

Discussion Paper

OEA Marketers and Retailers Sector Committee

Date: November 19, 2008

Subject: Potential Consumer Protection Regulation/Code Amendments Applicable to Small-Volume Consumers

Summary

Members of the Ontario Energy Association (“OEA”) Marketers and Retailers Sector Committee (the “Committee”) acknowledge the consumer and government concerns regarding door-to-door retail energy marketing practices. The Committee is very respectful and sensitive to the issues raised by some consumers who have had a negative experience with an energy retailer and recognize the need for immediate action in this regard.

In order to minimize further consumer confusion and increase consumer awareness, amendments to the existing marketing regulations must target the root causes of consumer issues.

- Misunderstandings or misrepresentations which occur during the sales process.
- Industry practices and market Rules/Codes which allow retailers to over-write existing retail contracts for the same consumer during the same or overlapping service periods.

In fact the instances of consumers being enrolled into 2 contracts during the same or an overlapping period of time occurs several thousand times every month. This of course, results in, and continues to cause, significant numbers of consumer complaints.

The Committee submits that changes in the following areas would target the root causes noted above.

1. Mandatory contract amendments to ensure a high standard in the sales process
 - a. Minimum format and plain language contract requirements.
 - b. The inclusion of standard disclosure statements on the contract directed to clarify the main complaint types received from consumers.

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2. Industry Rule and Code changes
 - a. Repeal or amend certain existing regulations which currently allow separate retailers to enroll multiple contracts for the same consumer account during the same or overlapping terms.
 - b. Repeal provisions which place consumers in a position to be held liable to two separate retail contracts during the same term and for the same premise (in the event a second enrolment attempt occurs).

The OEA members submit that the detailed amendments provided herein would result in a significant and measurable reduction in retail energy consumer complaints and a corresponding increase in consumer awareness. These amendments should be made mandatory for transactions involving small-volume consumers (not only OEA members).

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1. Introduction

The Ontario residential and small commercial mass market for retailing natural gas supply has been open since 1985 and the electricity market since 2002. The majority of sales activity for residential and small commercial consumers occurs by means of door to door sales.

The marketing practices for retail energy marketers is governed primarily by the (i) Ontario Energy Board Act (ii) Customer Protection Regulation OReg 200/02 (*The OEB Act*), (iii) the Retail Settlement Code, (iv) the Gas Distribution Access Rule, the (v) Codes of Conduct for Natural Gas Marketers and Electricity Retailers, and (vi) Bulletins issued by the Ontario Energy Board (OEB).

The OEA members submit that changes are required to regulations regarding marketing practices but also submit that the industry processes directed under regulation/Codes or Rules as noted herein, also contribute to the high levels of consumer dissatisfaction experienced in the market today.

The objective of the amendments is to strengthen consumer protections and raise consumer awareness, through the establishment of standard and transparent practices applicable to the marketing practices of energy retailers in Ontario. The proposed amendments are to be added to the existing regulations in place.

2. Industry Rules

The Retail Natural Gas Market

In regards to the natural gas market, prior to the implementation of the Gas Distribution Access Rule ('GDAR')¹, the market process for enrolling customers into a retail energy supply contract was structured to only allow one retailer to enroll a given consumer on a supply contract at a given time. Any attempt by a second retailer to enroll the same consumer into the second retailer's contract resulted in a rejection by the utility of the second contract enrolment attempt².

¹ A Rule passed by the Ontario Energy Board, pursuant to the *Ontario Energy Board Act*

² This process is standard in a number of deregulated markets (i.e. British Columbia, Manitoba, Alberta, Quebec, Indiana)

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Consumers could certainly choose to take service from a different retailer but it was done through an orderly transition in which the consumer was required to end the transaction with the current retailer prior to initiating an enrollment into a new contract or offer, with a second retailer.

With the implementation of the GDAR in June of 2007, an amendment to this enrolment process was introduced in which a second retailer could now initiate a second contract which overlapped the existing contract the consumer had with an existing retailer.

Because the consumer is no longer held harmless from being contractually bound to 2 contracts at the same time, an unfortunate circumstance has resulted in which consumers (either knowingly without realizing the impact of their decision, or as a result of confusion) enter into new contracts prior to ending their existing contract commitment, and become subjected to the obligations of two supply agreements for a single premise. Since most contracts for supply are term contracts, the customer is obligated to termination fees and costs associated to both contracts. This creates a situation in which the consumer must terminate one of the contracts; thus being held liable for the associated termination fees.

