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## **Official Report of Debates (Hansard)**

**Monday 22 March 2010**

## **Journal des débats (Hansard)**

**Lundi 22 mars 2010**

**Standing Committee on  
General Government**

Energy Consumer  
Protection Act, 2010

**Comité permanent des  
affaires gouvernementales**

Loi de 2010 sur la protection  
des consommateurs d'énergie

Chair: David Oraziotti  
Clerk: Trevor Day

Président : David Oraziotti  
Greffier : Trevor Day

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES**

Monday 22 March 2010

Lundi 22 mars 2010

*The committee met at 1400 in room 228.*

**SUBCOMMITTEE REPORT**

**The Vice-Chair (Ms. Helena Jaczek):** We're now in session. This is the Standing Committee on General Government and we are assembled to discuss Bill 253, An Act to enact the Energy Consumer Protection Act, 2010 and to amend other Acts.

The first item of business is the report of the subcommittee.

**Mr. Bill Mauro:** Your subcommittee met on Tuesday, March 9, 2010, to consider the method of proceeding on Bill 235, An Act to enact the Energy Consumer Protection Act, 2010 and to amend other Acts, and recommends the following:

(1) That the committee meet in Toronto on Monday, March 22, 2010, and Wednesday, March 24, 2010, for the purpose of holding public hearings.

(2) That the committee clerk, with the authorization of the Chair, post information regarding public hearings in the Toronto Star and the French weekly, L'Express.

(3) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Ontario parliamentary channel, the Legislative Assembly website and Canada NewsWire.

(4) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Wednesday, March 17, 2010.

(5) That groups and individuals be offered 10 minutes for their presentation. This time is to be scheduled in 15-minute increments to allow for questions from the committee.

(6) That, in the event all witnesses cannot be scheduled, the committee clerk provide the members of the subcommittee with a list of requests to appear by 1 p.m. on Wednesday, March 17, 2010.

(7) That the members of the subcommittee prioritize and return the list of requests to appear by 12 noon on Thursday, March 18, 2010, and that the committee clerk schedule witnesses based on those prioritized lists.

(8) That the deadline for written submissions be 5 p.m. on Wednesday, March 24, 2010.

(9) That the research officer provide the committee with a summary of presentations.

(10) That, for administrative purposes, proposed amendments be filed with the committee clerk by 12 noon on Tuesday, March 30, 2010.

(11) That the committee meet for the purpose of clause-by-clause consideration of the bill on Wednesday, March 31, 2010.

(12) That, in the event all witnesses can be scheduled on Monday, March 22, 2010, the committee shall meet for clause-by-clause consideration of the bill on Monday, March 29, 2010, and, for administrative purposes, proposed amendments should be filed with the committee clerk by 12 noon on Friday, March 26, 2010.

(13) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you very much. I just wanted to re-emphasize clause 12, that the committee will be meeting for clause-by-clause consideration of the bill on Monday, March 29, 2010. Therefore, any proposed amendments should be filed with the committee clerk by noon on Friday, March 26, 2010, just to bring that to everyone's attention.

Further debate?

All those in favour? Any opposed? None? That is carried.

**ENERGY CONSUMER  
PROTECTION ACT, 2010**

**LOI DE 2010 SUR LA PROTECTION  
DES CONSOMMATEURS D'ÉNERGIE**

Consideration of Bill 235, An Act to enact the Energy Consumer Protection Act, 2010 and to amend other Acts / Projet de loi 235, Loi édictant la Loi de 2010 sur la protection des consommateurs d'énergie et modifiant d'autres lois.

**UNION GAS**

**The Vice-Chair (Ms. Helena Jaczek):** Starting with our first deputants, from Union Gas, we have Mel Ydreos—I hope I'm saying that right—

**Mr. Mel Ydreos:** Perfect.

**The Vice-Chair (Ms. Helena Jaczek):** —vice-president in marketing and customer care from Union Gas.

You have 10 minutes, as I'm sure you know. We will follow that, if there's time left over, with up to five minutes for questions.

**Mr. Mel Ydreos:** Thank you very much, Madam Vice-Chair, and thank you, committee members, for the opportunity to speak to you and share our views on Bill 235, the Energy Consumer Protection Act.

Union Gas is a major natural gas storage, transmission and distribution company based in Ontario, with nearly 100 years of experience and service to our customers. In fact, next year we will be celebrating our 100th year.

Our distribution business serves 1.3 million residential, commercial and industrial customers in more than 400 communities across northern, southwestern and eastern Ontario.

Our staff have been working in co-operation with the minister to address our issues with Bill 235, and we very much appreciate the open-door approach they have provided thus far.

Although we understand the direction and target of the legislation to be door-to-door energy contract sale practices, we want to highlight with you the specific sections of the act that are causing Union Gas some concern.

As the public and media focus of this legislation has been retailers, Union Gas was completely surprised to learn that certain sections of this bill were directly targeting some of our most fundamental business practices.

Under part IV of the legislation, "Regulations," section 34, cabinet is giving itself the power to create different classes of customers, consumers and persons in order to dictate what costs and policies will and will not be applied to each respective class of customer. These initiatives have the effect of making the Minister of Energy a rate-maker for energy costs in Ontario.

The application of costs, related policies and the possible creation of classes of customers has always been the responsibility of the Ontario Energy Board, Ontario's independent energy market regulator. We firmly believe that these powers should remain the responsibility of the independent regulator, the OEB.

From our perspective, we believe that these new powers could produce some unintended consequences for government. Once one class of customers is created, what is to keep other interest groups from demanding similar government treatment—northerners, seniors, farmers, rural residents etc.? This creates a troubling precedent where the Minister of Energy would have the power to determine costs and rates for energy consumers, not the Ontario Energy Board.

We understand that the initial focus of this effort comes from attempting to drive an initiative to better serve low-income customers and provide special treatment and exemptions with regard to their energy costs. However, this effort was already being undertaken by the proper authority, the independent Ontario Energy Board, just last year, before it was abruptly cancelled by a previous minister.

That being said, Union Gas is not a social agency. We distribute, transmit and store natural gas while helping

our customers to use this valuable resource wisely. That is what we do well; that is what our investors signed up for. It is this business model that has driven more than \$1 billion of investment and significant job creation over the last four years in this province, and it is the model that will work to drive the next \$1 billion in investment and job creation. That is why we leave the social engineering to the experts; that is why we are donating \$1.8 million per year to the United Way winter warmth program over the next three years. It is the United Way that best monitors and understands the needs of low-income consumers. Social programming is best left to governments and social agencies, not shareholder-owned gas distributors. It is simply not our skill set.

#### 1410

We feel strongly that the low-income customer exercise at the Ontario Energy Board should be resumed. That is where it belongs: removed from direct political influence and undertaken in a transparent and inclusive way to all key stakeholders.

Under part V of Bill 235, "Consequential Amendments to Other Acts," section 42 of the Ontario Energy Board Act is amended to include ministerial regulation-making powers over our customer care practices: security deposits, disconnections and the presentation of our invoice. To date, no one in the ministry, government or anyone else, for that matter, has presented a rational argument for why these powers over our business are necessary. We see no requirement for their existence and the resulting intervention in our well-run business.

Regular customer surveys and industry benchmarking efforts prove over and over that our approach to dealing with customers is leading-edge in North America. Creating and building win-win relationships is one of our key stated organizational values. We have always prided ourselves on our ability to work with each and every customer on an individual and unique basis. We work with any customer who is willing to work with us in making alternative payment arrangements. We demonstrate empathy and flexibility with each customer, as we find this approach to be of enormous value to both our business and our customers. In fact, just last year we increased the number of customer special payment arrangements from 60,000 to 80,000. Customers can now also make payment arrangements electronically through our leading-edge self-serve option, offered through the My Account tool, without having to speak to anyone.

We understood that economic stress demanded some significant flexibility on our part last year. If government legislation had been in place, it is unlikely that we would have been able to make such an accommodation. We would have been forced to follow the rigid rule of the law and paint all customers with the same brush.

In the spirit of the Premier's Open Ontario and open-for-business focus, we have respectfully requested that initiatives surrounding our customer care policies be removed from the legislation. Leaving them in place will only serve to increase investment climate uncertainty and serve as a cloud over our relationship with our customers.

I respectfully submit to you that natural gas customers and the health of our sector would be best served by removing these measures as they pertain to the Union Gas distribution business. If you feel action needs to be taken on these and other issues surrounding our fundamental business interaction with our customers, we would again ask for these to be dealt with by the Ontario Energy Board, not the Ministry of Energy or the minister's office.

Our positions on security deposits, shut-offs and control of our invoice are as follows: Security deposits are only necessary if a customer has poor credit or a delinquency history. Even then, they are refundable with interest after just one year of satisfactory payment.

Shut-offs are our very last option when dealing with delinquent accounts. Without the threat of disconnection, customers don't pay and arrears grow out of control. Their subsequent ability to pay diminishes over time.

Our bill is private property and a shareholder-owned asset. It is the primary vehicle of communication with our 1.3 million customers. Over the years, we have invested time and effort on the presentation of our invoice and market research to make it what it is today. Our bill represents almost 100 years of interaction with our customers. We have always demonstrated flexibility on communicating issues of importance to the regulator and the government, and we will continue to do so.

Bill 235 states that the Minister of Energy will have control over our invoice and the wording within it. The invoice is a shareholder-owned asset and we will ensure that it remains so.

In closing, our recommendations are as follows:

—Any and all powers contained within Bill 235 pertaining to gas distribution, security deposits, shut-offs and invoices should be removed or, if preferred, referred to the Ontario Energy Board for their consideration.

—Any and all powers pertaining to the classification and separation of gas distribution customer classes should be removed from the legislation along with the power to assign or exempt certain costs from each class of customer as classified by the minister. This is a form of rate-making, and that should remain firmly in the hands of the OEB.

I would like to thank you for your time and attention to me and to Union Gas today. Once again, we appreciate the co-operative tone that Minister Duguid and his ministry have brought to the energy portfolio. We look forward to continuing our work with all members of the Ontario Legislature to help ensure that the needs of Ontario's energy consumers are addressed for years to come. We are most proud of the outstanding relationship we have with all MPPs and their staff.

Again, I thank you, Madam Vice-Chair. I'm now happy to take any and all questions from the honourable members of the committee in the order you see fit.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you very much. You have left just about five minutes for questions, starting with Mr. Yakabuski, the official opposition.

**Mr. John Yakabuski:** Thank you very much, Mel, for joining us today. It's always good to see you.

It would appear that the ministry and the Minister of Energy would like to see the OEB gutted completely. It looks like they want to run the whole show, according to your deputation here. It would bring into question as to whether or not they're actually interested in seeing the thing work or just have the minister control it.

I have another question: Because they're enveloping themselves into your billing and everything else, they're seeming to have significant control over your business practices where there's not a demonstrated problem. We understand the issues that have generated over the years related to door-to-door, but I have a question also, because we've seen this interference. We're seeing it now. Now they want to make utilities and gas companies bill collectors. We know about the \$53-million back-door tax on electricity. I wanted to ask you: Have you or your company engaged in any discussion with the Ministry of Energy regarding this tax fee being applied to your utilities as well, the gas companies? What we've seen today is about electricity. Have you been involved in discussions as to how it might relate to gas companies as well?

**Mr. Mel Ydreos:** Yes. We've had a number of discussions with respect to the applicability, potentially, to gas customers. Those discussions are ongoing. Nothing has been finalized as of yet, and we'll continue to cooperate in a way that is appropriate as we move on.

**Mr. John Yakabuski:** How many meetings have you had and what's the approximate cost associated with Ontario gas customers with this implementation?

**Mr. Mel Ydreos:** We've had several meetings with respect to that. The issue of cost allocation was one that was still being discussed and deliberated within the ministry, so we weren't quite certain how the whole allocation was going to play out. That's work that, as I understand, is still ongoing.

**Mr. John Yakabuski:** Thank you very much.

**The Vice-Chair (Ms. Helena Jaczek):** Mr. Tabuns?

**Mr. Peter Tabuns:** Mel, thanks for coming here today and making a presentation.

I'm very interested in the gas marketers, the gas retailers. Does your utility get a lot of complaints about the gas marketers?

**Mr. Mel Ydreos:** I would say that, off and on, we've had some complaints. I wouldn't categorize it as "a lot." They tend to be spotty and they tend to be more related to, perhaps, the behaviours of a single individual who may have not been properly trained or is not following the proper procedures that the individual has been trained for. That's what I would say.

**Mr. Peter Tabuns:** Your company does transmission and provides storage. Do you provide storage for gas for any of these marketers?

**Mr. Mel Ydreos:** Yes. We do have services that there are available to those—

**Mr. Peter Tabuns:** And do they utilize them with you?

**Mr. Mel Ydreos:** Yes, they do.

**Mr. Peter Tabuns:** Thank you.

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**The Vice-Chair (Ms. Helena Jaczek):** We have about a minute left. Mr. Levac.

**Mr. Dave Levac:** Mel, you're probably going to be totally shocked and surprised that I don't subscribe to the characterization of Mr. Yakabuski about what we've been doing and how we're moving forward.

*Interjection.*

**Mr. Dave Levac:** Shock of all shocks, my colleagues would concur with me. But I do accept what you've presented to us as an opportunity for us, and I understand that you have dialogued with some of the concerns that you've been raising and that the minister has been meeting with you. Staff is here to take copious notes, and we're here to listen very clearly.

I've made the commitment in my career in this place to try to write the best legislation we possibly can. So I look forward to the rest of the deputations. Thank you very much for the work that you do, and I appreciate the comments you made about the concerns you raise about the bill.

**Mr. Mel Ydreos:** Thank you very much. As I've stated, we've had the ability to have quite a bit of dialogue recently, which is very good.

**Mr. Dave Levac:** Thank you.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you very much.

#### ELECTRICITY DISTRIBUTORS ASSOCIATION

**The Vice-Chair (Ms. Helena Jaczek):** Now we have the Electricity Distributors Association: Charlie Macaluso, president and CEO, and Michael Angemeer, past chair. Welcome, gentlemen. As you know, you have 10 minutes for your presentation, which will be followed by five minutes of questions.

**Mr. Charlie Macaluso:** Can I proceed, then?

**The Vice-Chair (Ms. Helena Jaczek):** Please proceed.

**Mr. Charlie Macaluso:** Thank you very much for having us here today. I'm Charlie Macaluso, president and CEO of the Electricity Distributors Association. With me is our past chair, Michael Angemeer from Veridian utilities.

Certainly it's our pleasure and we thank you very much for the opportunity to provide our industry's views on the proposed legislation. Mr. Angemeer will give a more formal presentation of the remarks we have on the bill itself, but just before we start that, I'd like to give you a very short description of our organization.

The EDA represents the 80 electric utilities across Ontario that distribute power safely and reliably to over four million consumers. For each of these customers, the local utility is really the trusted face. It's the entity which the customer looks to for guidance and support with most of their energy issues. Collectively, we employ over

10,000 people, and we remit over \$200 million in payments in lieu of taxes each year to the provincial government. Our members collectively invest approximately \$1 billion annually in maintenance and upgrades to a \$14-billion distribution infrastructure.

Our industry is proud of its economic contributions to the provincial economy and the future opportunities to be more involved in renewable energy and to help develop sustainable communities.

With that, I want to introduce to you our past chair, Michael Angemeer.

**Mr. Michael Angemeer:** Thank you very much, Charlie. I would like to begin by thanking the committee for the opportunity to make this presentation today. In general, the EDA supports the overall direction of Bill 235, which takes significant steps to address customer concerns regarding electricity supply retailer practices and to create new opportunities for smart metering in multi-residential buildings.

The EDA supports the additional measures designed to protect customers 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; and enable individual suite metering in apartment buildings. These are all positive steps that will enhance consumer awareness and create opportunities for consumers to better manage their electricity consumption.

As mentioned, while generally we support the direction of the legislation, the EDA has three specific areas of concern to raise with this committee today. They include metering of new condominiums, applying security deposits to offset arrears in payment, and increasing liability for service termination.

With regard to unit metering of new condominiums, the current bill misses a significant opportunity to advance a broader public policy agenda of building a culture of conservation among electricity consumers. The proposed legislation provides condominium developers the choice of whether to sub-meter the condo units or suite-meter through the LDC. While this concept of choice appears reasonable, the impacts to the condo unit owner are substantially different. Sub-metered customers will not have access to the conservation programs available to customers directly metered by the electricity distributor.

Suite metering by the LDC provides a direct relationship between the meter and the customer and the LDC and the customer. Each condominium unit is billed as a unique residential customer who will directly benefit from conservation programs aimed at them. In order to successfully build the culture of conservation in the province, we recommend that the committee consider introducing an amendment which would allow LDCs the ability to require suite metering in new condominiums as

part of their conditions of service. Individual condominium owners would then become direct customers of the LDC and direct beneficiaries of conservation programs. Specific wording on our proposed amendment is included in the submission attached to our remarks.

The second issue involves a provision in the bill that seeks to apply security deposits to offset amounts payable or due by the customer. The purpose of a security deposit is to allow the distributor to apply the deposit to accounts where the customer has left the service territory and final payment cannot be obtained. Using security deposits to offset arrears effectively eliminates the purpose of a security deposit, as it will now be used for means other than originally intended. Without a security deposit, LDCs will be exposed to a greater bad debt risk and the potential for higher costs to all consumers to recover unpaid bills. The LDC imposes a security deposit to minimize higher costs for all customers.

The Ontario Energy Board's distribution system code sets out standards related to security deposits. The OEB allows for full consultation with stakeholders should new proposals be considered regarding security deposits. We recommend the removal of this provision of the legislation and that these types of issues remain under the purview of the OEB. We also understand that the province is developing a policy to assist low-income Ontarians. Proposals on security deposits could be also addressed through that policy development process.

In summary, we are recommending that the existing processes that will facilitate more detailed discussion with all stakeholders around security deposits be considered in lieu of legislation.

Our final issue is with section 36(4), which proposes a new section of the Electricity Act, requiring distributors to compensate any person who suffers a loss as a result of the disconnection of electricity in certain circumstances outlined in the bill. The provision expands the scope of damages beyond what is recoverable under common law. Common law limits damages to be recoverable only by the person or persons to whom a duty of care was owed and only to damages which were reasonably foreseeable. These limitations are not expressed in the proposed legislation.

We are concerned that the broadening of the scope of damages beyond what is recoverable through common law practice may raise costs for distributors that would be reflected in higher distribution rates for all customers. EDA recommends deleting this provision of the proposed legislation, given that the current common law practice already adequately allows for compensation to customers when a distributor is at fault. The specific legislative references are available in our attached submission.

In closing, I would like to thank the committee again for this opportunity to present our views. We appreciate the committee's consideration of our recommended amendments to the legislation that we feel will be beneficial in developing a culture of conservation in Ontario, supporting consumer interests, and improving the legis-

lation's effectiveness. We would be pleased to respond to any questions that you may have.

**The Vice-Chair (Ms. Helena Jaczek):** You've left lots of time for questions: about seven or eight minutes. Mr. Tabuns.

**Mr. Peter Tabuns:** Gentlemen, thank you for coming today and making this presentation.

This whole question of damages—I'm not familiar with the kind of damages that you can be claimed against for now and what you fear you may be open to. Can you give us a sense of what sort of door you think is being opened here?

**Mr. Charlie Macaluso:** Certainly. One of the concerns we have is that for various reasons electricity from time to time needs to be shut off for safety, maintenance and repairs. In general, we would be concerned that the legislation may be interpreted to have to compensate people where those situations are actually required for safety purposes for shutoff. We have a number of connection and shutoff conditions we have to meet with all customers today in accordance with the OEB regulations. This seems to be at least potentially interpreted that, regardless, there's a compensation required if we have to shut off, and we would certainly want to make sure that that gets tightened up or removed and allow common law to prevail for those types of exposures.

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**Mr. Peter Tabuns:** The other question, then, is the sub-metering for condominium buildings. Again, I don't live in a condo, but I assume there are a lot of companies out there that do this sub-metering and develop a billing relationship with electricity consumers. You're wanting to make sure that in fact they don't take over all of that metering activity. Is that correct?

