

Ontario Energy Board Act, 1998

Loi de 1998 sur la Commission de l'énergie de l'Ontario

## **ONTARIO REGULATION 200/02**

### **CONSUMER PROTECTION**

Consolidation Period: From October 13, 2010 to December 31, 2010.

This is the most current consolidation of this law available on e-Laws.

Notice of additional information:

On January 1, 2011, amendments made by O. Reg. 392/10 came into force. Grey shading and editorial notes will be removed in a subsequent consolidation to reflect this.

There may be more recent events that are not included in this notice.

Note: This Regulation is revoked on January 1, 2011. See: O. Reg. 392/10, ss. 1, 2.

Last amendment: O. Reg. 392/10.

This Regulation is made in English only.

Definition of consumer

1. The amount of electricity referred to in clause (a) of the definition of “consumer” in section 88.1 of the Act is 150,000 kilowatt hours. O. Reg. 200/02, s. 1.

Unfair practices

2. (1) The following acts or omissions of a retailer of electricity or gas marketer are unfair practices for the purposes of Part V.1 of the Act:

1. Making any false, misleading or deceptive statement to the public or to any consumer, including but not limited to a false, misleading or deceptive statement relating to the following:

i. The terms and conditions of any contract.

ii. The quality or other characteristics of any electricity or gas provided by any retailer of electricity or gas marketer.

iii. The status of any retailer of electricity or gas marketer or the business relationship, affiliation or connection between any retailer of electricity or gas marketer and any other person.

iv. Benefits to the consumer arising from the status of any retailer of electricity or gas marketer or the business relationship, affiliation or connection between any retailer of electricity or gas marketer and any other person.

v. The rate for the distribution of electricity or gas or the total price of electricity or gas.

vi. The difference between any price charged for the provision of electricity or gas by any retailer of electricity or gas marketer, including a distributor, and any price charged by any other retailer of electricity or gas marketer, including a distributor.

vii. The amount of money to be saved by a consumer, expressed in any manner, if a consumer chooses one retailer of electricity or gas marketer, including a distributor, over any other entity selling electricity or gas.

viii. The period of time during which a consumer may enter into a contract for the provision of electricity or gas at a specified price.

ix. The consequences if the consumer does not enter into or reaffirm a contract with the retailer of electricity or gas marketer.

2. Failing to disclose information about the products, services, or business of a retailer of electricity or a gas marketer, if,

i. the failure has the effect of deceiving or misleading a consumer, or

ii. the retailer of electricity or gas marketer knows or ought to know that the failure has the capacity or tendency to deceive or mislead a consumer.

2.1 Failing, before entering into, renewing or extending a contract for the provision of electricity, to give the consumer a written notice, in not less than 12 point bold type, that states,

i. the price that would be payable by the consumer for the provision of electricity if the consumer enters into, renews or extends the contract, expressed per kilowatt hour of electricity, and

ii. the price that would be payable by the consumer if the consumer does not enter into, renew or extend the contract but purchases electricity directly from the consumer's local electricity distributor, expressed per kilowatt hour of electricity.

2.2 Structuring the billing arrangements in a contract that is renewed or extended for a period of one year or less in a fashion that misleads or deceives the consumer in respect of the monthly costs of the renewed or extended contract during the period when the consumer may cancel the renewed or extended contract.

3. Asking a distributor to provide electricity or gas under a contract between a consumer and the retailer of electricity or gas marketer, if the contract is not signed by the consumer or is otherwise not valid.

4. Failing to comply with the Fair Marketing Practices set out in the Electricity Retailer Code of Conduct or the Code of Conduct for Gas Marketers approved by the Board.

