

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
27th. Floor
Toronto ON M4P 1E4
Telephone: (416) 481-1967
Facsimile: (416) 440-7656
Compliance Office

Commission de l'Énergie de l'Ontario
C.P. 2319
2300, rue Yonge
27e étage
Toronto ON M4P 1E4
Téléphone: (416) 481-1967
Télécopieur: (416) 440-7656



April 16, 2007

Licence Bulletin 200702

To: All Licensed Electricity Retailers and Gas Marketers

Re: Reaffirmation of Energy Contracts

This bulletin contains important information regarding legal and regulatory requirements associated with the reaffirmation of energy contracts with low-volume consumers.

This Bulletin replaces Licence Bulletin 200303

The Compliance Office has been made aware of consumer concerns relating to the reaffirmation practices of electricity retailers and gas marketers.

This Bulletin sets out my views and expectations regarding contract reaffirmation practices.

Under section 88.9 of the *Ontario Energy Board Act, 1998* (the "Act"), most contracts for the sale of electricity or gas to low-volume consumers cease to have effect unless they are reaffirmed in the manner prescribed by the *Consumer Protection Regulation, O. Reg. 2002/02* and within the following period specified in the Act: from the 10th day after a written copy of the contract is delivered to the consumer and before the 61st day after the contract was delivered.

Under section 2.3 of each of the Ontario Energy Board's "Electricity Retailer Code of Conduct" and "Code of Conduct for Gas Marketers", retailers and marketers are prohibited from supplying electricity to a consumer unless the retailer or marketer has received the notice of reaffirmation from the consumer, where reaffirmation is required.

The purpose of the reaffirmation of an energy contract is to ensure that the consumer understands and accepts the contractual arrangements to which he or she has previously agreed. As such, I expect that all electricity retailers and gas marketers will use clear and easily understandable terms in their reaffirmation communications with consumers.

In order to achieve this clear understanding and acceptance, I also expect electricity retailers and gas marketers to ensure the following when reaffirming contracts.

1. The consumer must understand that he or she has previously signed a contract, and is now being asked to reaffirm that contract. In order to ensure that this understanding has been achieved, the marketer or retailer should do the following:
 - remind the consumer that he or she has signed a contract and confirm that the consumer has received a written copy of the contract;
 - remind the consumer of the term and commodity price of the contract;
 - ensure that the consumer understands that he or she has an option not to reaffirm the contract;
 - ensure that the person reaffirming the contract has the authority to do so; and
 - use language that makes it clear that, if the person does not reaffirm the contract, it will cease to have effect.

Retailers and marketers should ensure that the consumer acknowledges the information being presented to him or her, and understands the decision he or she is being asked to make. If a consumer is not clear as to the purpose and effect of the reaffirmation, then in my view the reaffirmation is unlikely to meet the intent of the legislation.

2. A consumer's understanding of the decision should not be hindered by information unrelated to reaffirmation. Offers for other products and services should not distract from the reaffirmation decision.
3. In my view, it is inappropriate for a retailer or marketer to continue to contact a consumer to seek reaffirmation once the consumer has clearly indicated that he or she is choosing not to reaffirm the contract. To continue to contact the consumer may be considered exerting undue pressure on the consumer, which is contrary to the Board's Codes of Conduct and hence also contrary to the Consumer Protection Regulation 2002/02.
4. If a consumer already has a contract in place with the retailer or marketer that is seeking the reaffirmation and that contract has more than six months before expiry, the consumer must be informed of the price and remaining term of the existing contract. In reaffirming the new contract, the consumer is replacing the term and conditions of the existing contract with those contained in the new contract.

Where a consumer questions the validity of a contract reaffirmation, I expect that the retailer or marketer will, in a timely manner, provide the consumer with a copy of the document or voice recording evidencing the reaffirmation.

Retailers and marketers must maintain suitable records regarding reaffirmation. Section 4.2.2 of the Board's "Electricity Reporting and Record Keeping Requirements" states that an electricity retailer must maintain notices of reaffirmation of contracts. Section 2.2.2 of the Board's "Natural Gas Reporting and Record Keeping Requirements: Gas Marketer Licence Requirements" is to the same effect.

I expect that retailers and marketers will maintain records that enable them to substantiate not only that reaffirmation has occurred, but also that the reaffirmation took place within the period prescribed by the Act. I would consider the following to be examples of adequate substantiation of the date of the reaffirmation:

| Method of Reaffirmation | Substantiation |
|--|--|
| Telephone | A voice recording that includes a verifiable date and time stamp of the consumer's reaffirmation |
| Electronic communication (internet, fax or e-mail) | A date and time stamp of the electronic communication from the consumer |
| Paper-based | The date on which the reaffirmation was given, such as a post mark on a return envelope sent by the consumer |

The views and expectations expressed in this Bulletin are not intended to provide a complete guide to the reaffirmation process that is required by the legislation. It is the responsibility of electricity retailers and gas marketers to take the necessary steps to ensure that reaffirmations are obtained in the manner required by legislation and that the supply of electricity or gas to consumers does not violate the provisions of section 2.3 of the Board's Codes of Conduct.



Brian Hewson
Chief Compliance Officer
Ontario Energy Board

No statutory power of decision has been delegated to the Chief Compliance Officer, and the views expressed in this Compliance Bulletin are not binding on the Board. The Chief Compliance Officer may seek enforcement action by the Board under Part VII.1 of the *Ontario Energy Board Act, 1998* in relation to non-compliance.