

DESCRIPTION OF PROPOSED REGULATIONS UNDER THE *ENERGY CONSUMER PROTECTION ACT, 2010*

**For ease of reference only, the following definitions are included from the
*Energy Consumer Protection Act, 2010.***

They do not form part of the proposed Regulation.

Definitions from Part I and Part II of the *Energy Consumer Protection Act, 2010*

“Board” means the Ontario Energy Board;

“distribution system” has the same meaning as in section 3 of the Ontario Energy Board Act, 1998;

“distributor” has the same meaning as in section 3 of the Ontario Energy Board Act, 1998;

“gas” has the same meaning as in section 3 of the Ontario Energy Board Act, 1998;

“gas distributor” has the same meaning as in section 3 of the Ontario Energy Board Act, 1998, and “distribute” and “distribution” when used in relation to gas have corresponding meanings;

“Minister” means the Minister of Energy and Infrastructure or such other member of the Executive Council as may be assigned the administration of this Act under the Executive Council Act;

“person”, or any expression referring to a person, means an individual, sole proprietorship, partnership, including a limited partnership, trust or body corporate, or an individual in his or her capacity as a trustee, executor, administrator or other legal representative or such other class of persons as may be prescribed;

“prescribed” means prescribed by regulation made under this Act;

“regulations” means the regulations made under this Act.

“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, and

(b) in respect of gas marketing, a person who annually uses less than the prescribed amount of gas;

“contract” means an agreement between a consumer and a retailer for the provision of electricity or an agreement between a consumer and a gas marketer for the provision of gas;

“electronic signature” has the same meaning as in subsection 1 (1) of the Electronic Commerce Act, 2000;

“gas marketer” means a person who,

- (a) sells or offers to sell gas to a consumer,
- (b) acts as the agent or broker for a seller of gas to a consumer, or
- (c) acts or offers to act as the agent or broker of a consumer in the purchase of gas, and “gas marketing” has a corresponding meaning;

“retail”, with respect to electricity, means,

- (a) to sell or offer to sell electricity to a consumer,
- (b) to act as agent or broker for a retailer with respect to the sale or offering for sale of electricity, or
- (c) to act or offer to act as an agent or broker for a consumer with respect to the sale or offering for sale of electricity, and “retailing” has a corresponding meaning;

“retailer” means a person who retails electricity, but does not include a distributor, a suite meter provider or such other persons as may be prescribed;

“salesperson” means,

- (a) in respect of gas marketing, a person who, for the purpose of effecting sales of gas or entering into agency agreements with consumers, conducts gas marketing on behalf of a gas marketer or makes one or more representations to one or more consumers on behalf of a gas marketer, whether as an employee of the gas marketer or not, and

Definitions from Part II of the Energy Consumer Protection Act, 2010 Continued

- (b) in respect of the retailing of electricity, a person who, for the purpose of effecting sales of electricity or entering into agency agreements with consumers, conducts retailing of electricity on behalf of a retailer or makes one or more representations to one or more consumers on behalf of a retailer, whether as an employee of the retailer or not;

“supplier” means a retailer or gas marketer;

“text-based” means text capable of being read by an individual and in such form, format or medium as may be prescribed, but does not include any form, format or medium that may be prescribed as excluded.

Proposed Regulations: *Energy Consumer Protection Act, 2010*

PART I DEFINITIONS

Definitions

“account holder” means the person in whose name an account has been established with a distributor for the provision of electricity or gas and,

- (a) in whose name invoices are issued by the distributor, whether on its own behalf or on behalf of a supplier, in respect of the provision of the electricity or gas, or
- (b) in whose name invoices would be issued by the distributor in respect of the provision of electricity or gas, if the invoices were not issued by a supplier;

“authorized agent of the account holder” means, in relation to entering into, renewing, extending or amending, as the case may be, a contract with a supplier,

- (i) the spouse, as defined in section 29 of the *Family Law Act*, of the account holder if,
 - (A) the spouse is co-habiting with the account holder at the time the spouse enters into, renews, extends or amends, as the case may be, the contract on behalf of the account holder, and
 - (B) prior to the spouse entering into, renewing, extending or amending, as the case may be, the contract as contemplated in sub-paragraph (A), the account holder has not notified the supplier that the account holder has withdrawn the authority of the spouse to do so;

or

- (ii) a person who has actual authority from the account holder to enter into, renew, extend or amend, as the case may be, the contract on behalf of the account holder at the time the person does so;

“code” refers to any code pertaining to electricity issued by the Board under section 70.1 of the Ontario Energy Board Act;

“commodity price” means the price payable by a consumer for the commodity of electricity or gas;

“contract price” means all of the amounts payable by a consumer under a contract in relation to the sale of electricity or gas to the consumer, including the commodity price;

“disclosure statement” means a statement of information that must accompany an electricity or gas contract, or renewal of an electricity or gas contract, as contemplated in section 8, as the context requires.

“distributor” includes a gas distributor;

“price” means the commodity price, or contract price, as well as regulated rates;

“regulated rates” means the regulated rates or charges, payable by a consumer who is not in a contract, that are related to the sale of electricity or gas to the consumer, and further includes,

- (a) transmission and distribution charges,
- (b) regulatory charges,
- (c) debt reduction charges, and
- (d) any other adjustments or amounts contemplated under section 25.33 of the Electricity Act, 1998,

but excluding,

- (e) any sales taxes.

