

VIA COURIER AND EMAIL

October 5, 2016

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 No. EB-2015-0268

On September 8, 2016, the OEB issued a Notice of Revised Proposal to Amend the Electricity Retailer Code of Conduct, The Code of Conduct for Gas Marketers, The Retail Settlement Code and the Gas Distribution Access Rule. Below are Active Energy's comments to this Notice.

1. Plain Language Contract – Revisions to the Codes of Conduct

It is Active's understanding that in the Notice the OEB is making two proposals under this section: 1) to mandate standard contract terms and conditions to address the provisions of section 7 of the ECPA Regulations, and 2) that a desirable "end-state" is for all retailers/marketers to use a fully standardized form of contract. Active Energy supports the use of plain language in contracts (and currently does so), and providing consumers with a summary of main contract terms and consumer rights (as outlined in section 7 of the ECPA Regulations) as the first page of the contract. This summary could take the form of Section 1 of the OEB's Standard Contract Terms and Conditions example provided in Appendix A of the Notice. However, Active does object to the OEB prescribing standard contract terms and conditions either on the summary page or in other sections of the contract to be used by all retailers/marketers. Firstly, Active's contract terms and conditions are tailored to address its business practices and products, and to differentiate it from other market players. Standard contract terms and conditions mandated by the OEB will prevent retailers/marketers from tailoring contracts to suit the needs of customers and limit competition in the marketplace. Secondly, Active's customers are predominantly commercial consumers rather than residential consumers. Commercial consumers expect contract terms and conditions that provide commercial certainty and that clearly set out the obligations of both parties on an individual basis. Active's view is that a standardized plain language contract for commercial consumers could decrease rather than increase such commercial certainty between both parties.

The implementation of standard contract terms and conditions is unprecedented in Ontario and will significantly change the way retail business is currently conducted. If the OEB's intention is to continue with the development of standard terms and conditions, Active requests that the OEB set up a working

group, consisting of OEB staff and retailers/marketers, in order that a fulsome process can take place for the development of both mandatory and discretionary standard contract terms and conditions.

2. Written Notice of Switch

The OEB is proposing that electricity and natural gas distributors be required to send consumers contracting with a retailer/marketer a notice of switch letter. Active does not oppose the letter being sent to low volume consumers, but objects to the letter being sent to large volume electricity and natural gas consumers since they are not regulated under the ECPA, have not participated in this forum and on the need/advantages of receiving a notice of switch letter, and are sophisticated customers with complex pricing that may not be able to be captured in the letter. In fact, sending letters that do not capture the correct contract price product may expose retailers/marketers to unintended legal disputes as a result of the letter incorrectly describing the product.

3. Retailer contracts More Visible on the Bill

Active Energy supports that its telephone number, website address and e-mail address be made available on distributor bills as it can best address consumer inquiries concerning their contracted products.

4. Revised Verification Call Script

Active Energy has reviewed the proposed script for contracts entered into over the internet by Non-Residential consumers. Active Energy proposes the attached script (Schedule A) which removes some repetitive phrases. Active is also of the opinion that some of the questions being asked on the script would have already been verified by the consumer when they entered into the contract online and therefore not necessary to confirm. For example the customer would have already confirmed they reviewed the price comparison document and disclosure statement document prior to being able to complete enrollment.

Active Energy does not support the decision to not allow for online verification at this time. Active is of the opinion that many commercial consumers would find online verification to be a very essential tool as opposed to completing the verification over the phone.

5. Energy Retailer Scorecards

Active Energy does not object to the development of a scorecard. As stated by the OEB, Active looks forward to a consultative process to develop the scorecard methodology.