**Mr. Charlie Macaluso:** No, it's not whether they take over the metering activity. Certainly, there is the option today for sub-meters to install. The concern we raise is that we want to make sure there's a clear understanding that a condominium owner or unit owner who is a sub-metered consumer is not a customer of the local utility, and as a result, by the regulation, we have no ability to service that customer. We could only service customers who are individually metered by the utility. As a result, those sub-metered customers would miss out on any opportunity to participate in conservation programs that the LDC is operating or participating in in that community. It's an important distinction that we want to make sure we try to address.

**The Vice-Chair (Ms. Helena Jaczek):** Mr. Levac?

**Mr. Dave Levac:** Again, thank you for your presentation. We've heard what your issues are. And thank you very much for providing us the wording that you didn't read. We'll reference that and make sure staff sees it.

Just to be sure—and you're talking about clarity: The difference between sub-metering and suite metering for the consumer would be that if they own a condo and they're sub-metered, you do not have access to provide them with a service. That is done through whoever it is they've contracted as the main deliverer. What you're

saying is that we should be making the rule even tighter by saying there won't be any sub-metering; there will be suite metering in new condo builds.

**Mr. Charlie Macaluso:** What we're suggesting is that the utility be at least allowed to require suite metering so that they can provide the conservation programs to all of the residents in the community.

**The Vice-Chair (Ms. Helena Jaczek):** Mr. Yakabuski?

**Mr. John Yakabuski:** Thank you very much, Michael and Charlie, for joining us today.

I won't begin with that characterization because I wouldn't want to upset my colleague Mr. Levac—but you tell me: Have the last two or three bills that have been brought forth by this government made the OEB more relevant or less relevant? Can you answer that for me?

**Mr. Charlie Macaluso:** The OEB is very relevant to our sector and has been for quite some time, at least since 1998. The industry is evolving and the OEB's role in the industry is changing. I don't know if it's an answer—I'm not trying to dodge the question—but the conditions under which LDCs work with the OEB is an evolving situation, yes.

**Mr. John Yakabuski:** Do you think that this legislation, coupled with the Green Energy Act and others, has made the OEB weaker?

**Mr. Charlie Macaluso:** I don't know if they're weaker. I think a lot of things are still under construction. That's the way I would put it. We're still evolving.

**Mr. John Yakabuski:** Would you agree that the OEB was first envisioned as the protectorate of consumers in the electricity sector here in the province of Ontario and that was the reason for the legislation enabling that?

**Mr. Charlie Macaluso:** The OEB has an important role in that regard, and I think they've done a very good job over the years. Certainly, in the area of conservation and time of use and some of these new measures, the role of the OEB is evolving. We're trying to work with them to create a balanced situation between consumers and LDCs. There are some areas that we hope to see them improve on, yes.

**Mr. John Yakabuski:** You've raised a couple of concerns with regard to the role of the OEB versus the minister or ministry—let's say, for the sake of argument, the minister. You basically indicated that you don't support some of the things that are being transferred to the minister.

**Mr. Charlie Macaluso:** I think the one area we referenced specifically is the concern around security deposits. The OEB has a very broad set of rules around how all that works, and we would certainly be concerned with conflicting interpretations of legislation or regulations that put us offside with those existing OEB rules. So in that regard, we're saying to leave it to the OEB to deal with security deposits, late payments and things like that.

**Mr. John Yakabuski:** Under the proposed legislation, that security deposit could be used to offset arrears. If the

arrears exceed the security deposit, what provisions are there for you folks in the event that that is the case?

**Mr. Charlie Macaluso:** If the arrears exceed the security deposit, depending on what class of customer it is and what prescribed regulations may come down, we may have to begin shut-off procedures.

**Mr. John Yakabuski:** Thank you very much. I appreciate your time.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you very much.

## JUST ENERGY

**The Vice-Chair (Ms. Helena Jaczek):** Now we'll move on to the next deputation, Just Energy: Gord Potter, executive vice-president, regulatory and legal affairs. Make yourself comfortable. As you know, you have 10 minutes, followed by up to five minutes of questions.

**Mr. Gord Potter:** Thank you, Madam Vice-Chair and committee members, for the opportunity to speak this afternoon. I'm Gord Potter, and I'm with Just Energy. We are an Ontario-based company. We started in 1997 with a handful of people down on Yonge Street to offer energy supply options and customer choice in the province. Some 13 years later now, we have 1.7 million customers across North America. We operate in 20 different markets in the States and Canada, and all but one market is operated in a consolidated fashion out of our staffing in our operations here in Ontario.

To talk about that a bit: As I mentioned, all of our operations, our call centres, are staffed here in Ontario. They feed remotely and service 19 other markets in North America. We currently have about 1,200 direct jobs here in the province, as well as hundreds of spin-off jobs in the services industry and in manufacturing and products.

We support the green economy and job creation. A number of years ago, we began to start changing our product designs to serve consumer interests and the future path forward in energy. We started investing in green and renewable products and carbon-based or carbon-offset products. We purchase most of our stuff from Ontario-based suppliers and manufacturers. Last year alone, we made investments in Ontario of over \$580 million. We have \$68 million in payroll on an annual basis, and we're now, as I mentioned, offering green and renewable products—hydroelectric, wind energy and methane capture—here in Ontario.

We support increased consumer protection in the province, and we're staunch supporters of the bill, in large part. We believe that consumers should be able to make an informed decision and that robust consumer protections are definitely necessary here in the province. In short, the industry has had years to try to start to act responsibly on its own and, unfortunately, we haven't.

Just Energy currently serves hundreds of thousands of customers in Ontario, and it's critical to our business because we serve largely small volume and residential consumers. We need to make sure that their interests are

paramount and that we're able to sustain and continue to grow our business.

Notwithstanding that, about 18 months ago, Just Energy and three other retailers—or suppliers, as they're called in the act—that are here this afternoon got together and began looking and taking serious, effective measures and started to implement them in our sales processes and our service processes. We did that on our own. We now offer plain-language contracts for consumers.

We took a look at the top three or four complaint issues or areas of customer confusion in Ontario and we made mandatory disclosures in our contracts and our materials to try to make sure that things were clear for consumers. Just Energy also repeats those disclosures on the reaffirmation call, which is a verification of the sale shortly after it's completed.

We created an information brochure that's not a marketing piece. It's a standard, unbiased written piece of information that provides a number of different areas of information for consumers to also help assist them in their choice.

We created a standardized training package and a test module for all agents and undertook from that date forward to ensure that all agents went through that training and testing before they were allowed to sell on our behalf. In Just Energy's case, we do background checks on all agents prior to allowing them out to sell our products.

#### 1440

In essence, consumers require full disclosure and transparency in the products being offered to them and they need the opportunity to make an informed decision, but we need a balanced approach. While we welcome the improvements in consumer protection that are offered in the bill—and in fact you probably noted that some of the things I just mentioned are in that bill—as it's currently drafted, it limits the scope in our commercial flexibility that we need to continue to grow in Ontario. The bill has to balance the needs, in our view, of the consumer protections proposed but also maintain a fair and sustainable business climate in Ontario. In its current form, we believe it limits customer choice in some regards, as we will not be able to operate as efficiently or as effectively as we need to. It will, in essence, potentially jeopardize thousands of jobs as some retailers or suppliers may seek to relocate operations to other parts of North America that may offer more conducive regulatory and business climates to operate in.

In short, there are a number of amendments that we'd like to see in the bill but I wanted to go through the top few in my time here today. On page 5, the first amendment is with respect to preserving an automatic renewal option for consumers. As a company, automatic renewals, as they do in many other industries, provide us low cost and a flexibility necessary to manage our customer base. We have hundreds of thousands of customers. We hire people in our call centres, our operations, our billing to maintain those large customer bases, and we need that commercial flexibility to continue moving forward. But

we understand what the concerns have been of consumers—vulnerable consumers—people in this room which I've talked to and others. Consumers don't want to be in a position where, if they don't act by a certain date, they end up in a term contract of five years or a long term that ends up costing them liquidated damages or exit fees to leave. There's also, because energy markets are volatile, at some times, when you do have a renewal that comes up, the price may jump significantly from the current contract price.

We understand those concerns and we believe that we've reached a balanced approach. What we've put forward as an amendment to the bill is to allow that consumers be able to serve customers and offer automatic renewals, as many other industries do today: cellphones, fitness memberships, Internet services, insurance, credit cards, financial products—all automatically renew on a yearly or on a term basis. What we've offered forward to try to balance that as an approach is to provide consumers or suppliers the option to be able to offer an automatic renewal in addition to some other options, but limit it through regulation or under the bill to be a month-by-month renewal product with no exit fees applicable to the consumer. So the consumer may roll over on a month-to-month basis; they can change their mind at any time and leave without exit fees.

Further, to address the price issue, what we've offered is similar to a cellphone—when your contract expires, it just continues on a month-to-month basis at the same rates you were paying—that the regulation to help finish that consumer protection side of it offer that the price does not exceed the current price of the contract that they're under, that it's currently set at. We believe that that balanced approach, supported by clear and robust regulations under the act, will ensure that consumers receive an advance written notice with their options clearly laid out for them, including cancellation and any required disclosures to make sure that they make an informed choice—we think that that balanced approach addresses the concerns for consumer protection as well as provides the company an opportunity to continue moving forward in that regard.

The second amendment: authorized signature. It's our view that the bill is not consistent with the Family Law Act. In fact, OEB staff has also issued bulletins in the past clarifying the authorized parties as indicated under the Family Law Act. The bill, as currently written, potentially limits the signatory to a contract—it would be only the account holder and no one else. We believe that the account holder or their spouse should be able to make that decision. The bill also attempts to preclude people with agency agreements or power of attorney arrangements from acting on behalf of others in this regard. We think that both those cases should be considered to be authorized signatories to the contract.

We have heard in the past that somebody complained because somebody signed up their son or their roommate or an aunt or an uncle, and certainly we support the fact that other parties other than those listed, that I've just

mentioned, should not be entitled or authorized to sign a contract. In fact, any contract signed by anyone other than the spouse or an account holder or somebody with agency or POA should not be binding on the account holder. So we've offered a couple of requested amendments there: subsection 11(5), a small amendment to clarify; and subsection 11(6) we believe should be deleted altogether, as it prohibits agency.

Requested amendment three, cancellation: We support and want to work forward with government and the folks here and others on re-looking at the contract structures going forward for new contracts, ensuring that things are clear for consumers and easily ascertainable so consumers understand that when they enter into a contract there are rights and obligations that they need to consider before they make their choice.

However, the bill, as currently written, appears to suggest that any of these changes may be applicable to existing contracts. We strongly urge people to review that and amend the bill. Contracts that are structured today took into account the risks in providing those contracts and those services. As you probably know, energy retailers procure the energy all the way to the end of the contract when they sign the contract, and, as such, are left at risk of that mark-to-market loss on any positions, as well as costs and other risks that have been put into the contract. So we've just asked for a small amendment to section 20 to make it clear that anything that's determined under regulation is applicable to new contracts.

The fourth amendment, consumer consent: The Electronic Commerce Act and the current regulations we operate under provide that, within prescription, we can have consumers authorize or provide consent over a telephone, so long as it is digitally recorded and maintained for the contract term. The bill, as currently written, appears to change that and almost prohibit consumers from consenting to contracts or providing direction or guidance or acknowledgements by phone. This effectively removes the ability to complete energy contracts or transactions by phone. We certainly believe that as it exists today, consumers should receive written copies or documentation with respect to their decision. However, especially in today's markets, in whatever products you may sell, consumers should be allowed to contract over the phone or provide acknowledgement or consent. We believe it should be followed with robust regulation to ensure that the entire call is recorded, that it is digitally recorded and maintained. It can be produced, if requested.

An unintended consequence, I think, of this section is the fact that this also prohibits me from taking consent from a consumer over the phone to do anything. I have a service relationship with a customer and they call me today and they may give me direction or ask me to change something. This bill, the way it is currently written, under section 7 appears to prohibit me from even doing that, which I don't think is practical. I think it will strain the service relationship with the consumer, as well as increase costs dramatically for the suppliers.

In our view, it appears counterintuitive that the bill offers to remove the sales and service function which, in my view, offers the most consumer protection. When a customer calls you, the entire call is maintained. The context of the call, everything that is said and the consumer's consent is all maintained for the life of the contract.

**The Vice-Chair (Ms. Helena Jaczek):** Mr. Potter, just three minutes left.

**Mr. Gord Potter:** Oh, okay. Great. I thought you were giving me the hook.

Requested amendments: We just wanted to offer that subsections 7(1) through (6) should be amended to remove things like "text-based" and "capable of being read by a person." Those clauses, I believe, were added into what currently exists in the Electronic Commerce Act in large part, and we think that it would be best served that we remove those. Allow for telephonic confirmations, and certainly provide the support necessary or satisfactory support in the regulations to ensure there's enough protection around that process.

Finally, there are a number of other technical errors that we believe need to be reviewed, as well as other amendments to the bill as it's currently written. Just Energy, along with three other retailers, will be forwarding a more comprehensive written submission to the committee members within the next day or so which outlines the background on each of those areas, as well as a clause-by-clause review and suggested amendments.

Thank you for your time.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you very much. Now to the government side: You have two minutes. Mr. Levac.

**Mr. Dave Levac:** Thanks, Gord. I appreciate the review that you've done. Again, to repeat myself, which I will be doing, we're here to listen and carefully analyze some of the concerns and the issues that are being brought up to try to see if we can come up with a good piece of legislation.

I'm not going to get into banter about whether we're good or evil or bad or whatever. What I do want to talk about is the support that you've shown in terms of your actions over the last 18 months to acknowledge that this is consumer-driven, in that we're trying to do the best we can.

**1450**

As you've also indicated, the balance between forcing people out of the province because they can't do business—are there any other jurisdictions that have strict or far-reaching consumer protections within their scope where their companies have not abandoned the region?

**Mr. Gord Potter:** Yes. There are a number of markets and they have varying degrees of regulation, but I think where they focus more is around consumer protections with respect to, for example, telephonic authorizations. You can do telephonic authorizations, but there are a number of things, such as actually prescribing what the script is. To ensure that people adhere to that, those recordings are used. If there are any consumer issues, recordings are produced. If you stuck to the script and

you've maintained your content, that's something that the regulator and others—MPPs—would verify. They also build on that with respect to, if written documents need to be sent out, how quickly they need to be sent out and things that need to be included in them.

So what we're hoping is that, as we move through this process, we don't prohibit business opportunities, but what we do is we identify what's reasonable and what we think is good for consumers as well as suppliers and simply build the prescription under the bill or under the act to ensure that there are consumer protections around each of those that benefit the consumer.

**Mr. Dave Levac:** Thanks, Madam Chair.

**The Vice-Chair (Ms. Helena Jaczek):** Mr. Yakubuski?

**Mr. John Yakubuski:** I don't imagine we have much time, do we? Thank you very much, Gord, for joining us this afternoon. You've raised a lot of very interesting and valid concerns that, when we're looking at something on an overview, we don't necessarily see. The one about spousal consent: My riding has a lot of military people. A lot of those people could be transferred to Afghanistan for six or eight months at a time. Under the current legislation, if there were some requests on the part of the spouse of the primary bill holder, would that be something they simply couldn't talk about?

**Mr. Gord Potter:** That's how it appears to be written. That's correct.

**Mr. John Yakubuski:** Right. So that's something that certainly people in my riding would have an issue with: that the spouse can't actually deal with any issues between the contracted parties during that six-month period.

**Mr. Gord Potter:** Yes. Further to that, John, in a lot of cases similar to my own situation—my wife is the account holder for my Enbridge account and I'm the account holder for the electricity account. We provide services for both. Without that flexibility, we'd be in a position where we'd have to be able to manage that relationship with separate spouses. We don't have to deal with both of them for both services separately.

**Mr. John Yakubuski:** I'll leave that for you to work out. Anyway, thank you very much for joining us today. I think I'm probably short on time.

**The Vice-Chair (Ms. Helena Jaczek):** You've got a few seconds left. Mr. Tabuns, do you have something quick?

**Mr. Peter Tabuns:** Yes. First of all, I want to thank you for coming and making a presentation today. Your website says that you provide energy price protection. How do you do that?

**Mr. Gord Potter:** What we do is, in the case of fixed-price contracts, we will go out and purchase the supply. If we sell, for example, a five-year product to you, we'll fix that rate for five years, but we also contract behind us on a wholesale basis for that entire five years. That's how we're able to hedge against the volatility in the energy market. The benefit of that is that I'm able to keep that

rate stable for you for the five years regardless of what the market does, because I've hedged it in behind me.

That's also one of the risks we face if we have consumers who change their minds. When the energy prices go up, as they did about a year and a half ago when they were at very high highs, nobody wants to cancel. When you get into low price cycles, similar to a mortgage when interest rates drop, people start to reconsider their decision. That's why we're concerned over the cancellation rights; we think consumers should have the option to exercise their choice, but we certainly can't be left with a customer leaving the contract without being able to mitigate the risks associated with those obligations.

**Mr. Peter Tabuns:** Where do you buy your electricity for those five-year locked-in contracts?

**Mr. Gord Potter:** Ourselves personally, we have contracts with Shell, Bruce Power and a number of other parties, but those are the main ones.

**Mr. Peter Tabuns:** Thank you.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you, Mr. Potter.

#### ONTARIO ENERGY ASSOCIATION

**The Vice-Chair (Ms. Helena Jaczek):** Now we will move on to the next deputation. We have the Ontario Energy Association: Elise Herzig, president and CEO, and John Priddle, vice-president, strategic communications and stakeholder affairs. You have 10 minutes for your presentation, and I'll warn you at the 10 minutes so that will give us the full five minutes for questions after that. Please begin.

**Ms. Elise Herzig:** Madam Chair and members of the committee, good afternoon. On behalf of the board and members of the Ontario Energy Association, I would like to thank the members of the Standing Committee on General Government for allowing us the opportunity to comment on Bill 235, the proposed Energy Consumer Protection Act, 2009.

The OEA represents the full diversity of energy and associated industry participants in natural gas, electricity, manufacturing, contracting and service suppliers. Our organization has more than 150 member companies that together support our province's complex energy market. Today, some of our members will also be presenting their own comments on the proposed legislation. It is our understanding—and you just heard from Gord—that their feedback and submissions will be more focused and detailed as they bring their expertise and insights of their own business operations.

The OEA is here today to share the broader perspective, addressing concerns of the OEA's marketing and retailing members, as well as those of the OEA utility member companies. In addition, we hope to bring clarity and new understanding of some of the complexities of the energy sector.

I would first like to emphasize that the OEA and its member companies fully support effective consumer protection, and we are pleased that Bill 235 incorporates

many of the elements developed and proposed by some of our marketer and retailer members, including plain-language contracts and standardized training and testing for company sales representatives. As in many other sectors that operate in our province, there is room for improvement. As such, your work towards achieving a higher level of protection is applauded.

However, in this attempt to do better, it is equally important to make sure that the parts of the system that work stay put—that we build on these foundations rather than try to replace them. The energy system in Ontario is complex, and we believe that the current draft of the bill does not fully take into account some of the complexities of the issues.

These are our concerns: Protecting the vulnerable is one of the most important roles the government plays. The OEA fully supports the values, principles and practices of helping people in need, such as those living on a low income. Indeed, many of our member companies take an active part in charities and various social assistance programs.

We are concerned, however, by the provision for the minister to determine the cost of energy to consumers, which was described during the legislative debate on Bill 235 as a means for the government to provide for lower-income customers as part of the poverty reduction strategy.

We believe that addressing the financial needs of low-income consumers should remain a policy priority of government, which has the authority, expertise, competence and capacity in this area. Regulatory agencies and energy companies do not, nor is it their purpose to provide social assistance or assess who should and who should not receive financial relief.

We believe, therefore, that financial relief for low-income consumers should be addressed through income and other social policy programs, not through artificially suppressing, subsidizing or cross-subsidizing energy rates. This is a complicated system, and price plays a tremendous indicator in terms of other government initiatives as it relates to conservation and business planning. This is an area where regulatory agencies, business and government need to continue to operate as is and should not be modified.

I should also caution that lower costs for one class of consumers would mean higher costs for all other consumers.

