

ONTARIO GOVERNMENT INTRODUCES ENERGY CONSUMER PROTECTION ACT

By Stephen Andrews, Government Relations Advisor

Summary

On December 8, 2009, the Ontario Minister of Energy and Infrastructure, Gerry Phillips, introduced the *Energy Consumer Protection Act, 2009*, ("Bill 235") that would amend several statutes, including the *Ontario Energy Board Act, 1998*, *The Electricity Act, 1998*, *The Consumer Protection Act, 2002* and the *Residential Tenancies Act, 2006*.

The purpose of the proposed legislation is to provide additional protection for energy consumers and to allow for greater energy conservation through suite metering in multi-residential buildings.

Bill 235 is divided into five parts: Part I deals with definitions that apply in the Bill as well as new powers for the Minister of Energy and Infrastructure. These new powers include: the authority to distribute educational information and the power to provide consumer information about alternative dispute resolution options that may result from contract disputes.

Part II of Bill 235 provides a new regulatory framework around electricity retailing and gas marketing. It gives energy consumers new rights in respect of contracts or agreements with retailers or marketers.

Part III deals with suite metering and the requirements for the installation of suite meters in multi-residential buildings and the manner in which energy consumers are billed for their electricity consumption.

Part IV contains a wide range of new regulation making powers for Cabinet which affect retailers, marketers, LDCs and suite meter providers. This includes marketing or retailing contracts, formats for disclosing information, unfair practices, installation requirements of suite meters, and the provision of energy consumption information.

Part V deals with the detailed amendments to other legislation affected by Bill 235.

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In summary, Bill 235 contains additional measures that are designed to:

- ▶ Protect consumers from hidden contract costs, excessive cancellation fees and “negative-option” contract renewals
- ▶ Provide greater fairness and transparency for consumers through rate comparisons, and plain language contract disclosure
- ▶ Enhance the ability and rights of consumers to cancel contracts
- ▶ Create a new licensing and training regime that includes mandatory oral disclosure and ID badges for energy retailers
- ▶ Enable individual suite metering in apartment buildings
- ▶ Grant the Ontario Energy Board more authority to set policies on security deposits and termination of electricity procedures by local distribution companies.

Amendments to Existing Legislation

As noted above, Part V of Bill 235 contains detailed amendments to the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998* among other related statutes. Below is a summary of key amendments.

Consumer Protection Act, 2002

1. Subsection 2(4) of *The Consumer Protection Act, 2002*, that deals with electricity and gas marketers, is repealed. Consumer protection in respect of energy consumers is now in Bill 235.

Electricity Act, 1998

1. Where an LDC or suite meter provider requires a security deposit for the payment of charges related to electricity, certain requirements must be met.
2. Section 31, dealing with termination of service, is repealed and remade. In Bill 235 it takes into account and creates conditions for, and exemptions to, the power to shut off electrical service by LDCs.
3. Additional regulation-making authority is added to section 114 of the Act (distribution connections, classes of properties, and consumers).

Ontario Energy Board Act, 1998

1. The Minister may issue Cabinet approved Directives to the Ontario Energy Board (“OEB”) in relation to gas and electricity retailing or marketing. These Directives may require the OEB to amend retailers’ license conditions as well require third party verification of contracts.

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2. There are changes to the provisions under which gas distributors may terminate service or require security payments.
3. Part V.1, Energy Consumer's Bill of Rights, is repealed and replaced with a new Part V.1, Gas Marketers and Retailers of Electricity – Standards and Audits.
4. Part VII.0.1, Investigator and Investigations is added to the Act. This gives the Chair of the OEB the power to appoint persons to act as investigators to enforce compliance with the requirement of Bill 235.

Key Elements of the Energy Consumer Protection Act, 2009

Below are key elements of Bill 235 as set out in background materials to the Bill:

Energy Retailers

Problems	Proposed Solutions
Sales person practices	<ul style="list-style-type: none"> • Immediate verbal disclosure and ID badges • Sales person training and other standards
Consumers don't have the information they need to decide; language barriers	<ul style="list-style-type: none"> • "Plain language" contract disclosure statement available in various languages
Verbal contracts (usually on phone); Contracts not with account holder	<ul style="list-style-type: none"> • "Text-based" contract and signature required • Only the utility account holder or others specified by regulation can sign energy retailer contracts for a household
Consumers feel pressured into signing a contract	<ul style="list-style-type: none"> • Three possible cancellation alternatives: a 10-day cooling off period; upon third party verification (within 10-60 days of signing contract); and 30 days after receipt of first bill
Unfair cancellation policies and fees; automatic renewals for gas contracts	<ul style="list-style-type: none"> • Prevent excessive cancellation fees or in some instances, any fees - such as when people move or accidentally sign a second contract • Eliminate negative option renewals

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Problems	Proposed Solutions
Electricity Retailer / Gas Marketer accountability	<ul style="list-style-type: none"> • Additional licensing conditions for retailers, including individual sales person training and background checks • An assurance fund to assist in covering potential losses for consumers • OEB randomly audits retailers • Improved officer and director accountability
“Fixed contracts” don't clearly disclose all costs or offer products promoting conservation	<ul style="list-style-type: none"> • Energy Retailers required to clearly show all charges Time-of-Use products can be required

Suite Metering

Problems	Proposed Solutions
No framework to install suite metering in rental apartment buildings	<ul style="list-style-type: none"> • Enable mandatory installation in new residential buildings; voluntary installation in existing buildings
No rules for individual billing in rental apartment buildings	<ul style="list-style-type: none"> • Consent required from sitting tenants • Establish a framework for rent reduction if a tenant agrees to suite metering • Prospective new tenants given prescribed information on suite energy use
Suite-metering companies not subject to the same rules as local distribution companies (LDCs)	<ul style="list-style-type: none"> • Suite-metering providers subject to rules paralleling LDCs concerning fee regulation, licensing, security deposits and disconnections
Tenants can't control major energy efficiency factors in their suites such as windows or appliances	<ul style="list-style-type: none"> • Landlords required to meet certain energy efficiency standards for appliances and suites

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Deposits and Disconnections

Problems	Proposed Solutions
Gas and electricity companies work under different rules regarding invoices, disconnection and security charges	<ul style="list-style-type: none">• OEB can regulate disconnection and security deposits for both electricity and gas companies, such as mandating alternatives to deposits or requiring specific standards for disconnections for vulnerable consumers• Government can regulate utility bill requirements, for example, requiring the inclusion of information that would help consumers manage their energy use

Public Consultation and Next Steps

Background material for the proposed legislation has been posted on the Ontario Environmental Registry for a 60 day comment period. The Ministry of Energy and Infrastructure will be collecting comments through the Environmental Registry until February 6, 2010. In addition, Bill 235 will be referred to a Standing Committee of the Legislative Assembly for further consultation early in January, 2010. The proposed legislation is expected to pass into law in the session immediately following the recess on December 10, 2009.

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