

**Ontario Energy  
Board**

**Commission de  
l'énergie de l'Ontario**



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# **Report to the Minister of Energy**

**Consumers Come First: A Report of the Ontario  
Energy Board on the Effectiveness of Part II of  
the *Energy Consumer Protection Act, 2010***

**May 28, 2015**

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**Contents**

Executive Summary ..... 1

Introduction ..... 3

The Ontario Market Today ..... 4

The Energy Consumer Protection Act ..... 5

The OEB’s Review ..... 6

Highlights of the Consumer Experience ..... 8

Highlights of Stakeholder Perspectives ..... 10

OEB Experience ..... 11

Experience in Other Jurisdictions ..... 13

The Value Proposition of Retail Energy Contracts ..... 14

Recommendations ..... 17

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## Executive Summary

The *Energy Consumer Protection Act, 2010*, (ECPA) took effect in January 2011 in response to a large number of consumer complaints related to activities in Ontario's retail energy markets for natural gas and electricity. The goal is to ensure low-volume consumers (residential and small business) have the information they need to make the right decisions about retail electricity and natural gas contracts, and confidence that they're protected by fair business practices.

The ECPA includes a provision that allows the Minister of Energy to request that the Ontario Energy Board (OEB) review Part II of the ECPA after three years. In December of 2013, the Minister made such a request.

The OEB undertook a broad and extensive consultation that sought input and opinions from energy sector stakeholders and consumer advocates, as well as consumers themselves. Focus groups, an online workbook and a survey of current and former contract holders and non-contract holders provided insight into consumers' attitudes, opinions and experiences regarding retail energy contracts and the effectiveness of the ECPA in meeting its goals. The OEB considered complaints received and enforcement activities undertaken since the ECPA took effect. We also looked at market and other data provided by energy retailers in their annual filings and in filings made as part of this review.

Focus group participants and those who completed the online workbook generally expressed strong support for the ECPA. Stakeholder submissions and discussions, generally, indicated that the ECPA had been successful in curbing inappropriate behaviour, but that problems persist. Consumers have told us they like choice, but the consequences of making that choice may not be well understood. There is general agreement that energy literacy and consumer awareness are low. Among other things, consumers have a hard time understanding their energy bills, which makes understanding the impact of energy choices and accurate price comparisons more difficult.

Most notably, roughly one-third of current residential and non-residential contract holders who were surveyed were unaware that they have a retail contract. Of particular concern is that "unaware contract holders," when compared with other groups of consumers in our survey, are less familiar with the retail energy markets, less confident when it comes to entering into contracts, less likely to have a university degree and score comparatively lower on the cognitive assessment index used in the survey.

More than half of the current contract holders who were surveyed had signed contracts with the goal of saving money, and many of them think that they are doing so. Yet, former residential contract holders expressed a high level of dissatisfaction, and most cancelled or chose not to renew because of the high cost.

Consumers do not generally search out energy retailers; the energy retailers more often go to them. Yet consumers are often unhappy with the door-to-door sales practice. Almost no residential survey respondents who were asked about their experience said it was better than a typical retail interaction. A significant proportion said it was worse, most often citing aggressive sales practices as the primary reason. Concerns with door-to-door sales were noted by stakeholders and focus group participants, and sales agent conduct at the door continues to be an important source of complaints made to the OEB and an ongoing subject of our compliance activities.

The OEB is recommending 14 new measures to further enhance consumer protection. Recommendations include measures to curb inappropriate behaviour at the door and to provide consumers with the information that they need to make informed decisions about retail energy contracts. The recommended measures are listed here and described in more detail later in this report.

## **Recommendations**

- Ban door-to-door sales for residential consumers
- Sales agents must be employees of the company they represent
- Increase administrative penalties
- Eliminate auto-renewal of all retail contracts
- Extend cancellation from one to two billing cycles
- Increase the “cooling-off” period from 10 to 20 days
- Require verification of all retail contracts
- Introduce requirements regarding pricing practices/hedging
- Publish a “consumer beware” list
- Post prices and comparisons on an OEB-supervised website
- Make contracts, disclosures and scripts more consumer-friendly
- Make retail contracts more visible on the bill
- Address the unique needs of low-income consumers
- Further consider an exemption for agricultural co-ops

## Introduction

For most Ontarians, buying electricity and natural gas means buying it from their utility.

However, since the early 1990s for natural gas, and since 2002 for electricity, Ontario consumers have also had choices available to them in retail markets for energy. Energy retailers offer consumers retail contracts with varied terms or offerings such as the opportunity to buy their energy at a fixed price for the term of the contract. They have a variety of sales channels available, and most sales are transacted using door-to-door marketing.

Creating retail markets was seen as a way of providing choice to consumers, and was based on a belief that the resulting competition for customers would lead to an overall improvement of offerings for all consumers. However, it hasn't worked out that way. Governments made decisions to limit volatility in prices in the electricity sector. In the natural gas market, the price of the commodity over the long run has declined significantly.

When the electricity market in Ontario opened up to competition in 2002, about one million customers did sign up with electricity retailers. However, later that same year the government decided to freeze prices. Important changes to the electricity market were made in later years. Industry experts have noted that some aspects of the current market structure are barriers to an ideal retail market, and they are skeptical about whether the market structure leaves room for electricity retailers to provide value to low-volume consumers.

In 2010, the year before the *Energy Consumer Protection Act, 2010*, (ECPA) came into effect, the Ontario Energy Board (OEB) was receiving 100 to 150 complaints per week about energy retailers. These amounted to more than 80 per cent of all complaints received. In addition, energy retailers cracked the top 10 list of complaints compiled each year by the Ministry of Consumer Services.

