

VIA HAND DELIVERY AND EMAIL (boardsec@ontarioenergyboard.ca)

October 21, 2015

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O.Box 2319
2300 Yonge Street, Suite 2700
Toronto, Ontario M4P 1E4

Dear Kirsten Walli:

RE: OEB File Number EB-2015-0268

On October 5, 2015 the Ontario Energy Board issued a Notice of proposed changes to the Code of Conduct for Gas Marketers, Electricity Retailer Code of Conduct, Gas Distribution Access Rule, and Retail Settlement Code. Below are Active Energy's comments on the proposed changes. Active is filing three (3) copies of its submission with the OEB.

1. Electricity Retailer Code of Conduct and Code of Conduct for Gas Marketers ("Codes")

Active's comments regarding the Electricity Retailer Code of Conduct and Code of Conduct for Gas Marketers are provided in Table 1 (attached). The table references the proposed changes in the Electricity Retailer Code of Conduct. Active has the same comments for the proposed changes to the Code of Conduct for Gas Marketers since they are the same changes as in the Electricity Retailer Code of Conduct.

2. Making retail contracts more visible on the bill

- a) Active supports making more text characters available to suppliers on the distributor bill to display the statement that the consumer's supply is being provided under the supplier's contract (i.e., "YOU ARE BUYING YOUR ELECTRICITY FROM"), and provide more supplier contact information.
- b) Active does not support a comparison of the system supply commodity cost and supplier contract commodity cost on the bill for the following reasons:
 - i. There is no need for this comparison on the bill since the Price Comparison Form accomplishes this comparison for the consumer at the time the consumer is making their decision to enter into the contract. In fact, the Form provides more cost comparison to consumers than just the commodity comparison, such as whether other

future pricing is not accurate and provides the customer with confusing and misleading information.

- iii. The comparison focuses on the concept of savings which may not be the focus of a supplier's program. Fixed price contracts provide customers with price certainty or provide an insurance strategy against potential future price increase. Providing this comparison in isolation sends confusing messages to the consumer.

3. Consumer tip sheet

Active has no comments on the tip sheet.

4. Written notice to consumers of the switch to a supplier

Active does not support the proposal that all Ontario gas and electricity distributors issue a letter to consumers advising them of their switch to a supplier. The OEB argues that the letter (which would be sent to consumers after the switch to a supplier has taken place) is required to promote consumer awareness of the switch. In Active's view consumers are made aware of the switch to a supplier on their utility bill which indicates the supplier's name and contact information. With this information a consumer can exercise their cancellation rights if they wish as currently exists for electricity customers (i.e., cancelling without penalty 30 days after receiving their first bill under the contract) and as is being proposed under the new regulation of Bill 112 where both gas and electricity consumers will be able to cancel without penalty after 2 billing cycles. In Active's view sending a notice of switch to a consumer is unnecessary since existing tools exist to advise consumers of their switch to a supplier and provide them with an option to cancel without penalty. Consumers also sign a customer agreement, price comparison, and a disclosure statement and go through an extensive verification call where in Active's view, any customer that has been through this process would be fully aware that they are switching to a supplier.

5. Retail Settlement Code

Active's comments are in Table 2 attached.

6. Gas Distribution Access Code

Active's comments are in Table 3 attached.

Please contact me if you have any questions.

Regards,



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Director, Operations
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Table 1 – Comments on the Electricity Code of Conduct and Code of Conduct for Gas Marketers