We are also concerned that the powers the bill would grant the Minister of Energy and Infrastructure are exceedingly broad and would allow the minister, through regulation-making powers, to undertake activities that have traditionally been—and that we feel should continue to be—the responsibility of the independent regulator, the Ontario Energy Board.

#### 1500

We believe that rate-making is fundamentally not the role of the minister. Specifically, should Bill 235 become law, the proposed legislation would allow the minister to

assume a core regulatory function of the Ontario Energy Board, that being rate-making.

Making rates and determining costs are complex tasks that have long been the responsibility of the Ontario Energy Board. We maintain that the board should keep that responsibility. The board undertakes rate-making in an open and transparent manner, and public consultation is a key element of this process. The board is professional, independent and non-political, which provides confidence to consumer groups and energy market participants alike.

We therefore recommend that the sections of the proposed legislation that allow the minister to regulate and determine the cost of energy to customers—that would allow the minister to establish through regulations security deposit guidelines, disconnection policies, the manner in which they are presented and to which classes of persons or customers they are to be presented—be removed from the legislation.

We further recommend that giving the minister authority to approve requirements or the form of gas distributors' invoices be removed.

As in many other sectors, consumers have the ability to extend contracts with automatic renewal systems. The premise of these systems is to provide consumers with windows to explore and learn about options available and make educated, long-term decisions. This period removes from the consumer the pressure to make a quick decision and enables them to research and learn more about the level of their future commitment.

For example, with regard to energy contracts, automatic renewal is allowed for natural gas, which provides customers with peace of mind by removing the need to worry about what and where their energy supply comes from.

We therefore recommend that legislation continue to allow gas marketers to provide automatic contract renewal, and that automatic renewal also be permitted for retail electricity contracts. We also recommend that for both natural gas and electricity, contracts be allowed to be renewed only on a month-to-month basis and subject to penalty-free exits. A penalty-free exit renewal framework would provide both customer convenience and strong consumer protection.

Under current legislation, retailers may satisfy a requirement for anything in writing to be taken electronically, either as a voice or electronic signature. We are concerned that consumer protection could in fact be weakened by the proposed requirement for text-based contracts and signatures, which essentially position the consumer and the retailer one step backwards.

Transactions conducted by telephone enhance consumer protection because calls can be recorded and provided as required to the appropriate regulatory body. Further, not all consumers have access to energy retailers in person, and access to the Internet may be inconsistent, particularly for those outside major urban areas. Phone conversation allows the customer to ask for clarification and to better understand what is being presented.

However, we do have a recommendation that we believe can better protect consumers. Follow-up written confirmation of the phone call should be sent to consumers, which serves as their own paper trail for the electronic agreement for services.

**The Vice-Chair (Ms. Helena Jaczek):** Just one minute left.

**Ms. Elise Herzig:** Doing business in Ontario means that companies need to be able to plan and manage their businesses effectively. The proposed legislation, however, appears to permit customers to cancel valid contracts without cause, as long as they give specified notice. This would unfairly place on energy marketers and retailers restrictions that do not apply to other businesses.

Energy marketer and retailer member companies agree that consumers need to be aware of their rights and obligations before they enter retail contracts, and to that end, they have already implemented a range of consumer initiatives, talked about earlier.

Since I'm cutting down to one minute, I'm going to quickly get to the bottom part here.

Finally, the reference in Bill 235 to electricity retailers setting contract prices based on prescribed requirements is of concern because it suggests that retailers' ability to structure their products will be limited. That, in turn, would limit retailers' ability to provide a range of products suited to customers' needs. We, therefore, recommend that energy distributors, marketers, retailers and consumers be consulted before any regulations are formulated to determine how electricity prices and services are presented.

Thank you again for the opportunity to speak today. A formal submission will follow. I would be pleased, and John as well, to answer any questions you may have.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you so much, and we'd appreciate receiving a copy of your material.

**Mr. John Yakabuski:** Thank you very much, Elise and John, for joining us this afternoon.

First of all, I want to certainly emphasize that consumer protection is of paramount concern to all of us here with regard to this legislation and in general as members of the Legislature. I certainly appreciate the work that the OEA has done in the past couple of years in trying to promote and improve the circumstances surrounding energy retailers. What started out as a process of trying to correct what we saw as faults with the door-to-door has turned into something significantly bigger, almost back-door socialism, when it comes to the minister having you people subsidize the rates of electricity.

The poor and the vulnerable—the government has a responsibility in a society such as ours to enact legislation to protect them, but it seems like they're making you and your member companies the agents of this social change. You've commented on it, but I'd like maybe something a little more direct as to how you see this affecting the role of government and private entities with respect to having an electricity rate that's basically—you

people are out there doing the social work as opposed to the government itself.

**Ms. Elise Herzig:** I've had the privilege of doing a lot of work with the vulnerable, and the saddest thing about working with that group of our society is that they tend not to have a voice, and even if they have a voice, they're usually not heard and they tend to fall in the cracks of the system. So I'm a big believer that this is a responsibility of every citizen of this province to deal with, but it needs to be dealt with in a holistic way and not in a patchwork way.

My concern is that by giving the minister the power to change the prices for this group that needs help on so many levels, they may not be getting the help that they need at other levels, and it sends very mixed signals in our marketplace that are dangerous for us to have. If we're trying to get conservation efforts, if we're trying to get business decisions made on pricing and we start putting these people in the position where they get to judge who gets the help and who doesn't get the help, it's a very dangerous scenario. These are real issues, and these people, very often through no fault of their own, find themselves needing to be protected, but I don't believe that the legislation necessarily protects them with the intent that I think this government wants for them. I think the intent is a good intent; I just think it's the wrong solution.

**Mr. John Yakabuski:** Thank you very much.

**The Vice-Chair (Ms. Helena Jaczek):** Mr. Tabuns?

**Mr. Peter Tabuns:** Thank you for coming down and making this presentation today.

The concern you have about telephone conversations being the basis for a contract—the most frequent complaints I get about energy marketing firms come from people in my riding for whom English is not their first language. For them, a written document is something they can share with family or friends and get an interpretation. It's much harder for them over the phone. What sort of support do you provide for people for whom English is not their first language when they are dealing with these kinds of contracts?

**Ms. Elise Herzig:** Not being a retailer in that position, I can't answer specifically. I know that there are a number of people in this room that can. But I think what we would like to suggest is that it's important for individuals to be able to understand what they committed to, and if there's a way that we can use the technology we have, that there can be a paper trail and there is a period of time where people can make a decision topped out, this gives them a piece of paper that tells them what they committed to. So we're saying: Benefit from the technology, use the technology in the best possible way, but use it also to protect the consumer; give that consumer a chance.

**1510**

In terms of other languages, there may be opportunities. This is a group that really has tried to work well with the government to initiate a number of projects, whether it's around plain language and training. This

could be something that we look at, as our consumers have changing needs. I'm sure the OEA would be happy to actually create a discussion for you on that. We could set something up.

**Mr. Peter Tabuns:** Thank you.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you. To the government side, Mr. Levac.

**Mr. Dave Levac:** First and foremost, thank you for coming and presenting. The OEA has worked with the government in the past, and I think their intentions are to continue to do so. Thank you very much for acknowledging the intent of the legislation on the one side, which is specifically consumer protection.

I'm not going to delve too much into detail other than to say that in terms of your presentation, you indicated to us that you'd give us a more thorough presentation. Inside of that, would you be including the recommendations and amendments—or wording to amendments—that would assist in the staff offering some feedback on your view of the bill? Are you including—

**Mr. John Priddle:** We'll actually be giving a summary of this. However, we can be available for consultations on that, and some of our members here are much more well-versed in the minutiae.

**Mr. Dave Levac:** If they have anything that they can put in writing, it would be beneficial.

My last comment to you is—some people haven't been repeating this, and I'm just going to start repeating it now—that the government plans to do a very wholesome consultation on the regulatory stream of the bill as well. So inclusive of the bill itself, there's going to be some dialogue on the regulations that might assist the membership in terms of some of the minutiae that we're talking about.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you very much.

#### ENBRIDGE GAS DISTRIBUTION

**The Vice-Chair (Ms. Helena Jaczek):** Next, we have Enbridge Gas Distribution, if you'd like to come forward: Debbie Boukydis, director of public, government and aboriginal affairs, and Mike Mees, director, customer care. Again, you have 10 minutes for your presentation. I'll warn you at about the nine-minute mark, and then we'll have five minutes for questions.

**Ms. Debbie Boukydis:** Thank you, Madam Vice-Chair. Good afternoon, committee members. On behalf of Enbridge, we appreciate this opportunity to share our comments on Bill 235, the Energy Consumer Protection Act, 2010. I should note at the start that Enbridge Electric Connections, an affiliate of Enbridge Gas Distribution, will be speaking later today to provide their input on the suite sub-metering content of the legislation. My remarks will be focused on the gas utility and related issues.

Enbridge Gas Distribution is Canada's largest natural gas utility, with 1.9 million residential, commercial and industrial customers in about 100 Ontario communities, including Toronto, Ottawa, Barrie and the Niagara

region. Founded in 1848 as the Consumers Gas Company, we have played an integral part in Ontario's economic growth and prosperity since before Confederation.

Our relationships with our customers, large and small, are the cornerstone of our business. Enbridge is caring and supportive in providing assistance to all customers, and we place a priority on helping all customers stay connected to gas. As a result, we are keenly interested in Bill 235. We are here today to tell you about the actions that we have already taken to alleviate any hardship faced by low-income customers and why some of the provisions of Bill 235, while being aimed at retailers, could have undesirable and unintended consequences for Enbridge and our customers.

Enbridge takes pride in our customer care practices and policies. As part of the Ontario Energy Board's low-income consultations in 2008, we asked the independent consulting firm IndEco to compare Enbridge's practices with the practices of other utilities in Canada and the United States. IndEco reported that when it came to issues such as disconnections, late payment penalties and equal billing, Enbridge rated high relative to our Canadian peers in terms of the flexibility and leniency of our policies. These outstanding results show the importance we put on supporting our customers, particularly the most vulnerable.

Let me begin with security deposits. We provide new customers with a number of options to avoid the need for a security deposit. These include signing up for a pre-authorized payment plan, providing a letter of reference from their previous gas or electric utility, or providing a report from a credit agency. In short, any new customer with good credit can avoid a security deposit if they choose.

Security deposits may be required for customers with poor payment histories. These payments are required as a matter of fairness to our other customers. Utilities need to ensure their collection policies protect the vast majority of customers who pay their bills on time so that these customers are not burdened with added costs and fees. However, existing customers who are asked to pay a security deposit also have the same options as new customers in order to avoid security deposits.

Enbridge uses security deposits very sparingly. If a customer is in arrears but agrees to a mutually satisfactory payment schedule, a security deposit may be avoided altogether. If a security deposit is required, it typically works out to about two months' worth of gas charges.

We are confident that our policies are aligned with the government's intention in Bill 235. Then-Consumer Services Minister Ted McMeekin commented during second reading, "It is only natural that companies exercise due diligence in the extension of service to those with a checkered past in paying their bills."

Let me turn to disconnections. I want to stress that disconnecting customers is always the last resort for Enbridge. Disconnections create significant labour costs for the utility and also stop the customer from using the

product we distribute. It is simply not in our interest to disconnect unless we feel there's a significant amount of arrears which we do not have a reasonable prospect of recovering without disconnection.

As the company's ombudsman, I deal with these types of cases every day. My team and I are tremendously creative in developing payment schedules and other solutions that help customers keep their heat on without falling too far behind on their bill. My staff are the front-line workers and they do a tremendous job of helping customers out, who are often facing financial difficulties on other fronts as well.

We work with customers to fully explore alternatives to disconnection, including developing a payment schedule, seeking assistance from the winter warmth program that we initiated with the United Way, or referring them to social agencies which can provide financial support. We will allow customers to pay off their arrears over several months if it will give them the financial flexibility to keep up with all their bills. Enbridge does not disconnect residential customers during winter months. This has been a long-standing policy.

Much of the stated intent of Bill 235 is to protect the well-being of low-income residential energy customers in particular, so I would like to spend a few minutes on that topic. Enbridge is particularly concerned about situations where low-income customers find themselves in arrears due to factors beyond their control—things like illness or loss of work. That's why in 2004, Enbridge, Toronto Hydro and the United Way launched the winter warmth program to help customers below the Statistics Canada low-income cut-off to deal with their gas bill. This program has expanded over the years to include Union Gas and many other electricity utilities. To date, over 9,000 households have received up to \$450 for assistance to help keep their heat on.

This is an initiative the utilities started on their own, without any prompting or requirements from any level of government. It is a good example of the responsibility we take towards helping our own customers.

Additionally, Enbridge already works diligently with low-income customers and customers of any income level to avoid disconnections in the first place. We also offer energy efficiency programs and special arrangements for senior citizens through our Golden Age Service.

Next, I'd like to briefly highlight the distinction between classes of customers. The intent of the legislation is clearly to address situations facing residential customers, in particular those who may not have the financial means to pay in a timely manner. The legislation and related regulations should not interfere with Enbridge's business relationships with commercial or industrial customers, which are clearly outside the intent of this legislation.

Finally, we would like to express our serious concerns over provisions in Bill 235 that would allow the government control over the Enbridge bill. Enbridge engaged in a \$120-million project to refresh our bill presentation and

modernize our customer information systems over the last couple of years. The result is a more clear, understandable bill which provides detailed information to our customers about their historic gas usage. Enbridge also provides significant information to consumers via bill inserts on programs and incentives to help reduce their energy use.

Furthermore, the legislation leaves the regulation-making power wide open. The ministry would have unfettered power to modify the bills as they saw fit. While this power exists over electric utilities, this is an apples and oranges argument. Municipal utilities are, for the most part, owned by the public sector. Many of them are also relatively small, with limited ability to engage in the depth of customer care work that Enbridge does.

#### 1520

Enbridge is a private company which has dedicated significant resources to customer care. We are unaware of any occasion in the last 160 years where the government has objected to the presentation of our utility bill. We have business relationships with all of our customers, and we do not agree that a third party should interfere with the communication between those parties without clear justification.

As this committee considers amendments, I hope that you will recognize that Enbridge has made it a priority to develop customer service practices that are proactive, sustainable and meet the needs of the broadest number of customers. That's why we're very proud that the IndEco report rated Enbridge so highly.

Bill 235, at its heart, is about improving the retail market. The provisions around security deposits, disconnections and the utility bill are not based on any concern over the behaviour of the utility. There should not be any unintended consequences from Bill 235 incurred by the utility or its customers.

Additional layers of regulation and red tape would only serve to limit the flexibility we require to meet the various needs of our customers. Our reputation has stood strong for 160 years in Ontario, and we're committed to building on that record going forward.

We would be pleased to answer any of your questions.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you very much. We have some six minutes. Mr. Tabuns.

**Mr. Peter Tabuns:** Debbie, thanks very much for the presentation. Can you tell us a bit about arrears and disconnections? Have you seen a substantial increase in those in the last year or two?

**Ms. Debbie Boukydis:** I'll turn that one over to Mike. I would say we haven't, but—

**Mr. Mike Mees:** In fact, yes, Debbie is right. We haven't seen an increase in disconnections, even with the economy the way it was. Actually, our disconnections are probably down about 1% from 2008 to 2009.

**Mr. Peter Tabuns:** Do you have any understanding of why that's the case?

**Mr. Mike Mees:** I think customers are still paying their bills. We get 93% of our customers paying their

bills within 30 days. Customers are still working hard to make sure that they pay their bills off as soon as they can.

**Ms. Debbie Boukydis:** We were talking about the process that we go through for disconnections. We have a full 78-day period from the time a customer first learns that they're in arrears before we would even consider any disconnections. We work very, very hard to ensure that the customers do stay connected.

Also, there is the winter warmth fund. Last year we had \$650,000 put into the winter warmth fund, and we helped 1,200 customers. That first line of defence—being able to help customers stay on—is a priority, and it's working.

**Mr. Peter Tabuns:** Okay. Thank you.

**The Vice-Chair (Ms. Helena Jaczek):** The government side. Mr. Levac.

**Mr. Dave Levac:** Thank you for the presentation, Debbie and Mike. It seems to me that you're pointing out concerns of the legislation that have a possible unintended impact on you, and that, in some cases, it may indeed be intended. The question I would have is, then, why are we here? If there had not been a lot of stuff happening to the consumer at the door, we probably wouldn't be here. I'm told by one of the deputants, "Yes, we've had some time to get this cleaned up, and we didn't," and now we're looking at it. I hope you don't read that as an attack, but then what is it that we should be doing specifically? I think you're telling us, as are some of the deputants, that there are things that are unintended that you believe are happening to the company that shouldn't be happening, but you are indeed supportive of consumer protection. Am I reading that right?

**Ms. Debbie Boukydis:** I would say that's correct. Again, the policies of disconnections and security deposits—we've been working for a long time with the government and the Ontario Energy Board, and we believe that our customer care practices speak for themselves.

Whether or not this bill perhaps was not intended to tighten up all of the work that we're currently doing to protect our customers—as well as our utility bill too. That is something that we have worked on very closely with the government—to talk about communications—and with the Ontario Energy Board.

If, in any of this legislation, it's going to put more oversight on practices that we believe that we're already doing well, those are the unintended consequences that we're talking about.

**Mr. Dave Levac:** You'll be providing us with a deputation and details of the concerns—

**Ms. Debbie Boukydis:** Which we have done, but most certainly, we will put this on the record as well.

**Mr. Dave Levac:** Right. And amendments: Have you made specific recommendations for amendments?

**Ms. Debbie Boukydis:** No, we haven't.

**Mr. Dave Levac:** Is that something you would care to do?

**Ms. Debbie Boukydis:** Absolutely, yes.

**Mr. Dave Levac:** We'd definitely want it.

**Ms. Debbie Boukydis:** Yes. And if there's interest, I can also include the IndEco report so you can look at the more fulsome—

**Mr. Dave Levac:** I'm sorry; back up.

**Ms. Debbie Boukydis:** The IndEco report that I referred to, which gave a more fulsome overview of our customer care practices.

**Mr. Dave Levac:** We absolutely would want it; we absolutely would like it.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you—

**Mr. Dave Levac:** Can I refer it to the clerk to make sure that that communication happens?

**The Vice-Chair (Ms. Helena Jaczek):** I was going to mention that the clerk in fact does not seem to have received any written material from you.

**Ms. Debbie Boukydis:** Oh, all right.

**Mr. Dave Levac:** Thank you.

**The Vice-Chair (Ms. Helena Jaczek):** And now Mr. Yakabuski.

**Mr. John Yakabuski:** Thank you, Debbie and Mike, for joining us this afternoon. I just want to comment on my friend from Brant, Mr. Levac. I have a hard time connecting how a problem that clearly existed and had to be dealt with in some ways, which was the misrepresentation, if you want to go that far, but certainly problems at the door in regard to the contracts of energy retailers and taking that to social engineering and determining gas prices based on different classes in this bill—it's hard to connect the two. This is the way that this government likes to do things—through the back door.

I want to talk about this new \$53-million tax, which you people are very well aware of. We know that it hit electricity companies over the last weekend, and they're now expected to be the tax collectors for the government.

Have you or your company engaged in any discussions with the Ministry of Energy on this issue of collecting taxes, regulation 66/10? Have you met with them? If you have, how many meetings have you had with them, and what is the approximate cost associated with Ontario gas customers that you would be expected to be collecting on behalf of the government with their new tax program?

**Ms. Debbie Boukydis:** As my colleague Mel Ydreos, from Union Gas, said, Enbridge and Union have been meeting with the government throughout the last couple of months to talk about what this program would look like. There have been a number of meetings. In terms of the actual cost, that hasn't been determined at this time. There have been different numbers that have been sent about but, at this point, it has just been a meeting talking about how this actually would be collected and what it would be used for.

**Mr. John Yakabuski:** So if they're talking to you about collecting, that's over and above the \$53 million that they're collecting through electricity companies. So it would be reasonable to conclude that we can expect more down the road, should these talks continue. Is that correct?

**Ms. Debbie Boukydis:** I believe that there would be similar treatment for the gas utilities as there is now for the electric utilities.