*“I think every member in the Legislature—I think I probably heard from every member of our caucus on this bill, and I think that’s probably true for the opposition as well. This is an area that we get a lot of comments from our constituents on, and this bill is designed to address the issues that each of the members are dealing with.”*

- Minister Gerry Phillips, Thursday 10 December 2009, Legislative Assembly of Ontario

## The Minister's Request for A Review

In 2010, the Government of Ontario introduced the *Energy Consumer Protection Act, 2010*, Part II of which is designed to protect low-volume energy consumers from unfair practices and ensure they have the information they need to make informed decisions about retail electricity and natural gas contracts.

The ECPA includes a provision that allows the Minister of Energy to request that the OEB review Part II of the ECPA three years after the Part took effect. In December of 2013, the Minister made such a request.

## The Ontario Market Today

In today's market, Ontario energy consumers have options in choosing their supplier. They can sign a contract with an energy retailer, or they can continue being supplied by their utility. Roughly 90 per cent of energy consumers choose to purchase their energy from their utility.

### Buying From A Utility

The price that most low-volume consumers pay for their natural gas or electricity when they buy from their utility is regulated by the OEB. The OEB does not allow utilities to make a profit on the sale of natural gas or electricity.

In electricity, the utility price is called the Regulated Price Plan, or RPP. For most low-volume consumers, it takes the form of time-of-use prices. RPP prices are based on a forecast of the wholesale market price and the Global Adjustment,<sup>1</sup> and can change every six months. For three of the province's gas utilities, including the two largest, the price charged by the utility is based on the forecasted price for natural gas in the competitive market and is set by the OEB for each utility every three months.

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<sup>1</sup> **The wholesale market price.** The wholesale market price (Hourly Ontario Energy Price, or HOEP) is determined by matching supply and demand for electricity. It is based on the offers and bids submitted by generators and large consumers (those connected to the high-voltage transmission system) to the Independent Electricity System Operator (IESO).

**The Global Adjustment.** The Global Adjustment (GA) is the difference between regulated and contract prices for electricity paid to certain generators and the market prices they would have received had they not been subject to regulation or contracts with the IESO. In Ontario, the vast majority of generators are compensated on the basis of either a regulated rate set by the OEB or a contractual rate primarily negotiated with, or set by the IESO. The GA recovers the difference between these contracted or regulated prices and the revenues that the generators earn in the wholesale market (i.e. the wholesale market price). The GA is calculated each month, and can change every month.

## **Buying From An Energy Retailer**

There are 13 active energy retailers in Ontario. Eleven of those are licensed for both electricity and gas. The other two are licensed for electricity only. These companies offer an alternative way for consumers to purchase natural gas or electricity. Both natural gas and electricity contracts can have different types of contract pricing. Energy retailers offer various price structures, including long-term fixed rates, variable prices and tiered prices. Some offer energy from renewable or alternative sources.

For a number of years, the retail energy market in Ontario has been in decline. Fewer consumers today are signing retail energy contracts. In electricity, market share declined from 16 per cent in 2006 to 6.3 percent in 2013. In natural gas, market share declined from 36 per cent in 2006 to less than 11 per cent in 2013.

## **The Energy Consumer Protection Act**

### **Goals of the ECPA**

When the ECPA became law, the government stated the legislation would protect consumers from hidden costs, excessive cancellation fees and other unfair industry practices. The goal is to ensure consumers have the information they need to make the right decisions about retail electricity and natural gas contracts, and confidence that they're protected from unfair business practices.

### **What It Does**

To ensure consumers know who they are dealing with, sales agents must provide a business card and wear photo identification, which both have to contain certain specific information.

To help consumers understand what they are buying, an energy retailer offering a retail contract must provide an OEB-approved Disclosure Statement with important information about energy contracts. Contracts must also be accompanied with a Price Comparison, in a form approved by the OEB. The energy retailer must provide consumers with a text-based copy of the contract, including all terms and conditions. The consumer has to acknowledge receipt of the contract or the contract is invalid.

After acknowledging receipt of the contract, consumers have 10 days of "cooling off" to cancel, without facing cancellation fees.

To ensure consumers understand that they agreed to a contract and its terms, they get a follow-up call where they "verify" the contract. If the contract is not verified, it becomes invalid. The verification process follows a script approved by the OEB. However, verification is not required if the consumer initiated the contact, responded to direct mail or signed up online. People who verify contracts on behalf of energy retailers are not

allowed to be paid on the basis of the number or percentage of contracts verified – in other words, they are not allowed to be paid on commission.

There are a number of rights to cancel. For example, a consumer can cancel if they move or if the energy retailer has committed an unfair practice. An electricity contract can also be cancelled within 30 days of receiving the first bill under the contract, and an auto-renewed natural gas contract can be cancelled at any time. A consumer can cancel a contract for no reason, but in that case must pay a cancellation fee. The maximum amount of this cancellation fee is capped by law.

## The OEB's Review

The OEB took a broad approach to the ECPA review. We looked at consumer experiences with energy retailers. We considered the OEB's experience with oversight of the retail energy sector. We sought feedback and data from energy retailers, and asked other stakeholders for input. We looked at products offered by energy retailers, conditions in the retail energy market and experience in other jurisdictions that also have retail energy markets. Details of the ECPA review process are on the OEB's website, and a brief overview is provided here.