5. If a person acting on behalf of the retailer of electricity or gas marketer negotiates or concludes a contract in person with another person at a direct sales location,

i. failing, at the time of negotiating or concluding the contract, to give the other person a written copy of any document that is presented to the other person and is signed by the other person,

ii. failing, at the time of negotiating or concluding the contract, to give the other person a written copy of any document that is presented to the other person but is not signed by the other person, if the other person requests a copy, or

iii. on or after August 1, 2002, failing, at the time of negotiating or concluding the contract, to give the other person a business card that,

A. identifies the person acting on behalf of the retailer of electricity or gas marketer,

B. identifies the retailer of electricity or gas marketer,

C. includes the number of the electricity retailer's licence or gas marketer's licence issued under the Act to the retailer of electricity or gas marketer, and

D. includes the telephone number of the retailer of electricity or gas marketer.

6. Despite the terms of any contract and subject to the rules for an extension or renewal of a contract for a period of one year or less provided in subsection 6 (2.1), amending any term of a contract for the provision of electricity or gas to a consumer without the express written consent of the consumer given not more than one month before the amendment is made.

7. Any act or omission that is an unfair practice under Part III of the Consumer Protection Act, 2002. O. Reg. 200/02, s. 2 (1); O. Reg. 340/02, s. 1; O. Reg. 194/03, s. 1; O. Reg. 25/05, s. 1.

(2) In paragraph 5 of subsection (1),

“direct sales location” means any place other than,

(a) the place of business of the retailer of electricity or gas marketer,

(b) a market place,

(c) an auction,

(d) a trade fair,

(e) an agricultural fair, or

(f) an exhibition. O. Reg. 200/02, s. 2 (2).

Written copy of contract

3. For the purpose of section 88.9 of the Act, the written copy of the contract shall be delivered to the consumer within 40 days after the consumer signs the contract. O. Reg. 200/02, s. 3.

Reaffirming or not reaffirming contracts

4. (1) Subject to subsection (3), for the purpose of section 88.9 of the Act, a consumer may reaffirm a contract or give notice to not reaffirm a contract by giving written notice to the retailer of

electricity or gas marketer by any means that indicates an intention of the consumer to reaffirm the contract or to not reaffirm the contract, as the case may be. O. Reg. 200/02, s. 4 (1).

(2) Where notice is given under subsection (1) other than by personal service, it shall be deemed to have been given when sent. O. Reg. 200/02, s. 4 (2).

(3) Despite the Electronic Commerce Act, 2000, notice under subsection (1) may not be given by telephone unless a voice recording of the telephone notice is made and, on request, is given to the consumer. O. Reg. 200/02, s. 4 (3).

Date for contract to cease to have effect

5. (1) If clause 88.9 (10) (a) of the Act applies to a contract, the 41st day after the consumer signs the contract is prescribed,

(a) for the purpose of subsection 88.9 (10) of the Act, as the day the contract ceases to have effect; and

(b) for the purpose of subsection 88.9 (13) of the Act, as the day the consumer has no further obligations. O. Reg. 200/02, s. 5 (1).

(2) If clause 88.9 (10) (b) or (c) of the Act applies to a contract, the 61st day following the day on which the written copy of the contract was delivered to the consumer is prescribed,

(a) for the purpose of subsection 88.9 (10) of the Act, as the day the contract ceases to have effect; and

(b) for the purpose of subsection 88.9 (13) of the Act, as the day the consumer has no further obligations. O. Reg. 200/02, s. 5 (2); O. Reg. 330/03, s. 1.

Renewals and extensions of contracts

6. (1) For the purpose of subsection 88.9 (8) of the Act, a contract may be renewed or extended only if,

(0.a) the contract,

(i) contains a provision that allows for its renewal or extension, and

(ii) no matter how many times it is renewed or extended and subject to subsections (2) and (2.1), the contract is renewed or extended in total for a period no longer than the renewal or extension period contemplated in the provision in the contract;

(a) the contract contains the same information that subsection 88.10 (1) of the Act would require in a contract that is entered into on the day the retailer of electricity or gas marketer complies with paragraph 1 of subsection (2);

(b) the contract is renewed or extended without any changes, other than changes to the term of the contract and the price for the provision of electricity or gas; and

(c) the contract is renewed or extended,

(i) in accordance with subsection (2), in the case of a contract that is renewed or extended for a period of more than one year, or

(ii) in accordance with subsection (2.1), in the case of a contract that is renewed or extended for a period of one year or less. O. Reg. 200/02, s. 6 (1); O. Reg. 194/03, s. 2 (1, 2).

(2) The following rules apply to the renewal or extension of a contract for a period of more than one year:

1. The retailer of electricity or gas marketer must give the consumer written notice of the changes to the contract, a copy of the original contract and a renewal or extension form.