“rule” refers to any rule pertaining to natural gas issued by the Board under section 44 of the *Ontario Energy board Act*;

Definition of consumer, prescribed amount of electricity

2. The prescribed amount of electricity referred to in clause (a) of the definition of “consumer” in section 2 of the Act is 150,000 kilowatt hours.

Same, prescribed amount of gas

3. The prescribed amount of gas referred to in clause (b) of the definition of “consumer” in section 2 of the Act is 50,000 cubic metres.

PART II UNFAIR PRACTICES

Unfair practices

4. (1) The following acts or omissions of a supplier or a person acting on behalf of a supplier are unfair practices for the purposes of Section 10 of the Act in relation to a consumer to which the acts or omissions are directed:

- (a) Making any false or misleading statement to the consumer or to the public, including but not limited to a false or misleading statement relating to any one or more of the following:
 - (i) The terms and conditions of any contract.
 - (ii) The quality or other characteristics of any electricity or gas provided by any supplier.
 - (iii) The status of any supplier or the business relationship, affiliation or connection between any supplier and any other person.

- (iv) Benefits to the consumer arising from the status of any supplier or the business relationship, affiliation or connection between any supplier and any other person.
 - (v) The contract price or the commodity price payable by a consumer who is not under a contract or the regulated rates payable by a consumer whether or not under a contract.
 - (vi) The difference between any price payable by a consumer to any supplier or distributor, and any price payable by the consumer to any other supplier or distributor.
 - (vii) The existence of a specific financial or economic advantage to the consumer, if it does not exist.
 - (viii) The fact that the consumer will save money, or the amount of money to be saved by a consumer, expressed in any manner, if a consumer chooses one supplier or distributor over another, or any other, supplier or distributor.
 - (ix) The period of time during which a consumer may enter into a contract for the provision of electricity or gas at a specified price.
 - (x) The consequences if the consumer does not enter into or verify a contract with a supplier.
- (b) Making an unconscionable representation, as per section 5.
- (c) Failing to disclose information about the products, services, or business of a supplier, if,
- (i) the failure has the effect of deceiving or misleading the consumer, or
 - (ii) the supplier knows or ought to know that the failure has the capacity or tendency to deceive or mislead the consumer.
- (d) Failing, when making any statement as to any price charged by a supplier or distributor for the sale of electricity or gas, to specify whether the price includes regulated rates, and if the price does not include regulated rates, failing to identify those regulated rates that would be payable by the consumer.
- (e) Failing, when soliciting or negotiating a contract in person with a consumer, to give the consumer a disclosure statement if the consumer requests a copy of the document.

- (f) If one or more persons, who is acting on behalf of the supplier, solicits, negotiates or enters into a contract with a consumer, in person, and,
 - (i) fails, at the time of entering into the contract, to give the consumer,
 - (A) a text-based copy of the contract with the acknowledgements and signatures required under subsection 6(1),
 - (B) such information or documents as may be required by regulation or by a code or rule of the Board, and
 - (C) a text-based copy of the signed contract or a disclosure statement referenced in section 8.
 - (ii) fails, at any time when soliciting, negotiating or entering into the contract, to give the consumer a text-based copy of any document that is presented to the consumer but is not signed by the consumer, if the consumer requests a copy, or
 - (iii) fails, at any time when soliciting, negotiating or entering into a contract, to give the consumer a business card, in a format determined by the Board and that otherwise complies with the requirements set out in the Act and the regulations made under the Act and the *Ontario Energy Board Act, 1998* and the regulations made under that Act, from each person representing the supplier,
 - (iv) fails at any time when soliciting, negotiating or entering into the contract, to prominently display to the consumer, at each meeting with the consumer, an identification badge, in a format determined by the Board and that otherwise complies with the requirements set out in the Act and the regulations made under the Act and the *Ontario Energy Board Act, 1998* and the regulations made under that Act, for each such person.
- (g) Entering into, amending, renewing or extending a contract with any person other than,
 - (i) the account holder, or
 - (ii) the authorized agent of the account holder.
- (h) Entering into a contract with a consumer where the contract does not meet the requirements set out in section 6.

- (i) Failing to meet the requirements set out in section 8 with respect to a disclosure statement.
- (j) Failing, when entering into a contract, to have the consumer sign the acknowledgment described in paragraph 6(1)(a).
- (k) Structuring the pricing or billing arrangements in a contract in a fashion that misleads or deceives the consumer with respect to the monthly costs of a contract.
- (l) Asking a distributor to provide electricity or gas under a contract between a consumer and the supplier, if the contract has not been verified as described in section 12 or is otherwise not in compliance with the requirements set out in section 6.
- (m) Failing to comply with any code or rule of the Board, including but not limited to the Fair Marketing Practices set out in the Electricity Retailer Code of Conduct or the Code of Conduct for Gas Marketers approved by the Board.

Further clarity, unconscionable representations

5. (1) Without limiting the generality of what may be taken into account in determining whether a representation is unconscionable for purposes of subsection 4(b), there may be taken into account that the person making the representation on behalf of the supplier knows or ought to know,

- (a) that the consumer is not reasonably able to protect his or her interests because of disability, ignorance, illiteracy, inability to understand the language of an agreement or similar factors;
- (b) that the price grossly exceeds the price at which the electricity or gas is being offered by the supplier to similar consumers;
- (c) that a statement of opinion is misleading and the consumer is likely to rely on it to his or her detriment; or
- (d) that the consumer is being subjected to undue pressure to enter into a contract.

