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**BY EMAIL AND WEB POSTING**

**NOTICE OF REVOCATION AND RE-ISSUANCE OF A CODE**

**REVOCATION AND RE-ISSUANCE OF THE ELECTRICITY RETAILER CODE OF CONDUCT**

**AND**

**NOTICE OF REVOCATION AND RE-ISSUANCE OF A RULE AND OF AN AMENDMENT TO A RULE**

**REVOCATION AND RE-ISSUANCE OF THE CODE OF CONDUCT FOR GAS MARKETERS AND AMENDMENT TO THE GAS DISTRIBUTION ACCESS RULE**

**BOARD FILE NO.: EB-2010-0245**

**To: All Licensed Electricity Retailers  
All Licensed Gas Marketers  
All Licensed Electricity Distributors  
All Natural Gas Utilities  
All Participants in Consultation Process EB-2010-0245  
All Other Interested Parties**

**Date: November 17, 2010**

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The Ontario Energy Board (the "Board") has today issued the following under section 45 and section 70.2 of the *Ontario Energy Board Act, 1998* (the "OEB Act"), as applicable:

- i. a restated Electricity Retailer Code of Conduct (the "Retailer Code"), set out in Attachment A to this Notice;

- ii. a restated Code of Conduct for Gas Marketers (the “Marketer Code”), set out in Attachment B to this Notice; and
- iii. an amendment to the Gas Distribution Access Rule (the “GDAR”), set out in Attachment C to this Notice.

The Board has also today issued the following documents that are contemplated in each of the Retailer Code and the Marketer Code (together, the “Supplier Codes”) as restated, in the form in which they will be approved by the Board for use effective January 1, 2011:

- i. disclosure statements, set out in Attachment D to this Notice;
- ii. price comparison templates, set out in Attachment E to this Notice;
- iii. scripts for contract verification calls, set out in Attachment F to this Notice; and
- iv. scripts for contract renewal/extension calls, set out in Attachment G to this Notice.

For information purposes, Attachment H to this Notice sets out a comparison version of one of the scripts for contract verification calls that shows the revisions made relative to the version proposed as part of the materials issued for comment by the Board on October 15, 2010, and Attachment I does the same for one of the scripts for contract renewal/extension calls (the same changes have been made to all of the scripts). The consolidation of certain of the price comparison templates and of the necessary consequential changes (see section 4 below) makes the development of a meaningful comparison version impractical. However, sections 4 and 5 below identify in some detail the changes that have been made to the price comparison templates relative to the versions issued for comment on October 15, 2010.

The revisions to the Board’s regulatory instruments referred to above implement the provisions of the *Energy Consumer Protection Act, 2010* (the “ECPA”) in relation to the activities of licensed electricity retailers and gas marketers

“suppliers”). As noted in section F below, the revisions take effect on January 1, 2011.

## **A. Background**

The ECPA will establish a new framework for the regulation of the activities of suppliers effective January 1, 2011, the date on which the relevant provisions of the ECPA have been proclaimed to come into force.

On August 12, 2010, the Board issued a Notice of Proposal to Revoke and Re-issue a Code, to Revoke and Re-issue a Rule and to Amend a Rule (the “August Notice”) in which it proposed to revoke and re-issue each of the Supplier Codes and to amend the GDAR to implement the provisions of the ECPA in relation to the activities of suppliers (the “August Proposed Amendments”).

The August Proposed Amendments were prepared on the basis of the ECPA itself and on two draft regulations that were posted for comment by the government on July 2, 2010, one under the ECPA and the other under the OEB Act (the “Draft Regulations”). On October 13, 2010, revised and final versions of the Draft Regulations were filed; namely, Ontario Regulation 389/10 under the ECPA (the “Final ECPA Regulation”) and Ontario Regulation 390/10 (amending Ontario Regulation 90/99) under the OEB Act (the “Final OEBA Regulation”) (together, the “Final Regulations”).

On October 15, 2010, the Board issued a Notice of Revised Proposal to Revoke and Re-issue a Code, to Revoke and Re-issue a Rule and to Amend a Rule (the “October Notice”) in which it proposed revisions to the August Proposed Amendments (the “October Proposed Amendments”). Many of the proposed revisions were designed to accommodate the new requirement in the Final ECPA Regulation that a disclosure statement be accompanied by a price comparison. Other revisions were proposed in response to stakeholder comments or to reflect additional changes made to the Draft Regulations as ultimately set out in the Final Regulations.