<p><u>OEB Proposed changes to the Ontario Energy Board Electricity Retailer Code of Conduct</u></p>	<p><u>Active’s Comments</u></p>
<p><u>1.4.2 Nothing in this Code shall be construed as permitting a retailer to: (a) sell or offer to sell electricity to a low volume consumer in person at the consumer’s home; (b) cause a salesperson to sell or offer to sell electricity to a low volume consumer in person at the consumer’s home; or (c) undertake advertising or marketing activities in a manner contrary to the ECPA Regulation.</u></p>	<p>Active proposes changes to section 1.4.2(c) by adding the words in bold so the section reads: “undertake advertising or marketing activities to a consumer in person at the consumer’s home in a manner contrary to the ECPA Regulations”. The purpose of adding the bolded words is to provide clarity that the restrictions regarding the advertising and marketing activity undertaken by a retailer or gas marketer only apply to residential consumers and do not apply to low volume commercial consumers.</p>
<p><u>1 FAIR MARKETING PRACTICES 1.1 A retailer or salesperson of a retailer, when retailing to a consumer, shall: (f.1) if retailing to a low volume consumer at residential premises, provide and leave with the low volume consumer such documents as may be approved by the OEB; (f.2) not undertake advertising or marketing activities in a manner contrary to the ECPA Regulation; (g) not make any offer or provide</u></p>	<p>Active does not recommend any changes to the addition of (f.1). Regarding (f.2) Active recommends adding the words in bold so the section reads: “not undertake advertising or marketing activities to a consumer in person at the consumer’s home in a manner contrary to the ECPA Regulations”. The purpose of adding the bolded words is to provide clarity that the restrictions regarding the advertising and marketing activity undertaken by a retailer or gas marketer only apply to residential consumers and do not apply to low volume commercial consumers.</p>
<p><u>1 FAIR MARKETING PRACTICES 1.1 A retailer or salesperson of a retailer, when retailing to a consumer, shall: 1.2 If a low volume consumer asks whether an OEB-approved document referred to in section 1.1(f.1) is available in a language other than English or requests one, the retailer shall inform the low volume consumer that the OEB-approved document is available from the OEB in the languages listed on the document.</u></p>	<p>Active recommends adding the words in bold to communicate that the requirement to make available or provide documents to consumers in a requested language applies only to residential consumers: “If a low volume consumer at a residential premise asks whether an OEB-approved document referred to in section 1.1.(f1) is available in a language other than English.....”</p>
<p></p>	<p></p>

Table 1 – Comments on the Electricity Code of Conduct and Code of Conduct for Gas Marketers

<p><u>3.2A A contract between a retailer and a low volume consumer shall: (a) include a cover sheet approved by the OEB; and (b) not contain any provision that is inconsistent with the information in the OEB-approved cover sheet.</u></p> <p><u>3.2B A retailer shall use the OEB-approved cover sheet referred to in section 3.2A without alteration or redaction except as expressly contemplated by the cover sheet and then only in respect of the information specifically called for by the cover sheet.</u></p>	<p>The OEB is proposing that a cover sheet be provided to all low volume consumers as a means to provide plain language disclosure of the contract terms and conditions. Active submits that there is no need for another document to communicate key contract terms and conditions to consumers since any plain language disclosure that needs to be made to consumers can be done in any one of the existing documents (i.e., the contract, Disclosure Form or Price Comparison Form) and/or the verification call. Using the existing documents and/or verification call is a better utilization of existing resources. It prevents the retail community from incurring additional printing costs, is more environmentally friendly in avoiding the extra circulation of paper, and prevents consumers from receiving additional paper work that may lead to information overload and make the sign-up process more confusing.</p> <p>Nonetheless, if the OEB is going to proceed with a cover sheet, Active submits that it is not necessary for low volume commercial consumers. Commercial consumers are accustomed to entering into commercial contracts as part of their day to day business practices and familiar with reading contract terms and conditions. Therefore they do not require a separate document to summarize key contract terms.</p>
<p><u>3.2C If a low volume consumer asks whether the OEB-approved cover sheet referred to in section 3.2A is available in a language other than English or requests one, the retailer shall inform the low volume consumer that the OEB-approved cover sheet is available from the OEB in the languages listed on the OEB-approved cover sheet.</u></p>	<p>Active submits that the requirement to provide the cover page in a language other than English to a low volume commercial consumer is not necessary due to the fact that commercial consumers are familiar with negotiating contracts in English. The requirement to provide this will increase costs for business consumers.</p>
<p><u>3.2D A retailer shall not enter into a contract with a low volume consumer unless the contract complies with the following requirements:</u></p>	
<p><u>(a) the information required by item 5 of section 7(1) of</u></p>	<p>Active has no comment.</p>