2. The renewal or extension form must clearly indicate, in not less than 12 point type,

i. that the purpose of the form is to renew or extend the contract,

ii. that the retailer of electricity or gas marketer is offering to renew or extend the contract without any changes, other than changes described on the form, in not less than 12 point type, to the term of the contract and the price for the provision of electricity or gas,

ii.1 in the case of a contract for the provision of electricity,

A. the price that would be payable by the consumer for the provision of electricity if the consumer renews or extends the contract, expressed per kilowatt hour of electricity, and

B. the price that would be payable by the consumer if the consumer does not renew or extend the contract but purchases electricity directly from the consumer's local electricity distributor, expressed per kilowatt hour of electricity,

iii. that the contract will only be renewed or extended if the consumer accepts the renewal or extension by giving written notice to the retailer of electricity or gas marketer,

iv. even if the consumer accepts the renewal or extension, the contract will not be renewed or extended if, not later than 14 days after giving the notice of acceptance, the consumer retracts the acceptance by giving written notice of the retraction to the retailer of electricity or gas marketer, and

v. in the case of a contract for the provision of electricity, that the contract will only be renewed or extended if the consumer specifically acknowledges in writing that the consumer has read the information referred to in subparagraph ii.1.

3. If the current term of the contract expires less than 60 days after this section comes into force, the material referred to in paragraph 1 must be given to the consumer not more than 120 days before the current term of the contract expires.

4. If the current term of the contract expires 60 days or more after this section comes into force, the material referred to in paragraph 1 must be given to the consumer not less than 60 and not more than 120 days before the current term of the contract expires.

5. The consumer may accept the renewal or extension of the contract with the changes described on the renewal or extension form only by giving written notice to the retailer of electricity or gas marketer that indicates an intention of the consumer to accept the renewal or extension.

5.1 In the case of a contract for the provision of electricity, an acceptance under paragraph 5 is void unless the consumer specifically acknowledges in writing that the consumer has read the information referred to in subparagraph 2 ii.1.

6. Not later than 14 days after giving notice under paragraph 5, the consumer may retract the acceptance by giving written notice to the retailer of electricity or gas marketer that indicates an intention of the consumer to retract the acceptance.

7. The renewal or extension only takes effect if the consumer accepts the renewal or extension under paragraph 5 and, on the 15th day after giving notice under paragraph 5, the consumer has not retracted the acceptance under paragraph 6. O. Reg. 200/02, s. 6 (2); O. Reg. 340/02, s. 2 (1-4); O. Reg. 194/03, s. 2 (3).

(2.1) The following rules apply to the renewal or extension of a contract for a period of one year or less:

1. Not less than 60 days before and more than 120 days before the renewal or extension date of the contract, the retailer of electricity or gas marketer must give the consumer written notice, in not less than 12 point type in each case except for the copy of the original contract, that includes,

- i. the changes to the contract,
- ii. a copy of the original contract,
- iii. a statement of all the information required under subsection 88.10 (1) of the Act,
- iv. in the case of a contract for the provision of electricity,
  - A. the price that would be payable by the consumer for the provision of electricity if the contract is not cancelled, expressed per kilowatt hour of electricity, and
  - B. the price that would be payable by the consumer if the contract is cancelled and the consumer purchases electricity directly from the consumer's local electricity distributor, expressed per kilowatt hour of electricity,

- v. a cancellation form,
- vi. the renewal or extension date of the contract and the options that are available to the consumer as of that date, of which one option must be that the consumer may cancel the contract,
- vii. the fact that the contract will be renewed or extended unless the consumer gives written notice of their intention to cancel the contract within 30 days after the consumer receives notice under this paragraph,

viii. the fact that the consumer may also cancel the contract within 35 days after the first bill under the renewed or extended contract is sent, and

ix. in the case of a contract for the provision of electricity, a statement that the contract will only be renewed or extended if the consumer specifically acknowledges in writing that the consumer has read the information referred to in subparagraph iv.