The Board received 10 written comments on the October Proposed Amendments from 14 stakeholders including suppliers, gas distributors and representatives of consumers. These are available for viewing on the Board’s website at

[www.oeb.gov.on.ca](http://www.oeb.gov.on.ca) on the “Implementation of Consumer Protection (Retailer/Marketer) Provisions of the ECPA” webpage, together with all other materials issued by or filed with the Board in this consultation.

On October 21, 2010, a group of suppliers filed a letter with the Board urgently requesting that the Board consider certain options for addressing transitional issues relating to contract renewals. On October 25, 2010, the Board issued a letter in response, indicating that any approach to the transition for contract renewals must comply with the legal and regulatory requirements applicable at the time of renewal and stating that neither of the suppliers’ proposals satisfy those requirements in all respects.

## **B. Adoption of October Proposed Amendments with Revisions**

The Board has considered the comments received in response to the October Notice, and has determined that no material changes are required to the restated Supplier Codes or the proposed amendment to the GDAR as set out in the October Proposed Amendments. The Board has therefore adopted those October Proposed Amendments, with certain revisions described in section C below. The Board has also made revisions to the verification call scripts, renewal/extension call scripts, disclosure statements and price comparison templates, as also described in section C below.

## **C. Overview of Comments Received and of Revisions Made to Materials Accompanying the October Notice**

### *1. Restated Supplier Codes*

Stakeholders representing larger volume or low-volume commercial consumers were generally supportive of the proposed revised restated Supplier Codes attached to the October Notice. One of these stakeholders suggested that, in addition to the re-training referred to in sections 5.8 and 5.9 of each of the restated Supplier Codes, re-training should also be required in circumstances where a salesperson has been the subject of repeated complaints. The Board notes that this contingency is addressed in sections 7.5 and 7.6 of each of the restated Supplier Codes, and does not believe that anything further is required in that regard.

A stakeholder representing low-volume consumers suggested that suppliers be required to review with a salesperson or verification representative any mistakes the person may have made on a training test, to ensure that the person has corrected his or her knowledge. The Board expects that post-testing review of any training test questions that have been answered incorrectly will be undertaken as a normal part of the process by which suppliers satisfy themselves that their salespersons and verification representatives will act in accordance with all applicable legal and regulatory requirements. The Board does not believe that it is necessary to include specific provisions in that regard in the restated Supplier Codes.

A supplier suggested that two proposed changes be made to the restated Supplier Codes. First, the supplier proposed that the requirement set out in section 2.3 to wear an identification badge on the front of a salesperson's outer clothing (i.e., the item of clothing that is at any given time the outermost) be replaced with a requirement that the badge be prominently displayed (the concept referred to in the Final OEBA Regulation), to provide flexibility when a supplier is dealing with family and close friends. The Board does not believe that it is desirable to allow suppliers to individually determine how best to "prominently display" an identification badge, and is not persuaded that the particular circumstance identified by this supplier warrants special treatment in that regard.

The second change proposed by this supplier is to clarify that internet-based training is acceptable for purposes of the restated Supplier Codes. The Board agrees with this supplier that, as proposed in the October Proposed Amendments, the restated Supplier Codes do not prohibit internet-based training. The Board also agrees that a reference to internet-based training should nonetheless be specifically included in the restated Supplier Codes to ensure that it is clearly understood that this form of training is acceptable. The Board has revised section 5.5 of each of the restated Supplier Codes accordingly. The Board emphasizes that it expects suppliers that use internet-based training to ensure that appropriate safeguards are in place, such as those identified by the supplier that raised this issue in its comments as well as safeguards that allow the supplier to ensure that a person cannot take a training test on another person's behalf.

This supplier also requested clarification as to the practical implications of the provision of the restated Supplier Codes that imposes a limitation on the number of times that a salesperson or verification representative can re-take a training test. The supplier identified four possible outcomes, ranging from allowing an opportunity to re-take a training test after a period of time has elapsed to an absolute prohibition on the person acting as a salesperson or verification representative for any supplier in the future. The Board confirms that the effect of the limitation on the re-taking of training tests is that the supplier cannot offer further training or testing for a person that has failed to pass that supplier's training test twice.