Same, false or misleading statements

(2) Without limiting the generality of what may be taken into account in determining whether a statement is false or misleading for purposes of subsection 4(a), there may be taken into account that the person making the statement or the person's employer or principal knows or ought to know that the statement omits information that makes the statement sufficiently incomplete that it is false or misleading.

PART III
CONTRACTING REQUIREMENTS

Information to be included in contracts

6. (1) For the purposes of subsection 12 (1) (a) (i) of the Act, a contract must contain the following information, which information must be in not less than 12 point font and in Times New Roman font except as otherwise provided in this subsection:

- (a) A place that would permit the consumer to,
 - (i) acknowledge that the consumer has received, read and understood a disclosure statement,
 - (ii) sign the acknowledgement, and
 - (iii) set out the name of the consumer in printed letters.
- (b) The consumer's name and address in printed letters.
- (c) The name, business address, toll-free telephone number and, if any, fax number, website address and e-mail address of the supplier.
- (d) The number of the supplier's license issued under the *Ontario Energy Board Act, 1998* to the supplier.
- (e) In the case of a contract entered into with the consumer in person, the name of the person or persons who,
 - (i) negotiated the contract on behalf of the supplier,
 - (ii) signed the contract on behalf of the supplier.
- (f) The date in printed letters on which the parties to the contract entered into it.
- (g) The date that the provision of electricity or gas is intended to start under the contract and a description of any circumstances that may prevent electricity or gas from being provided on that date.
- (h) In the case of a contract for the purchase of electricity, a statement of the contract price for the purchase of electricity.
- (i) In the case of a contract for the purchase of gas, a statement of the contract price for the purchase of gas.

- (j) Unless the contract price includes all regulated rates,
 - (i) in the case of a contract for the purchase of gas, a statement that the contract price does not include all of the charges that the consumer will have to pay for the gas, and that there will be additional charges that the consumer will have to pay to the consumer's local gas distributor.
 - (ii) in the case of a contract for the purchase of electricity,
 - (A) a statement that the contract price does not include all of the charges that the consumer will have to pay for the electricity, and that there will be additional charges that the consumer will have to pay to the consumer's local electricity distributor.
 - (B) a statement that the additional charges referred to in (A) are already part of the price that the consumer would be required to pay the local distributor if the consumer did not enter into the contract.
- (k) The terms of payment that the contract requires, including the terms relating to any deposit, any late payment charges, any cancellation fees and any other charges or penalties payable under the contract.
- (l) A statement that the consumer has various rights to cancel the contract under section 19 of the Act and in the regulations made under the Act, and that nothing in the contract will negate or vary such cancellation rights.
- (m) A statement that the cancellation rights contemplated in paragraph (l) include, in the case of a contract for the purchase of electricity, the right to cancel the contract without penalty within 30 days after the first bill on which the full price of the contract is charged is sent to the consumer.
- (n) The circumstances, if any, in addition to those referred to in this section and Part VII, in which the consumer or the supplier may cancel the contract and the address, phone number or fax number to which the consumer may send a notice of cancellation.
- (o) Whether or not the contract may be assigned by the supplier or the consumer, and any terms or conditions relating to such an assignment.
- (p) If a contract for the provision of electricity contains a term assigning a rebate to which the consumer is entitled to another person, a statement informing the consumer that the consumer will not receive the rebate.
- (q) A description of how to make a complaint to or ask a question of the supplier.

- (r) A place for the signatures of the parties to the contract, separate from the acknowledgment described in paragraph (a) that the consumer signs.
- (s) A place, immediately below or adjacent to the place for the consumer's signature described in paragraph (r), for the name of the consumer to be set out in printed letters.
- (t) A place for an acknowledgment, below or adjacent to the place described in paragraph (s), that,
 - (i) states that the consumer acknowledges having received a text-based copy of the contract entered into with the supplier,
 - (ii) a place for the consumer to sign, and
 - (iii) a place for the date on which the consumer signed the contract.
- (u) A description of the applicable cancellation fee as contemplated in Section 21.
- (v) Such other requirements determined by the Board.

Same, internet contracts

(2) For the purposes of a contract concluded on the internet, subsections 6(1)(a)(ii), 6(1)(f), and 6(1)(t)(i) do not apply.

Contract concluded on the internet

(3) For the purposes of a contract entered into on the internet, the supplier must:

- (a) Use a secure website.
- (b) Ensure that its internet server will cancel the transaction in a reasonable period of time.
- (c) Include check boxes that must be checked by the consumer in order for the sign-up process to proceed that:
 - (i) Remind the consumer that saving and leaving their personal information on a public computer is not recommended,
 - (ii) Confirm the consumer's understanding that the supplier is not affiliated with a local utility company, the Board or the Government of Ontario,
 - (iii) Confirm that the person online is the account holder, or the authorized agent of the account holder.

- (d) Provide the terms and conditions of available contracts, a disclosure statement, and a link to the Board's website without requiring a consumer to commence a transaction.
- (e) Require the consumer, as part of a transaction for the purchase of gas or electricity, to review a disclosure statement and indicate that it has been read and understood by checking a check box.
- (e) Provide the consumer with the opportunity to download or print the contract and disclosure statement, prior to entering into the contract.
- (f) Include on the signature page an electronic signature of a director or officer of the supplier's company, and the date the contract was concluded.
- (g) following the signatures contemplated in paragraph (f), two check boxes must be displayed and a requirement for the consumer to check only one, to either explicitly,
 - (i) accept the terms and conditions of the contract offer, resulting in paragraph (h); or
 - (ii) decline the terms and conditions of the contract offer resulting in the termination of the contracting process.
- (h) Require the consumer to provide his or her electronic mail address.
- (i) Immediately upon completion of the transaction, send the contract and a disclosure statement to the consumer's electronic mail address provided.