### Giving a Voice to Consumers

The OEB recognized that retail energy sales and marketing practices are primarily about consumer experience, and so we reached out to consumers in a variety of ways. Since it is not possible to speak to every consumer, we designed a process that could provide a representative cross-section of opinions and a variety of consumer experiences. This review sets a new precedent for the OEB in terms of direct consumer engagement on a broad scale.

The OEB sought to understand the experiences of low-volume consumers in Ontario's retail energy markets, and get their thoughts on how effective the ECPA has been in protecting their interests.

To assist with our review, the OEB commissioned Innovative Research Group Inc. (Innovative) as an independent consultant to help design, collect feedback and document the consultation process among low-volume consumers. A copy of Innovative's report is available on the OEB's website.

Innovative and the OEB developed an online workbook to ask consumers what they think about the key consumer protection provisions in the ECPA and how well they think those provisions are addressing the government's goals. The workbook included information that would allow consumers to better understand how the energy system works in Ontario and how the retail natural gas and electricity markets operate.

The workbook was visited by 10,606 unique visitors, of which 3,268 partially completed the workbook and 532 fully completed it.

Innovative also held a series of consumer focus groups across the province in Sudbury, Ottawa, London and Toronto. The 51 consumers that participated in these focus groups were asked to read through the consumer workbook, complete the feedback questions and discuss their own experiences with energy retailers.

In addition to the qualitative research, Innovative conducted telephone surveys of 1,519 residential and 428 non-residential randomly selected low-volume consumers. The survey included those with energy contracts, those who cancelled or let their contract expire and a sample of general population households and businesses. The survey provided insights on how the ECPA is working in practice.

### **Stakeholder Consultations**

The OEB also took a broad approach to engaging stakeholders.

While energy retailers only serve a small number of Ontario's energy consumers, the OEB recognized that our review could have significant implications for them. We also acknowledged that utilities continue to be the billing agent for consumers even if they sign a retail contract, and are sometimes the first point of contact for questions or complaints about energy retailers. So, it was important that we invite both energy retailers and utilities to share their perspectives.

Although we reached out to consumers directly, we also wanted to hear from consumer advocates, including those that represent low-income consumers. Stakeholders had a number of opportunities to provide their input.

Selected industry experts (10) and stakeholders (22) were interviewed by Innovative as we developed our consumer research materials. All interested stakeholders were invited early on to provide us with written comments on the issues. The OEB hosted a stakeholder forum, where our consultants provided the results of their commissioned consumer and market research and some stakeholders made presentations. Stakeholders, including consumer groups, advocates for low-income consumers, utilities, energy retailers and others, attended the forum and some provided feedback, ideas and opinions on the research findings.

We invited further comment on key issues and asked stakeholders to tell us what the OEB should take away from the consumer research findings and what they thought about potential changes that could be recommended by the OEB to improve consumer awareness and consumer protection. In response, we received written comments from a range of stakeholders, including energy retailers, electricity distributors, consumer groups and advocates for vulnerable consumers.

## Highlights of the Consumer Experience

**The ECPA is believed to be appropriate and headed in the right direction.** Results indicate strong support for the consumer protection measures contained in the ECPA, and for how they support the government's objectives. In other words, there is general agreement with the effectiveness of the ECPA, at least in theory. In practice, however, problems continue.

**Consumer understanding and awareness is low.** The OEB's review of the ECPA found that consumer confusion and lack of awareness about the energy sector, retail energy markets, energy bills and the ECPA are making it difficult for consumers to understand their choices and make valid price comparisons. That there is a need for increased plain language in consumer-facing documents emerged as a common theme during the consultation process.

**Bill presentation makes it difficult for consumers to compare prices.** When consumers enrol with an electricity retailer, they see the Global Adjustment as a separate charge on their bill. Consumers who stay with their utility do not see the Global Adjustment as a separate charge – a forecast of it is already included in their RPP prices. This difference in presentation is an obstacle for consumers in comparing prices when considering whether to sign a retail electricity contract or remain with their utility.

**Roughly one-third of current residential and non-residential contract holders surveyed are unaware that they have a contract.** About three out of 10 consumers in our survey were identified as "unaware contract holders." When compared with other groups of consumers in our survey, unaware residential contract holders are less familiar with the retail energy markets, less confident when it comes to entering into contracts, less likely to have a university degree and score comparatively lower on the cognitive assessment index used in the survey. Importantly, 40 per cent of unaware contract holders are consumers with a household income of less than \$40,000. Comparatively, this is higher than their representation in all other groups analyzed in our research findings.

**Many consumers enter contracts with the goal of saving money.** A majority of residential consumers and more than 70 percent of non-residential consumers surveyed who entered into contracts did so with the goal of saving money. These consumers are generally satisfied with their contracts if they believe they are saving money, and many believe that they are. However, our research suggests that savings are highly unlikely, at least for residential consumers, and that residential consumers with contracts have in fact paid more than consumers who bought their energy from their utility.

**Cancellations point to a relatively high level of dissatisfaction.** Approximately six out of 10 former residential contract holders in our survey were dissatisfied with their contracts. High cost is the most common reason given by residential consumers for cancellation or non-renewal of a retail contract.

**Most contracts do not pass the verification stage.** Most consumers who enter into a retail contract that requires verification choose not to go through with it. The OEB has data on the number of retail contracts that are entered into, and we compared this to energy retailer data on contracts that were successfully verified. While there are slightly different patterns for natural gas and electricity, almost 60 per cent of consumers who signed contracts that require verification change their mind and do not complete the verification process, choosing instead to remain with their utility. This could indicate that consumers feel pressured at the door, or have trouble absorbing the necessary information at the door.