In their joint comments, a group of suppliers proposed that the form of Certificate of Compliance appended to each of the restated Supplier Codes be revised to state that the requirement relating to business cards and identification badges applies only to salespersons that are transacting with a consumer in person. It is clear from both the Final OEBA Regulation and sections 1.1, 2.1 and 2.3 of each of the restated Supplier Codes that the business card and identification badge requirements apply only where a salesperson is retailing or marketing to a consumer in person. The Certificate refers to compliance with all applicable legal and regulatory requirements, and as such addresses the requirements associated with business cards and identification badges in that context. The Board does not believe that any revisions to the form of Certificate of Compliance are necessary in that regard.

This group of suppliers also requested that the restated Supplier Codes be amended to allow: (a) the option to produce the disclosure statements and price comparison templates in a carbon format; and (b) the option to reproduce the disclosure statements and price comparison templates in a black and white version. With respect to (a), the data files for the disclosure statements and price comparison templates can be used by a supplier to produce documents that allow for carbon capture of the consumer's signature and, in the case of the price comparison templates, of the information included in Part B by the supplier. The Board understands that suppliers may wish to use this functionality as a means of being able to later demonstrate that the consumer did, in fact, sign a particular document on a given date, rather than having the consumer sign two copies of the document. The Board emphasizes that, in the event of a dispute, the Board will look to the supplier to demonstrate to the Board's satisfaction that all legal

and regulatory requirements relating to the contracting process have been met. While the Board therefore encourages suppliers to avail themselves of the carbon capture functionality, the Board does not believe that it is necessary to revise the restated Supplier Codes to make express provision for it.

With respect to (b), the colour design of the disclosure statements and price comparison templates provides better readability and allows for certain information to be emphasized for the consumer. The Board therefore will not make provision for the documents to be distributed to consumers in a black and white format.

A supplier suggested that the restated Supplier Codes should be prescriptive with regards to both the format of a renewal cancellation form and its location in the renewal package. The Board is satisfied that the rules set out in the Final ECPA Regulation in relation to renewal/extension forms are adequate and need not be augmented.

In the October Proposed Amendments, the Board proposed to limit a number of new provisions in the restated Retailer Code to make them applicable only to transactions with low volume consumers. While the Board is not revisiting that approach, the Board has noted that the scope of section 8.1 of the restated Retailer Code has been unnecessarily limited relative to the scope that exists today (section 4.1 of the current Retailer Code). The Board has revised section 8.1 of the restated Retailer Code to revert to text that more closely reflects section 4.1 of the current Retailer Code.

## *2. Verification and Renewal/Extension Scripts*

Stakeholders representing consumers had no specific comments on the verification call scripts and the renewal/extension call scripts attached to the October Notice.

In their joint comments, a group of suppliers proposed the following in relation to the scripts:

- i. A number of changes to the text, set out in comparison versions of the scripts provided by this group of suppliers with their comments, which

appear to be intended largely to make the scripts more “consumer friendly”. The Board has adopted some of those changes, but has not adopted changes that would have fundamentally altered the text or its meaning, or that did not in the Board’s view provide greater clarity for the consumer. The Board has also made a small number of additional changes for clarity.

- ii. The Board should allow verification of multiple locations for a consumer with one verification call. The Board notes that the revisions to the scripts proposed by this group of suppliers do not appear to be specifically aimed at this issue, and the Board therefore understands that the suppliers’ proposal is that a generic provision be included in each of the restated Supplier Codes to allow for this circumstance. The Board is concerned that a “multiple locations” script will become unwieldy for the consumer, particularly if the contract offer is one that is dual fuel and/or where different price options are being made available. In addition, there may be instances where a person has been authorized by an account holder to make decisions for some accounts but not others. The Board is therefore not proposing to make provision for a “multiple locations” verification script at this time, but may consider that for the future.