Information, etc., not permitted in contracts

7. (1) For the purposes of subsection 12 (3) of the Act, a contract shall not contain or be accompanied by any term or acknowledgement that purports to negate or vary any rights given to the consumer, or requirements or obligations imposed on the supplier, under the Act or regulations made under the Act or under the *Ontario Energy Board Act, 1998* or under a code or rule of the Board, including but not limited to the cancellation rights given to the consumer under section 19 of the Act.

(2) Any term or acknowledgement referred to in subsection (1) is void.

(3) Any term or acknowledgement referred to in subsection (1) is severable from the contract and shall not be evidence of circumstances showing an intent that the deemed or implied warranty or condition does not apply.

Information to accompany contracts

8. (1) For the purposes of subsection 12(1)(a)(ii) of the Act, any contract offered to a consumer must be accompanied by the appropriate disclosure statement.

(2) For the purposes of subsection 18(1) of the Act, any renewal or extension of a contract offered to a consumer must be accompanied by the appropriate renewal disclosure statement.

(3) The disclosure statement referenced in subsections (1) and (2) shall be of such form, content and use as is determined by the Board.

(4) A disclosure statement referenced in subsections (1) and (2) must be available in such languages as are determined by the Board.

Text-based copy of contract

9. (1) For the purposes of subsection 13(1) of the Act, if a consumer enters into a contract with a supplier in person, a text-based copy of the contract must be delivered to the consumer at the time the contract is entered into.

Same, contracting through the internet

(2) For the purposes of subsection 13(1) of the Act, if a consumer enters into a contract with a supplier through the internet, a text-based copy of the contract must be delivered to the e-mail address provided by the consumer immediately after entering into the contract, per paragraph 6(3)(i).

Same, contracting via mail or telephone solicitation

(3) For the purposes of subsection 13(1) of the Act, if a consumer enters into a contract with a supplier in response to a direct mailing or telephone solicitation, a text-based copy of the contract is deemed to be delivered to the consumer when the consumer inserts a date into the contract as required by subparagraph 6(1)(t)(iii).

Acknowledgement of receipt

10. (1) For the purpose of section 14 of the Act, if a consumer enters into a contract with a supplier in person, the consumer may acknowledge receipt of a text-based copy of the contract only by signing the acknowledgement described in paragraph 6(1)(t).

Same, contracting through the internet

(2) For the purpose of section 14 of the Act, if a consumer enters into a contract with a supplier through the internet, the consumer is deemed to have acknowledged receipt of a text-based copy of the contract at the time the consumer receives the e-mail contemplated in subsection 9(2).

Same, contracting by mail

(3) For the purpose of section 14 of the Act, if a consumer enters into a contract with a supplier in response to a mail solicitation, the consumer is deemed to have acknowledged receipt of a text-based copy of the contract by signing the acknowledgement in the place contemplated in subparagraph 6(1)(t)(ii) and sending the signed contract to the supplier

Same, renewals or extensions of contracts

(4) For the purpose of section 14 of the Act, if a consumer renews or extends a contract with a supplier, the consumer may acknowledge receipt of a text-based copy of the contract either by signing the acknowledgement described in subparagraph 13(4)(b)(iv) or, if the consumer renews by telephone, the consumer will be deemed to have acknowledged receipt on the date the renewal or extension occurred as described in subsection 13(6).

Prohibition re entering, etc., certain contracts

11. (1) No supplier shall enter into a contract, or renew or extend a contract with any person other than,

- a) the account holder, or
- b) the authorized agent of the account holder.

PART IV VERIFICATION REQUIREMENTS

Conditions and qualifications of persons verifying contracts

12. (1) A contract may only be verified on behalf of a supplier by an individual who meets the following conditions and qualifications:

- (a) The individual must not receive any compensation or benefit that directly or indirectly results from the number or percentage of contracts he or she verifies.
- (b) The individual must successfully complete such training as may be required by a code issued under section 70.1 of the Ontario Energy Board Act, 1998 or by a rule made by the Ontario Energy Board pursuant to clause 44(1)(c) of that Act, or by the conditions of a licence issued to the supplier by the Board.

(2) A person shall only verify a contract with:

- (a) the account holder, or
- (b) the authorized agent of the account holder

Requirements to verify contracts, general

(3) Subject to subsection (4), a contract may only be verified by taking such steps as set out in a code or rule of the Board.

Same, verifying by telephone

(4) A person may only verify a contract by telephone.

Same, recording verification call

(5) The person verifying shall record the verification call and promptly provide the recording to the supplier, and the supplier shall provide the recording to the consumer upon request.

Same, time period for verifying

(6) A person may verify the contract, no earlier than the 10th day and no later than the 30th day following the day on which a text-based copy of the contract is delivered or provided to the consumer in accordance with section 13 of the Act and acknowledged by the consumer under section 14 of the Act.

Same, when verification not valid

(7) The verification of a contract is not valid if any of the requirements of subsection (1), (2), (3), (4) (5) and (6) or of any applicable code or rule of the Board, are not met.