**Door-to-door activities are a continuing concern.** A significant proportion (38 per cent to 49 per cent) of the residential unaware contract holders, former contract holders and non-contract holders surveyed say the experience of dealing with a sales agent at the door was worse than a typical retail interaction. The same is true of a third of non-residential non-contract holders. Of those that think it is worse, “aggressive sales tactics” was the top reason.

Up to 11 per cent of residential and non-residential consumers who had interacted with an energy retailer report that they thought the sales agent was from the utility, the government or an energy agency.

Focus group participants echo that they are unhappy with the door-to-door sales practice, noting high-pressure sales, misrepresentations and that there is simply too much information to absorb at the door.

*“This summer there was a blitz of people going to doors trying to make you sign contracts, and they were pretty pushy... they were asking you for your bill.”*

- Focus group participant

**Retail energy sales continue to rely heavily on door-to-door sales.** Our survey shows that consumers do not generally search out energy retailers. Three in four current contract holders were approached without their having initiated the interaction. Almost no one in the other sub-groups (former contract holders, unaware contract holders and non-contract holders), sought out a contract. The energy retailers found them. The same general trends hold for non-residential consumers surveyed, contract holders and non-contract holders alike.

Based on data from energy retailers, in 2014 about 50 per cent of all retail electricity contracts and about 46 per cent of all retail natural gas contracts were sales transacted using door-to-door marketing. Some portion of the internet sales reported by energy retailers for that year (about 39 per cent for electricity and about 42 per cent for gas) may also have originated with a sales agent at the door.

**Consumers value choice, but to varying degrees.** The vast majority of consumers purchase their energy from their utility. Consumers differ in their views on choice. More than eight in 10 current contract holders surveyed like having the opportunity to enter into a retail energy contract if they want one. The same is true of a majority of former residential contract holders and non-residential non-contract holders. Residential non-contract holders – a group that represents roughly 90 per cent of residential consumers – and unaware contract holders are less interested in this choice, at 44 per cent and 43 per cent respectively.

## Highlights of Stakeholder Perspectives

The stakeholder interviews conducted by Innovative showed that the three stakeholder groups – consumer advocates, distributors and energy retailers – share some perspectives but differ on others.

All stakeholder groups recognize that the ECPA is achieving its objective in protecting consumers from unfair practices, citing a reduction in complaints. Both consumer advocates and distributors credit energy retailers for performing more ethically in the market. However, while acknowledging that consumers are better protected than they were before, all groups also agree that lack of consumer awareness of the ECPA and poor energy literacy continue to be the biggest hurdle preventing optimal achievement of the provisions set out by the ECPA. The Global Adjustment was identified as a key element that is not well understood by consumers and that makes true price comparisons difficult.

Consumer advocates feel that the ECPA has forced some energy retailers to develop means of circumventing the protections. One tactic mentioned was gaining access to consumers' homes under the guise of a water heater inspection and using the opportunity to engage a consumer in signing a contract. They also cite misrepresentations regarding claims to savings. Consumer advocates also identified several vulnerable groups that are at most risk from the door-to-door sales approach. There is support among these stakeholders for banning this practice altogether.

Distributors cite continued misrepresentation by energy retailers about themselves, as well as the products and services they offer. They also outline some of the administrative burdens they are faced with, particularly in regards to the cancellation of contracts. Furthermore, distributors feel that there is little value offered to consumers by the retail electricity market. Given the reduction in new retail contracts, they question the value of the retail model, and wonder if the costs required to maintain the market – which are being passed on to consumers – are justified.

Energy retailers who remain in the market appear to support the consumer protections in the ECPA, yet feel the regulatory and administrative burdens placed on them are intended to force them out of the market. Some feel that the process of signing a contract is too cumbersome, and acts as a deterrent to consumers in itself. They feel

that the cost of compliance is too high and that some of this cost is being passed on to the customer. They also feel that the ECPA is inhibiting their ability to provide innovative products, acts as a disincentive to invest in the growth of their businesses and may eventually result in the loss of choice for consumers. Ultimately, they believe there needs to be a redress of balance in the regulatory and administrative burdens borne by energy retailers.

In their comments filed after the stakeholder forum, consumer advocates and electricity distributors encouraged the OEB to be guided by the consumer research findings in making its assessment of the ECPA. They also generally supported most of the potential changes identified by the OEB.

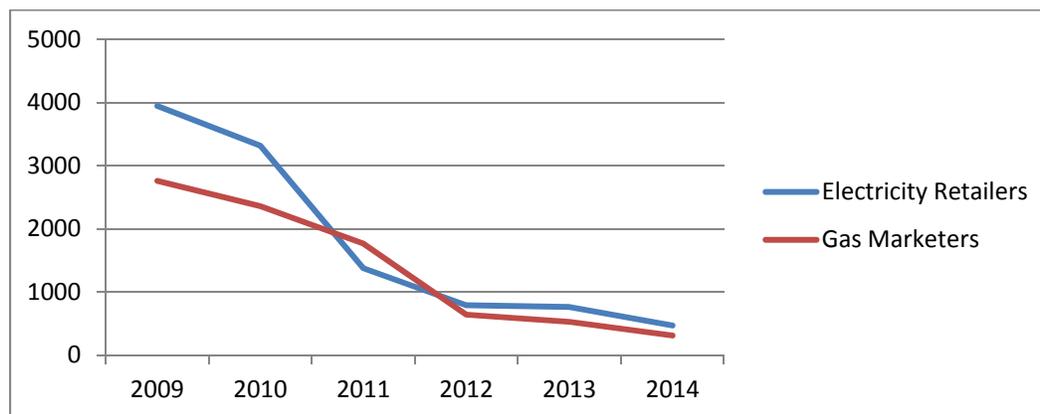
Energy retailers believe that further study, analysis and research are needed to confirm any of the consumer research findings. They generally did not support a number of the potential changes identified by the OEB, other than those that go to improving consumer awareness and understanding. They also highlighted their concern with the Global Adjustment and how it is presented on the bill.