### 3. *Disclosure Statements*

A stakeholder representing low-volume consumers proposed two changes to the disclosure statements. The first was that a reference to the salesperson’s name and identification number should be included on the disclosure statements, at least for the door-to-door versions, which in this stakeholder’s view could be useful in the case of disputes. The Board notes that the Final ECPA Regulation requires that the name of the salesperson be included in a contract that is entered into with a consumer in person. The Board believes that this is adequate for purposes of enabling the salesperson to be identified in these cases, and that no further revisions to the disclosure statements are necessary for this purpose.

The second change proposed by this stakeholder was to include in the gas and electricity versions of either the disclosure statements or the price comparison templates a warning indicating that the consumer should investigate the impact

that switching to a contract may have on their equal billing plan payments, both in the immediate term and as part of the “true up” or reconciliation process. As indicated in the October Notice, the Board is currently examining issues relating to equal billing for retailer-enrolled customers in its on-going consultation on electricity distributor customer service rules (consultation process EB-2007-0722). The Board prefers to await the outcome of that consultation before to making any further changes to the disclosure statements relating to equalized billing. While the Board understands that distributors may not be in a position to identify in all cases the exact amount of the financial impact of switching to a contract, the Board does expect that gas and electricity distributors will provide such assistance as they can to consumers that contact them with inquiries in this regard.

Another stakeholder reiterated that the disclosure statements should not include any statement of any kind about savings. The Board addressed this issue in the October Notice, and does not intend to revisit it. This same stakeholder also proposed that the electricity versions of the disclosure statements include a further statement regarding the global adjustment to the effect that “the Global adjustment (*sic*) amount is effectively the same, whether buying from your utility or a retailer”. This is not, strictly speaking, a necessarily accurate statement in all cases given the manner in which forecast global adjustment costs are included in Regulated Price Plan prices relative to the manner in which global adjustment costs are charged to retailer-enrolled consumers on a monthly basis. The Board is also concerned that, absent considerably more explanation, this statement may be confusing and potentially misleading to consumers. The Board has therefore not included this statement in the disclosure statements.

In their joint comments, a group of suppliers indicated that it was not clear why separate disclosure statements are required for “direct mail” and “in person” sales approaches. The distinction lies in the manner in which time is calculated for purposes of the 10-day “cooling off” period under the ECPA and the Final ECPA Regulation. In the “in person” case, the 10 days run from the date of signature of the contract, whereas in the “direct mail” case the 10 days run from the date on which the consumer sends a signed copy of the contract back to the supplier. This distinction is reflected in the text of disclosure statements in the relevant place.

This group of suppliers also commented that, for disclosure statements included as part of an internet offer, it will only be possible for the “click icon” to be incorporated on the screen and not embedded in the document. The Board notes that the Final ECPA Regulation makes reference to the consumer checking a box to indicate that he or she has read and understood the applicable disclosure statement and price comparison, but does not mandate that the box be part of the disclosure statement or the price comparison itself. The Board has therefore revised the internet versions of the disclosure statements in the manner suggested by these suppliers.

The Board has made a small number of changes to the electricity versions of the disclosure statements (one change) and to the gas versions of the disclosure statements (two changes) as a result of comments received from non rate-regulated gas distributors, and these are discussed in section 5 below.

As contemplated in the October Notice, the Board has undertaken further format and graphic design work related to the disclosure statements as attached to the October Notice, among other things to ensure uniformity of all of the disclosure statements. The disclosure statements attached to this Notice reflect the results of that exercise.

#### *4. Price Comparisons*

For the most part, stakeholders representing consumers had few comments on the price comparison templates attached to the October Notice.

One stakeholder did propose the following revisions: (a) that the references to “monthly supply cost” be expressed as being “with your utility” or “with [the supplier]”, as applicable; (b) that a more defined structure be prescribed for the presentation of the supplier’s price disclosure in Part B of the template; and (c) that the templates be reconfigured to allow either a side-by-side comparison or to otherwise somehow emphasize for consumers the values that they should compare. Although the addition of the phrase “with your utility” or “with [the supplier]” may provide some additional measure of certainty, the Board is satisfied that both the structure and mandatory text set out in the price comparison templates make it sufficiently clear as to which is the utility price and which is the contract price. The Board is not persuaded that it is practical to

revise the templates to accommodate either (b) or (c), except perhaps in relation to very simple fixed price offers, and has therefore also not adopted those proposals. However, the Board has revised the instructions in each of the price comparison templates to require the supplier to identify the total monthly contract amount using the same nomenclature as is used in Part A of the applicable template.