Please contact me should you have any questions

Regards,



Gaetana Girardi
Director, Operations
Phone: 416-238-5540 ext 226
Email: gaetana.girardi@activeenergy.ca

Schedule A – Active Energy’s proposed script changes

Verification Call Script for Non-Residential Consumers – Dual Fuel Contracts Entered into Over the Internet

Instructions for the use of this script:

1. This script must only be used for non-residential consumers that have entered into a contract or contracts for natural gas and electricity over the internet.
2. In this script, the term “energy retailer” is used to refer to the gas marketer / electricity retailer.
3. The verification call must be terminated if Ontario Regulation 389/10 (General) made under the *Energy Consumer Protection Act, 2010* (the ECPA Regulation) or this script so requires. Among other things:
 - a. The ECPA Regulation requires that the verification representative stop the verification process if he or she is made aware that the energy retailer has committed an unfair practice, or if the verification representative has reasonable grounds to believe that the energy retailer has committed an unfair practice. Among other things, this requires that the verification representative terminate the verification process if at any time the verification representative knows or ought to know that the consumer is not reasonably able to protect his or her interests by reason of inability to understand English, physical or mental disability, ignorance, illiteracy or another disadvantage.
 - b. The verification representative must terminate the verification process if at any time the consumer indicates that he or she is not comfortable with the verification call being recorded.
 - c. The verification representative must terminate the call if at any time it appears that the verification call is taking place on a date that is outside the window allowed by the ECPA Regulation.

Where the verification call must be terminated for any of the above reasons or as otherwise required by this script, before terminating the call the verification representative must advise the consumer that the verification process cannot continue and must explain in plain language the reason why that is the case. In providing that explanation, the verification representative cannot make any statements regarding any

benefit to the consumer that may be lost as a result of the termination of the verification process, but must indicate in neutral terms that the contract will become invalid and that the consumer's energy supply arrangements will remain as they are on the date of the call.

4. This script must be followed in the order presented below. Statements or questions in italics must be given or made verbatim as written. If the verification representative has any additional questions for the consumer, these may be asked once the script has been completed.
5. Where a question or statement calls for a yes or no response from the consumer and the consumer answers no, except where alternative instructions are provided in the script the verification representative must end the call.
6. If the consumer has entered into two separate contracts rather than one contract for both gas and electricity, the verification representative may refer to "contracts" instead of "contract" where appropriate in this script.

A. Mandatory Greeting

If at any time during the Greeting portion of the script the consumer indicates that the consumer did not enter into a contract with the energy retailer, or does not recall having entered into a contract with the energy retailer, the verification agent may make up to two attempts to jog the consumer's memory. If the consumer still does not recall having entered into the contract, the verification representative may offer to re-send the consumer a copy of the energy retailer's e-mail with the contract, disclosure statement and price comparisons. The verification representative may also ask the consumer if there is a convenient time to call again once the e-mail has been sent to the consumer, but otherwise must end the call.

1. The verification representative must provide the following information:
 - a. The name of the verification representative.
 - b. The name of the energy retailer on whose behalf the verification representative is acting.
 - c. The name of the company that employs the verification representative.
2. The verification representative may greet the consumer by name, and then must explain the purpose of the call:

- a. For an inbound call: *May I please confirm that you are calling to verify that you would like to continue with a contract to buy electricity and natural gas from [energy retailer name] for the business at [address]? Y/N*

If the consumer answers no, the verification representative may offer to refer the consumer to the energy retailer to answer the consumer's enquiry, but otherwise must end the call. No additional explanation for ending the call is required.

- b. For an outbound call: *Our records show that you signed up for a contract over the internet to buy electricity and natural gas for the business at [address (s)]. I am calling today to confirm that you want to continue with that contract.*
3. The verification representative must explain that the call is being recorded, after which the verification representative must add the following: *If you are not comfortable with this call being recorded, please let me know at any time.*
4. The verification representative must ask the consumer if the consumer would like an opportunity to retrieve a copy of the contract, the disclosure statement and price comparisons for reference purposes before proceeding with the call.

B. Mandatory Questions and Statements

1. “May I please confirm that you are authorized to make decisions in regards to the natural gas and electricity supply for this business? Y/N

If no – “Is there an individual who is authorized to make decisions in regards to the gas and electricity supply for [business name]”? Y/N

If no, the verification representative may ask the consumer if there is a more convenient time to call, but otherwise the call must be terminated.

2. Can I confirm your full name and position within the business?
3. Can I confirm the name that is on the electricity and natural gas bills for the business?
4. “Today’s date is [date]”.

5. “Can you please confirm for me that you signed up for a contract over the internet to buy electricity and natural gas from [energy retailer name] for the business? Y/N

If the consumer answers no, the verification representative may make up to two attempts to jog the consumer's memory, but if the consumer still does not confirm having entered into the contract the verification representative must end the call.