## OEB Experience

### Consumer Complaints

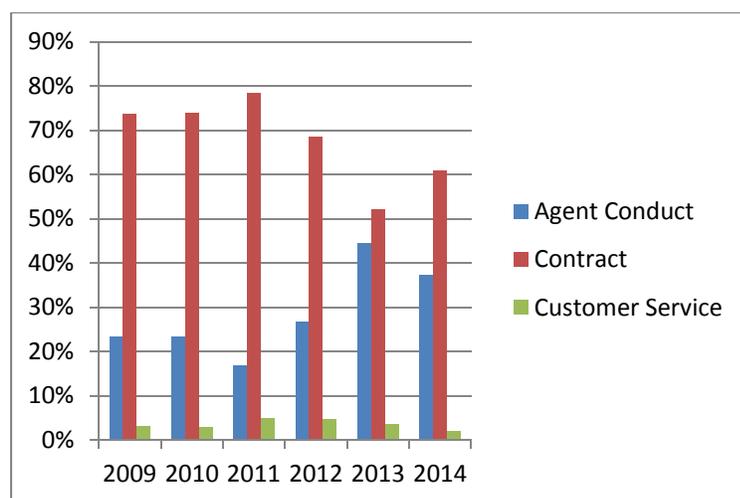
The ECPA has made progress in several ways, which indicates that consumers enjoy greater protection. Overall, numbers of complaints are down, but the decrease needs to be considered bearing in mind the declining market share of retailers. In any event, complaints about energy retailers continue to be made with the OEB.

#### Total complaints received – energy retailers



The types of consumer complaints received by the OEB indicate that issues, particularly at the door, are continuing. Complaints relating to agent conduct continue to increase as a percentage of all complaints about energy retailers, rising from 23 per cent of all complaints in 2010 to 44 per cent of all complaints in 2013 and to 37 per cent in 2014.

### Complaints related to agent conduct



### Market Data

As part of our review, the OEB asked energy retailers for data about different aspects of their business. Among other things, this data shows that:

- the number of contracts that are cancelled during the cooling-off period has increased since the ECPA took effect;
- almost 60 per cent of contracts that require verification drop off at the verification stage, which is similar to the drop-off rate for reaffirmation – the pre-ECPA name for verification;
- the renewal of electricity contracts is up and the renewal of natural gas contracts is down, but the rate of auto-renewed natural gas contracts varies; and
- few consumers use the new cancellation right for electricity contracts (30 days after the first bill) or the new cancellation right for auto-renewed natural gas contracts.

## Enforcing Compliance

The OEB reviews complaints received with a view to resolving the issue and ensuring that licensees are complying with the rules. Where a consumer alleges misrepresentation or other inappropriate behaviour by a sales agent at the door, the energy retailer is expected to take immediate steps to resolve the issue and advise the OEB of the steps it has taken. In appropriate cases, energy retailers have stopped using the services of certain sales agents.

Since the ECPA came into force on January 1, 2011, the OEB has initiated a total of 20 enforcement cases against energy retailers for allegations of non-compliance related to the ECPA and associated regulatory requirements. These cases were the result of proactive compliance reviews by the OEB, or in response to allegations of non-compliance arising from consumer complaints.

Where the OEB finds that non-compliance has taken place, it can impose administrative penalties. The penalties are capped by law at \$20,000 for each day on which a breach of the rules occurs or continues. The OEB must use a matrix that is set out in a regulation when it decides how much of a penalty it will impose in any given case.

Administrative penalties totalling \$2,580,000 have been levied against energy retailers since 2009 for breaches of the rules under the ECPA or the consumer protection rules that were in place earlier. For cases under the ECPA, the breaches related to matters such as: misrepresentation and false or misleading statements made by sales agents; failure to provide business cards; identification badges that did not have the necessary information on them; using tablets to complete sales at the door and failing to verify them; unauthorized contract enrolments; price comparisons being incorrectly filled out; retail contracts that did not contain required terms; and training materials that were deficient.

One energy retailer's licence was revoked by the OEB. We also held the officers and directors of one energy retailer liable for failing to exercise the necessary degree of care, diligence and skill and failing to take measures necessary to ensure that the retailer complied with the ECPA.

## Experience in Other Jurisdictions

A number of jurisdictions in North America and elsewhere have retail energy markets. We took the opportunity to compare Ontario's experience with theirs. We looked at regulatory requirements in Alberta, Texas, Pennsylvania, New York, Ohio, Connecticut, Maine, Massachusetts, Maryland and the United Kingdom. We found that Ontario's issues with retail energy markets are fairly common, and that ours is among the more extensive consumer protection regimes.

Like Ontario, most of the jurisdictions studied cover misrepresentation and unfair practices. They require some form of information to be presented to consumers and they licence energy retailers. A number of jurisdictions, including Texas, Pennsylvania, New York and Ohio, have websites where energy retailer prices are posted.