**Mr. John Yakabuski:** So when the minister says, “No new taxes,” we don’t want to take that one to the bank. Thank you very much. We appreciate your submission today.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you very much.

**Ms. Debbie Boukydis:** Thank you.

#### SMART SUB-METERING WORKING GROUP

**The Vice-Chair (Ms. Helena Jaczek):** Now the next deputation, Smart Sub-Metering Working Group: John Macdonald, president and CEO, The Consumers’ Waterheater Income Fund, and Rob Fennell, General Manager and COO, Enbridge Electric Connections Inc.

If you’d just like to come forward and make yourselves comfortable. As you know, you do have up to 10 minutes for your presentation. I’ll warn you at the nine-minute mark, and then we’ll have questions from all three parties. Please proceed.

**Mr. John Macdonald:** Good afternoon, and thank you very much. My name is John Macdonald. I’m here on behalf of the Smart Sub-Metering Working Group. We generally support the bill, and here’s why.

First of all, it protects the small guy. The bill will ensure that no one will be arm-twisted into signing up to a sub-metering deal.

Secondly, it helps stop power wastage in the 1.75 million homes in Ontario where there’s no metering of the electricity supply.

It’s great for the environment, because in reducing electricity consumption in those suites, we will substantially reduce the amount of power demanded in the province at peak times.

Lastly, it help controls crime. Smart sub-metering has been shown to uncover grow-ops in many, many instances. There have been recent articles about what the grow-ops do to multi-residential buildings. They do worsen the environment for the tenants, and it’s something that we’re very concerned about.

As a quick summary, we believe the bill allows a much wider proportion of Ontarians to participate in a culture of conservation. I have some prepared remarks I was going to read as well.

Our group represents most of the private sub-metering providers in Ontario. Our members are licensed by the Ontario Energy Board. As I mentioned, there are 1.75 million suites in Ontario, of which 100,000 are sub-metered by our group, and about 50,000 are sub-metered by the local electricity companies. Suite metering is the norm throughout Europe and in many American states. In many places it’s illegal to build new construction of multi-residential buildings without separate electricity metering. This bill should help Ontario match the conservation success of some of these other jurisdictions.

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Electrical sub-metering, for those who are not familiar, is a system where apartments and condominium buildings are measured by a single bulk meter monitored by the local utility, and we add, within the building, meters to monitor electrical consumption of every individual suite. Instead of electricity costs being included in rent or common area fees, residents receive monthly bills based on their actual consumption. Suite metering, we believe, represents the single, biggest and quickest way to reduce electricity consumption in the multi-residential sector.

We are supportive of Bill 235, but we do have some concerns we’d like to bring up.

We welcome the bill’s recognition of individual suite metering in apartment and condominium buildings. When residents are provided with transparent information and take responsibility for paying their monthly electricity costs, electricity consumption for the building is reduced between 15% and 25%. This has been shown in a number of studies in Ontario, New York and other jurisdictions throughout North America. This translates into monthly energy savings of the equivalent today of 17,000 homes, based on our current penetration. We believe there’s an ability to substantially increase that through time.

As I mentioned, the other benefit is the uncovering of illegal grow-ops. Aside from being illegal, they provide a major health and safety hazard to residents.

We’re very pleased to see the explicit confirmation that private independent companies can continue to provide suite-metering services alongside local distribution companies and help realize the province’s conservation objectives.

However, we submit that rate regulation is unnecessary where there is competition. Indeed, the OEB’s own statute provides that it will forebear from exercising its powers in situations where customers are already protected by competition. Our current and future prices and services must be competitive in order to attract and retain customers—landlords and condominium boards—who purchase our services. These competitive pressures will provide price and service protections for our residents.

The OEB already regulates LDC rates. Private competitors, like those in our group, price their services in relation to LDC rates. In almost all cases, our rates are lower, and the OEB also has oversight over smart sub-metering companies through the licensing process.

Apartment residents become customers of smart sub-metering providers through a voluntary decision. If the cost of sub-metering is too high or the rent reduction is too small, the customer will refuse to accept the service or rent elsewhere and, under Bill 235, they have that right. Consumers need accurate and clear information: the price of metering, the average electrical consumption in the suite and the rent, all of which our group is advocating.

Once again, I’d like to thank the committee, and I’ll pass it over to Rob Fennell from Enbridge Electric.

**Mr. Rob Fennell:** We're pleased to see the changes being proposed to the Residential Tenancies Act to permit suite-metering of apartment units. The changes will remove uncertainty and support a recent Ontario Energy Board decision. Our group is pleased to see that the RTA's new rules will apply equally to private providers and LDCs. We make the following recommendations.

The changes to the RTA and the related regulations should take a balanced approach that facilitates tenant choice and encourages metering and conservation in rental apartment buildings. The OEB has already created a sensible solution in an August 2009 decision. The OEB set out what constitutes informed consent for tenants taking responsibility for their electricity costs. The OEB's approach should be reflected in the legislation and regulations.

Sub-metering conducted in accordance with the August 2009 OEB decision should be recognized as valid and grandfathered by Bill 235.

The legislative and regulatory approach currently taken to regulating smart sub-metering activities in condominiums has worked extremely well in supporting consumer protection, the growth of smart sub-metering and also in energy conservation.

We recommend that the new provisions in Bill 235 should essentially replicate what exists for condominiums and be applicable to both condominiums and rental apartments, with changes being made only where necessary.

In Ontario, most multi-residential buildings are heated by gas or oil. In-suite electricity consumption is primarily related to refrigerators, air conditioners, lights, computers and televisions, all of which can be controlled by the resident. In our experience, energy savings are realized by decisions taken by the residents such as turning off lights and air conditioning units when leaving the suite. Simple changes have led to immediate and significant drops in consumption in buildings we sub-meter. It's also the reason that suite metering has been such a success in Europe and the US.

While electrically heated buildings are a relatively small number across Ontario, the building envelope does have an impact on the cost of electricity consumption. We are recommending to the Ministry of Housing that the regulatory focus be on providing accurate information to current and prospective tenants as to the expected average heating costs of the suite instead of the complicated regulatory mandates and calculations that are being contemplated. Residents can then make an informed decision on whether the proposed rent reduction is sufficient to offset the cost of heating the suite.

Finally, we think that Bill 235 represents a major opportunity for both conservation and fairness within the apartment and condominium market. Electricity consumption will drop and those residents who choose to use more electricity will pay for that choice rather than having others subsidize them through their rent. However, we are concerned that without changes to the

legislation and regulations, the opportunity will not be fully realized.

Thank you for the opportunity to speak.

**The Vice-Chair (Ms. Helena Jaczek):** That's excellent. Thank you. We have six minutes left, starting with the government side. Mr. Levac.

**Mr. Dave Levac:** John and Rob, thank you for presenting. Does the working group have any other participants?

**Mr. John Macdonald:** It does. There are six members in total. Do you want me to read those in—

**Mr. Dave Levac:** If you have them for the record, it wouldn't be a bad thing to have so that we can make contact if we need to follow up.

In terms of the legislation itself specifically, I know that you've talked about some of the things that need clarity. You are aware that some of the issues that you are talking about are contemplated through regulation.

**Mr. John Macdonald:** Correct.

**Mr. Dave Levac:** And that there will be some consultation as well during the regulation drafting.

**Mr. John Macdonald:** We look forward to it.

**Mr. Dave Levac:** And we would more than welcome your participation on that.

Now the specific question: When you talk about the way in which tenants behave, in essence, inside of their apartment buildings, it's your experience that when they are given the opportunity to pay for their electricity or their power directly, consumption goes down.

**Mr. Rob Fennell:** Right. It goes down by 15% to 25%, in our experience, and it goes down almost immediately. It's our belief that it's the behaviour that changes, driven by the requirement to pay their own electricity costs.

**Mr. Dave Levac:** In your experience, has there been anyone to teach them, school them, advise them, work with them to ensure that they understand that they do have domain?

**Mr. John Macdonald:** We provide a residents' seminar before the implementation of sub-metering, where we explain how the sub-metering occurs and give them some energy tips in terms of how to reduce consumption. I would submit that information is the key to getting people to participate and understand how to save money.

**Mr. Dave Levac:** My colleague Peter asked a question that we are involved in, and that is language. Would your seminars also be offered in different languages as well?

**Mr. John Macdonald:** Currently, our seminars are conducted in English only, but where there is a significant population of non-English-speakers, we're certainly interested in providing information in other languages.

**Mr. Dave Levac:** And the government would work with you.

**Mr. Rob Fennell:** We have one example where our meeting was conducted in Cantonese, based upon the tenants.

**Mr. Dave Levac:** Thank you.

**The Vice-Chair (Ms. Helena Jaczek):** The official opposition? Mr. Yakabuski.

**Mr. John Yakabuski:** Thank you very much, John and Rob, for coming to see us today. Sub-metering, suite metering: Those two terms get kind of bandied about. They don't mean exactly the same thing but they can have a similar effect in the fact that it does reduce the amount of electricity being used.

It's interesting. I've been a proponent of this since I got here in 2003, and we've had different committees on different bills talk about this issue. It's amazing to me that it has taken this government until 2010 to actually get around to doing something. I know that George Smitherman personally opposed it. That may have something to do with the fact that it took so long for this to get here. One of the primary, easiest ways of reducing energy consumption is to ensure that everybody is directly accountable for the electricity they use. So I certainly support that component of the act.

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We had the Electricity Distributors Association in earlier. They have a concern with the option to sub-meter new condominiums. They want all units to be directly metered so that the electricity provider has a direct contractual relationship with them. What is your view on that? I know you touched it in your submission, but if we could have a more direct answer on that—

**Mr. John Macdonald:** We believe developers and condominium residents should have a choice of who meters them. We don't think it should be monopolized by the incumbent utilities.

**Mr. Rob Fennell:** Competition and offering different programs for different needs has certainly allowed for more penetration than the local distribution companies have had.

I think that LDCs are suggesting that the programs they would offer would not be available to tenants of sub-meterers. My solution to that is simply to find a way to make them available. There's no reason to treat them any differently than ones they directly meter in order to drive increased conservation in the province.

**Mr. John Yakabuski:** Thank you very much. I appreciate that.

**The Vice-Chair (Ms. Helena Jaczek):** Mr. Tabuns?

**Mr. Peter Tabuns:** Thank you, gentlemen, for making the presentation today. I have lived in a high-rise building that was situated on a north-south axis, so the building was an extremely effective collector of solar radiation. I have to tell you: In mid-July, the air conditioner in my apartment was going full-tilt just to keep the temperature in the 30-degree range.

My experience is, in fact, the building envelope has a huge impact on the air conditioning demand. What we have before us is a situation where tenants—elderly people—will be in their units mid-afternoon, mid-July, and worried sick about how much it's going to cost them to keep their unit at a temperature they can live with. Why have you not addressed that question of envelope

and its impact on those consumers when you talk about air conditioning?

**Mr. John Macdonald:** We've spoken about electrically heated buildings.

**Mr. Peter Tabuns:** For electrically cooled units in apartment buildings, the state of the envelope has a big impact, and you've said that it doesn't.

**Mr. John Macdonald:** We've done studies that looked at similar suites vertically, at the same level. We've found that within a building, the same suite on different floors can have as much as a 6-to-1 difference in terms of energy consumption. I would submit that things like keeping the windows closed, having an efficient—in most cases, the cooling is supplied by the tenant. The tenant supplies their own air conditioning device. There are very substantial differences in the efficiencies of those, as much as 3-to-1 between an older, non-Energy-Star air conditioner and one that's relatively new. In addition, people can set them to be off during the day, when they may not be there. So there are ways for them to control the energy consumption within their suite.

**Mr. Rob Fennell:** I think we've also seen that the temperature setting in the suite is lower when the energy consumption is covered in rent. Certainly, from my daughter's place in London, we've complemented hers by putting fans in, so the temperature of the air coming into the unit is a little less, but they just use fans, which is a much lower cost of electricity. She is paying for her electricity.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you very much. That concludes your deputation.

#### FEDERATION OF RENTAL-HOUSING PROVIDERS OF ONTARIO

**The Vice-Chair (Ms. Helena Jaczek):** If we could have the next deputants, the Federation of Rental-housing Providers of Ontario: Vincent Brescia, president and CEO, and Mike Chopowick, manager of public affairs.

As you know, you have 10 minutes to make your presentation. I'll warn you at the nine-minute mark. Then we'll have some questions. Please proceed.

**Mr. Vincent Brescia:** Thank you, Chair, and thank you to all the committee members for having us. Welcome back to the provincial Legislature, Mr. Chiarelli. It's good to have you back.

Rather than written notes, we have a short slide presentation, because what we've found is, to make decisions in this area, you need factual information on which to base them, and there's a lot of mythology that gets floated around, we find, in this area of discussion.

The first slide is a summary of some of the background information I'm going to provide you, so I'm going to skip over that slide. It's just there to give you a quick summary of some of the problems.

I'd just say as an overview that we're very glad to see the government's verbal support of the idea of individual billing and suite metering. However, from our organ-

ization's perspective, this legislation and direction is a lost opportunity for significant energy conservation for Ontario. So we're disappointed from that perspective.

The second slide summarizes some of the comments of key officials in the government, Minister Duguid and Mr. Smitherman, that conservation is the greenest thing the government can do. We wholeheartedly agree with that. "Negawatts" is what the greenies call them. It's more important to conserve than it is to have new wind turbines or have the coal plants firing. Suite metering really helps the whole issue of conservation. It's the lowest-hanging fruit in the province of Ontario at the moment, actually.

On the third slide you'll see absolute proof that individual billing leads to significant energy conservation. This is from a Statistics Canada study. It shows the difference in consumption between households that are responsible for payment of their bills and those that are not. What you'll see in this is that it's 58% less consumption for those who are paying their own bills versus those who are not.

You're going to hear some mythology from other presenters. Some will say that once the tenants have to pay for hydro, there's no incentive for the landlord to invest in the infrastructure. This data proves that this is a myth and a false claim. If it were true, what you would see is that when tenants are responsible for energy consumption, there wouldn't be savings as some others are going to tell you. In fact, the savings are massive.

If we look at data we have from recent conversions of gas-heated buildings to electricity, so that heat's not even being included, we're seeing 39% less electricity consumption when individual billing takes place. Again, this is clear proof that there are significant savings when you move to individual billing—all of this, by the way, at no cost to the government.

On slide 5, you'll see some data that shows you the differences in consumption in identical suites. This is from a series of buildings where the suites are absolutely identical in every way, and you see the range of consumption. Consumption within a suite is determined almost entirely by the tenant's behaviour, not by these other things which are red herrings and which people tend to raise—infrastructure and things like that.

Another important element that you need to keep in mind: Slide 6 shows you that bulk billing results in the poor subsidizing the rich. It's well known around the world and in all kinds of data that as income rises, energy consumption rises. So in a situation where you have bulk billing like we have in our sector, you end up instituting a system where low-income people subsidize the electricity consumption of higher-income people. If we were to move all of it at once, all this bulk billing we have in Ontario, to individual billing, the largest beneficiaries would be low-income households in the province of Ontario.

On slide 7, there's another important point to keep in mind, and not a lot of people seem to have been aware of it: Individual billing has been going on for decades in

Ontario. It's not something new. There's sort of a sudden reaction recently—we think a bit of an overreaction—with regulation to the notion that tenants might face individual billing. A quarter of the province has been individually billed forever, and there haven't been any issues. Legislation governing our industry has been amended multiple times in past decades. It's never raised as an issue. You don't get calls in your constituency offices about this issue because it hasn't been an issue.

Slide 8 points out the differences between Ontario and other jurisdictions. We are behind the rest of the world when it comes to individual billing. The US has 80% of their stock individually billed; we have 26%. We're an anomaly. This is an unfortunate situation for Ontario.

I was at a conference in the States where Al Gore was presenting. He was encouraging the US industry to get on with converting the rest of the suites because he thought it was so important for the environment and conservation.

With respect to specific aspects of the bill, I just want to make a few comments, and it relates to a lot of the background we've just given you. The new bill is going to require consent for sitting tenants. We think this is one of the biggest mistakes and why I referred to the bill as a large opportunity. Previously, we had contemplated a system that would have allowed an owner to unilaterally convert under some rules that we would have hoped would have been reasonable. By requiring consent, it's going to take decades before we're able to ever convert the existing stock. It's incredibly inefficient and it's expensive. You have to invest all this infrastructure and then wait decades for a turnover to happen before you can recoup on the infrastructure. It's an unfortunate process to set up to make this happen. It means high-income users are never going to consent to conversion, and they are the ones we need to expose to energy costs. They're the ones who create the problem, and we're never going to get at them. So that's unfortunate.

#### 1550

The second comment is with respect to energy efficiency standards. These don't exist anywhere else in the world in this context, so Ontario is unique in its desire to put a whole bunch of new regulations around this process of a tenant coming in to rent an apartment and a whole bunch of new regulations about the suite and disclosure to the tenants. If you really want to put something in here, perhaps you should limit it to fridges or something like that. But really, you shouldn't have anything, because it hasn't been required in the past and we don't think it's required now.

With respect to disclosure to sitting tenants, we support disclosure to sitting tenants. It's something quite different if you're going to convert a sitting tenant from bulk billing to individual billing versus if you have a new tenant coming in. Having a new tenant coming in has been going on forever. If you're going to convert, we support a system of rigorous disclosure, where they're given a lot of details about what's going to happen in the process. We don't have an issue with that. We left you some suggestions here.

However, we're moving to this new context, and because tenant consent is now going to be required under your proposed legislation, your proposed regulatory scheme hasn't kept pace. We don't think there's any requirement to disclose the method of calculating the rent reduction to a sitting tenant if you have to get their consent before you can convert them. The regulatory thinking hasn't caught up with this new change that you've made to require the consent of the tenant. You don't need a whole bunch of rules about how you calculate the rent reduction; if the tenant has this consent mechanism, you should, as a landlord, be able to just put a number in front of them, and then they can either accept or reject whether they want to convert. It's not going to happen much anyway under your proposed scheme because of this requirement for consent.

There's another issue that we're quite concerned about: that tenants should be able to revise the agreement shortly thereafter. It's bad enough that you have to invest in all this infrastructure and wait decades before you might recoup on the infrastructure, but you're going to propose a scheme where the tenant can take you to the tribunal and possibly revise the rent reduction they consented to. Again, we don't think this is in keeping with the direction you've taken to require consent. This doesn't make sense. We're disclosing to the tenant up front what the rent reduction is going to be, and we don't know why they're going back to the tribunal to dispute the rent reduction. You're giving this tenant a powerful tool, which we don't think you should—it's a mistake—of consent.

With respect to disclosure to prospective tenants, this is where we think you don't really need to do anything. You're overreacting. We've been doing this for decades in the province without issue, you haven't been hearing about it, and you're setting up a whole bunch of new regulations. The thing you should think about, if you want to promote this, is that when you put too many regulations in place, you're actually penalizing people who are going to individually bill. The message you're sending to our industry is: "If you individually bill, if you move from bulk billing to individual billing, we're going to penalize you with a whole bunch of new regulations, new risks and possible applications to the tribunal." What you're saying to people is: "Don't do it." So we think you're going too far in that respect.

There also is contemplation of disclosing the previous tenant's consumption in the bill. I showed you data earlier, and one of the reasons I showed you was the huge, massive variance in consumption in identical suites. If you require us to disclose the previous tenant's consumption, you are giving misleading information to the incoming tenant. We think you're making a mistake by going in this direction and we hope you will look to fix that up as you consider the legislation. Also, there are privacy concerns from our perspective, disclosing the previous tenant's consumption to the incoming tenants. That's something you may want to think about.

**The Vice-Chair (Ms. Helena Jaczek):** You have just one minute left.

**Mr. Vincent Brescia:** Okay. Another thing is, we'd like you to consider grandfathering the existing buildings. As I said, we haven't seen issues, and it would be great if you'd consider grandfathering those that have been built for decades now.

Thank you for your kind attention today.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you so much. Turning to the official opposition, Mr. Yakabuski.