6. “Please note that you don’t have to confirm that you want to continue with the contract if you don’t want to. If you don’t want to continue with the contract, you will keep buying your electricity and natural gas like you do today. And you won’t have to pay any cancellation fees. Do you have any questions about that?”

If the consumer has questions, the verification representative may answer them. If the verification representative does not answer a consumer’s question, or the consumer indicates that they do not understand something after an explanation has been given, the verification representative must end the call. If the consumer indicates that they do not have any questions, the verification representative may go on to the next question.

7. “[Energy Retailer Name name] was required to send you an e-mail with the contract and other important documents after you signed up for the contract. I just want to make sure that you did in fact get all of that information. So I am going to ask you a few questions about that.

a. First, did you get a copy of the contract by e-mail from [energy retailer name] on [month, day, year]? Y/N

b. Did the e-mail also include a disclosure statement that explains basic information about energy contracts and your rights as an energy consumer? Y/N

c. Did the e-mail also include two price comparisons that explain how [energy retailer name’s] prices for electricity and natural gas compare to the prices charged by your electricity utility and your natural gas utility? Y/N

If the consumer does not recall receiving the e-mail or the attachments, the verification representative may offer to re-send the consumer a copy of the energy retailer’s e-mail with the contract, disclosure statement and price comparison. The verification representative may also ask the consumer if there is a convenient time to call again once the e-mail has been sent to the consumer, but otherwise must end the call.

8. “Do you understand that, if you confirm that you want to continue with the contract today, you will be buying your natural gas and electricity from [energy retailer name] for [X] years? Y/N

9. “Do you understand that [supplier name] is not your utility, and is not associated with the Ontario Energy Board or the Government of Ontario”? Y/N

If no, the verification representative must explain the independence of the supplier.

10. “You should also be aware that there is no guarantee that the contract will save you any money on your electricity or natural gas.

11. The contract details for natural gas are a term of [x] years at a price of [price details]. The contract details for electricity are a term of [x] years at a price of [price details]. Can you please confirm that this is correct”? Y/N

12. I have to explain that the contract price only covers part of your bill. You will still have to pay for other charges like delivery charges, the debt retirement charge and taxes. You will also have to keep paying your share of the Global Adjustment, which will start to show up as a separate line on your electricity bill. Do you have any questions about the Global Adjustment or the other charges you will still have to pay on top of the contract price?

If the consumer has questions, the verification representative may answer them. If the consumer’s question is about the Global Adjustment, the following explanation must be given:

“Most electricity generating companies get a guaranteed price for the electricity that they produce. The Global Adjustment is the difference between that guaranteed price and the money the generators earn in the wholesale marketplace. The Global Adjustment also covers the costs of some conservation programs. The amount of the Global Adjustment can change every month. Although it can be a credit, the Global Adjustment has been a charge almost all the time since 2006. All electricity consumers have to pay their share of the Global Adjustment. The electricity prices charged by your electricity utility already include an estimate of the Global Adjustment. If you confirm the contract, you will have to pay your share of the Global Adjustment on top of the contract price.”

13. “Do you agree to continue with the contract to buy electricity and natural gas from [energy retailer name] for [X] years at the price we talked about today? Y/N

If the consumer indicates they want more time to decide, the verification representative may attempt to schedule another verification call on a later date, but otherwise must end the call.

14. If you change your mind about the contract, you can tell [energy retailer name] that you want to cancel the contract up to 30 days after you receive the second bill that shows the contract price. You have to pay that bill, but you won’t have to

pay any cancellation fees. If you cancel after that, you may have to pay a cancellation fee. Do you have any questions about that?

If the consumer has questions, the verification representative may answer them or refer the consumer to the contract for details about the consumer's cancellation rights. If the verification representative does not answer a consumer's question, or the consumer indicates that they still do not understand something after an explanation has been given, the verification representative must end the call. If the consumer indicates that they do not have any questions, the verification representative may go on to the next question.

15. Now that you have confirmed that you want to continue with the contract, your electricity utility and gas utility will take steps to switch you to the contract price. They will send you a letter once the switch has been done. The contract price will start to show up on the electricity and natural gas bills for the business after that. If you have any questions about that, you should contact [energy retailer name]. Their contact information is on your contract, but I can give it to you now if you'd like.