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<p><u><i>the ECPA Regulation must be set out as follows: (i) the length of time during which electricity is to be provided under the contract must be set out under the heading “Contract Length”; and (ii) all other information, other than the date on which the contract is entered into, must be set out under the heading “Start Date of Supply”;</i></u></p>	
<p><u><i>(b) the information required by item 6 of section 7(1) of the ECPA Regulation must be set out under the heading “Contract Price and Other Charges You Must Pay”, and the following sub-headings: (i) the contract price must be set out under the heading “Contract Price”; and (ii) information about payments for the account of a person other than the retailer must be set out under the heading “Charges You Must Pay to Others”;</i></u></p>	<p>Active has the following comments on the headings and sub-headings proposed: 1. All charges regarding the contract price and all charges the consumer is required to pay for the supply and delivery of energy can be clearly included under the one heading of “Contract Price and other Charges You Must Pay to Others. Having all energy charges under one heading can provide better clarity and ease of reference to the consumers</p>
<p><u><i>(c) the information required by item 7 of section 7(1) of the ECPA Regulation must be set out under the heading “How You Pay, Deposits, Late Payments Etc.”;</i></u></p>	<p>Active has no comment.</p>
<p><u><i>(d) the statements required by items 8 and 9 of section 7(1) of the ECPA Regulation must be set out under the heading “You Can Change Your Mind About this Contract”;</i></u></p>	<p>Active has no comment.</p>
<p><u><i>(e) the information and statements required by items 10, 11, 12 and 13 of section 7(1) of the ECPA Regulation must be set out under the heading “Ending this Contract” and the following sub-headings: (i) information pertaining to the low volume consumer’s rights to cancel the contract must be set out under the heading “You Can End this Contract If...”, with the information required by item 11 presented at the end; and (ii) information pertaining to the retailer’s rights to cancel the contract must be set out under the heading “We Can End this Contract If...”;</i></u></p>	<p>Active has no comment.</p>

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<p><u><i>(f) the information required by item 14 of section 7(1) of the ECPA Regulation must be presented under the heading “Transferring this Contract”;</i></u></p>	<p>Active has no comment.</p>
<p><u><i>(g) the information required by item 16 of section 7(1) of the ECPA Regulation must be set out under the heading “How to Contact Us...” and the following sub-headings: (i) information on how to contact the retailer for the purposes of making a complaint or requesting information must be presented under the sub-heading “...If You Have a Complaint or Question”; (ii) information on how to contact the retailer for the purposes of renewing or extending the term of the contract must be presented under the heading “...To Renew or Extend this Contract”; and (iii) information on how to contact the retailer for the purposes of cancelling the contract must be presented under the heading “...To End this Contract”; and</i></u></p>	<p>Active has no comment.</p>
<p><u><i>(h) if the contract contains information on how the contract may be amended, the information shall be set out under the heading “Making Changes to this Contract”.</i></u></p>	<p>Active has no comment.</p>
<p><u><i>3.2E A retailer shall not renew or extend a contract with a low volume consumer unless the contract complies with the following requirements:</i></u></p>	<p>Active has no comment.</p>
<p><u><i>(a) information on the length of time during which electricity is to be provided under the contract as required by item 5 of section 7(1) of the ECPA Regulation must be set out under the heading “Contract Length”;</i></u></p>	<p>Active has no comment.</p>
<p><u><i>(b) the information required by item 6 of section 7(1) of the ECPA Regulation must be set out under the heading</i></u></p>	<p>Active has the following comments on the headings and sub-headings proposed: 1. All charges regarding the contract price and all charges the</p>