A stakeholder representing low-volume consumers suggested that the price comparison presentation used by a particular supplier be subject to review by the Board. The Board does not believe that it is necessary to require suppliers to submit their price comparison presentations for prior review or approval by the Board. If it appears that a supplier's price comparison presentation may be misleading or otherwise non-compliant, the Board will take such remedial action as may be warranted at the relevant time.

Representatives of suppliers each suggested a number of revisions to the price comparison templates, including the following:

- i. A group of suppliers jointly commented that the different versions of the templates for gas supply, transportation and storage should be consolidated and the marketer should be allowed to indicate the combination applicable to the specific offer being made to the consumer. The Board sees merit in this proposal, both for simplicity and for ease of comparison by consumers. The Board is therefore replacing these different versions of the price comparison templates with one version for each of residential and non-residential consumers that addresses supply, transportation and storage on the same template. It is necessary to have different versions of these consolidated templates for different gas utilities, as not all utilities offer unbundled rates for transportation and/or storage. Consequential changes have also been made to the instructions, to indicate how the supplier is to identify whether charges for transportation and/or storage are included in the contract price or will continue to be paid at the utility price.
- ii. A group of suppliers jointly proposed that the gas versions of the templates be revised to reflect the provincial average annual

consumption divided by 12 months multiplied by the then-current utility rate. Another supplier requested that it be permitted to show a range of utility rates, or a representative rate, for customers in Union Gas franchise areas other than Southern Ontario on one price comparison form. According to this supplier, the utility rate in each franchise area is only marginally different, and collapsing the forms into one would simplify the process. Based on current gas supply, transportation and storage rates, the difference in the monthly amount for these three components of the utility bill for consumers in different Union Gas rate zones could in some cases be in excess of \$6.00. Even excluding the Southern rate zone and using an average for the remaining four rate zones, the difference could in some cases be in excess of \$3.50. The Board believes that these differences are sufficiently material so as to warrant the retention of separate price comparison templates for the different Union Gas rate zones. The Board also remains of the view that different price comparison templates should be used for consumers in each franchise area, and is maintaining separate templates applicable to each gas distributor in the Province.

- iii. Suppliers made different comments regarding the treatment of storage and transportation costs in the gas versions of the templates. A group of suppliers jointly indicated that they are unable to provide a cost comparison for storage and transportation when included in the contract, as these cannot be hedged and the transportation rate may fluctuate as TCPL tolls change. In addition, this group of suppliers noted that neither the supplier nor the consumer will know the consumer's utility transportation profile at the time of sale. The group of suppliers therefore suggested that contract transportation and storage charges be compared against utility costs on a per cubic meter basis only. By contrast, another supplier supported full price disclosure, including transportation and storage costs, and further proposed that contract rates for transportation should be fixed and not variable. The Board believes that, for price comparison purposes, it is appropriate to treat variable transportation and storage costs in much the same manner as market-based supply costs. The Board has therefore revised the instructions for the gas versions of the price comparison templates to require the supplier to include, in addition to

the price prevailing at the time of the contract offer, a description of how the variable price is derived and the basis on which changes to the variable price will be determined during the contract term.

- iv. A supplier suggested that the gas versions of the templates for non-residential and residential consumers are redundant. According to this supplier, the critical components of the price comparisons are the utility rate and the contract price, and there is no value in having total dollar amounts based on consumption thresholds as “the customer can do their own math”. This supplier also expressed the view that the difference between Rate 1 and Rate 6 is negligible and would not be a determinant in whether the customer opts to sign a fixed rate contract. This supplier therefore recommended that there be only one form of price comparison. The Board remains of the view that, for comparison purposes, it is more useful for the consumer, and in particular for residential consumers, to have an estimated “bottom line” number that reflects both price and consumption than it would be to simply provide price information. The Board is not persuaded that changes should be made to the Board’s overall approach to the price comparison templates in this regard, whether in relation to the gas versions or the electricity versions.
- v. A supplier questioned why only one contract price can be included in Part B of the gas versions of the price comparison templates. This supplier recommended that Part B should be unique by product, with multiple contract prices listed by term on the same price comparison document. In their joint comments, a group of suppliers made the same recommendation. The Board believes that the requirement to show each separate contract price offer on one price comparison document will better ensure that the consumer can clearly identify each price offer and understand how each compares against the utility price. The Board has therefore not adopted this recommendation, either in relation to the gas versions or the electricity versions of the templates.