Informing supplier of potential unfair practice

(8) If at any time during the verification call, the person verifying believes, or reasonably ought to believe, that the supplier has committed an unfair practice, including having committed an unfair practice at the time of soliciting, negotiating or entering a contract, then the person verifying shall notify the supplier that an unfair practice may have been committed and terminate the verification process

Consumer notice to not verify

(9) A consumer may give notice to not have the contract verified by any means that indicates an intention of the consumer to do so, including notifying the supplier by telephone at the toll-free number contemplated in subsection (11).

Same, when deemed sent

(10) If a consumer gives a notice described in subsection (6) other than by personal service, it shall be deemed to have been given when sent.

Same, notice by telephone

(11) A supplier shall record all telephone calls made to the supplier at the telephone number contemplated in paragraph 6(1)(c), including any calls made under subsection (9) by a consumer to give notice to not have the contract verified.

Same, providing recording to consumer

(12) A supplier who makes a voice recording of a telephone call from a consumer as contemplated in subsections (9) and (11) shall give the recording to the consumer within 10 days after the consumer requests it.

PART V CONTRACT RENEWALS AND EXTENSIONS

Conditions for renewals and extensions of contracts

13. (1) A contract may be renewed or extended only if,

- (a) the contract contains a provision that allows for that particular renewal or extension; and
- (b) no matter how many times it is renewed or extended and subject to subsections 14(2), (3), (4), and (5) , the contract is renewed or extended in total for a period no longer than the renewal or extension period contemplated in the provision in the contract; and
- (c) the contract is renewed or extended without any changes, other than changes permitted under subsection (2); and
- (d) the contract, with any changes made under subsection (2), is in compliance with the requirements of the Act and regulations made under the Act.
- (e) the renewal or extension complies with all of the requirements of the Act, the regulations made under the Act and any applicable code or rule of the Board.

Contract changes permitted

(2) The following are the only changes that may be made to a contract that is renewed or extended:

- (a) changes to the term of the contract to reflect the renewal or extension period;
- (b) changes to the price for the provision of electricity or gas, during the renewal or extension period, which changed price must apply throughout the term of the renewal or extension without further change, and,
- (c) changes required to ensure the contract is in compliance with the requirements of the Act and regulations made under the Act or any code and rule of the Board.

Same, notice and other material

(3) In addition to the requirements set out in subsection (1), a contract may be renewed or extended only if,

- (a) the supplier gives the consumer,
 - (i) a text-based description of all of the changes to the contract,
 - (ii) a copy of the original contract,
 - (iii) two copies of a renewal or extension form that is in compliance with subsection 13(4), and,
 - (iv) a renewal disclosure statement,
- (b) the material referred to in paragraph (a) is given to the consumer not more than 120 days before the current term of the contract expires, and
- (c) the material referred to in paragraph (a) is given to the consumer not less than 60 days before expiry.

Same, renewal or extension form

(4) The renewal or extension form contemplated in subparagraph 3(a)(iii) must meet the following requirements:

- (a) The renewal or extension form must clearly indicate, in not less than 12 point font,
 - (i) that the supplier is offering to renew or extend the contract without any changes, other than those terms permitted to be amended by subsection 2.
 - (ii) that the contract will not be renewed or extended unless either,
 - (A) (1) the consumer signs the form to acknowledge receipt of the disclosure statement, and
 - (2) the consumer gives the supplier a text-based copy of the form in which the consumer has fulfilled the requirements set out in paragraphs (a) and (b) of subsection 13(5);
 - or
 - (B) the consumer renews the contract by telephone and the supplier makes a voice recording of the telephone call;

- (iii) that, in the case of a contract for the sale of electricity, the contract will expire if not renewed, and in the case of a contract for the sale of gas, the consumer may refuse the renewal of the contract by giving the supplier notice of refusal no later than 30 days before expiry of the contract
 - (iv) that, in the case of a contract for the sale of gas, if the consumer does not give the supplier notice of acceptance or refusal of the renewal of the contract, no later than 30 days before expiry of the contract, the contract will be renewed under the same terms and conditions as in the expiring contract until cancelled by either party.
 - (v) that the consumer may reach the supplier by telephone at the toll-free telephone number that must be included in the form, and
- (b) The renewal or extension form must contain,
- (i) an acknowledgment, in not less than 12 point font, for the consumer to sign that they have read and understood the disclosure statement,
 - (ii) a place, immediately below or adjacent to the place for the consumer's signature described in subparagraph (i), for the name of the consumer to be set out in printed letters,
 - (iii) an acknowledgment, in not less than 12 point font, adjacent to the place for the consumer to sign described in subparagraph (iv), that states that by signing in the place described in subparagraph (iv), the consumer accepts the renewal or extension of the contract with the changes described on the renewal or extension form,
 - (iv) a place for the consumer to sign and date separate from the statement described in subparagraph (i), if the consumer accepts the renewal or extension of the contract with the changes described on the renewal or extension form,
 - (v) a place, immediately below or adjacent to the place for the consumer's signature described in subparagraph (iv), for the name of the consumer to be set out in printed letters,
 - (vi) a place for the consumer to sign, if the consumer declines the renewal or extension of the contract, and,
 - (vii) a place, immediately below or adjacent to the place for the consumer's signature described in subparagraph (vi), for the name of the consumer to be set out in printed letters.

- (viii) The name, business address, toll-free telephone number and, if any, fax number, website address and e-mail address of the supplier.

Same, signatures and printed name for acceptance

(5) Subject to subsection (6) and section 14, a contract with the changes described on the renewal or extension form may be renewed or extended only if,

- (a) the consumer signs the acknowledgment in the place as prescribed in subparagraph (4)(b)(i), and,
- (b) the consumer gives the supplier a text-based copy of the renewal or extension form which the consumer has signed and dated in the place prescribed in subparagraph (4)(b)(iv).