Other jurisdictions studied have adopted a range of measures with goals similar to the objectives of the ECPA. Most inform consumers of the level of complaints, and, in several cases, publicize the names of companies and issue complaints scorecards. Some allow for contracts to be broken if unfair practices were found to be a factor in signing. Most also address door-to-door sales activities, require that retail contracts be verified and protect consumers from excessive cancellation fees. Criminal background checks for sales agents are being considered in Pennsylvania.

Texas requires the expiry date of a fixed price contract to be on the bill. Pennsylvania requires a line containing price to compare data. Connecticut requires a quarterly bill insert comparing default rates to energy retailer prices. New York proposes to allow the non-billing party up to 480 characters and requires the name, logo and toll-free numbers and/or email address to be on the bill.

Alberta, Ohio and Texas permit the automatic renewal of energy contracts, with similar protections as those in the ECPA (month-to-month, no penalty for cancellation, etc.) However, Pennsylvania does not permit auto-renewals. And the United Kingdom's regulatory agency recently banned auto-renewals for residential consumers (five of six of the large energy retailers in the UK had already voluntarily ended auto-renewals in 2013 as a result of high complaints).

Some jurisdictions have or are developing measures to protect low-income consumers. In Ohio, consumers enrolled in a utility's low-income assistance plan cannot enrol with an energy retailer. In New York, an energy retailer will have to ask if the consumer is receiving low-income rate-funded assistance. If so, then the energy retailer must either guarantee that the consumer will pay no more per year than the utility price or provide eligible energy-related value-added products or services to the consumer.

Looking at Ontario's own general consumer protection laws, we identified that consumers now have a longer cooling-off period – 20 days – for water heater sales and rentals, where door-to-door sales have been common. The Ministry of Consumer Services also has a “consumer beware” list on its website where consumers can check a company's track record.

## **The Value Proposition of Retail Energy Contracts**

We invited stakeholders to comment on the “value proposition” for retail contracts. Generally, representatives of consumers and electricity distributors seriously question whether there is any value for residential consumers, but leave open the possibility of

value for larger consumers. Energy retailers point to choice, price stability and alternative and innovative products as elements of value beyond price.

When we asked residential consumers who had signed a contract with an energy retailer why they had done so, more than 50 per cent said that it was mainly to save money. But we found that savings have been elusive for residential consumers.

We heard from energy retailers that the contract price analyses presented at the stakeholder forum are of limited value, and are time and term sensitive. Although invited to do so, no energy retailer provided their own electricity contract price analyses. One energy retailer pointed to information in its 2006 Annual Report that showed that consumer savings resulted from five-year retail natural gas contracts signed between 1997 and 2000 (running to between 2001 and 2005). Our additional price analysis work is presented below.

We looked at residential natural gas contracts that were offered by retailers between November 2001 and November 2009 for a five-year fixed term, and compared the total cost over the term for residential consumers who used an average amount of natural gas to what they would have paid without a contract. On average, the contract was 36 per cent more expensive. Although many natural gas contracts signed before the summer of 2004 did yield savings, all of the retail contracts in our sample that were signed afterwards cost the consumer more.

For residential electricity contracts, the average premium was higher: 82 per cent for five-year fixed-rate contracts signed between May 2006 and November 2009. None of the electricity contracts we looked at would have resulted in more money in the residential consumer's pocket at the end of the term.

Our findings are broadly consistent with those of the Office of the Auditor General of Ontario, which expressed concern in its 2011 Annual Report, that retail electricity contracts are more expensive than the regulated RPP charged by utilities. In the Auditor General's sample of retail electricity contracts, the consumer paid anywhere from "35% to 65% more for their electricity, before tax and other charges, than the highest RPP rate over the term of their contract." The Auditor General cited the example of a consumer that uses 1,000 kWh per month and had a five-year fixed-price electricity contract at 8¢/kWh. That consumer would have paid about \$2,000 more for electricity under the contract than the consumer would have on the RPP.

The OEB asked Professor Donald Dewees to study issues relevant to the performance and measurement of the retail energy markets in Ontario. Professor Dewees has advised governments on environmental and electricity policy. In 1998, he served as Vice-Chair of the Ontario Market Design Committee, which advised the government on the introduction of competition into the electricity sector in Ontario. Professor Dewees' opinion is also that savings tend to be illusory. Because of the way the electricity market is designed, there is virtually no prospect of electricity retailers offering contracts that would result in lower bills. Although natural gas contracts could potentially offer savings

in a period of rising natural gas commodity prices, in the long run, according to Professor Dewees, the retail customer will pay a premium over the utility price to compensate the marketer for taking the price risk and to pay for marketing and administration costs.

Some consumers told us they signed retail contracts to keep their energy bills stable. Although some natural gas contracts may indeed smooth out monthly payments, consumers pay a premium for that insurance, which many of them may not fully understand.

On the electricity side, we found that residential consumers on retail contracts see higher bill volatility than those on the RPP. This is because retail electricity contracts add the Global Adjustment, which can vary significantly from month to month, as a separate item on the bill in addition to the contract price. For consumers on the RPP, by contrast, the Global Adjustment is built into the RPP. Professor Dewees notes that the RPP is a regulated price, not a volatile spot price. It has changed only gradually, moving mostly upward, gradually, every six months. There are no significant up and down movements for consumers to avoid. This echoes the views of industry experts, who question whether there is any opportunity for electricity retailers to provide value to low-volume consumers under the current market structure given limited volatility and the treatment of the Global Adjustment. In the Auditor General's 2011 report, it was noted that the consumer on a retail contract in the example noted above "would have actually seen more dramatic electricity price increases and price fluctuations on his or her electricity bill than a customer who stayed on [the RPP]."