All of the following comments were made jointly by a group of suppliers:

- vi. The suppliers proposed that the title of each of the templates be changed to include “at the time of signing the contract”. The Board notes that each template indicates the period of time for which the template is in effect (in the case of the templates for consumers served by non rate-regulated gas utilities, by reference to a start date only). The Board is not persuaded that the addition proposed by this group of suppliers will provide incremental additional clarity for consumers, and has not incorporated it into the templates.
- vii. The suppliers proposed that the phrases “monthly electricity supply cost” and “monthly gas supply cost” be qualified to read “estimated monthly electricity supply cost” and “estimated monthly gas supply cost”. The Board believes that this proposal is in keeping with the overall tenor of the price comparison templates, provided that it is clear that the reference to “estimated” applies equally to the supplier’s contract price disclosure portion of the template, and has incorporated it into all of the price comparison templates.
- viii. The suppliers proposed that the phrase “you will also have to pay charges for...” be qualified with the words “to your utility”. The Board believes that this proposal is also in keeping with the overall tenor of the price comparison templates and has incorporated it into both Part A and Part B of all of the templates.
- ix. The suppliers commented that a comparison based on a 6-month forecast of a variable rate is impractical and misleading and should not be necessary with the inclusion of the qualifying description of the market price in the price comparison form. They recommended that the price comparison be limited to the initial variable rate. While the Board understands that meaningful forecasts of market prices may not be available for the entire duration of a contract, in the Board’s view a rate based on a 6-month forecast can reasonably be expected to be more representative of the cost to the consumer than the market rate on any given day. The Board is therefore not persuaded that it should change its approach to this element of contract price disclosure.

- x. The suppliers requested that the price comparison templates be revised so that utility and supplier price comparison information can be provided on one page. The Board notes that there is nothing in the templates that precludes placing all of the information on one page, although the Board acknowledges that this may be difficult to achieve in light of the length of Part A in certain versions and the minimum font requirements applicable to all versions. While the Board agrees that a one-page document would in most respects be ideal, the Board does not believe that either the content of Part A or the minimum font requirement should be sacrificed for the purpose of having a price comparison document that is limited to one page. The Board will, however, make the price comparison templates available in legal-sized format.
  
- xi. The suppliers noted the fact that contract renewal forms must be sent at least 60 days before the date of contract expiry, and requested that the price comparison templates reflect the utility rates in effect as of the current date. The Board expects suppliers to use the price comparison template that is current as of the date of transmittal to the consumer. In the case of contract renewals or extensions, the Board confirms that there is no requirement for the supplier to provide an updated price comparison in the event that a utility price change occurs during the 60-120 day renewal or extension window.
  
- xii. The suppliers commented that the provision of three arbitrary levels of consumption in the gas price comparison templates for non-residential consumers is not illustrative of how non-residential customers consume, and recommended that the rate comparison be on a per cubic meter basis only. By contrast, a gas distributor supported the Board's "three example" approach to dealing with the issue of consumption by non-residential consumers in the price comparison templates. The Board believes that its approach provides a non-residential consumer with a better (i.e., more illustrative) basis for comparison than would the recommendation made by the suppliers and is not persuaded that any changes should be made to the price comparison templates in that regard, either in the electricity or gas versions.

- xiii. The suppliers noted that the price comparison templates require them to provide price comparisons as an accurate reflection of the price over the term of the contract. They requested that the Board revise the restated Supplier Codes to accept introductory pricing if all pricing components are reflected in the price comparison for the duration of the contract. The Board does not believe that either the restated Supplier Codes or the price comparison templates prohibit introductory pricing. Where, however, the contract price changes during the course of the contract term (for example, where there is an introductory price for some initial period and a different price thereafter), each different contract price must be separately identified by the supplier in the price comparison document as required by and in accordance with the instructions set out in the templates. The Board therefore does not believe that any further changes are required to either the restated Supplier Codes or the price comparison templates to address introductory pricing.