Same, telephone renewal

(6) Despite subsection (5), the consumer may accept the renewal or extension of the contract by telephone, if:

- (a) the telephone call takes place no sooner than 15 days after the supplier sends the material contemplated in paragraph 13(3)(a) to the consumer;
- (b) the supplier informs the consumer that the call will be recorded;
- (c) the supplier records the call;
- (d) The consumer is provided sufficient information to be able to request a copy of the call at a later date; and
- (e) the form and contents of the call complies with any applicable code or rule of the Board.

Same, telephone renewal

(7) A supplier who makes a voice recording of a telephone call from a consumer as contemplated in subsection (6) shall give the recording to the consumer within 10 days after the consumer requests it.

Automatic monthly renewal

14. (1) If,

- (a) a contract for the sale of gas contains an express provision allowing for renewal without the consumer's explicit agreement,

- (b) the contract, with any changes made under subsection 13(2), is in compliance with the Act and regulations made under the Act,
- (c) the supplier fulfils the requirements set out in subsections 13(2), (3) and (4) in respect of the renewal or extension of a contract,
- (d) the contract is not renewed or extended in accordance with subsection 13(5), or (6), and
- (e) the consumer has not, no later than 30 days before the expiry of the contract, given notice to the supplier that indicates the consumer's intention to cancel the contract,

the supplier and consumer shall be deemed to have renewed the contract for a period of one month on the same terms and conditions that are in the expired contract.

Same, deemed further renewal

(2) If a contract that is deemed to have been renewed under subsection (1) expires, and the contract has not been cancelled by the consumer under subsection (3), or cancelled by the supplier under subsection (4), the supplier and consumer shall be deemed to renew the contract for another month upon the same terms and conditions that are in the expired contract.

Same, consumer right to cancel

(3) The consumer shall have the right to cancel, without penalty, a contract renewed under subsection (1) or subsection (2), by giving 30 days notice to the supplier that indicates an intention of the consumer to cancel the contract.

(4) The supplier shall have the right to cancel a contract renewed under subsection (1) or subsection (2), by giving 30 days notice in writing to the consumer that indicates an intention of the supplier to cancel the contract.

Same, when cancellation effective

(5) Cancellation of a contract by notice under subsection (3) or (4) shall be deemed to be effective on the earlier of,

- (a) the date the gas meter is read, or
- (b) 60 days after the notice is given.

Consumer retraction of renewal or extension

15. (1) Not later than 14 days after,

- (a) the consumer gives the supplier a text-based copy of the renewal or extension form contemplated in paragraph 13(5)(b), or

- (b) all of the requirements of subsection 13(6) are met, the consumer may retract the acceptance of the renewal or extension of the contract by giving notice to the supplier that indicates an intention of the consumer to retract the acceptance.

Form of notice of retraction

(2) A consumer may give notice to retract the renewal or extension of the contract by any means that indicates an intention of the consumer to do so, including notifying the supplier by telephone at the toll-free number contemplated in subparagraph 13(4)(b)(viii).

Same, when deemed sent

(3) If a consumer gives a notice described in subsection (2) other than by personal service, it shall be deemed to have been given when sent.

Same, notice by telephone

(4) A supplier shall record all telephone calls made to the supplier at the telephone number contemplated in subparagraph 13(4)(b)(viii), including any calls made under subsection (2) by a consumer to give notice to retract the renewal or extension of the contract.

Same, providing recording to consumer

(5) A supplier who makes a voice recording of a telephone call from a consumer as contemplated in subsection (2) shall give the recording to the consumer within 10 days after the consumer requests it.

Deemed given when sent

16. (1) If a consumer gives any of the following other than by personal service, it shall be deemed to have been given when sent:

- (a) a text-based copy of the renewal or extension form described in paragraph 13(5)(b) ;
- (b) a notice of cancellation under section 14; or
- (c) a notice of retraction under section 15.

PART VI AMENDMENTS

Contract amendments

17. (1) Despite the terms of any contract but subject to subsection (3) and to the rules for an extension or renewal of a contract provided in Part V, a supplier may amend a term of a contract only if:

- (a) the supplier gives the consumer notice of the proposed amendment,

- (b) the supplier informs the consumer that the consumer may retract consent for up to 14 days after a text-based copy of the amendment is sent to the consumer, and
- (c) the consumer consents to the amendment, not less than 60 days before the amendment takes effect.

Same, text-based copy to consumer

(2) If a contract is amended as contemplated in subsection (1), the supplier shall provide the consumer with:

- (a) a text-based copy of the amendments no later than 30 days after the consumer gives his or her consent to the amendments, and,
- (b) the name, business address, toll-free telephone number and, if any, fax number, website address and e-mail address of the supplier.

Same, cooling-off period

(3) If a contract is amended as contemplated in subsection (1), the consumer may, without any reason, retract his or her consent to the amendments at any time from the date of giving the consent until 14 days after a text-based copy of the amendments is sent to the consumer.

Same, notice of retraction

(4) A consumer may give notice to retract his or her consent to the amendment of the contract by any means that indicates an intention of the consumer to do so, including notifying the supplier by telephone at the toll-free number contemplated in paragraph (2)(b).

Same, when deemed sent

(5) If a consumer gives a notice described in subsection (4) other than by personal service, it shall be deemed to have been given when sent.