In addition, many retail contracts allow the retailer to cancel the contract unilaterally, without cause. While we are not aware of energy retailers using this clause to date, there is the potential based on this contract provision that even where the consumer may be getting a good deal (for instance, in the event of a sudden spike in the market price of natural gas or electricity), the deal may not last.

On the electricity side, retail contracts provide an alternative to "time-of-use" pricing paid by the vast majority of residential consumers on the RPP. This alternative may seem attractive to some consumers, particularly those who are at home during the day when time-of-use rates are higher. However, Professor Dewees calculated that even a consumer who uses most or all of his or her electricity at peak times would pay less under time-of-use pricing than under a retail contract.

Some energy retailers offer innovative products to consumers. For example, some have separately offered "green" products, such as products that allow the consumer to offset greenhouse gas emissions through the purchase of carbon credits. Others indicated that they offer products such as "smart" thermostats in conjunction with their energy product. We did not ask consumers to speak to whether or how they value these kinds of products. However, our consumer survey results show that only about two in 10 residential contract holders had "bundled" contracts, defined as contracts that include another product or service, either for free or at some cost, such as a thermostat.

We also heard that consumers to varying degrees see intrinsic value in having a choice. However, the implications of choosing to enter a contract appear to be poorly understood by many consumers. In many cases, there seems to be a disconnect between what consumers say they want and what they are actually getting.

## Recommendations

The ECPA has generally been effective in improving consumer protection in the energy retail markets, and the OEB believes it to be among the most extensive legislation of its kind in North America. However, problems persist and we believe further protections are warranted. The OEB is recommending 14 new measures that will further enhance consumer protection in the retail energy markets. Some of the measures will enhance energy literacy and consumer awareness, to help consumers better understand what they are buying and who they are buying from. Other measures will address ongoing concerns, including a need for greater protection from unfair business practices at the door.

### Ban door-to-door sales for residential consumers

Complaints relating to sales agent conduct as a proportion of all complaints about energy retailers are higher today than when the ECPA came into effect in 2011. This same conduct has been a focus of the OEB's compliance and enforcement activity, with many cases revealing that misrepresentations or misleading statements are still being made to consumers by sales agents. Our survey shows that up to 11 per cent of consumers who had interacted with an energy retailer believed that they were approached by their utility, the government or an energy agency when they were approached by an energy retailer sales agent.

Consumers do not generally go looking for an energy contract, but are more often approached by an energy retailer at the door. When approached in this way, consumers are often unhappy with the experience. And when consumers do enter into contracts, one or more of three things can tend to happen. First, a third of them do not even realize that they have a retail contract. Second, in almost 60 per cent of the cases where verification is required, the consumer opts out of the contract at the verification stage. And third, residential consumers are often ultimately dissatisfied and leave their contracts due to the high cost.

Entering into a retail energy contract is a complex decision, with potentially expensive financial consequences. Consumers would be better served by making that decision at their own pace, with the benefit of additional time and distance to consider an offer and consult additional sources of information. Consumers like choice, but the doorstep is not a place where they can exercise that choice in a meaningful way.

The ECPA attempted to legislate good behaviour at the door, but complaints and inappropriate conduct remain, and are particularly difficult to monitor. It is hard to

disagree with the conclusion reached in the United Kingdom, where large energy retailers voluntarily suspended door-to-door sales because the channel was “irreparably broken.”

While other measures can and should be provided, preventing contracts from being signed at the door would provide the most effective protection for residential consumers.

### **Sales agents must be employees of the company they represent**

Most energy retailers use commissioned sales people, who are employed by independent agencies, to conduct door-to-door sales. Energy retailers would have greater incentive to improve ECPA training and compliance, and conduct background checks, if the people representing them at the door were employees. At a minimum, commission-based wages should be prohibited, since they can incent more aggressive sales behaviour. This is already the case today for people who verify contracts on behalf of energy retailers. Under the ECPA, they cannot be paid by reference to the number or percentage of retail contracts that are verified.

### **Increase administrative penalties**

Penalties need to be higher than they are today in order to encourage accountability and effectively promote compliance. Penalties that are not high enough can become a cost of doing business instead of being a meaningful tool for making sure that the rules are followed. In addition, the current penalty matrix is not flexible enough to impose a penalty that is in line with the conduct in question and the factors that the OEB takes into account when deciding an appropriate penalty.

### **Eliminate auto-renewal of all retail contracts**

Consumers should be actively involved in all aspects of the energy contracting process, including contract renewals.

Auto-renewal of natural gas contracts is allowed under the ECPA for one year only and without an increase in the price. There is no auto-renewal permitted for electricity contracts. Some jurisdictions allow auto-renewals but Pennsylvania does not and, in the United Kingdom, auto-renewals are not allowed for residential consumers.

Eliminating the auto-renewal of natural gas contracts would put decision-making clearly in the hands of the consumer, eliminate a potential source of consumer confusion and harmonize the natural gas and electricity sectors.

### **Extend cancellation from one to two billing cycles**

One of the major findings of our review is the number of consumers that are not aware that they have or recently had an energy contract. And for those consumers that are aware, dissatisfaction often occurs because of the high cost.

Under the ECPA, a consumer has 30 days from the first bill to cancel an electricity contract without penalty. No similar cancellation right is available for natural gas contracts. Extending the current provision for electricity contracts to two billing cycles, and introducing a similar measure for natural gas contracts, would give consumers a longer opportunity to assess the value of a retail contract against their own energy consumption practices.