The Retail Electricity Market

Similarly, the electricity retail market is governed largely by the Retail Settlement Code ('RSC')³ and a similar process was introduced into the market as was introduced by the GDAR in natural gas. Although the market opened in 2002, the small volume retail market was essentially stifled by the government's introduction of Statutory Pricing in November of 2002, which provided default pricing for consumers at 4.3 kWh. Since no retailer could compete with this pricing, marketing to residential and small volume commercial customers ceased until late 2005 when the RPP replaced the Statutory Price and slowly increased to start reflecting the true cost of power.

The Resulting Effects for Consumers

Therefore since late 2005 and more so increasingly into 2007, consumers started to become subjected to these two processes noted above, in which they could be held liable for two competing contracts for the same premise. Although the intent of the Code and Rule changes were to provide a simple, more convenient means for consumers to choose or switch between retail supply offers than what existed prior; it had the unfortunate reverse effect.

³ A Code passed by the Ontario Energy Board, pursuant to the *Ontario Energy Board Act*

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In fact the instances of consumers being enrolled into 2 contracts during the same or an overlapping period of time occurs several thousand times every month. This of course, resulted in, and continues to cause, significant numbers of consumer complaints.

Therefore, the Committee recommends the following amendments be implemented to restore the consumer safeguard that existed previous to the implementation of GDAR, in the natural gas market, and pass a similar change to the RSC to bring parity to the electricity market.

I. Industry Rules Amendments

1. The objective is to ensure consumer mobility while increasing protection of a consumer if a contract already exists. This could be accomplished by:

- 1. Amending the Gas Distribution Access Rule ('GDAR') and the Retail Settlement Code ('RSC') to remove the right of a retailer to overwrite or cancel another retailer's existing supply arrangement on behalf of a customer, and any supporting provisions thereof.**
- 2. If 1. above will not be enacted, then the regulation should, at minimum, be amended to include:**
 - i. A provision which provides that the consumer may cancel a new marketing contract without cost or penalty if a marketing contract presently exists for the same property, except where the existing marketing contract is to expire on or before the commencement of the new marketing contract. This similar provision exists in the Alberta Energy Marketing Regulation (under *The Fair Trading Act*).**
 - ii. A requirement that where a retailer enrolment request is received by the utility for a premise which is currently served by an existing retailer, that the customer is reverted to the original service with the existing retailer should the second enrolment request be cancelled or otherwise unsuccessful.**

3. Marketing Rules and Regulations

The OEA Committee recognizes that stronger measures of quality in the communication and sales of retail energy contracts is needed to minimize the occurrences of confusion and misleading practices evident from the types and trends of complaints received from consumers.

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Generally, the main complaint types received from consumers can be categorized in the following manner:

- i. Consumers believe the energy retailer is affiliated with the local utility
- ii. Consumers believe the product will guarantee a savings over the utility default price
- iii. The consumer is not aware of the existence of early termination fees or can not easily ascertain the amount of the fee

Therefore, the OEA Committee recommends the following amendments to the marketing regulation (OReg 200/02) be enacted to ensure that all retailers and marketers in Ontario are held to the same high standards of quality in the sale of energy offers.

II. Contracts

Whether a sale occurs at the door, through the internet, at a store or a place of business, the Committee offers that the most practical means of ensuring clarity and awareness by the consumer is to provide written disclosure of the following items at the time of sale to ensure the consumer received this information clearly and accurately.

- 1. The Energy Retailer is an independent energy company and not affiliated with the customer's local utility**
- 2. The product does not guarantee savings over the utility rate (unless it in fact does)**
- 3. If an exit fee or early termination fee exists for the contract, it must be disclosed along with the amount of the fee or charge.**

4. The OEA Self-Regulatory Actions

The retail members of the OEA are working to improve the standards of retailing in Ontario, and to increase the level of quality of the sales and service being provided to low volume consumers.

The Committee is delivering this initiative in 4 areas initially;

- The development of a standard consumer brochure to be provided to all consumers considering a retail energy offer

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- Designed as a neutral and balanced piece which provides simple understanding of the options available to consumers and a narrative of key terms and information needed to consider when exercising their choice
- Pending Consumer focus Group testing –week of November 24th
- Implementation Date: January 1-2008

- Commitment to the use of plain language contracts
 - Completed July1, 2008

- A Standard Sales Agent Training Module
 - To be provided to all sales employees and agents serving small volume consumers
 - Provides basics on the industry rules and practices, how the deregulated markets work, compliance with regulations and marketing practices in effect in Ontario
 - Draft is completed- Pending OEA Governance Committee Approval
 - Implementation Date: January 1, 2008

- Establishment of an industry Agent Database
 - A program to capture agents who are certified and trained to work for the member companies
 - Implementation date: February 1, 2008