Same, notice by telephone

(6) A supplier shall record all telephone calls made to the supplier at the telephone number contemplated in paragraph (2)(b), including any calls made under subsection (4) by a consumer to give notice to retract his or her consent to the contract amendments.

Same, providing recording to consumer

(7) A supplier who makes a voice recording of a telephone call from a consumer as contemplated in subsection (6) shall give the recording to the consumer within 10 days after the consumer requests it.

Same, consequences of retraction

(8) If a consumer retracts his or her consent to the amendments under subsection (3), then

- (a) the amendments will be of no effect, and
- (b) the supplier shall refund to the consumer, within 30 days after the retraction, any amounts paid by the consumer to the supplier that the consumer was not required to pay under the contract without the amendments.

New contract not prevented

18. (1) Nothing in this Part or Part V prevents a new contract from being entered into in accordance with the Act.

PART VII CONTRACT CANCELLATION

Cancellation, without cancellation fee

19. (1) For the purposes of subsection 19(4) of the Act, a consumer may cancel a contract without incurring the obligations contemplated in subsection 22(2) of the Act if

- (a) the supplier is required to make a voice recording of any telephone discussion with the consumer and fails to provide a copy of that recording to the consumer within 10 days after the consumer requests it,
- (b) the consumer moves from the premises to which the electricity or gas is provided under the contract,
- (c) the consumer was sent the first bill calculated using the full price of the contract, for the supply of electricity, less than 30 days before the notice of cancellation is provided,
- (d) the consumer enters into a contract for the provision of electricity for a term that begins before the expiry of the term of another contract that the consumer had already entered into for the provision of electricity, so long as the consumer gives notice of cancellation of the later contract before the expiry of the term of the earlier contract.
- (e) the consumer enters into a contract for the provision of gas for a term that begins before the expiry of another contract that the consumer had already entered into for the provision of gas, so long as the consumer gives notice of cancellation of the later contract before the expiry of the earlier contract.

Notice of Cancellation

20. (1) For the purposes of subsection 19(5) of the Act, a consumer must give 30 days notice to cancel a contract.

(2) A notice provided under subsection (1) is deemed to be given upon the supplier receiving a telephone call from the consumer in the case of a notice by telephone, or an electronic date stamp of an e-mail from the consumer, in the case of a notice by e-mail, or the postmark on a letter received from the consumer, in the case of a notice by mail.

Cancellation Fees, residential

21. (1) For the purposes of subsection 22(2) of the Act, and subject to subsection (3), a consumer who cancels a contract under subsection 19(5) of the Act is liable only for one or more of the following amounts:

- (a) a fee of not more than \$50 for each year, or any part thereof, remaining on the contract for the supply of electricity.
- (b) a fee of not more than \$100 for each year, or any part thereof, remaining on the contract for the supply of gas.

Cancellation Fees, non-residential Consumers

(2) For the purposes of subsection 22(2) of the Act, and despite subsection (1), a consumer who is a non-residential consumer and who cancels a contract under subsection 19(5) of the Act is liable only for one or more of the following amounts:

- (a) For a contract for the supply of electricity, a fee determined by multiplying an amount determined by dividing the consumer's consumption of electricity consumed in kilowatt hours during the 12 month period immediately prior to the cancellation by 12 multiplied by the number of months, or parts thereof, remaining in the contract term of the consumer by \$0.015, or,
- (b) For a contract for the supply of gas, a fee determined by multiplying an amount determined by dividing the consumer's consumption of gas consumed in cubic meters during the 12 month period immediately prior to the cancellation by 12 multiplied by the number of months, or parts thereof, remaining in the contract term of the consumer by \$0.05.

(3) For the purpose of subsection (2) a non-residential consumer is a consumer who is cancelling a contract in respect of a property that is occupied for the primary purpose of carrying on a business intended to provide goods or services for the consumption of others, or:

- (a) In the case of a contract for the supply of electricity, consumed more than 15,000 kilowatt hours of electricity in the 12 months prior to delivery of the notice of cancellation, or,

- (b) In the case of a contract for the supply of gas, consumed more than 3,500 cubic meters of gas in the 12 months prior to the delivery of the notice of cancellation.

Notice of cancellation

22. (1) For the purposes of subsection 21(2) of the Act, a consumer may give notice to cancel a contract by any means that indicates an intention of the consumer to do so, including notifying the supplier by telephone, at the number described in paragraph 6(1)(c).

Same, notice by telephone

(2) A supplier shall record all telephone calls made to the supplier, including any calls made under subsection (1) by a consumer to give notice to cancel the contract.

Same, providing recording to consumer

(3) A supplier who makes a voice recording of a telephone call from a consumer as contemplated in subsections (1) and (2) shall give the recording to the consumer within 10 days after the consumer requests it.

Same, when effective

(4) For the purposes of subsection 21(5) of the Act, a cancellation under subsections 19(1), (2), and (3) of the Act, takes effect when notice is given.

(5) For the purposes of subsection 21(5) of the Act, a cancellation under subsections 19(4) or (5) of the Act, takes effect no later than

- (a) The date the consumer's gas or electricity meter is read, or,
- (b) 60 days after notice is given to the supplier.

Refunds on cancellation

23. (1) For the purposes of subsection 23(1) of the Act, a supplier shall refund to the consumer any amount paid by the consumer under the contract no later than 60 days after notice is given for the purposes of subsections 19(1) and (3) under the Act.

Same, contract does not meet requirements

(2) For the purposes of subsection 23(2) of the Act, a supplier shall refund to the consumer any amount paid by the consumer under the contract no later than 60 days after notice is given for the purposes of subsections 19(2) of the Act.