**Mr. John Yakabuski:** It's almost comical, sometimes, but I suppose they assume in this government that if someone buys a successful business, regardless of how they conduct business, they'll be successful because it was successful before. That's using the same logic as needing to know what the previous tenant's consumption was. It has everything to do with the behaviour of one tenant versus the behaviour of another. The unit itself doesn't use the power; it's the choices of the person. Obviously, there are some things that cannot be affected.

I live in an apartment building now that is bulk-metered. I used to have one—I don't live there, but I had it—that I was metered on individually. You pay attention to that. I don't use a lot of power because I'm not here that much, and I don't cook when I'm down here. So I'm not going to affect my power very much, but people who have a family in an apartment—their choices will affect the power in the building.

I appreciate all of the things that you brought forward here today, Vince and Mike, to give the government some food for thought with respect to how they might amend this and make it better. There's no question whatsoever: It looks like they kind of want to do it, but they really don't want to make it happen. If you're going to have individuals responsible for their consumption of electricity, then you have to have the enabling legislation, and it looks like we're falling short of the mark here. Would you not agree?

**Mr. Vincent Brescia:** I agree with you. I think we can do better. The evidence is irrefutable. This is an opportunity for the province to save the equivalent of a small coal plant, if you will, if we do this across the entire sector. We should be more proactive, I think, in how we approach it, and not so hesitant.

**Mr. John Yakabuski:** They'd love to take credit for it; I know that.

**Mr. Vincent Brescia:** We certainly would welcome an approach that facilitated it more than we're seeing today. We're encouraged by the direction to try and make it happen. We do think it can be better in the legislation.

**Mr. John Yakabuski:** Thank you very much.

**The Vice-Chair (Ms. Helena Jaczek):** Mr. Tabuns?

**Mr. Peter Tabuns:** Thank you for the presentation. I know you won't be surprised that I disagree very fundamentally with what you have to say today. My experience as a city councillor was in dealing with commercial buildings where the tenants paid the electricity and other energy bills, and the landlords didn't. But the landlords had no incentive to invest in upgrading the energy efficiency of the buildings because in the end, they didn't realize the savings. The tenants weren't interested in in-

vesting because they didn't own the buildings. In the end, they would be gone.

Having been a property manager, I know that people who have very low incomes will be forced to cut corners so that they can continue to pay their rent, pay for groceries. So what we have is a situation where tenants will have to cut corners on the heating in their units. In the summer, they'll have to cut corners on cooling those units.

I think that that's the wrong direction. I think, in fact, the question really is making sure that buildings are highly efficient, with very sophisticated building envelopes, protection from sun so you don't get overheating in units. In the end, if we're going to invest in buildings—and putting in sub-metering is an investment—that's where we have to go.

I don't have a question for you, but I have to say that I think the direction you're going in is going to yield small savings compared to the savings that would be available through a program of capital investment on the part of landlords.

**The Vice-Chair (Ms. Helena Jaczek):** Mr. Levac?

**Mr. Dave Levac:** I don't know if you want to respond or not.

**Mr. Vincent Brescia:** I'd love a chance to respond. On page 3 of the slides we gave you, the data we've given you shows you that it is irrefutable that there are enormous savings, and not that it's a point of debate or that you can disagree with us. You'd have to say that Statistics Canada was wrong in its research that shows that there is massively less consumption in buildings where tenants pay for the electricity. If it really was true that there was going to be more consumption because the landlords don't have incentive to invest, then this data would be wrong and it would be the inverse of what it shows. Do you have any actual data that prove your point?

**Mr. Peter Tabuns:** I'll tell you, as a property manager dealing with people who said, "I can't afford to pay my rent to you because I need to keep the heat on," I have no doubt that there are people who cut the heat in their units quite dramatically to make sure they can pay their bills. I don't think there's any doubt about that. The question is, at what human cost? And what is the most sensible way to make the investment? That's the reality.

The other data I can give you: As I said, as a city councillor dealing with situations where the owner of the capital was not the person who paid for the energy—and that's a simple reality—it is very difficult for a building owner to have an interest in going back and fixing the windows, insulating the walls, making sure that they have the highest efficiency in terms of the appliances. That's a reality.

People who are poor and desperate and need to eat, who have a sub-meter, I have no doubt, will cut their energy use. They will make sure they can eat and they will make sure they pay their rent so they don't get evicted. But it is a very brutal way to get to a green world.

There's a very different approach that one can have. What you've brought forward is one that's going to mean more people evicted, more kids cold and more kids hungry. I've seen it; that's the reality.

**The Vice-Chair (Ms. Helena Jaczek):** Mr. Levac?

1600

**Mr. Dave Levac:** And on that note, I'll keep mine short, because I know that we've gone a little over time. Thanks for the presentation. I was just curious about the comment that you made about the tenant-metered—I, too, was aware that we were into that situation. It's not all Toronto-centric; there's a very vast amount of tenant-paid bills outside of Toronto, and I want to thank you for bringing that to our attention.

I also want to thank you for the deputation and indication of your concerns. The staff are here to take care of this, and if there is any other deputation that you have in writing that would be presented, because I think you said that this was a slide deck, versus specifics to the bill—if you've got those, we'd gladly receive them.

**Mr. Vincent Brescia:** We'd be happy to send that in to you.

**Mr. Dave Levac:** Please. We try not, on this side, to make points to make government look bad. It's just that we're trying to make the bill better.

**Mr. Vincent Brescia:** Thank you.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you very much.

## DIRECT ENERGY

**The Vice-Chair (Ms. Helena Jaczek):** Next we have Direct Energy: Adèle Malo, executive vice-president and general counsel. Please make yourself comfortable. As you know, you have 10 minutes. At the nine-minute mark, if you're there, I'll let you know, and then we'll have questions.

**Ms. Adèle Malo:** Thank you very much. I'd first like to apologize for my voice; I've had this for about 10 days now and I'll attempt to make sure that I keep it all to myself.

I would like to thank you for this opportunity and I'd like to thank you for your attention because, as Mr. Levac has said, we're here to listen to each other to make the bill better, or as good as it can be under the circumstances.

So what I'd like to do in these few minutes that I have is tell you a little bit about Direct Energy and tell you a little bit about how we fit into the Ontario framework and what our thoughts are on the ECPA and its implications for consumers and for business folks in the province.

Direct Energy is a wholly owned subsidiary of an extremely large UK-based company called Centrica, which you may have heard of. They came to Ontario in August 2000 and had all of North America to choose from, but chose Ontario for where they were going to build their business, keep their head office and have a fairly significant number of employees.

We've invested \$5 billion over the years in North America, and in Ontario we service 40% of all households. We have approximately 550,000 gas customers, 150,000 electricity customers, and a very large number of service customers as well.

The service business, when combined with our energy business, helps people use energy wisely. We have high-efficient HVAC systems—heating, ventilation and air conditioning. We do home energy audits, insulation, and all the sorts of things that the government has indicated it wants people to do in terms of conserving.

We also believe that, in addition to it being the right thing to do, being a good corporate citizen is important, and we spend a fair amount of time, effort and money giving back to the community, which I'm sure is important to each and every one of you in your own constituencies. Whether it's Raising the Roof, Direct in the Community, or the cancer society, we give people time off during their workday to contribute to the charity of their choice because these things matter to us, and it assists in employee engagement matters as well.

I don't know whether you have the material in front of you, but if you do, you'll see on slide 3 that there's a map of North America. You can see there that we are involved in over 30 jurisdictions in North America, whether it's in our commodity business with the gas and electricity contracts or in our services business. Gas and electricity contracts can be sold to small residential consumers or large industrials, so we have a very large suite of customers. They each have individual needs that we try very hard to meet, because there's no point in having an unsustainable business.

We recognize, and you will hear it consistently, that retailers are in support of consumer protection. It would be unfortunate if this became a discussion about whether you were for consumer protection or against consumer protection, because that's not a very sensible conversation to have. If you want to be in business in the long haul, as we clearly are, hurting consumers is not a particularly effective way to make sure that you're in business the year after and the year after.

You can see that we're also in the power generation business. We have gas fields in Alberta. We have wind farms in Texas, and we have gas plants that create electricity in Texas as well.

Generally speaking, this is a very big footprint, but we chose Ontario. This is where our head office is. We employ 2,000 people in the province of Ontario. We have \$172 million in salaries, 500,000 square feet of space, and approximately 1,000 vehicles. These would be automotive sector jobs that we're helping to support by our services industry. Those trucks that you see with the little orange logos that say "Direct Energy," that once you start noticing them are everywhere: That would be us.

So indeed, on slide 4, you'll see we do support consumer protection. We recognize there were problems. It would be naive to say that there were not. When we recognized that there were these problems, that was an

unintended consequence of our business. So we undertook voluntarily, well over a year ago, to introduce many measures that Gord Potter has explained and discussed with you. These were a good-faith attempt to say, "This is not a business that we want to destroy; this is a business that we want to thrive."

So whether it was third party verification, where we have a third party phone a customer while the salesperson is on the doorstep and say, "Do you understand what you've bought? Do you know who these people are? Do you know who they are not?"—there's a very good opportunity, right then and there, to know if there's a salesperson problem, and if it's clear that the person doesn't understand, there is no sale.

We have clear brochures that are not DE-specific, they're energy-retailer-specific in the province of Ontario, and they point people to the OEB website if they've got questions that they feel they want the OEB to answer.

We have plain-language contracts. We really do go out of our way not to mislead people, because it doesn't serve anyone's interests and it increases overhead and costs while you sort those things out. So we do attempt and we will continue to attempt to do all of those things.

We do criminal background checks on every agent who might want to work for us. If there's been any kind of a misdemeanour or problem at all, they are simply not wanted on the voyage.

We clearly support the government in its efforts to make sure that consumers are protected, but we think there is a very good balance that can be reached. We've always wanted to co-operate with the government in these efforts, but we think you can have a friendly business environment where business can thrive and consumers are taken care of. That's our goal, to be honest.

Gord went through the issues that the ECPA presents for us that we think could be revised to get everybody what they want and make sure consumers are protected. While there are several, the six main ones would be, first of all, the potential retroactive application of this act. For contracts that are already in place, we've gone out and bought power or gas five years ahead to back those contracts up. To change that partway through a contract would leave us in a very difficult financial position. So we would want it to be very clear where it's prospective and where it's retrospective, and that we give very careful thought to each one of those things, as opposed to interrupting a contract. As long as everybody has lived up to both sides and the rights and obligations have been maintained, we think the integrity of that contract should be maintained.

That feeds a little bit into the second issue that we're concerned about, which is the cancellation provision which would allow people to cancel at any time, for any reason, with some nominal capped fee that the OEB or someone would place on it. That goes to the fact that we will have hedged those contracts out, and that could be extremely damaging to our business if the customer base was told that for \$10 they could cancel their contracts for any reason whatever. As it is, we have policies where

people who are seniors, who have English as a second language or any difficulties at all in the contracting process—we let those people out of their contracts now. But that's different than saying the entire customer base, all million customers, could leave immediately.

The third area of concern for us is the automatic renewal on gas contracts. We think this is a potential area where there's good conversation we could have about what makes sense, as opposed to simply no automatic renewals, which is quite common in a lot of industries: telecom, credit card. But if we were to put customers on to a month-to-month where they could cancel at no cost at that point with a renewal price that's at the same price or lower than the contract price they were in, we believe that would protect consumers' interests effectively.

The fourth area of concern would be the overriding of the E-Commerce Act, where verbal or oral consent over the telephone isn't acceptable. I think this is an area where it's actually a very effective tool right now. People who do not want to be called can get on the federally regulated do-not-call list, so they're not getting unwanted phone calls. They are fully taped from start to finish, so if there's a problem, there's a history. The cooling-off period for customers, the 10-day period, is not touched at all. They've got 10 days: If they've entered a contract over the telephone they just decide they don't want, they don't need to. The telephone calls are all scripted, they're regulated, they're as clear as the regulator wants them to be, and we would be fully supportive of obviously continuing in that vein.

1610

**The Vice-Chair (Ms. Helena Jaczek):** One minute left.

**Ms. Adèle Malo:** Thank you. Third party verification: You've heard about that—on the doorstep. You wouldn't want a salesperson going out for 10 days, 20 days or 30 days; if they weren't clear about what they were selling, the third party verification at that moment will tell you if you've got an issue, and you can deal with it right away. We have found, in all of the pilots that we do, that the complaint numbers dropped dramatically when you've got a third party verification at the doorstep. It's got to be timely.

Finally, the director and officer liability is of course a concern, because most thresholds indicate that you should take all reasonable measures to make sure that certain things happen. We would want to do that—we do do that—but to be held to a threshold that says you will ensure compliance with the act we feel is perhaps a little excessive in terms of the penalties that might be assessed against officers and directors of a company that's trying to do, and does do, the right thing.

In my 30 remaining seconds, I just wanted to say what you have heard, which is that we are a viable industry that employs a lot of people, tries to do the right thing, wants to do the right thing. We think the act can do the right thing. We think that it is perhaps a bit overzealous, and would in many respects signal the demise of the retailer industry. I'm not sure, but I believe that that is an unintended consequence.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you very much. Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you for taking the time to come and make the presentation. Why do you think this act would signal the demise of your industry?

**Ms. Adèle Malo:** We have several sales channels that we can use, and to be honest, with the costs that this might build into either the door-to-door—telesales would be no more, essentially, because oral consents are not allowed. We think that, really, the channel that would be left to us would be the Web channel. We do have Web channel retailers out there, but they have a very, very tiny customer base.

The energy industry in Ontario, as you can appreciate more than many, I'm sure, is a very complicated one, and when someone's on your doorstep trying to explain what this complicated universe is all about, it's a much more effective way to convey what your product offering is. We think that it would just build an enormous amount of cost into a system where the margins are pretty skinny and would make it almost impossible to do business in Ontario.

**Mr. Peter Tabuns:** Thank you.

**The Vice-Chair (Ms. Helena Jaczek):** To the government side. Mr. Levac.

**Mr. Dave Levac:** Thanks very much for the presentation, Adèle. Two quick questions I do have for you: I think I heard that you are supportive of some of the process that we've gone through in terms of accepting a bill and that you'd like to work with us to find a good consumer protection component to that, but I didn't actually hear that. What I thought I started to read in here was that, "We do it ourselves, so don't do a bill." I want to rule that out.

**Ms. Adèle Malo:** To be honest, we could, but if a bill is the way the government wants to go—

**Mr. Dave Levac:** Yes, but there are an awful lot of companies in all different sectors—

**Ms. Adèle Malo:** No, I agree.

**Mr. Dave Levac:**—that say, "We're self-policing. We can do it," and we end up doing legislation anyway.

**Ms. Adèle Malo:** This bill came out, though, without any—to the best of my knowledge, there was very minimal, if any, consultation. So what we're saying now is, we've got the framework that you've put forward and we'd like to work with you.

**Mr. Dave Levac:** So you're into that?

**Ms. Adèle Malo:** Sure.

**Mr. Dave Levac:** And the comment that I made earlier is that there will be good discussion on the regulatory stream as well.

**Ms. Adèle Malo:** Right, which is very good.

**Mr. Dave Levac:** Help me very quickly with the officer/director liability, because, quite frankly, did not the industry bring that onto itself when it basically put its hands up and said, "Don't come to us. They're actually not contracted to us. They're independent people who are selling at the door, so don't talk to us"?

**Ms. Adèle Malo:** That may be what you heard from some, but even though they're third parties, if you've hired them to represent you, you've got a responsibility to make sure that you have processes in place—audits, monitoring, censures, training—to make sure that these things don't happen. But as people who deal with the public every day, which is what you do, I'm sure sometimes things don't always go as planned. But if you've really worked hard—and you must be held to that threshold, you must have the processes, the audits, the monitoring, the penalties, the training. If you've done all those things and there's a problem, it seems excessive to go to the officers and directors and say, "I'm going to put a lien on your house," which is essentially—we think a threshold is a very good thing. It's just a very high threshold when compared to most of the Ontario Business Corporations Act sorts of thresholds.

**Mr. Dave Levac:** I'll leave it at that. I've got another one, but I won't—

**The Vice-Chair (Ms. Helena Jaczek):** Thank you, Mr. Yakabuski.

**Mr. John Yakabuski:** Thank you, Adèle, for coming to visit us this afternoon.

I think one thing that we all agreed on prior to this is that while we accept the industry was moving, the consumer demanded something on the part of the government that was more definitive. This is certainly something that is moving in that direction. I'll separate the bill into a few parts, because part of this bill has absolutely nothing to do with energy retailers visiting people at the door.

Based on the submissions earlier today from other energy retailers, and there could be other ones coming, you all share that consumer protection is something that you very much support. I guess my question would be, if the amendments that you're proposing were to be enacted in an amended version of the bill, the concern is, would we be watering down consumer protection? Because consumer protection is important. Could we offer the same amount of consumer protection and still allow the whole issue surrounding the ability to actually function to be somewhat less cumbersome or even, in your own words, almost sounding the death knell for an industry? Would these amendments still allow us to have that same amount of consumer protection that the bill is intended to bring?

**Ms. Adèle Malo:** We believe that, with the amendments, you'd get what the government desires and what everybody desires, which is good consumer protection, in an extremely robust way. It would be sort of an 11 out of 10 that we believe you could get out of this.

It's also very important that if there are problems, we have a strong system, a strong regulator, a strong backbone that says, "That's just not acceptable," so that all retailers must do this.

**Mr. John Yakabuski:** Have you got any data since you've gone to this third party verification at the door? I know you said your problems have been vastly reduced.

Have you got any data that can say, "It was reduced from this to this"?

**Ms. Adèle Malo:** We do, in fact. We've run quite a few studies on our pilots. In Ontario alone, in January 2009—we started our third party verification in December, and in January we had what you would call 244 complaints. Now, that's on a base of about 750,000 customers. In December 2009, that was 89.

**Mr. John Yakabuski:** Eighty-nine?

**Ms. Adèle Malo:** Eighty-nine. We've got great graphs—if you'd like to see them, we'd be happy to show them to you—where literally it just plummets. It's an extremely effective way to make sure the customers understand that the agent has behaved and you've got a sale that they want.

**Mr. John Yakabuski:** But we also have to have something that's standard across the industry in the way that we—

**Ms. Adèle Malo:** That would be effective, yes.

**Mr. John Yakabuski:** Thank you very much. I appreciate that.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you very much.

#### LOW-INCOME ENERGY NETWORK

**The Vice-Chair (Ms. Helena Jaczek):** Now we have the Low-Income Energy Network: Zee Bhanji, coordinator. She's accompanied by Mary Todorow, steering committee member, and Jennifer Lopinski. Just make yourselves comfortable. As you know, you have 10 minutes. At around nine minutes I'll give you a warning, and that will leave us time for questions from all three parties. So, if you'd like to proceed.

**Ms. Zee Bhanji:** Good afternoon to the Chair and members of the committee. My name is Zee Bhanji. I am coordinator of the Low-Income Energy Network. LIEN is a group of environmental, anti-poverty and affordable housing advocates who joined together in early 2004 to raise awareness of the impact of rising energy prices on low-income households and to suggest solutions to aid these vulnerable consumers. Our approach places the greatest emphasis on reducing energy consumption and costs for those who are least able to afford higher energy prices and who face barriers to full participation in energy conservation initiatives.

I am joined today by my colleagues Mary Todorow, a research and policy analyst with the Advocacy Centre for Tenants Ontario, and Jennifer Lopinski, program administrator of the emergency home energy and resource program at A Place Called Home. Both ACTO and A Place Called Home are LIEN steering committee members.

**1620**

To address energy poverty, LIEN has proposed a low-income energy conservation and assistance strategy, which is outlined in the pyramid in one of your handouts in the back. That strategy consists of targeted low-income energy conservation and efficiency programs at no cost

to recipients; extensive consumer education about energy conservation, and specific low-income consumer protection measures; a permanent low-income rate assistance program; and adequate emergency energy assistance to help households in short-term crisis.

As we highlight our concerns today, it is important to keep in mind that there is currently no province-wide multi-fuel low-income energy program in place today. LIEN is eagerly awaiting the provincial government's plan to develop a province-wide integrated program for low-income energy consumers. We're also hoping that the principles agreed to and the Ontario Energy Board's consultation on the low-income energy assistance program will form the basis of the government's program.