2. The cancellation form must clearly indicate, in not less than 12 point type,

i. that the consumer may use the form to cancel the contract or may cancel the contract in writing in any way, as long as it indicates the consumer's intention to cancel the contract,

ii. that the consumer may give notice of the cancellation at the postal address or the electronic mail address that must be included in the form,

iii. that the consumer may reach the retailer of electricity or gas marketer by telephone at the toll-free telephone number that must be included in the form,

iv. that, in the absence of its cancellation by the consumer, the retailer of electricity or gas marketer will renew or extend the contract without any changes, other than the changes described, in not less than 12 point type, on the form, to the terms of the contract and the price for the provision of electricity or gas.

3. The contract is renewed or extended for a period of no more than one year if the retailer of electricity or gas marketer complies with paragraphs 1 and 2 and the consumer does not give written notice of cancellation of the contract under subparagraph 1 vii.

4. Despite the renewal or extension of the contract under paragraph 3, a consumer may give written notice of cancellation of the contract within 35 days after the day on which the first bill under the renewed or extended contract is sent.

5. In the case of a contract for the provision of electricity, a renewal or extension of the contract is void unless the consumer specifically acknowledges in writing that the consumer has read the information referred to in subparagraph 1 iv. O. Reg. 194/03, s. 2 (4); O. Reg. 261/03, s. 1 (1, 2); O. Reg. 330/03, s. 2.

(2.2) Where notice is given under subsection (2.1) other than by personal service, it shall be deemed to have been given when sent. O. Reg. 194/03, s. 2 (4).

(3) Subject to subsection (5), notice under paragraph 5 or 6 of subsection (2) may be given by any means. O. Reg. 200/02, s. 6 (3).

(4) Where notice is given under paragraph 5 or 6 of subsection (2) other than by personal service, it shall be deemed to have been given when sent. O. Reg. 200/02, s. 6 (4).

(5) Despite the Electronic Commerce Act, 2000, notice under paragraph 5 or 6 of subsection (2) may not be given by telephone unless a voice recording of the telephone notice is made and, on request, is given to the consumer. O. Reg. 200/02, s. 6 (5).

(5.1) Subject to subsection (5.3), an acknowledgement under paragraph 5.1 of subsection (2) may be given by any means. O. Reg. 340/02, s. 2 (5).

(5.2) Where an acknowledgement is given under paragraph 5.1 of subsection (2) other than by personal service, it shall be deemed to have been given when sent. O. Reg. 340/02, s. 2 (5).

(5.3) Despite the Electronic Commerce Act, 2000, an acknowledgement under paragraph 5.1 of subsection (2) and paragraph 5 of subsection (2.1) may not be given by telephone unless a voice recording of the telephone acknowledgment is made and, on request, is given to the consumer. O. Reg. 261/03, s. 1 (3).

(6) Nothing in this section prevents a new contract from being entered into in accordance with the Act. O. Reg. 200/02, s. 6 (6).

#### Information to be included in contracts

7. (1) For the purpose of clause 88.10 (1) (a) of the Act, a contract must contain the following information:

1. The consumer's name and address.
2. The name, business address, telephone number and, if any, fax number, website address, e-mail address and toll-free telephone number of the retailer of electricity or gas marketer.
3. The number of the electricity retailer's licence or gas marketer's licence issued under the Act to the retailer of electricity or gas marketer.
4. The name of the person who signed the contract on behalf of the retailer of electricity or gas marketer.
5. The date on which the parties to the contract entered into it.
6. The date that the provision of electricity or gas is intended to start under the contract and a description of any circumstances that may prevent electricity or gas from being provided on that date.
7. A statement, in not less than 12 point bold type, that the contract ceases to have effect unless the retailer of electricity or gas marketer delivers a written copy of the contract to the consumer within 40 days after the consumer signs the contract.
8. A statement, in not less than 12 point bold type, that the contract ceases to have effect unless it is reaffirmed by the consumer in accordance with section 88.9 of the Ontario Energy Board Act, 1998 before the 61st day following the day on which the written copy of the contract is delivered to the consumer, unless subsections 88.9 (3) to (6) and clauses 88.9 (10) (b) and (c) of the Act do not apply to the contract pursuant to subsection 88.9 (16) of the Act.