If the consumer wants contact information for the energy retailer, the verification representative must provide it.

16. You can get information about energy contracts, energy prices and your rights and obligations as an energy consumer from the Ontario Energy Board. The Ontario Energy Board is the independent government agency that oversees the electricity and natural gas sectors in Ontario. Would you like the Ontario Energy Board's website address or toll-free number? Y/N

If the consumer answers yes, the verification representative must provide the OEB's contact details.

"Thank you for your time.

~~1. Am I speaking with the person whose name is on the electricity and natural gas bills for the business at [address]? Y/N~~

~~If the consumer answers no, the verification representative may ask if the account holder is available for the call. If the consumer answers no, the verification representative may ask whether the consumer is authorized by the account holder to enter into a contract to buy electricity and natural gas for the business. When referring to the account holder, the verification representative must always refer to "the person whose name is on the electricity and natural gas bills" for the business. If no person~~

~~that is legally permitted to enter into the contract comes to the phone, the verification representative must end the call.~~

~~2. The verification representative must confirm the consumer's full name.~~

~~3. Before I go on, I first have to record that today's date is [month, day, year].~~

~~4. Can you please confirm for me that you signed up for a contract over the internet to buy electricity and natural gas from [energy retailer name] for the business? Y/N~~

~~If the consumer answers no, the verification representative may make up to two attempts to jog the consumer's memory, but if the consumer still does not confirm having entered into the contract the verification representative must end the call.~~

~~5. I have some other questions to ask you so that we can confirm that you want to continue with the contract. But before I do that, I have to tell you that you don't have to confirm that you want to continue with the contract if you don't want to. If you don't want to continue with the contract, you will keep buying your electricity and natural gas like you do today. And you won't have to pay any cancellation fees. Do you have any questions about that?~~

~~If the consumer has questions, the verification representative may answer them. If the verification representative does not answer a consumer's question, or the consumer indicates that they do not understand something after an explanation has been given, the verification representative must end the call. If the consumer indicates that they do not have any questions, the verification representative may go on to question 6.~~

~~6. Do you understand that, if you confirm that you want to continue with the contract today, you will be buying your natural gas and electricity from [energy retailer name] for [X] years? Y/N~~

~~7. [Energy retailer name] was required to send you an e-mail with the contract and other important documents after you signed up for the contract. I just want to make sure that you did in fact get all of that information. So I am going to ask you a few questions about that. First, did you get a copy of the contract by e-mail from [energy retailer name] on [month, day, year]? Y/N~~

~~If the consumer does not recall receiving the e-mail or the contract, the verification representative may offer to re-send the consumer a copy of the energy retailer's e-mail with the contract, disclosure statement and price comparison. The verification representative may also ask the consumer if there is a convenient time to call again once the e-mail has been sent to the consumer, but otherwise must end the call.~~

~~8. Did the e-mail also include a disclosure statement that explains basic information about energy contracts and your rights as an energy consumer? Y/N~~

~~If the consumer does not recall receiving the e-mail or the disclosure statement, the verification representative may offer to re-send the consumer a copy of the energy retailer's e-mail with the contract, disclosure statement and price comparison. The verification representative may also ask the consumer if there is a convenient time to call again once the e-mail has been sent to the consumer, but otherwise must end the call.~~

~~9. Did the e-mail also include two price comparisons that explain how [energy retailer name's] prices for electricity and natural gas compare to the prices charged by your electricity utility and your natural gas utility? Y/N~~

~~If the consumer does not recall receiving the e-mail or the price comparison, the verification representative may offer to re-send the consumer a copy of the energy retailer's e-mail with the contract, disclosure statement and price comparison. The verification representative may also ask the consumer if there is a convenient time to call again once the e-mail has been sent to the consumer, but otherwise must end the call.~~

~~10. I now need to ask you some questions to make sure you understand what you will be paying for electricity and natural gas if you decide to continue with the contract today. Before I go on, I need to tell you that there is no guarantee that the contract will save you any money on your electricity or natural gas.~~

~~11. The verification representative must explain the contract price for electricity and natural gas. Unless the contract provides for a combined price for both commodities, the verification representative must do this separately for each commodity. The verification representative must then select the applicable version of this question:~~