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<p><u><i>“Contract Price and Other Charges You Must Pay”, and the following sub-headings: (i) the contract price must be set out under the heading “Contract Price”; and (ii) information about payments for the account of a person other than the retailer must be set out under the heading “Charges You Must Pay to Others”;</i></u></p>	<p>consumer is required to pay for the supply and delivery of energy can be clearly included under the one heading of “Contract Price and other Charges You Must Pay to Others. Having all energy charges under one heading can provide better clarity and ease of reference to the consumers</p>
<p><u><i>(c) the information required by item 7 of section 7(1) of the ECPA Regulation must be set out under the heading “How You Pay, Deposits, Late Payments Etc.”;</i></u></p>	<p>Active has no comment.</p>
<p><u><i>(d) the information and statements required by items 11, 12 and 13 of section 7(1) of the ECPA Regulation must be set out under the heading “Ending this Contract” and the following sub-headings: (i) information pertaining to the low volume consumer’s rights to cancel the contract must be set out under the heading “You Can End this Contract If...”, with the information required by item 11 presented at the end; and (ii) information pertaining to the retailer’s rights to cancel the contract must be set out under the heading “We Can End this Contract If...”;</i></u></p>	<p>Active has no comment.</p>
<p><u><i>(e) the information required by item 14 of section 7(1) of the ECPA Regulation must be presented under the heading “Transferring this Contract”;</i></u></p>	<p>Active has no comment.</p>
<p><u><i>(f) the information required by item 16 of section 7(1) of the ECPA Regulation must be set out under the heading “How to Contact Us...” and the following sub-headings: (i) information on how to contact the retailer for the purposes of making a complaint or requesting information must be presented under the sub-heading “...If You Have a Complaint or Question”; (ii) information on how to contact the retailer for the purposes of renewing or extending the term of the contract must be</i></u></p>	<p>Active has no comment.</p>

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<p><u>presented under the heading “...To Renew or Extend this Contract”; and (iii) information on how to contact the retailer for the purposes of cancelling the contract must be presented under the heading “...To End this Contract”; and</u></p>	
<p><u>(a) if the contract contains information on how the contract may be amended, the information shall be set out under the heading “Making Changes to this Contract”</u></p>	<p>Active has no comment.</p>
<p><i>Transfer requests and supply (low volume consumers - where verification is required)</i> 3.3 A retailer shall not submit a request to an electricity distributor for a change of electricity supply for a low volume consumer to that retailer or supply electricity to a low volume consumer under a contract to which verification applies unless: (a) the retailer has given a text-based copy of the contract to the low volume consumer; (b) the retailer has given the applicable Board-OEB-approved disclosure statement to the low volume consumer; (c) the retailer has given to the low volume consumer the applicable price comparison that complies with this Code; (d) the low volume consumer has acknowledged receipt of the text-based contract, the disclosure statement and the price comparison; and (e) the contract has been validly verified.</p>	<p>Active has no comment.</p>
<p><i>Transfer requests and supply (low volume consumers - where verification is not required)</i> 3.4 A retailer shall not submit a request to an electricity distributor for a change of electricity supply for a low volume consumer to that retailer or supply electricity to a</p>	<p>Active has no comment.</p>

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<p>low volume consumer under a contract to which verification does not apply unless: (a) the retailer has given a text-based copy of the contract to the low volume consumer; (b) the retailer has given the applicable Board-approved disclosure statement to the low volume consumer; (c) the retailer has given to the low volume consumer the applicable price comparison that complies with this Code; (d) the low volume consumer has acknowledged receipt of the text-based contract, the disclosure statement and the price comparison; and (e) the low volume consumer has not given notice of cancellation of the contract under section 19(1) of the ECPA and the time for doing so has expired.</p>	
<p>4.11 The verification of a contract with a low volume consumer shall be effected within the period and in the manner prescribed by the ECPA Regulation, and shall comply with the following requirements: (a) the verification representative shall use <u>ensure that the call includes all of the statements and questions set out in the applicable script approved for that purpose by the Board OEB and that those statements and questions are made and asked in the order set out in the script</u>; (b) the verification representative shall not deviate from the applicable <u>Board-OEB-approved script except when and as expressly permitted by the terms of the script, or as required</u> to comply with paragraph (e), to provide a factual answer to a question from the low volume consumer or to provide a factual clarification where the low volume consumer has indicated that he or she does not understand a statement made by the verification representative; (c) except where expressly permitted by</p>	<p>Active has no comment.</p>