9. A statement, in not less than 12 point bold type, that the consumer has the right set out in subsection 88.10 (2) of the Ontario Energy Board Act, 1998 to cancel the contract within one year of entering into the contract if the contract does not meet the requirements referred to in subsection 88.10 (1) of the Act.

10. The heading “Consumer’s Rights” in not less than 12 point bold underlined type preceding the statements described in paragraphs 7, 8 and 9.

11. A statement that the consumer is contracting with a retailer of electricity or gas marketer, not the consumer’s local electricity distributor or local gas distributor.

12. In the case of a contract for the provision of gas, a statement of the price to be paid under the contract for the provision of gas, expressed per cubic metre of gas.

12.1 In the case of a contract for the provision of electricity,

i. a statement, in not less than 12 point bold type, of,

A. the price to be paid under the contract for the provision of electricity, expressed per kilowatt hour of electricity, and

B. the price that would be payable by the consumer if the consumer does not enter into the contract but purchases electricity directly from the consumer’s local electricity distributor, expressed per kilowatt hour of electricity, and

ii. a statement, immediately adjacent to the information referred to in subparagraph i, that is signed by the consumer and indicates that the consumer acknowledges having read the information referred to in subparagraph i.

13. The terms of payment that the contract requires, including the terms relating to any deposit, any late payment charges and any other charges or penalties payable under the contract.

14. A statement that the price for the provision of electricity or gas set out in the contract is the price for electricity or gas only and does not include regulated transmission, distribution and other charges that will be charged by the consumer’s local electricity distributor or local gas distributor.

15. The circumstances in which the contract may be terminated by the consumer or by the retailer of electricity or gas marketer, and the address or fax number to which a consumer may send a notice of termination.

16. Whether or not the contract may be assigned by the retailer of electricity or gas marketer, and any terms or conditions relating to such an assignment.

17. Whether or not the contract applies only to specified premises and any terms or conditions relating to making the contract applicable to other premises.

18. If a contract for the provision of electricity contains a term assigning a rebate to which the consumer is entitled to another person, a statement in not less than 12 point bold type informing the consumer that the consumer will not receive the rebate.

19. A description of how to make a complaint to or ask a question of the retailer of electricity or gas marketer.

20. A description of how to contact the Ontario Energy Board's Customer Service Centre.

21. The signatures of the parties to the contract. O. Reg. 200/02, s. 7 (1); O. Reg. 340/02, s. 3; O. Reg. 330/03, s. 3.

(2) The information required by subsection (1) shall be contained in the contract in not less than 10 point type, unless subsection (1) provides otherwise. O. Reg. 200/02, s. 7 (2).

(3) In the event of a conflict, this section prevails over any code governing the conduct of a retailer of electricity made by the Board or any rules that apply to gas marketing made by the Board under clause 44 (1) (c) of the Act. O. Reg. 200/02, s. 7 (3).

(4) This section does not apply to contracts entered into before this section comes into force. O. Reg. 200/02, s. 7 (4).

#### Date for cancellation of contract

8. (1) For the purpose of subsection 88.11 (4) of the Act, the cancellation of a contract takes effect on the first day of the first month that begins more than 30 days after the notice of cancellation is given under subsection 88.11 (2) of the Act. O. Reg. 200/02, s. 8 (1).

(2) For the purpose of subsection 88.11 (7) of the Act, the cancellation of a contract takes effect on the day of the first reading of the consumer's electricity meter that is more than 30 days after the notice of cancellation is given under subsection 88.11 (2) of the Act. O. Reg. 200/02, s. 8 (2).

#### Reading electricity meter

9. (1) For the purpose of subsection 88.11 (5) of the Act, the distributor shall read the consumer's electricity meter not less than 31 days and not more than 45 days after the notice of cancellation was given by the consumer. O. Reg. 200/02, s. 9 (1).

(2) Despite subsection (1), the Board may authorize the distributor to read the consumer's electricity meter within a period specified by the Board that ends more than 45 days after the notice of cancellation was given if the Board is satisfied that it is not reasonably possible for the distributor to read the meter within the time period set out in subsection (1). O. Reg. 330/03, s. 4.

10. REVOKED: O. Reg. 330/03, s. 5.

11. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 200/02, s. 11.