If the suite-metering initiative in the multi-residential rental sector goes forward, the key to maximizing energy use reductions and protecting housing affordability and housing security for tenants will be a permanent rate assistance program and funding incentives for energy retrofits in the sector. Without low-income energy conservation programs for multi-family buildings, tenants will be facing even costlier above-guideline rent increases for the capital expenditures spent on the retrofits. My colleague Mary Todorow will talk more about this later.

Bill 235 contains provisions that can impact, both positively and negatively, on low-income energy consumers, and that could potentially work at cross-purposes with the government's efforts to reduce energy demand and greenhouse gas emissions. LIEN wishes to highlight the following specific concerns with Bill 235. I'll pass it on to Jennifer.

**Ms. Jennifer Lopinski:** The first point I'd like to discuss is the termination of energy retail contracts with no penalty fee for low-income consumers. LIEN recommends that if a low-income consumer has signed a retail contract for gas or electricity without fully understanding the financial implications and pays more for the commodity than that charged by the gas or electricity distributor, the consumer should be able to cancel the contract without paying a penalty fee for early termination. In addition, LIEN recommends that there should be an exemption for low-income households from penalty fees for early termination of a gas or electricity retail contract.

The second point I'd like to discuss is a winter disconnection moratorium for low-income consumers. Unaffordable home energy bills leading to the disconnection of utility services pose serious public health and safety risks for low-income households. Disconnection of utility services is particularly devastating for infants, the elderly, and those who are ill or disabled. Under Bill 235, there are provisions for regulations that would prohibit electricity and gas service shut-offs to a consumer or a member of a class of consumers. LIEN recommends that priority be given to issuing a regulation that would ban the disconnection of electricity or gas service to low-income households and households where infants, persons over 65 years of age, or seriously

ill/medically fragile persons reside during the period of November 1 to May 1. This winter or heating season disconnection moratorium should also prohibit the use of a load limiter or other device that limits or interrupts electricity service in any way. In addition, LIEN recommends that the government consider a similar disconnection moratorium for the cooling season.

Thank you for the opportunity to share our concerns with the committee today. I will now hand over to my colleague Mary Todorow.

**Ms. Mary Todorow:** Hello.

Security deposit waiver for low-income consumers: LIEN supports the mandatory exemption for low-income households from consumer security deposit requirements which can adversely impact, or even exclude, these households from accessing and maintaining gas or electricity service. As part of LEAP, the OEB was proposing code amendments that would have prohibited electricity distributors from requesting a security deposit from certain eligible low-income customers and that would have allowed other eligible low-income customers to pay a security deposit in more affordable instalment payments over a period of at least 12 months.

Under Bill 235, there is regulation-making authority to set security deposit criteria for gas and electricity distributors for prescribed consumers or a member of a prescribed class of consumers. LIEN recommends that priority be given to issuing a regulation that provides for mandatory exemptions from gas and electricity security deposit requirements for low-income consumers. Currently, electricity distributors have the discretionary authority to waive security deposit requirements for a customer or future customer. To date, the OEB has not codified security deposit rules for gas distributors who also have the discretion to waive security deposit requirements.

Suite metering of electricity service in the multi-residential rental sector: The majority of low-income households in Ontario are tenants who reside in multi-residential buildings and currently pay for their utilities in their monthly rent. Bill 235 sets up the framework for the provincial government to expand its smart meter initiative to the multi-residential sector and for landlords to proceed with the installation of sub-meters or meters in their buildings in order to transfer the responsibility for paying for in-suite electricity use to tenants directly and separately from rent.

LIEN has continuously questioned whether smart meters and suite metering are the most effective, cost-efficient or fair way to reduce energy use in the multi-residential rental sector on an ongoing basis, particularly in view of the split incentive between landlords and tenants. "Split incentive" refers to the different interests of the owner/landlord and the resident. Simply put, the landlord's purpose is to make a profit and minimize costs, while the tenant seeks a safe, comfortable and affordable home.

We have raised concerns about the potential erosion of housing affordability for low-income tenants who will be

disproportionately affected by rising and volatile electricity costs and who have the least capacity to respond to time-of-use pricing by shifting their energy use. These households are the least likely to have washing machines, dryers or dishwashers in their homes, the appliances that consumers are expected to run in off-peak periods in order to respond to price signals.

It is impossible to assess whether the suite-metering provisions in Bill 235 for fair rent reductions, adequate tenant information packages, and landlords' obligations to meet certain energy conservation and efficiency standards will protect tenants, because those measures are to be set out in regulations which have yet to be drafted. We haven't seen them yet. In addition, under Bill 235, the onus remains on tenants to enforce landlords' compliance with the suite-metering requirements.

LIEN requests that the Ontario government thoroughly review whether suite metering can meet the energy conservation, peak demand reduction and GHG emission reduction goals expected from the multi-residential rental sector. At the same time, it should undertake neutral studies on how optimal energy use reductions in this sector can be best achieved without increasing financial burdens on tenants. Such actions are essential and prudent in order to avoid proceeding with what could prove to be an energy conservation strategy that does not achieve savings in the low-income sector due to the specific circumstances of these energy consumers—their demographics: who you're dealing with, and their ability to respond.

Those are my comments. We thank you for paying attention and considering what we've raised before you.

I do have to congratulate the government on moving forward and addressing issues that have occurred because of what was happening in suite metering in the multi-residential rental sector. There really was a vacuum in terms of rules and guidelines. We're happy to see that you're trying to deal with that.

On the energy retail side, our legal clinics—I'm a research and policy analyst with the Advocacy Centre for Tenants Ontario. Our legal clinics spend a lot of time trying to get people who are on OW and ODSP out of contracts where they just didn't understand what they were getting into.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you very much. We'll start with the government side. Mr. Levac.

**Mr. Dave Levac:** Ladies, thank you very much for your presentation. I appreciate the position that you've taken.

It sounded to me like the concern that you raise is that it could be positive or negative, depending on the direction we end up with, whether or not we put amendments in. Have you listed the amendments? I've seen your program. Have you a list of them?

**Ms. Mary Todorow:** A lot of it is dealing with the regulations, and—

**Mr. Dave Levac:** Yes, and there's going to be a consultation process for the regulatory stream for everybody to contribute to that, so that will get addressed.

What do you say to the providers that expressed a concern today and before today that some tenants have a propensity to say, "If you can't kick me out, then I don't have to pay. I don't pay, so you can't kick me out"—the carrot-and-stick kind of thing? They need to have some kind of leverage. If that leverage is taken away, the cancellation of the contracts and stuff like that—

**Ms. Mary Todorow:** I'm not sure I understand your question.

1630

**Mr. Dave Levac:** To cut off service. You were referencing—

**Ms. Mary Todorow:** Oh, disconnection. You mean the moratorium?

**Mr. Dave Levac:** Correct. Their concern, they laid it out, is that we take away—

**Ms. Mary Todorow:** Oh, you mean they have an unpaid bill?

**Mr. Dave Levac:** Yeah.

**Ms. Mary Todorow:** Do you know what? This is about a package. It's about a package. You can't look at this stuff piecemeal. The whole point is, what you want to do is make sure people are the greenest consumers or energy as possible. A late payment fee on someone who's already payment-troubled, who doesn't have money to pay the bill, doesn't accomplish them paying the bill. It's not going to work. Right?

**Mr. Dave Levac:** But I guess I have to be very succinct. That part is negotiable, and the wording that you used is basically saying that it's up to them whether or not they discuss this. You're saying that it should be—

**Ms. Mary Todorow:** The moratorium or the security deposit?

**Mr. Dave Levac:** I'm adding them both together. What the industry is saying is that you're removing the reason why somebody would say, "Then, okay; I will pay my bill," or, "I will behave myself," or, "I will"—

**Ms. Mary Todorow:** About the moratorium?

**Mr. Dave Levac:** Yeah.

**Ms. Mary Todorow:** The moratorium is about low-income consumers; it's not everybody. The thing is, the government has said, "We know there should be an integrated program in place." We actually want to prevent disconnections from happening. When someone has already gotten to the disconnection procedure, we've failed. We have failed that person.

**Mr. Dave Levac:** I understand what you're saying, and the companies are saying somewhat of the same thing because they're saying—

**Ms. Mary Todorow:** People maybe are thinking back to what happened when there was the moratorium when they went back to—basically there was a failure when they opened up the market. November 11, 2002, I think it was, when they put a halt on it. They capped the price of electricity and said, "Rebates are going out. We're not going to cancel people's electricity service if they haven't paid by March 31." There were problems there because the LDCs were on the hook for buying electricity. I know this happened in a lot of university

towns as students decided not to pay the bill because it was a free ride.

We're not talking about that; we're talking about a whole package of protections for people who are least able to afford their energy and shelter costs and making sure that we collectively are going to make sure that they can participate in the culture of conservation and afford their electricity.

There were comments earlier today that we can't have low-income rate assistance programs because it's going to cost ratepayers. We were involved in a four-day hearing at the OEB about this integrated program. These types of rate assistance programs are operating in the States, and guess what? They save money. They save costs down there by implementing it.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you. Now to Mr. Yakabuski.

**Mr. John Yakabuski:** Thank you very much for joining us today. I want to talk about the sub-metering/suite-metering issue. My friend Peter has said that there is no incentive for a landlord to improve the accommodations if the unit is being individually metered for electricity. If there's no incentive to improve the accommodations in the building or whatever on individual metering, there's no real incentive to improve it under bulk metering either except that the total electricity use of that building is most assuredly going to be higher because the landlord is not going to be paying for the electricity. That electricity is going to be passed on to the tenants, whether it's in one form or another, if it's equal billing or whatever. The only thing that really changes is the individual's bill for electricity, which hurts the low-income consumer and the low-electricity consumer because they're subsidizing the high-electricity consumer. There's no incentive for the landlord to improve the building or the accommodations under either scenario. They're only the agent to pay the bill, but all of those costs—they're not sucking it up; they're passing them on. I'm trying to understand how it would make a difference to the individuals if each suite was metered other than the fact that they'd be very, very aware of their own electricity use.

**Ms. Mary Todorow:** I think you can look at inventive ways of doing that. Sharing the energy savings would be one way to do it.

**Mr. John Yakabuski:** Could you expand on that?

**Ms. Mary Todorow:** Yes. When the landlords apply for above-guideline rent increases for the energy and water conservation retrofits, they are allowed to put it forward. In fact, they're obligated to do it. They can pass that on to the tenants. It's going to be capped at a 3% increase over three years; they're going to be filing for that. If there are public multi-residential conservation programs, they have to deduct those public funds from the AGRIs, so that means there will be less of a total amount of increase that's going to be passed on to the tenants.

So the tenants will be paying until the useful life of that retrofit expires. There's a schedule for that in the

Residential Tenancies Act. During that whole time period, the energy costs are going to go down. Guess who has the savings? The landlord. What if they shared those savings with the tenants? What would be wrong with that? Because the tenants are paying for those retrofits and they're not getting any of the savings.

**Mr. John Yakabuski:** Valid point.

**The Vice-Chair (Ms. Helena Jaczek):** Mr. Tabuns?

**Mr. Peter Tabuns:** Thank you for coming down and making a presentation today.

The whole question of energy marketing contracts and the difficulties that people have signing up when they're not fully aware of the impact: Could you speak a bit about some of the cases that people have had to deal with?

**Ms. Jennifer Lopinski:** Absolutely. I've had a large number of clients, actually in the last year, come into my office and express to me that they can't understand why their electricity bill—and sometimes their gas bill too—is so much higher. I review their bills and I see that they've signed up with a retailer. I question them, and they say, "Yes, somebody did come, and yes, I signed a contract." I say, "Did you know at what rate you signed up for and for what length of time?" They say, "No. They just told me that I would save money, and that I had to hurry up and sign a contract; otherwise, I would be facing much-increased costs." Honestly, this is a common, everyday experience in my office, because I'm a direct service provider.

It's very difficult to get out of these contracts. I'm successful at getting some clients who are on Ontario Works or ODSP off them; however, for the average low-income earner it's almost impossible. I have to involve my local MPP to help me try to get the consumer off the contract. It's not enough, I guess, to say that the increased costs are causing undue financial hardship. So it's a challenge.

I had one client where it took two months just to have them finally say, "Yes, we'll remove you from the contract without penalty." It still took time—at least another month—before that person was actually taken off the roster, let's say off Hydro One, for instance. They were finally released. All that time was lost and that consumer paid a higher amount because they didn't realize.

I really feel that the average consumer does not understand what they're signing with these contracts. They need to know at the time of signing, if they're going to sign, what the main distributor is offering and what the retailer is offering. It has to be very clear. But I personally believe that there are so many instances where someone comes to a senior citizen and tells them that they're going to save money, and it sounds like such a good deal. They believe it. They just believe it, and they don't question it. They sign up. Then when they realize, it's so difficult for them to get out of those contracts. I'll tell you, it does put people in very tough positions. I've heard you speaking earlier today. It does force people to make a decision as to whether they're going to get some

groceries in the house this week or pay their hydro bill, because if they don't, they're going to be facing a disconnection. It's concerning to me.

I really am impressed and relieved at the prospect of these new changes, this new Bill 235. I'm really excited, because I think it will amount to a lot fewer low-income earners and vulnerable consumers—there will be more opportunity for them to be better educated, and if they do make a mistake, there will perhaps be a better chance for them to get out of something that they didn't realize they were getting themselves into.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you for your deputation.

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MR. MAURICE McMILLAN

**The Vice-Chair (Ms. Helena Jaczek):** Next we have Maurice McMillan, who is an Orillia city councillor. Mr. McMillan, are you accompanied by somebody as well?

**Mr. Maurice McMillan:** My friend Don. He used to work in the power business—Don Fenwick.

**The Vice-Chair (Ms. Helena Jaczek):** Okay. We'll ask you to identify yourselves just for Hansard, right at the beginning of your presentation. As you know, you have 10 minutes, and I'll let you know at the nine-minute mark so we can have some time for questions. Please proceed.

**Mr. Maurice McMillan:** Thank you for this opportunity to present a position on electricity retailers and Bill 235.

My name is Maurice McMillan. I am a member of the Orillia city council and someone with significant relevant experience. I have worked in power generation for 36 years. I actively opposed the sale of Hydro One to the United States in 2002. I worked with the Ontario Electricity Coalition informing the public of the risks of privatization, deregulation and electricity retailers. That's why we're here today.

I would like to note that in 1996, the head of Orillia Water, Light and Power warned the city of Orillia about the risks of electricity marketers.

In 2008, at the AMO conference in Ottawa, I put a question to Energy Minister George Smitherman. My question concerned the licensing of electricity marketers and is unfortunately still relevant today.

I pointed out that in 2002, Ontario Energy Board chair Floyd Laughren reported that 23% of households had signed up with electricity marketers. In 2002, this amounted to millions of dollars leaving the residents of Ontario. These marketers have continued since then to sign people up. This most deeply impacts our most vulnerable citizens: people living on fixed incomes, seniors and single parents, all paying out much-needed dollars when there's no benefit to be gained from doing so.

When the electricity retail sector was shut down in October 2002, the question I asked Mr. Smitherman was that electricity marketers' licences should have been suspended immediately. It is astonishing to me that they

have been permitted to continue making a profit without providing a service. I asked, "Why weren't the licences of these electricity marketers suspended the moment you took power, and when will you put an end to this unethical behaviour?" He failed to answer that question.

I have a brochure from our own power company in the city of Orillia. You can refer to that as you go through here.

Point one: There are 1,855 homes signed up to retail hydro contracts in Orillia. This presently costs the users about \$75 each, and all together there's about \$130,000 a month leaving people's pockets in Orillia. I don't see how Bill 235 actually deals with the issue of signed five-year power contracts.

Point two, a few pages over: The total average power bill in Orillia was \$72 a month in 2001. On the new power rate application, \$13 covers service charges, power cost accounts for \$30, and debt, maintenance etc. make up the remaining \$30-a-month charge. I would like to note that 3 cents a kilowatt hour for a 1,000-kilowatt average home is a cost of electricity in 2001 of \$1 a day. Competition was going to drive that cheaper, right? A dollar a day kept our households economically successful, with minimal social burden, in 2001. The current Orillia power rate contract is up to 13 cents a kilowatt hour, or about \$4 a day, and has been for most of 2009.

Point three: Typically, electrically heated homes use 2,000 kilowatts a month, doubling the retailer charge to \$150 per home, with a total bill now of \$376 year-round.

Point four: Ontario's social housing stock is generally old and built to lower standards with electric heat. Therefore, there is more likelihood that the poor will be impacted with higher cost.

I commend the efforts of Bill 235 to increase controls and restrictions to protect consumers, but these professional retail hydro salesmen—and gas salesmen, by the way—will continue to be a challenge and a burden to Ontario. Orillia's city council position is that retail licenses must be removed. Orillia can't do it, for I tried numerous times in different venues with efforts through Mr. Smitherman, the Minister of Energy.

If you go down through the pages, I also pointed out in 2008 with a draft paper on poverty reduction that these retail contracts are infringing on people's ability to afford power.

Of course, on the last page, I was on my way down. A couple of days ago I was starting—I didn't get too much time to put too much together. There's a letter in the paper here. A wife talks about her husband. He's 85 years old. Apparently, to get out of their contract now it's \$1,283. So obviously, these people are in trouble with electricity retailers. They do not understand the energy sector at all, especially the poor and senior citizens and the like.

I'll take any questions you have or any opinions you may have.

**The Vice-Chair (Ms. Helena Jaczek):** We have quite a bit of time left for questions, and we are going to be starting with the opposition. Mr. Yakabuski.

**Mr. John Yakabuski:** Thank you very much, Maurice, for joining us today. What's your friend's name?

**Mr. Maurice McMillan:** Don Fenwick. It was Don and I who predicted the blackout in 2002. It happened in 2003.

**Mr. John Yakabuski:** Thank you very much, Don.

It would clearly be your position that the business of selling electricity contracts should be outright banned. Is that correct?

**Mr. Maurice McMillan:** That would be the shortest cut you could do to alleviate the people of Ontario. If you take the numbers here of Mr. Floyd Laughren, there were 1,100,000 homes in Ontario in 2002 paying electricity contracts. If you multiply that by 75, you'll find that's about \$80 million a month leaving the pockets of people in Ontario, if those numbers are true today.

**Mr. John Yakabuski:** On the issue of seniors, I believe I heard submissions from energy retailers today that they have provisions that low-income seniors who are affected by an energy contract—they will cancel it without a fee. I may have misheard that, but I did believe I heard that. I know you're talking about a couple here in Orillia. They were told 1,200-and-some dollars, you said?

**Mr. Maurice McMillan:** To break the contract. That's what it says in—I didn't contact those people. I deal with electricity retailer contracts and have been doing so for quite a number of years. Even when you try to get a discussion going, you have to get it signed over for me to discuss the contract for the people, which is a lengthy process. Of course, these energy companies don't like to have somebody in that position. Even when we get them off, they're slow to release the people from the contracts. It's just troublesome all the time. The humiliation that people go through, plus the economic cost, are just unbelievable. There's just no peace of mind until they do get rid of them. They feel taken advantage of. But I do get them off sometimes if mum will say, "Dad signed that, and he's marginal," so to speak, which is a tough thing for—

**Mr. John Yakabuski:** My kids say that about me.

**Mr. Maurice McMillan:** I've had that said about myself more than once. But anyway, that is true to some degree. I didn't get them all off that way.

**Mr. John Yakabuski:** I appreciate the work that you do for consumers, and thank you for your submission today.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you, Mr. Tabuns.

**Mr. Peter Tabuns:** Maurice, thank you very much for taking the time to come down here today. I'm assuming that for you to come here and make this presentation, you must have a fair volume of people, of constituents coming to you with these problems. Can you talk about the volume you have and the kinds of difficulties people have been facing?

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**Mr. Maurice McMillan:** At certain times, it kind of comes in floods. Any time there's a volatile price in

energy you'll get a number of calls—maybe five, 10—and if the retailers have hit the street there's usually somebody smart enough to go and call. So what I tell them to do is, I tell them to go down that street, tell them they can get out of that contract in 10 days if they want, and make sure they knock on every door they think a retailer went to. So that's what I do to help alleviate that situation.