~~a. For a contract with a combined price for electricity and natural gas: Do you have any questions about how much you will be paying for electricity and natural gas under the contract?~~

~~If the consumer has questions, the verification representative may answer them. If the verification representative does not answer a consumer's question, or the consumer indicates that they still do not understand something after an explanation has been given, the verification representative must end the call. If the consumer indicates that they do not have any questions, the verification representative may go on to question 12.~~

~~b. For a contract with separate electricity and natural gas prices:~~

- ~~i. Do you have any questions about how much you will be paying for electricity under the contract?~~

~~If the consumer has questions, the verification representative may answer them. If the verification representative does not answer a consumer's question, or the consumer indicates that they still do not understand something after an explanation has been given, the verification representative must end the call. If the consumer indicates that they do not have any questions, the verification representative may go on to question ii.~~

- ~~ii. Do you have any questions about how much you will be paying for natural gas under the contract?~~

~~If the consumer has questions, the verification representative may answer them. If the verification representative does not answer a consumer's question, or the consumer indicates that they still do not understand something after an explanation has been given, the verification representative must end the call. If the consumer indicates that they do not have any questions, the verification representative may go on to question 12.~~

- ~~12. We've now covered what you will be paying for electricity and natural gas if you continue with the contract. I have to explain that the contract price only covers part of your bill. You will still have to pay for other charges like delivery charges, the debt retirement charge and taxes. You will also have to keep paying your share of the Global Adjustment, which will start to show up as a separate line on your electricity bill. Do you have any questions about the Global Adjustment or the other charges you will still have to pay on top of the contract price?~~

~~If the consumer has questions, the verification representative may answer them. If the consumer's question is about the Global Adjustment, the following explanation must be given:~~

~~Most electricity generating companies get a guaranteed price for the electricity that they produce. The Global Adjustment is the difference between that guaranteed price and the money the generators earn in the wholesale marketplace. The Global Adjustment also covers the costs of some conservation programs. The amount of the Global Adjustment can change every month. Although it can be a credit, the Global Adjustment has been a charge almost all the time since 2006. All electricity consumers have to pay their share of the Global Adjustment. The electricity prices charged by your electricity utility already include an estimate of the Global Adjustment. If you confirm the contract, you will have to pay your share of the Global Adjustment on top of the contract price.~~

~~If the verification representative does not answer a consumer's question, or the consumer indicates that they still do not understand something after an explanation has been given, the verification representative must end the call. If the consumer indicates that they do not have any questions, the verification representative may go on to question 13.~~

~~13. Do you agree to continue with the contract to buy electricity and natural gas from [energy retailer name] for [X] years at the price we talked about today? Y/N~~

~~If the consumer indicates they want more time to decide, the verification representative may attempt to schedule another verification call on a later date, but otherwise must end the call.~~

~~14. If you change your mind about the contract, you can tell [energy retailer name] that you want to cancel the contract up to 30 days after you receive the second bill that shows the contract price. You have to pay that bill, but you won't have to pay any cancellation fees. If you cancel after that, you may have to pay a cancellation fee. Do you have any questions about that?~~

~~If the consumer has questions, the verification representative may answer them or refer the consumer to the contract for details about the consumer's cancellation rights. If the verification representative does not answer a consumer's question, or the consumer indicates that they still do not understand something after an explanation has been given, the verification representative must end the call. If the consumer indicates that they do not have any questions, the verification representative may go on to question 15.~~

~~15. Now that you have confirmed that you want to continue with the contract, your electricity utility and gas utility will take steps to switch you to the contract price. They will send you a letter once the switch has been done. The contract price will start to show up on the electricity and natural gas bills for the business after that. If you have any questions about that, you should contact [energy retailer name]. Their contact information is on your contract, but I can give it to you now if you'd like.~~

~~If the consumer wants contact information for the energy retailer, the verification representative must provide it.~~

~~16. You can get information about energy contracts, energy prices and your rights and obligations as an energy consumer from the Ontario Energy Board. The Ontario Energy Board is the independent government agency that oversees the electricity and natural gas sectors in Ontario. Would you like the Ontario Energy Board's website address or toll-free number? Y/N~~

If the consumer answers yes, the verification representative must provide the OEB's contact details.

—

—