Table 2 – Comments on Proposed changes to the Retail Settlement Code	
Proposed Changes to the Retail Settlement Code	
<p>Section 1.2 of the Retail Settlement Code is amended by adding the following new definition after the definition of “lock box arrangement”: “low volume consumer” means a consumer who annually uses less than 150,000 kilowatt hours of electricity or such other amount as may be prescribed for the purposes of section 2 of the Energy Consumer Protection Act, 2010;</p>	Active has no comment.
<p>Section 7 of the Retail Settlement Code is amended by adding the following new section 7.2.3: 7.2.3 Retailer Information on the Bill Despite any Service Agreement, a distributor shall, in respect of a low volume consumer that is served by a retailer: (a) include, on the part of each bill submitted to the low volume consumer that relates to the commodity price, the phrase “YOU ARE BUYING YOUR ELECTRICITY FROM”, followed by the retailer’s name in capital letters and the retailer’s telephone number, website address and e-mail address as provided by the retailer; and (b) make available on the bill up to 500 text characters, including blank spaces, for the information set out in (a). Despite any Service Agreement, a retailer shall provide each applicable distributor with the retailer information listed in (a).</p>	Active supports this change.
<p>Section 10.5.2 of the Retail Settlement Code is amended by adding the words “or processed” to the end of paragraph 1. 10.5.2 Mandatory Notices A distributor shall issue notices to various parties as part of the process of implementing STRs. Notices have three purposes: 1. To inform current service providers or a consumer that a request to change service arrangements has been received; 2. To inform various market participants what actions they must take before a transfer will be implemented (e.g., if they are in arrears or if security arrangements are inadequate); and</p>	Active does not support this change. The reasons are outlined in Active’s letter to the OEB attached hereto “Active’s Letter” under section 4, “Written notice to consumers of the switch to a supplier.
<p>Section 10.5.3 of the Retail Settlement Code is amended by adding the words “Subject to section 10.5.4A,” at the beginning of the second paragraph of that, and changing the “A” of the first word of that section to “a”. 10.5.3 Processing a Change From SSS to a</p>	Active does not support this change. The reasons are outline in Active’s Letter under section 4, “Written notice to consumers of the switch to a supplier.

<p>Competitive Retailer An STR requesting the transfer of a consumer from SSS to a competitive retailer shall be submitted by the retailer who will become the new supplier if the STR is implemented. Upon receipt of the STR, a distributor shall check to see if electricity supply is currently being provided by a competitive retailer or if a request to transfer to another retailer is currently pending. If the consumer is currently served under SSS and no transfer is pending, the distributor shall proceed to process the transfer. Where an STR is received (the second STR) and a consumer is presently served by SSS yet an STR is pending, the second STR shall be rejected by the distributor with a notice that there was a pending STR for the consumer. A distributor has no specific notification requirements associated with a transfer from SSS to a competitive retailer, other than those related to meter reads as specified in section 10.5.1, unless the consumer turns out to be served by a competitive retailer, rather than being an SSS consumer, or unless there is also a pending request.</p>	
<p><i>Section 10.5 of the Retail Settlement Code is amended by adding the following new section 10.5.4A:</i> <i>10.5.4A Notification of Transfer to Low Volume Consumer Where a distributor processes an STR for a change in supply in respect of a low volume consumer under section 10.5.3 or 10.5.4, the distributor shall notify the low volume consumer of the transfer in writing within 5 business days of the date on which processing of the STR has been completed. The notice must be sent to the low volume consumer separate from any other communication from the distributor, including the bill. Subject to any arrangements to the contrary that a distributor may have with a low volume consumer in relation to communications, the notice may be sent to the low volume consumer by courier, mail, facsimile or e-mail. The notice may not be given by telephone. The notice must not include any promotional statements about the distributor's business or services, and must include the following: (a) the name of the competitive retailer to which the consumer was transferred; (b) the date on which the transfer</i></p>	<p>Active does not support this change. The reasons are outline in Active's Letter under section 4, "Written notice to consumers of the switch to a supplier."</p>