It's terrible dealing with people who have no idea what they've just signed. All they know is, a couple of months down the road they maybe think something was wrong with the first bill. About three or four months in, they find out that that's the normal nature of the bill from there on in, and then they're hurt. Just like people are saying here, they're fighting energy bills for food, and there's no question; that's just straight up.

**The Vice-Chair (Ms. Helena Jaczek):** To the government side. Mr. Levac.

**Mr. Dave Levac:** Thank you for your presentation, Mr. McMillan and Don.

Two things come to my mind here. It sounds to me like, at the beginning and at the end, you do see that the efforts of Bill 235 are being made to deal directly with the consumer part of the part that you have had to deal with as an expert and having background in that, right? Both times, at the beginning and at the end, you recommend that you're here as a city councillor, and Orillia city council's position is that retailer licences must be removed.

Not to sound in conflict, but have you received this information as a city council resolution to say, "Go talk to them at Queen's Park," or are you here representing yourself with your background knowledge? I want to make sure that I'm clear on that.

**Mr. Maurice McMillan:** I'll make it really clear. I got notice four days ago that this hearing was taking place. I had no time to go to the municipality to get clearance from them, so I'm on my own. But we did go through council trying to get resolutions, which is in your package, to limit retailers. We tried to see if we could put a licence on top of the province's, and we found out, down through the chain of learning, that here's the place.

**Mr. Dave Levac:** Is it fair, then, to make a recommendation that before we close down the hearings and finish with the resolutions and the regulatory stream that the government is going to apply if this bill passes, you would bring it back to city council to provide them with an opportunity for resolution?

**Mr. Maurice McMillan:** I could.

**Mr. Dave Levac:** When one person speaks, it's great. When a whole town speaks—do you see where I'm headed? I'm not trying to be in conflict; I'm trying to be helpful here—

**Mr. Maurice McMillan:** No, no, fair enough.

**Mr. Dave Levac:** —if that's indeed what city council's intent is.

**Mr. Maurice McMillan:** At city council, we tried to deal with—since I got elected, I got elected on energy issues. City council, when I put it forth to them, we went

through the slow process of learning, of course. If we could, we'd get them off the street; there's no question about it.

**Mr. Dave Levac:** I appreciate that, and I would invite you to follow up a little bit more and maybe staff could help you, whatever the case may be, because it's really important. I can recognize that, as an individual with the background that you have, you definitely have a wealth of knowledge that should be shared with the rest of the council.

**Mr. Maurice McMillan:** If I have a minute or two, I'd like to point out here that energy companies always compete for the same consumer dollar. What is upsetting to me is, in the energy business, the gas companies always competed with the hydro companies for electric heat and electric hot water, so when you have a retailer coming around selling you both contracts, I think it's kind of a conflict of interest. The worst-case scenario is when we swing over so heavily to gas generation of electricity. Obviously we gave up energy competition in Ontario, because the gas company now is your hydro company. He sets the rate of competition, which is zero. No competition; total control. I find that unbelievable that all the free enterprise and all the competition that everybody talked about was thrown out the window the day the gas companies got the right to privately own gas-generating stations to produce power.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you very much, Mr. McMillan. That concludes the 15 minutes. Thank you for coming down from Orillia.

**Mr. Maurice McMillan:** Okay. Thank you.

#### SUMMITT ENERGY

**The Vice-Chair (Ms. Helena Jaczek):** Next: we have Summitt Energy; Gaetana Girardi, director, compliance and regulatory affairs. Thank you for coming in. As you know, you have 10 minutes to make your presentation. I'll warn you at about the nine-minute mark so we have sufficient time for questions. Please proceed.

**Ms. Gaetana Girardi:** Great. Thank you for taking the time today to hear Summitt Energy's opinion and my colleagues', Just Energy, Direct Energy and Superior Energy Management.

Summitt Energy is an Ontario-based company. Our primary business is retailing energy contracts to residential and small commercial customers. We retail hot water tanks as well, and green energy products. Summitt Energy has been in business for approximately four years. As I stated, we're part of a retailer group that will be putting forth a submission today to the committee regarding Bill 235.

Summitt Energy supports the consumer protection initiatives of Bill 235. As stated by my colleagues, over the past 18 months the retailer group has been developing self-regulatory initiatives to ensure and to increase consumer protection. Some of the examples that have already been stated are: We've implemented a standardized sales training module which includes a test; we've

moved towards plain-language contracts; and we've developed an OEA information brochure which outlines the role of the retail marketer in Ontario and directs customers to the OEB if they have any concerns or require more information.

Summitt Energy has put forward suggestions to the bill which we feel will ensure consumer protection and enable retailers to continue operating in Ontario. We also feel that some of the existing sections in the bill will have a significant effect on the financial viability of retail companies and consumer choice.

Today I'd like to focus on three areas: cancellation rights, electricity product structure and third party verification.

As currently written, section 20 requires retailers to cancel a consumer's contract at any time and for any reason. Subsection 20(1) outlines that there will be a prescribed set of consumers and a prescribed set of cancellation fees. Summitt submits that this clause will lead to significant unintended consequences to its existing and future business for the following reasons: The main premise of our business is to ensure that we maintain the integrity of our firm supply contracts with our suppliers. It is through our firm supply contracts that we're able to provide the commodity to our end-use customers at the contracted price and for the term of the contract. The cancellation fee is a fair representation of the cost of maintaining the supply contracts. If inadequate cancellation fees are prescribed to retailers, retailers would be operating in an uncertain and unfeasible environment.

For example, in today's energy market, because of the decrease in energy cost, if all consumers called to cancel their contract without paying an exit fee or paying a prescribed exit fee, this would result in retailers not meeting their supply obligations and may result in the company becoming insolvent.

Summitt and the retailer group are proposing the following amendments to section 20: that section 20 either be removed or revised to clarify that the cancellation of a binding contract be subject to cancellation fees as prescribed by regulation; and that a new section be added that states that the new cancellation provision applies to contracts that have been entered into after the act and regulations come into force.

We've also put forward submissions, and I'd like to state them again, where we'd like to offer some consumer protection or enhancements around the cancellation. We'd like to recommend that the exit fees should be clearly disclosed to the consumers at the time of sale; that exit fees should be easily ascertainable by consumers; for residential consumers, the fee should be presented as a flat charge per year remaining on the contract; and that certain classes of consumers be exempt from having to pay cancellation fees. Such examples would be consumers who move out of the province, the elderly and for humanitarian reasons.

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In regard to product structuring, section 9 of the bill refers to retailers setting contract prices for electricity

products based on prescribed requirements and in a prescribed format. This suggests that there will be restrictions on the type of contracts that can be offered to retailers and how the price is presented.

Summitt's concerns with this section are twofold: Limiting the requirements for the design of the electricity product may not satisfy the market needs of consumers and may hinder product innovation in the market. For example, there are some consumers who may not always be able to shift their load to off-peak periods and for whom some form of a fixed-price contract or other product would best meet their needs.

In regard to the presentation of a retailer's contract price in the bill, Summitt submits that the retailer contract price be transparent to consumers so they can fully understand their commodity choices and commodity costs and address any questions regarding the retailer product directly to their retailer. If, for example, the provincial benefit is combined with the commodity cost, the consumer may be confused as to the cost of their commodity, which may lead to an increase in consumer inquiries.

Summitt proposes that section 9 be revised to encourage the development of a competitive market that provides a choice of innovative products to consumers that would help them manage their choices and their costs.

In the area of third party verification, this area, we submit, is one of the strongest areas which we feel will ensure consumer protection. We feel that the verification should be done as close as possible to the time of sale. Again, we feel that this will enhance consumer protection. We're basically saying that we shouldn't wait for the 10 days for the cooling-off period to lapse before doing the verification. It is based on the retailer's experience that completing the verification call at the time of the sale provides insight into consumers' understanding of the sales and enables the retailer to immediately address any sales agent issues. This, together with a prescribed set of questions, will enhance consumer protection.

If the verification call is done close to the time of sale, the customer service representative who's doing the sale can detect, say, any language barrier, comprehension barrier, any misinformation and close the deal at the time, not proceed with the call. We feel this is a very effective tool to ensuring that customers understand what they're entering into. The prescribed set of questions on the verification call can address the concerns that have been discussed today by the Low-Income Energy Network and the Orillia city councillor as well.

We're submitting that this will not affect the customer's cooling-off period. The customer will still have an opportunity to review the material that was left with them, to ask questions and exercise their cancellation rights, if they wish.

It would also appear that the act would not enable retailers to choose who conducts the verification call on their behalf. This would appear to prevent suppliers from

using their existing employees or vendors and may be required to use a vendor approved by the Ontario Energy Board. The unintended consequences of this approach would be a loss of jobs and of the retailer's ability to effectively manage their own business to ensure the quality of the call.

It's in the best interests of retailers to ensure that customers know the contract they're entering into. We want to keep these customers happy. We want to be able to renew them, so it's in our best interests that all these processes that we're doing to bind the contracts are done with full disclosure and consumer awareness.

The last point, coming into force: Summitt proposes that the act not come into force until all regulations have been completed and a time frame provided to retailers. Time is required for redesign, build, system testing and the training of employees.

The last point I wanted to talk about to add on to what my colleague Gord Potter was talking about this morning is the account holder. The act introduces a conflict, we believe, with the Ontario Family Law Act by allowing only the utility account holder to enter into or renew a contract. In addition, an agent of an account holder will not be able to enter into a contract. This means that a spouse of the account holder or an authorized party cannot enter into energy contracts on behalf of the household. Summitt submits that this places restrictions on energy contracts that go beyond those placed on other types of contractual arrangements in Ontario. For example, spouses are able to make decisions on behalf of the household in regard to cable, Internet and phone; why not energy contracts?

Secondly, it would also appear that a legally binding agent of an account holder would not be able to enter into a contract on their behalf. Many Ontarians have agency relationships with family members and other persons to manage their affairs. Summitt proposes that the act be amended to allow the account holder, the spouse of the account holder or any authorized agent to enter into energy contracts.

Thank you for your time today.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you very much. We have about six minutes left for questions, and we're starting with the NDP. Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you for coming down and making your presentation today. Can you tell us who supplies Summitt Energy with the electricity that they sell?

**Ms. Gaetana Girardi:** As stated by Gord, we use similar suppliers that he does, BP being an example.

**Mr. Peter Tabuns:** And BP, which facility?

**Ms. Gaetana Girardi:** I couldn't speak to that, sorry.

**Mr. Peter Tabuns:** And you use Bruce Energy as well?

**Ms. Gaetana Girardi:** I'm not sure. Sorry.

**Mr. Peter Tabuns:** Do you buy power from OPG itself?

**Ms. Gaetana Girardi:** No.

**Mr. Peter Tabuns:** So you use private generators outside of the OPG system?

**Ms. Gaetana Girardi:** Correct.

**Mr. Peter Tabuns:** And you have five-year contracts with these suppliers? You're constantly signing new contracts as you're bringing in people on new five-year terms?

**Ms. Gaetana Girardi:** Yes. What I can speak to is that we ensure that the supply we sell to our consumers is secured. So yes, we do sell five-year contracts, so all our contracts are hedged.

**Mr. Peter Tabuns:** Okay. And what are you currently charging per kilowatt hour?

**Ms. Gaetana Girardi:** We have several products out there. I believe one of the products is around 7.3 cents.

**Mr. Peter Tabuns:** Right. Any others?

**Ms. Gaetana Girardi:** No, that's the main product we have.

**Mr. Peter Tabuns:** How does that compare to what people would get, say, buying from Toronto Hydro here?

**Ms. Gaetana Girardi:** Well, the RPP rate is about 5.5 and 6.5, and then there are the time-of-use rates, which range from four cents to over nine cents.

**Mr. Peter Tabuns:** So how do people save money paying your higher rate per kilowatt hour?

**Ms. Gaetana Girardi:** It would depend on the household's needs and whether you're on time-of-use products or not. Our products don't guarantee savings. They're a peace-of-mind tool. They're a tool used to budget. Some people prefer that, depending on how big their home is, how they use energy and so forth.

**Mr. Peter Tabuns:** I'll just say that I followed a group of your salespeople through part of my riding a few weeks ago, asking people if they'd signed, and virtually every person I talked to was told that they would save money, that this was their big opportunity to cut their electricity costs.

**Ms. Gaetana Girardi:** That's not the case. I hear your concerns, Mr. Tabuns. Through the TPV call or through plain-language contracts, that would be something we would disclose up front. Our program does not guarantee savings.

**Mr. Peter Tabuns:** Well, that's not what they're hearing at the door.

**Ms. Gaetana Girardi:** Okay.

**Mr. Peter Tabuns:** For your information, that is not what customers are hearing when they hear that sales pitch.

**Ms. Gaetana Girardi:** Okay.

**Mr. Peter Tabuns:** Thank you.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you. Mr. Levac.

**Mr. Dave Levac:** Ms. Girardi, just a couple of quick questions—you brought this one up, and I've heard it a couple of times: First, if I'm hearing you correctly, as I have heard other groups, you're kind of in favour of the direction that the government is taking with consumer protection?

**Ms. Gaetana Girardi:** Definitely.

**Mr. Dave Levac:** And from your perspective, with some changes and amendments, there could be a very happy—that everybody's walking away thinking that this is the best piece that we could write?

**Ms. Gaetana Girardi:** Yes. We could even make it more robust.

**Mr. Dave Levac:** Third party verifications: It has come up a few times now, and I want to get a real understanding of why you believe that the same moment the verification works—because, on a psychological side, I may have already spent my time convincing somebody to take the contract, and then to immediately get another phone call saying, “Is that the contract you want?” What I'm thinking is that somebody might already be in that euphoric moment when they've made the sell and then they're sitting back saying, “Oh, yeah, I understand what I just bought,” but then maybe five days later they say, “Just a minute,” or the spouse comes home and says, “What did you do?”

*Interjections.*

**Mr. Dave Levac:** I've been married 33 years. I'm telling you, I know what I've done.

I'm not trying to pick a fight on same-day verification; I'm just trying to understand. Your successes that you say you're meeting, in beginning to think a little bit about it—it could be very explainable why you're meeting with success, and that is, there could be this euphoric moment that people go through. In the selling and buying of something, they've convinced themselves that, “Okay, I'll take the plunge. I get it.” Then somebody calls them in half an hour saying, “Did you buy this contract?” “Yeah, yeah, I understand what's going on.” So help me understand that part.

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Then my last one: You indicated that if that does happen, you may have a problem with unemployment, because the verifiers that you use are part of your company. They weren't always verifying contracts because you weren't doing that all the time. So were they employees from some other department moved in to do this specialty job, or are they only doing verification?

**Ms. Gaetana Girardi:** If I understand your question, verification or reaffirmation is required in today's environment. It's required 10 days after the customer signs the contract. So we have to verify the contract right now.

**Mr. Dave Levac:** So your employees are doing that?

**Ms. Gaetana Girardi:** We have a combination of employees and contractors who do that. But, yes, it's done today.

**Mr. Dave Levac:** Do you understand my rethinking of why somebody might be happy that they've got a contract?

**Ms. Gaetana Girardi:** The cooling-off period would address that—

**Mr. Dave Levac:** So the understanding is that the verification contract makes sure that we don't have people who are totally confused and got duped at the door, and that the cooling-off period still exists and still provides them with an opportunity to exit.

**Ms. Gaetana Girardi:** That is correct. I would add that the verification call done at the time of the sale—it's happening with the person who's entering into the contract, which you may not get if you call 10 days later. So you're able to ascertain the comprehension level of the person at the time of the sale, and that's an important factor. At times, you can detect language comprehension; comprehension of product; age, if that's an issue. So you can ask these questions randomly, in different orders, so the salesperson doesn't become accustomed to what the questions are.

**Mr. Dave Levac:** And that's a script.

**Ms. Gaetana Girardi:** And that's the script. They can be as prescribed and detailed around any issues that you want to address.

**Mr. Dave Levac:** Okay. My brain was working, so—  
*Interjection.*

**Mr. Dave Levac:** Leave it alone.

**The Vice-Chair (Ms. Helena Jaczek):** Mr. Yakabuski.

**Mr. John Yakabuski:** Actually, you answered part of the questions that I was contemplating.

My own thinking is that, while the issue is fresh in your mind, providing you have an approved script that is the same for everybody and that the legislation agrees with, you ask those questions—and those questions can identify whether something nefarious went on at the door, if that script is approved and consistent. I don't know what kind of questions are in it, but I would be interested in knowing if the salesman indicated that there would be a cost savings.

To Peter's question: If one of your agents, for example, clearly was identified as going around saying, "You're going to save money on your energy bills," is there a set disciplinary action that you would take under those circumstances?

I actually do think that the third party verification at the door—after 10 days, people sometimes are a little fuzzy about the details. "Did a guy ask you this? Did a guy ask you that?" I actually like the idea of verification on the spot: "Okay, was this asked? Was that asked? Were you told that this would happen?"—those kinds of questions. I kind of like that idea of verification at the door.

But I would like to know: If someone is identified as being rogue, what do you do?

**Ms. Gaetana Girardi:** We immediately address it with their manager, and we ask them to refrain from selling until the issue is investigated. We don't want that behaviour to continue. It's not in anybody's best interests. It just causes problems for the industry.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you for your time.

ADVOCACY CENTRE  
FOR TENANTS ONTARIO

**The Vice-Chair (Ms. Helena Jaczek):** Next we have the Advocacy Centre for Tenants Ontario: Kenn Hale,

director, advocacy and legal services; and Karen Andrews, staff lawyer. Please come forward and make yourselves comfortable.

As you know, you have 10 minutes for your presentation. I'll warn you at around the nine-minute mark so we have time for questions. Whenever you'd like to, begin.

**Mr. Kenn Hale:** Thank you, Madam Chairman. ACTO has been in discussions with the government about the protection of low-income consumers, particularly low-income tenants, and their energy bills for quite a long time, and we've always had a clear and simple message: Government must have policies that ensure that energy cost increases don't undermine the ability of low-income residents to afford adequate, suitable housing. We're here today to repeat that message and to ask that when the committee's looking at that bill, particularly those parts—and we're really here to talk about sub-metering and suite metering and what we call offloading of electricity onto tenants—we're asking you to measure this bill against that goal. If you do measure this bill against that goal, we believe that you'll agree that metering of individual rental apartments will hurt our efforts to meet the challenge of providing affordable housing to all Ontarians. Furthermore, this potential change to the vast majority of residential tenancy agreements is not necessary to achieve Ontario's energy conservation goals.

In our view, the new provisions that you're proposing for the Residential Tenancies Act in section 38 of the bill would not provide energy consumer protection in tenant households. It would leave those households vulnerable to increases in the total cost of their housing, and in many cases those would be increases that they could not afford.

The complexity of part II, and all the problems you've heard all day with the marketers and the retailers, demonstrates that purchasing utilities that are going to heat and light a home in Ontario is not longer a simple matter. There's a complicated web of parties and regulators, and this requires that the purchasers of utilities make the right choices and are able to forecast the effects of those choices. In our view, the way that our economy is set up, those are the kinds of decisions that are part of the job of being a landlord. For taking those kinds of risks, we reward investors with profits where they make successful choices. Access to knowledge about the market and commercial sophistication are the things that make landlords successful at these and increase the chances that they will be correct and that this would hopefully lead to profits and also to progress toward the government's policy goals, whatever those may be.

But residential tenants don't generally possess this particular kind of knowledge and sophistication. What they know about the energy market comes to them third- or fourth-hand, through the media, through people who come to the door trying to sell them things, through landlords and sub-metering companies telling them a story. The consequence to them of making the wrong choice is not just, "Our profits could go down this quarter," but it could be the loss of their home.

Putting the onus on tenants to monitor market forces and make predictions about where energy costs are going doesn't make economic sense. From our viewpoint, this push for individual metering of electricity is no more than an effort by some landlords to remove an unpredictable cost from their balance sheets in order to protect the profitability of their enterprise. It has nothing to do with protecting consumers, and furthermore, it has nothing to do with preserving the environment.

Tenants pay for rising electricity costs and benefit from any decline in electricity costs through the annual guideline rent increase that's based on changes to the consumer price index. Where there are extraordinary increases in utilities, landlords can apply to the Landlord and Tenant Board for additional rent increases above and beyond the CPI. What this does is smooth out the ups and downs in energy prices and protects tenants from that volatility. Tenants' wages and their pensions and social assistance benefits don't fluctuate according to where the energy market is going.

