, we identified annual natural gas savings of \$978,000 and annual electricity savings of approximately \$500,000, for a total savings of approximately \$1,478,000 based on then current market prices for energy.

With the introduction of the ECPA, Ag Energy was forced to withdraw from the low volume consumer energy market because of the prohibitive regulatory administration costs associated with this market. Rather than benefitting low volume agricultural consumers serviced by Ag Energy, the ECPA has actually forced those smaller agricultural consumers to purchase their energy requirements from companies who need to achieve a higher margin from their energy sales in order to obtain a margin of profit for their shareholders. As a co-operative, Ag Energy's interest is in reducing costs for its members. Obtaining higher profits is not a primary consideration for the co-operative since any such profits are ultimately distributed back to member consumers either in the form of patronage dividends or in the form of enhanced member services.

Thank you for your kind consideration of this important element of reform for the Energy Consumer Protection Act.

Sincerely yours,

A handwritten signature in cursive script that reads "Rose Marie Gage".

Rose Marie Gage
Chief Executive Officer,
Ag Energy Co-operative Ltd.
rgage@agenergy.coop
1-866-818-8828