### **Increase the “cooling-off” period from 10 to 20 days**

The number of consumers that cancel energy contracts during the 10-day cooling-off period has gone up since the ECPA came into effect. Consumers could benefit from a longer cooling-off period, to allow them more time to decide if an energy contract is the right choice for them.

Other consumer protection legislation in the province allows consumers a 20-day cooling-off period for water heaters, where door-to-door sales have been common.

### **Require verification of all retail contracts**

Verification is not required for internet contracts, direct mail or where the consumer initiates contact with the energy retailer. In these cases, the assumption is that consumers have sought out the contract or chosen to enter into it at their own pace. However, the OEB’s enforcement activity and consumer complaints show that some energy retailers are using tablets at the door to enrol consumers and avoid the verification process.

Verification is an effective consumer protection tool. Almost 60 per cent of contracts that do require verification drop off at the verification stage. Verification of all contracts, regardless of the method or circumstances of enrolment, would best ensure that all consumers are on a level playing field in terms of consumer protection.

### **Introduce requirements regarding pricing practices/hedging**

It has been suggested that price stability is a way that energy retailers can provide value for consumers. However, many energy contracts allow the energy retailer to cancel the retail contract unilaterally, without cause. There may be business reasons for energy retailers to give themselves this “out,” and while it may be the case that energy retailers are not using this contract provision, there is the potential that the consumer could lose the benefit of price stability for which the consumer has been paying a premium.

There are no regulatory requirements that apply to energy retailers in terms of how they structure products and secure supply for their customers. Introducing such requirements would improve the effectiveness of the price stability value proposition, and limit the likelihood of price risk being placed on consumers, who will often be ill-equipped to understand that risk.

## **Publish a “consumer beware” list**

Consumers should have ready access to information that allows them to understand who they are buying from and to easily compare the “track record” of different energy retailers. In addition, publication of company-specific information on complaints and compliance can be a strong incentive for good behaviour by energy retailers. Other jurisdictions make this kind of information available. While some of this information is already on the OEB’s website, more can be done to make the information easier to access and more useful to consumers.

## **Post prices and comparisons on an OEB-supervised website**

Our research shows that making meaningful price comparisons is a challenge. Consumers should have easily accessible and easily understandable tools available to help them make informed choices. An OEB-supervised website with clear, understandable and meaningful price comparisons that consumers can use to assess an energy retailer’s contract offerings will improve consumer understanding and energy literacy. Price comparison websites are common in other jurisdictions.

## **Make retail contracts, disclosures and scripts more consumer-friendly**

A common theme in our review is that consumers need clearer and better information in order to make informed decisions and to understand their rights and obligations under energy contracts. The OEB will work towards introducing a series of improvements to achieve that goal, so that important consumer-facing materials are reader-friendly, simple and as short as possible.

Disclosure Statements, Price Comparisons and standard scripts are important consumer protection measures, and are broadly used elsewhere. Ours were developed in the early days. Based on our consumer research and a review of consumer complaints, we believe that these measures may not be working as well as they could.

Consumers should also be able to easily understand an energy contract that is being offered. Key provisions, like cancellation rights and fees, need to be emphasized and in plain language.

## **Make retail contracts more visible on the bill**

Consumers who have entered into a retail contract with an energy retailer continue receiving a bill from the distributor, which includes all distributor and retailer-related charges. The distributor also collects the energy retailer’s portion of the invoice on its behalf.

Consumer bills are not presented in a way that makes it clear to consumers that the price that they are paying for their natural gas or electricity is the price under a retail contract that they have with an energy retailer. This may contribute to the “unaware

contract holder” phenomenon. Other jurisdictions require that information about a retail contract or the retail contract price be included on or with the bill. Making retail contracts more visible on the utility bill would increase awareness for contract holders.

### **Address the unique needs of low-income consumers**

A separate and detailed review of measures that could enhance protection for low-income consumers will be undertaken by the OEB.

Thirty-four percent of current residential contract holders surveyed are from households with an income of less than \$40,000 per year, and nearly seven in 10 said that their energy bills have a major impact on their finances. Both advocates for low-income consumers and electricity distributors have called for greater protection for low-income energy consumers. One area of concern that has been highlighted is cancellation fees. Another is that low-income consumers may be especially attracted by gift cards and other incentives offered by energy retailers as inducements to enter into an energy contract. Where the terms of the deal include repayment of a gift card or payment for the value of the bundled product (such as a thermostat) if the energy contract is cancelled, the consumer may find that cancelling the energy contract becomes too expensive.

Additional measures will complement existing rate relief programs developed by the OEB and consider building on the experience in other jurisdictions.

### **Further consider an exemption for agricultural co-ops**

In order to ensure that consumers are protected, we need to have the right rules in place. Sometimes, the “right” rules can mean having different rules for different players. The ECPA allows for regulations to create exemptions, with or without conditions. There is today an exemption from the ECPA for “broader public-sector procurement agents” who enter into contracts with “broader public-sector” account holders (including health services, school boards and municipalities) for the provision of natural gas or electricity. These agents are owned and controlled by members of the broader public sector on whose behalf they obtain energy.

As part of this review, agricultural co-ops have argued that they deserve special consideration because of their ownership structure and legislated requirements. These entities are “consumer-owned” and member controlled, and they are required by the *Co-operative Corporations Act* to distribute profits back to their members.

A number of submissions were received from the agricultural sector supporting an ECPA exemption for agricultural co-ops, and electricity distributors are supportive as well. Not all stakeholders agree, and other energy retailers in particular feel strongly that any exemptions should apply to all of them. However, we believe that an exemption for agricultural co-ops deserves further review by the government, including whether any such exemption should be subject to conditions.