We understand the goal of our rent regulation policies to be keeping rents stable and predictable, but pushing energy costs onto tenants undermines this important objective. Even where tenants are able to reduce their use of electricity by changing the kind of light bulbs they use or using a power bar, the small savings they achieve are quickly eaten up by the administrative costs of running a sub-metering system and paying for a sub-meter.

It's claimed that this loss of stable rents and huge costs ongoing, both capital and administrative, of this individual metering is worth it, because we're going to reduce energy use, help Ontario cut its peak energy demand and meet our greenhouse gas reduction targets. We believe this is simply greenwashing. It's business seeking to put an environmentally friendly face on measures that do nothing other than enhance their profitability.

**1720**

ACTO and other tenant groups have been in the forefront of action to address energy conservation and climate change. We are one of the founders of LIEN, which you heard from earlier. We've helped them to provide community organizing and education to low-income consumers to meet the challenge of reducing energy use. We've advocated with the Ministry of Energy and Infrastructure and the Ontario Energy Board to meet those challenges while housing affordability is protected. We've fought back against the Ontario Energy Board, the Landlord and Tenant Board and the courts against efforts by landlords to evade the requirements that are there for them to meet energy conservation obligations while they're making money from sub-metering.

But the government has refused to acknowledge in our discussions that there is no objective, empirical evidence that forcing tenants to assume the cost of electricity will accomplish any significant reduction in energy use. It will make investors' returns on their investment more stable and predictable, it will make money for the building installation and managing companies that install smart meters, it will create low-wage clerical jobs in the

processing and collection of the bills, but it will not stop energy from flying out the poorly insulated doors and windows of our clients' homes. It will not stop tenants with drafty, poorly heated apartments from having to use their electric stoves and inefficient space heaters to keep themselves and their families from freezing on cold winter days. It will not encourage landlords to invest in the repairs and upgrades that will actually save electricity and reduce bills.

Studies by public agencies, as opposed to those conducted by those promoting sub-metering, do not show individual suite metering to have a significant impact on electricity use. In fact, an American study of over 600 public housing buildings shows no significant difference in electricity use between those buildings where electricity was included in the rent and where it was individually metered—and, unlike some studies referred to previously, this was about electricity use.

The only concession that the government has made to these realities is to give sitting tenants the chance to refuse to go along with the sub-metering scheme as long as they live in the same apartment. This is very similar to the vacancy decontrol form of rent control that's now perpetuated in the Residential Tenancies Act. New tenants have no choice but to accept what the landlord offers. Sitting tenants are pressured to go along with the sub-metering schemes, and they face extremely high barriers to enforcing the law against their landlords in this area. Any savings that tenants experience from reduced energy use are lost when the tenants move out of a unit. The landlord can put the unit back on the market for the same rent that was charged at the time that electricity was included. In a province where only a very few municipalities—those municipalities facing widespread economic difficulties—have a healthy vacancy rate, this is no protection for the energy consumer.

We ask the committee and the minister to ask themselves two questions in deciding if the sub-metering part of this bill is good policy: Who, between residential landlords and their tenants, is best able to manage the risk of a steep escalation in the price of electricity? I think it's obvious what the answer to that is. That's one of the reasons why utilities have traditionally been included in apartment rents. We believe this is also the reason why the Ministry of Municipal Affairs and Housing is proposing that all social housing units be exempted from individual suite metering.

**The Vice-Chair (Ms. Helena Jaczek):** You have one minute left.

**Mr. Kenn Hale:** Secondly, is it the landlords or the tenants who are able to make the significant changes in energy use that are necessary to create a meaningful reduction in peak energy demand and greenhouse gas emissions? Again, obviously, it's landlords. They provide the fridges, the stoves, the washers and the dryers that use most of the electricity. They provide and maintain the heating, ventilating and air conditioning systems that fight against the inadequate building envelope, and the rent regulation system provides incentives to them to

improve the energy efficiency. They can pass the cost of upgrades on to the tenants, and they can pocket the savings from the reduced energy bills.

Our recommendations are simple. Section 38 should be amended to say, “Part VIII of the Residential Tenancies Act is repealed,” period, not replaced with a new scheme.

Secondly, to make sure that landlords don’t continue to try to sneak these things in the back door, we would like you to add a section that says, “Nothing authorizes a landlord to discontinue a service or facility without the consent of the tenant.”

Part II is addressing, with the energy retailers, existing government policy that has created all kinds of unforeseen problems of people preying on vulnerable homeowners. Let’s learn from that experience and not create the conditions that put even more vulnerable residential tenants at risk.

Thank you very much.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you. We’re going to start with the government side. Mr. Levac.

**Mr. Dave Levac:** So, basically, if I’m hearing you correctly, you are in favour of the section of the bill that tries to protect the consumer at the door, and that—

**Mr. Kenn Hale:** Yes, but I would honestly say that’s not really the experience of most residential tenants. I think the homeowners are the ones who suffer from the—

**Mr. Dave Levac:** So you’re here to speak specifically on behalf of tenants.

**Mr. Kenn Hale:** Yes. That’s our mandate.

**Mr. Dave Levac:** And having said that, then, basically, in a nutshell, you’re suggesting that the landlords gain, the government gains, everybody gains except for the tenant.

**Ms. Karen Andrews:** Yes. The benefits of smart sub-metering in the tenant sector aren’t what—it’s not the way to go. It would be better to leave tenants alone.

**Mr. Dave Levac:** Okay. Thank you.

**The Vice-Chair (Ms. Helena Jaczek):** Mr. Yakabuski?

**Mr. John Yakabuski:** Thank you very much for joining us today, Kenn and Karen. You bring a different perspective than the federation of rental providers brought.

**Mr. Kenn Hale:** I hope so.

*Laughter.*

**Mr. John Yakabuski:** No, I’m not surprised—

*Interjections.*

**Mr. John Yakabuski:** —but they provided us with statistical evidence of what individual metering does to energy use. You’ve provided us with anecdotal evidence, but could you provide the committee with that empirical evidence and copies of those studies that show—and also, obviously, the authors of the studies—something that paints a different picture than what we’ve been given today? Because my natural instinct tells me that if I’m paying for something directly, I’m going to pay a lot more attention to its use.

**Ms. Karen Andrews:** Yes. Mr. Brescia, in his remarks, talked about groups bringing mythology, and I think he was talking about us. Fortunately, I have a degree in English literature as well as law, and I know what “mythology” means, and that’s stories that speak to larger truths. So we’re happy to engage.

This could devolve into a battle of experts. They have their statistics and we have ours. We have HUD in 2007 saying there was no meaningful change in behaviours. We have Toronto Hydro telling the Toronto Sun in January 2010 that smart sub-meters in houses, time of use, was not making any difference to behaviours.

We’ve got lots of reports, and we would be very happy to provide this committee with the alternative view. Reasonable people can disagree, and there are reports on both sides.

**Mr. John Yakabuski:** Now, they were more speaking about time-of-use meters.

**Ms. Karen Andrews:** Well, they were talking about a StatsCan study that was produced in—

**Mr. John Yakabuski:** The Toronto Hydro thing—

**Ms. Karen Andrews:** Toronto Hydro was time of use.

**Mr. John Yakabuski:** It was more about time-of-use.

**Ms. Karen Andrews:** Yes, absolutely. And I would ask everyone here to think about the blue box program. We’ve been blue-boxing for a long time, and I don’t know anybody who doesn’t do it and embrace it. The neighbour across the road who has too many loud parties and doesn’t cut his grass: I notice that he is recycling. I notice that he is putting his paper in the right box. There is no financial incentive for us to do this, but we all do it because it’s the right thing to do. We all do it.

I think that legislating smart sub-meters underestimates the goodwill of people. If you tell most people, “Turn off your lights,” most people will turn off their lights. I think if you tell most people to try to run stuff that isn’t essential after 10 o’clock at night, most people will do this. Voluntary compliance is very effective and is the cheapest way to go.

**Mr. John Yakabuski:** Thank you very much for your submission. I appreciate that, and your comments.

**The Vice-Chair (Ms. Helena Jaczek):** Mr. Tabuns?

**1730**

**Mr. Peter Tabuns:** Thank you both for coming down. Thank you for also suggesting others come down today. It’s good to see a good, solid turnout of tenants.

Could you provide us with those studies? I know that it all does devolve into a battle of experts, but occasionally it’s useful to have some experts on one side of an argument.

**Mr. Kenn Hale:** I think it’s fair to say, and perhaps even the federation of rental providers would agree, that there has not been a good study in Ontario of electricity sub-metering in residential tenancy situations. The study they referred to was not about electricity to start with. But it would seem, if the government is proposing to change the basic, fundamental terms of contracts for hundreds of thousands of people and there have already been 150,000 people sub-metered, can’t somebody do

some objective looking at those figures before we rush headlong into this, based on what we hope will happen and just happens to benefit one side of the agreement quite a bit more than the other?

So it's really a plea to the government members to ask your minister or the public service to do an actual study that we can all rely on, so we don't get into a battle of experts, which is often just going to be a battle of biased experts. We certainly will provide whatever information we have, but our experience has been that it's pretty thin on the ground that really provides you with any serious guidance. We would like to see that remedied.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you very much for coming.

### SUPERIOR ENERGY MANAGEMENT

**The Vice-Chair (Ms. Helena Jaczek):** We now have our final presenter of the afternoon, Superior Energy Management: Judy Wasney, director of operations, if you'd like to come forward and make yourself comfortable. As you know, you have 10 minutes. I'll warn you around the nine-minute mark, and that will leave us time for questions. So please begin.

**Ms. Judy Wasney:** I'm hoping I won't take that long. Thank you very much for giving me the opportunity to speak today.

I was actually very confident that the other marketers who are here today would reflect many of the opinions that I have, but I did want to come down and illustrate to the committee that as an industry, we are working very hard to resolve some of the issues that we've been facing.

Let me back up for just a moment. My name is Judy Wasney, and I represent Superior Energy Management. We market natural gas and electricity in Ontario, and natural gas in Quebec and BC as well. We have recently acquired a licence to market natural gas in New York City, or New York state, and are in the process of acquiring an electricity licence as well.

Superior Energy is a division of Superior Plus. We have a Canadian propane distribution company as well, Superior Propane, that you may be familiar with. We've recently acquired refined assets in the northeastern United States. Superior Plus also has two other divisions: one for specialty chemicals and another for construction products.

As I had just mentioned, Superior Energy definitely supports the ECPA. In fact, Superior, along with Just Energy, Direct Energy and Summitt Energy, have been working for the last 18 months. I've gotten to know them all very well. Trying to improve consumer protection for customers in the province, we have initiated a very extensive sales agent training document, along with testing that also requires regular updates, plain-language disclosure forms that are non-branded that we hand out at the door, and a variety of other initiatives as well.

We do feel, though, that there are some opportunities to increase that consumer protection based on some

amendments. There are a few that I was going to highlight today.

The first one that I wanted to mention is section 9, which prescribes potentially how we can define our products. I was a little unclear as to the intention of that particular clause, but in conversation with the ministry it appears that there may be a requirement in the future for retailers to provide time-of-use products. Superior Energy is certainly open to that. We think the smart meter implementation and the transition to time-of-use provides a significant opportunity for retailers, as well as others, to create new products, whether that be different buckets from what the OEB has in place or other technology that may be attracted to the province.

One of the issues with implementing time-of-use products, from a retailer perspective, is that there currently is no mechanism for us to get hourly data for the consumer. There has been a lot of work between the LDCs and ISO to create a system where that transfer will take place. Retailers have not been part of that implementation, and part of our concern is that if we get involved after that transition and implementation has taken place, there may be costs that could have been avoided.

Again, we're certainly open to offering time-of-use products, but I did want to say that if the intent is for retailers to provide only time-of-use products, that reduces customer choice. We feel there is going to continue to be a demand for fixed-price products. Not everybody has the opportunity or the situation where they can shift their electricity consumption and air conditioning. As Mr. Tabuns quite pointedly commented, it's not necessarily for comfort; sometimes it's for well-being. So we would certainly support an amendment to that section to require that time-of-use hourly data be provided in advance of any requirement for retailers to provide that type of product.

The second section I was going to talk about today is around cancellations. We've been operating in this province since 2002. We have many long-term contracts, some at really favourable rates, and we feel that the contract law that defines these contracts applies to us as well as to consumers. We feel that we shouldn't be able to back out of a contract if it suits us, and consumers should also not be able to back out of a valid contract without some kind of exit fee to help us mitigate our costs. As others said today, we procure 100% of the estimated consumption that our customers are consuming, and if we were to release a customer, then that would be our financial risk mechanism to offset that hedge.

Having said that, we feel there is an opportunity and do recommend that cancellation fees for agreements that are initiated after the ECPA comes into effect would be clearly defined for consumers at the door, would be easily determined by a consumer and, for residential consumers specifically, would be limited to a fixed amount for each year that is outstanding in the contract. That would allow us to mitigate our losses, and a consumer,

when evaluating the value of a contract, would have the information available to make that assessment up front.

The last item I was going to talk about today is around auto-renewals. I know that auto-renewals are very familiar to many consumers in the province for items such as insurance or cellphones, and natural gas, actually. We feel that the requirement that we meet currently to communicate renewals to consumers is very stringent. We feel that returning a customer to default supply because they haven't instructed us otherwise may not necessarily reflect their intentions. What we would recommend is that we be allowed to offer auto-renewals for a customer on a month-to-month basis, which would give them the flexibility to shop around, and to cap the rate we would renew the customer at to their existing contract.

**1740**

I did want to touch on one item with regard to third party verification. We've tested quality calls at the door here in Ontario. We do it in Quebec, actually, although it's not mandated, and it's a requirement in BC. One of the points I wanted to raise today is the fact that it's not an opportunity for us to further sell the contract. What we require of our sales agents is that they can't interrupt the conversation with the consumer.

The questions are actually very clear, very concise, and ask the customer pointed questions about the fact that they understand the sales agent does not represent a utility, but represent Superior Energy; that they're badged appropriately; that they understand that they may not experience savings, and what we're selling is price stability; and also that there are potential liquidated damages if they choose to cancel after—the cancellation fee. A couple of other questions we ask as well are around authorization, because that's obviously a very important question.

Again, I do appreciate the opportunity to speak today and certainly would be willing to answer any questions you may have.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you very much. We'll start with Mr. Yakabuski.

**Mr. John Yakabuski:** Thank you very much for joining us today.

On the issue of cancellations, you people understand that the legislation is written—you have your advisers and legal people, and you understand that better than I do sometimes. I don't think that any reasonable person would expect that there would be an ability to cancel something without having a consequence; otherwise, people would be getting out of the contracts for their cars, and could just walk away from anything. They'd be doing that all the time, because there's no incentive to follow the rules. So you guys obviously have to follow through with your obligations. I'm getting a different sense that there must be, within this bill, some obligation on the part of the consumer to honour the contract.

**Ms. Judy Wasney:** Actually, the way we've read it, the worst-case scenario would be that there potentially isn't. There will be a prescribed group of people—we're

not quite sure who they are at this point—who would be able to get out of a contract without cause and would not have to pay any exit fees or would pay a prescribed exit fee, and we're unsure what that is.

**Mr. John Yakabuski:** So we don't even know what that's going to be?

**Ms. Judy Wasney:** No.

**Mr. John Yakabuski:** We don't now what the prescribed group of people is going to be. We presume it will be low-income earners or people who are challenged with their electricity bills, but there's nothing defined in the bill at this time.

**Ms. Judy Wasney:** No.

**Mr. John Yakabuski:** So we have to wait for regulations.

**Ms. Judy Wasney:** Not as we've interpreted it.

**Mr. John Yakabuski:** Okay. Thank you very much. I appreciate your input.

**The Vice-Chair (Ms. Helena Jaczek):** Mr. Tabuns.

**Mr. Peter Tabuns:** Judy, thanks for coming down today and making a presentation. Superior provides both electricity and natural gas?

**Ms. Judy Wasney:** Yes.

**Mr. Peter Tabuns:** Where do you get your electricity from?

**Ms. Judy Wasney:** Bruce Power.

**Mr. Peter Tabuns:** I imagine you have a variety of plans, and a year ago you may have signed for a different rate. Currently, what are you charging people per kilowatt hour?

**Ms. Judy Wasney:** We're not actually marketing to residential customers and haven't been for the last year. We're marketing to commercial customers. I could certainly give you an indication of what that is, but it tends to be for other customers' product.

**Mr. Peter Tabuns:** Why did you stop marketing electricity to residential customers?

**Ms. Judy Wasney:** From the standpoint of Superior Energy, we felt we needed to focus our operations, at least in the short term, on a more commercial focus.

**Mr. Peter Tabuns:** That's fine.

**The Vice-Chair (Ms. Helena Jaczek):** Mr. Levac.

**Mr. Dave Levac:** Thanks, Judy. I appreciate your dialogue and your conversation with us.

I indicated earlier that I was just having some thought—let me clarify, first of all, that it was not a government policy or any instruction that I was provided in terms of discussing third party verification, whether it's instantly or whether it's a 10-day cooling-off period. The 10-day period is within the scope of the legislation and the recommendation, and we are open to hearing the arguments for it.

I was just presenting a thought that maybe there's a reason why doing it right away is not such a great idea. Other people are saying that it is a great idea, because we've dropped our complaints etc. I'm open to hearing that. I just provided another reason or piece of rationale that might say that there might be a reason why people might not see that as effective for the consumer. That's

all. I don't mean it to enter into a very large discussion; I just put it out there.

The point that I do want to make—from you and from the others, along with my colleagues, all present—is that I've been impressed with the dialogue, the recommendations and the positioning that people have taken and explained in a way that is actually an open and honest debate. I felt good about today, hearing and understanding people's positions on a piece of legislation that I honestly believe will be supported, but that will be offered, I would respectfully suggest, probably some amendments or some questions about why certain things are in the bill and why certain things are not.

I've felt very engaged by the organizations and the individuals that have stepped forward, so I want to thank you for doing that. And I want to thank the pragmatic way in which our committee has approached this and set forth the concept of trying to get to the bottom of where we can make a nice piece of legislation. So I do thank you for your engagement, your words of understanding as to why the legislation is before us in the first place.

I'll leave it at that. Thank you.

**Ms. Judy Wasney:** I'd like to make one more point, actually, coming back to the at-the-door verification. I certainly found, in my experience, that door-to-door is actually the channel of choice for many marketers in Ontario, for a number of reasons. There are transactional reasons for that, as well. It's a difficult channel to monitor, so we found that doing that telephone call at the door, either while the sales agent is there or shortly after they have left, requires and improves the level of quality of the sale. It visibly alters their behaviour. So I feel it's a very positive recommendation for you to consider.

With regard to a consumer's second thoughts with regard to a contract, I think that there are a couple of ways that you can mitigate that. One, of course, is the cooling-off period, or communicating some kind of confirmation to the customer. Whatever those circumstances are, I think at least you're getting a hold of the person immediately and you're not getting a hold of, maybe, a spouse or somebody else in the household. It's certainly not up to 60 days after the sale, which I think is very difficult to verify.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you very much. That concludes the 15 minutes.

That, in fact, concludes the public hearings. All those who wished to make oral presentations have done so, so just to remind the committee that the meeting originally scheduled for Wednesday, March 24, is not required. The committee will be meeting again to consider Bill 235 clause-by-clause on Monday, March 29 at 2 p.m. Again, I remind that all those proposed amendments should be filed with the clerk by noon on Friday, March 26. Thank you so much.

**Mr. Dave Levac:** Madam Chair, there were some requests by both the opposition and by our side—and we support the requests. Any other materials that any of the other deputants can get to us, can we make sure that everyone gets a copy of them?

**The Vice-Chair (Ms. Helena Jaczek):** The clerk has assured me that we will get copies to members as soon as they're received.

**Mr. Dave Levac:** Perfect. Thank you.

**The Vice-Chair (Ms. Helena Jaczek):** Thank you. This meeting stands adjourned.

*The committee adjourned at 1746.*







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