became effective; (c) whether the low volume consumer will continue to receive a bill from the distributor that includes the price of the electricity commodity under distributor-consolidated billing or whether the low volume consumer will be billed using split billing or retailer-consolidated billing; including the date on which the distributor expects the low volume consumer to receive their first bill from the distributor under the new supply arrangement, and (d) information about how to contact the distributor if the low volume consumer has questions about the transfer.

Table 3 – Comments on Proposed Changes to the Gas Distribution Access Code

Section 1.2.1 of the Gas Distribution Access Rule is amended by adding the following new definition after the definition of “gas vendor consolidated billing”: “low volume consumer” means a consumer who annually uses less than 50,000 cubic meters of gas or such other amount as may be prescribed for the purposes of section 2 of the Energy Consumer Protection Act, 2010;

Active has no comment.

Section 4.3 of the Gas Distribution Access Rule is amended by adding the following new sections 4.3.10 to 4.3.12: 4.3.10 Where a gas distributor processes an STR for a change in supply in respect of a low volume consumer under section 4.3.5 or 4.3.6, the gas distributor shall notify the low volume consumer of the transfer in writing within 5 business days of the date on which processing of the STR has been completed. The notice must: (a) be sent to the low volume consumer in accordance with section 4.3.1.12 and separate from any other communication from the gas distributor; (b) include the information set out in 4.3.1.11; and (c) not include any promotional statements about the gas distributor’s business or services. 4.3.11 The notice referred to in section 4.3.10 must include: (a) the name of the gas vendor to which the consumer was transferred; (b) the date on which the transfer became effective; (c) whether the low volume consumer will continue to receive a bill from the gas distributor that includes the price of the gas commodity under gas distributor-consolidated billing or whether the low volume consumer will be billed using split billing or gas vendor-

Active does not support this change. The reasons are outline in Active’s Letter under section 4, “Written notice to consumers of the switch to a supplier.

<p>consolidated billing; including the date on which the gas distributor expects the low volume consumer to receive their first bill from the gas distributor under the new supply arrangement; and (d) information about how to contact the gas distributor if the low volume consumer has questions about the transfer. 4.3.12 Subject to any arrangements to the contrary that a gas distributor may have with a low volume consumer in relation to communications, the notice referred to in section 4.3.10 may be sent to the low volume consumer by courier, mail, facsimile or e-mail. The notice may not be given by telephone.</p>	
<p>Section 6 of the Gas Distribution Access Rule is amended by adding the following new sections 6.1.4 and 6.1.5: 6.1.4 In the case of gas distributor-consolidated billing, and despite any Service Agreement, a gas distributor shall, in respect of a low volume consumer that is served by a gas vendor: (a) include, on the part of each bill submitted to the low volume consumer that relates to the commodity price, the phrase "YOU ARE BUYING YOUR GAS FROM", followed by the gas vendor's name in capital letters and the gas vendor's telephone number, website address and e-mail address as provided by the gas vendor; and (b) make available on the bill up to 500 text characters, including blank spaces, for the information set out in (a). 6.1.5 Despite any Service Agreement, a gas vendor shall provide each applicable gas distributor with the gas vendor information identified in section 6.1.4(a).</p>	<p>Active supports this change.</p>