In addition to the revisions made in response to stakeholder comments as discussed above and in section 5 below, the Board has also revised the price comparison templates as follows:

- i. To assist consumers in achieving a better understanding of their energy costs, a sentence has been added to each of the price comparison templates indicating where the consumer can go for further information about the delivery and other charges that appear on their utility bills (a reference to the Board's website in the templates relating to rate-regulated utilities and a reference to the utility in the templates relating to non rate-regulated gas utilities).
- ii. In the electricity versions of the price comparison templates, references to tiered Regulated Price Plan prices have been deleted. Based on current expectations for the implementation of time-of-use billing, the Board anticipates that time-of-use pricing will be phased in for most residential consumers in 2011. As such, the Board believes that time-of-use prices are a better point of comparison against retail offerings than are tiered prices. The Board also believes that the elimination of tiered pricing from the electricity price comparison

templates will minimize the potential for consumer confusion and tend towards the more effective administration of the price comparison framework on a going forward basis. For completeness, however, the Board has included in the electricity price comparison templates a statement alerting consumers to the fact that they may still be on tiered pricing, and advising them to contact their utility for further information about when time-of-use pricing will apply to them.

- iii. To ensure that there is no confusion as to the source of information contained in the price comparisons that are provided to consumers, Part B of each of the price comparison templates has been revised to make it clear that the price disclosure information set out in Part B was prepared by the supplier.
- iv. To facilitate consumer review of the price comparisons, the Board has increased the font size of the pre-populated information on the price comparison templates to 11 font, and has therefore also revised the instructions on all of the price comparison templates to require the same minimum font size.

As contemplated in the October Notice, the Board has undertaken format and graphic design work related to the price comparison templates as attached to the October Notice. The price comparison templates attached to this Notice reflect the results of that exercise.

#### 5. *Issues Arising in Relation to Non Rate-Regulated Gas Distributors*

Both of the non rate-regulated gas distributors proposed that consumers be directed to their respective websites in order to avoid confusion as to who sets the utility price in their service areas. In one case, the distributor proposed that this be included in the disclosure statements and/or price comparison templates whereas in the other case, the distributor proposed that the Board's website contain a link to the distributor's website. In both cases, the distributors proposed that they might create an on-line bill calculator similar to the one on the Board's website.

The Board agrees that the addition of a reference to the consumer contacting the utility about utility prices is appropriate in these circumstances. However, to avoid having different disclosure statements applicable to different gas distributors, the Board has added to the gas versions of the disclosure statements a statement that the consumer can contact the utility for more information about utility pricing. Should this approach not be sufficient for purposes of ensuring that consumers are not confused as to the entity that sets the rates charged by their gas utility, the Board may revisit the issue.

The Board's on-line bill calculator cannot currently accommodate price comparisons for utilities whose rates are not set by the Board. To again avoid having different disclosure statements applicable to different gas distributors, the Board has added to the gas versions of the disclosure statements some additional text that clarifies that the Board's on-line bill calculator applies only where the Board sets the utility's rates. The text of the relevant statement has also been simplified in both the gas and electricity versions of the disclosure statements, as has the comparable text in the gas and electricity price comparison templates. The Board has also removed from the price comparison templates applicable to the two non rate-regulated utilities the text box that refers consumers to the Board's on-line bill calculator. The Board may further explore options for on-line bill calculators applicable to non rate-regulated gas utilities, and may engage the two utilities in discussions in that regard.

## 6. *Other*

In their joint comments, a group of suppliers requested that the Board provide a separate destination on its website for the purpose of housing materials related to the restated Supplier Codes. The Board confirms that it intends to do so, and will notify suppliers and other interested parties once the dedicated webpage becomes available.

This group of suppliers also requested that the Board acknowledge receipt of Certificates of Compliance received prior to noon on December 31, 2010 no later than 12:01 a.m. on January 1, 2011. The Board reiterates the statements made in the October Notice to the effect that it anticipates that it will be in a position to issue written acknowledgements in the first week of January, 2011 in relation to Certificates that meet all applicable requirements.