Same, retailer fails to meet cancellation requirements

(3) For the purposes of section 21 of the Act, a supplier shall refund to the consumer the average daily commodity price paid by the consumer for the number of days elapsed following the effective cancellation date determined under section 22 until the consumer's meter is read.

(4) Despite subsection (3), a refund is not payable if the Board has authorized an extended meter reading date as per section 25 (2).

Return of pre-payment

24. (1) For the purposes of section 24 of the Act, a supplier shall refund to the consumer any amount paid by the consumer under the contract before the day the cancellation took effect in respect of electricity or gas that was to be sold on or after that day within 15 days after the cancellation under subsection 19(2), (4), or (5) of the Act takes effect.

Meter reading

25. (1) For the purpose of subsection 25 (1) of the Act, the supplier shall have the distributor read the consumer's meter not more than 60 days after the notice of cancellation was given by the consumer.

Same, extension by Board

(2) Despite subsection (1), the Board may authorize the distributor to read the consumer's meter within a period specified by the Board if the Board is satisfied that it is not reasonably possible for the distributor to read the meter within the time period set out in subsection (1).

PART VIII VOID CONTRACTS

Contract deemed void

26. (1) For the purpose of paragraph 16(1)(f) of the Act, a contract is deemed void, if,

- (a) A supplier fails to notify the appropriate distributor, within 10 days of receiving a notice of cancellation from a consumer that the consumer wishes to switch supplier in respect of either electricity or gas, or
- (b) At the time that the contract is entered into, or renewed or extended the supplier has not complied with the provisions of [Section 1 of the regulations proposed under the Ontario Energy Board Act].

(2) For the purpose of subsection 16(3) of the Act, the prescribed period within which the supplier must refund to the consumer all of the money paid by the consumer under the contract is 60 days after the contract becomes void.

**PART IX
EXEMPTIONS FROM THE ACT**

Regulations, exemptions

27. (1) For the purpose of paragraph 35(2)(a) of the Act, the following entities are exempt from Part II of the Act :

(2) Broader public-sector procurement agents in respect of contracts they enter into with the broader public-sector consumers for the supply of gas and electricity, and

(3) Gas distributors but for greater clarity, affiliates of gas distributors are not exempt.

**DRAFT PROPOSALS MADE UNDER THE
ONTARIO ENERGY BOARD ACT, 1998 (OEBA)**

These Regulations will be introduced under the *Ontario Energy Board Act, 1998*, in order to implement the proposed *Energy Consumer Protection Act, 2010* regulations.

Energy Retailer / Marketer License Conditions - Certification

1. It shall be a condition of every license issued to a supplier under Part IV or Part V [of the OEBA] that the supplier shall not enter into, renew, amend or extend any contract after January 1, 2011 until:
 - a. the supplier files with the Board such certification of compliance with the *Energy Consumer Protection Act, 2010* and regulations made under that Act as may be required by a code issued under section 70.1 of the Act [i.e. the OEBA] or a rule made under section 44 (1)(c) of the Act [i.e. the OEBA];
 - b. the supplier completes the certification in the form or manner required by the code or rule;
 - c. the certification is signed by such persons or class of persons as may be required by the code or rule;
 - d. the supplier receives from the Board acknowledgement in writing that,
 - i. the Board has received the certification,
 - ii. the supplier has completed all sections of the certification,
 - iii. the certification has been signed, and
 - iv. the certification indicates that the certification has been signed by the persons or class of persons as are required under clause c.; and
 - e. the supplier completes any other requirements, at any other time, as may be required by the Board or by a code or rule of the Board.

Energy Retailer / Marketer License Conditions – Business Card

2. It shall be a condition of every license issued to a supplier under Part IV or Part V [of the OEBA] that each person acting on behalf of the supplier shall, at the time of negotiating or entering into a contract, give the consumer a business card that:
 - a. is clear and legible;
 - b. identifies the supplier;
 - c. identifies the person acting on behalf of the supplier;
 - d. includes the number of the supplier's license, issued under the Ontario Energy Board Act, 1998;
 - e. includes the toll-free telephone number of the supplier; and
 - f. meets any other requirements as may be determined by the Board.

Energy Retailer / Marketer License Conditions – Identification badge

3. It shall be a condition of every license issued to a supplier under Part IV or Part V [of the OEBA] that each person acting on behalf of the supplier shall, at all times when negotiating or entering into a contract, prominently display an identification badge that:
 - a. is clear and legible;
 - b. is prominently displayed;
 - c. clearly identifies that this person is an employee of a retailer and is in no way associated with a local utility or the government;
 - d. includes a photo of the person's face;
 - e. identifies the supplier;
 - f. identifies the person acting on behalf of the supplier;
 - g. identifies the title or position of the person;
 - h. includes a supplier-issued identification number for the person;
 - i. displays an expiry date that is not more than 2 years after the date on which the badge was issued to the person; and
 - j. includes such other information as may be required by the Board.

Training for Salespersons

4. It shall be a condition of every license issued to a supplier under Part IV or Part V [of the OEBA] that each person acting on behalf of a supplier shall, before making a representation, negotiating or enter into a contract with a consumer shall successfully complete such training as may be required by a code issued under section 70.1 of the Ontario Energy Board Act, 1998 or by rules made by the Ontario Energy Board pursuant to clause 44(1)(c) of that Act, or by the conditions of a license issued to the supplier by the Board.