This group of suppliers also requested the immediate receipt of the disclosure statements and price comparison templates, populated as necessary, to ensure that February 2011 renewal notices can include these materials. To the extent that this request presupposes the acceptability of one of the options for addressing contract renewal transitional issues identified in the joint supplier letter filed with the Board on October 21, 2010, the Board refers suppliers to the Board's October 25, 2010 response to that letter.

#### **D. Licence Amendments and EBT Standards**

As indicated in the August Notice and the October Notice, any required changes to the licences of suppliers will be addressed separately from this notice and comment process.

As also indicated in the August Notice and the October Notice, any required changes to the EBT Standards for gas and electricity were similarly being addressed separately from this notice and comment process. The October Notice listed the issues that had been identified by the EBT Standards Working Groups in their letter filed with the Board on October 6, 2010, as well as the Board's views on each. By letter dated October 21, 2010, the Board requested that the EBT Standards Working Groups confirm whether any additional issues related to the current EBT processes arise in relation to the implementation of the ECPA, in particular in respect of areas where the Final Regulations differ from the Draft Regulations and where the October Proposed Amendments differ from the August Proposed Amendments. By letter dated November 4, 2010, the EBT Standards Working Groups reported back to the Board and confirmed that the members of the Working Groups had not identified any further issues.

On the basis of the Working Groups' reports, it appears that there are no significant EBT process issues that require immediate attention in order to ensure a smooth transition to the new legal and regulatory regime applicable to the activities of suppliers. If there are any electricity or gas distributors that are of a different view, the Board expects that they will so notify the Board without delay.

## **E. Anticipated Costs and Benefits**

The anticipated costs and benefits of the August Proposed Amendments and the October Proposed Amendments were set out in the August Notice and the October Notice, respectively, and interested parties should refer to those Notices for further information in that regard.

The Board believes that the revisions that it has made to the October Proposed Amendments, as discussed in section C above, will provide greater certainty and clarity in terms of the implementation of the consumer protection provisions (retailer/marketer) of the ECPA. The Board does not believe that those revisions will result in incremental costs for suppliers, distributors, or consumers relative to the costs associated with implementation of the August Proposed Amendments or the October Proposed Amendments.

## **F. Coming into Force**

As contemplated in the August Notice and the October Notice, the restated Retailer Code, the restated Marketer Code, and the amendment to the GDAR will come into force on January 1, 2011.

## **G. Cost Awards**

The Board will address cost awards for this consultation by way of a Notice of Hearing to be issued shortly.

This Notice, including the restated Retailer Code, the restated Marketer Code and the amendment to the GDAR set out in Attachments A, B and C to this Notice, and the disclosure statements, price comparison templates, verification call scripts and renewal/extension call scripts set out in Attachments D, E, F and G, respectively, to this Notice, as well as all other Attachments, will be available for public viewing on the Board's web site at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca) and at the office of the Board during normal business hours.

If you have any questions regarding this Notice, including the attachments to this Notice, please contact the Market Operations Hotline at

[market.operations@oeb.gov.on.ca](mailto:market.operations@oeb.gov.on.ca) or at 416-440-7604. The Board's toll free number is 1-888-632-6273.

**DATED** at Toronto, November 17, 2010

ONTARIO ENERGY BOARD

*Original signed by*

Kirsten Walli  
Board Secretary

Attachments:

- Attachment A: Restated Electricity Retailer Code of Conduct
- Attachment B: Restated Code of Conduct for Gas Marketers
- Attachment C: Amendment to the Gas Distribution Access Rule
- Attachment D: Disclosure Statements
- Attachment E: Price Comparison Templates
- Attachment F: Verification Call Scripts
- Attachment G: Renewal/Extension Call Scripts
- Attachment H: Comparison Version of a Verification Call Script (for information purposes only)
- Attachment I: Comparison Version of a Renewal/Extension Call Scripts (for information purposes only)

**Attachment C**

**Amendment to the Gas Distribution Access Rule**

**Note: The text of the amendments is set out in italics below, for ease of identification only.**

Section 4.3.7.4 of the Gas Distribution Access Rule is deleted and replaced with the following:

*4.3.7.4 A gas distributor shall not process an STR from a consumer's gas vendor unless the consumer's contract with the gas vendor:*

- (a) has been terminated due to the consumer's default;*
- (b) has been cancelled by the consumer; or*
- (c) has expired or will expire on or before the proposed transfer date.*