



# Energizing Consumers

A PROACTIVE ENERGY  
CONSUMER CHARTER FOR  
ONTARIO

BY PAUL B. SOMMERVILLE, RICHARD CARLSON  
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**Mowat**ENERGY

MOWAT'S ENERGY POLICY RESEARCH HUB

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# Introduction

The Ontario Energy Board (OEB) has indicated that as part of its “consumer-centric” vision of energy regulation in the province of Ontario, it is interested in introducing an energy consumer bill of rights.<sup>1</sup>

In earlier research, we identified the importance of consumer engagement on energy issues and the need to have those rights clearly stated.<sup>2</sup> The energy market is changing, transforming the role of consumers and increasing the need to ensure that they know both their rights and their opportunities to participate.

In the past, consumers were primarily seen by the sector as passive – ratepayers who would consume energy without much consideration as to how or when it was produced. Now, consumers are becoming more discerning in their energy use, controlling how and when they use energy, and in many cases producing their own energy through such technology as solar PV, selling the surplus back into the grid. In this context, there is an increasing demand for legislators and/or regulators to create a set of energy consumer rights and to enshrine them in a document – the consumer charter.

As the Board examines the implementation of a consumer charter, it would be instructive to learn from charters in other jurisdictions. To identify best practices and the elements of a well-designed consumer charter, we looked at consumer charters in five jurisdictions – Texas, Ohio, Mississippi, Pennsylvania and Ireland (EU). We also interviewed consumer advocates in Europe, the U.S. and Canada to discover the key issues as they saw them.

<sup>1</sup> Ontario Energy Board, *Enabling Ontario’s Energy Future: 2015-2018 Business Plan*, p. 5. At [http://www.ontarioenergyboard.ca/oeb/\\_Documents/Corporate/OEB\\_Business\\_Plan\\_2015-2018.pdf](http://www.ontarioenergyboard.ca/oeb/_Documents/Corporate/OEB_Business_Plan_2015-2018.pdf).

<sup>2</sup> See Richard Carlson and Eric Martin, *Re-energizing the Conversation: Engaging the Ontario Public on Energy Issues*, Mowat Centre, October 2014. At <https://mowatcentre.ca/re-energizing-the-conversation/>.

Based on this jurisdictional review, we found that consumer rights and consumer charters fall into two main categories: reactive and proactive.

“Reactive” rights are focused on consumers’ relations with utilities, as they concern services. Consumer charters focused on these rights deal with such issues as service standards, consumer billing, disconnection procedures and the way that consumers can complain to a utility respecting perceived shortcomings and errors. In many instances these reactive charters tend to merely restate in plain language pre-existing rights. In Ontario most, if not all, reactive rights are already provided for through legislation or various regulator-imposed Rules and Codes.<sup>3</sup>

“Proactive” rights are the rights that consumers have in being active participants in the energy market. Proactive consumer charters are therefore more comprehensive, establishing consumers’ rights to engage in the energy market in a more substantive way.

In Ontario, legislation and Board Rules and Codes governing consumers’ relationship with utilities already provide a very effective suite of protections for reactive rights. To be genuinely useful, a consumer charter for Ontario would therefore need to go beyond reactive rights and address consumers’ proactive rights:

- + recognize the changing role of consumers, protect them and empower them in a changing market-based environment
- + recognize that consumers are no longer all of one single type, and many are making the move from passive to active consumers
- + recognize that issues related to energy poverty and climate change are coming into sharper focus.

A properly designed consumer charter will accomplish the dual goal of addressing both reactive and proactive rights: ensure that consumers are protected and informed of their rights in relation to the utility, while ensuring that their broader participation in the energy world is guaranteed, predictable and according to principle.

<sup>3</sup> This includes the Distribution System Code for electricity distribution, Gas Distribution Access Rule (GDAR) for gas distribution and the *Energy Consumer Protection Act* for retailers.

# Jurisdictional overview of charters

We examined consumer charters from five jurisdictions – Texas, Mississippi, Pennsylvania, Ohio and Ireland (EU). These jurisdictions were identified as the most promising examples through preliminary research and interviews.

We found five areas of a consumer charter to be crucial:

- + institutional relationship
- + legal power
- + focus of the rights and ability to participate
- + enforcement measures
- + contact with consumers.

Table 1 (next page) outlines these five key areas across the jurisdictions studied.

Of the five jurisdictions considered, only two – Ireland and Texas – have what could be described as somewhat more comprehensive, proactive consumer charters that are designed to both protect and empower consumers with respect to new or emerging market opportunities.

The other jurisdictions have more reactive charters, which do little more than restate existing rights that consumers already had through various enforceable regulatory instruments.

**TABLE 1**

**Summary comparison of consumers charters in the five jurisdictions examined<sup>4</sup>**

Jurisdiction	Institutional relationship	Legal power	Focus of the rights and ability to participate	Enforcement measures	Contact with consumers
Texas	The charter was written and implemented by the Public Utilities Commission (PUC), based on legislation recently passed improving consumer relations with deregulation of the market.	The overall rights are set by legislation, and	Applying to all residential and small business consumers, the charter focuses on: - disconnections - billing and communication with consumers.  Also, consumers are specifically empowered to choose retailers and to participate in the energy market.	The PUC enforces the rights, and consumers can directly complain to the PUC.	Consumers can directly contact PUC.  Office of the Public Utility Counsel (OPUC) assists consumers in their complaints, and with other market concerns.  Regulatory rules are developed through a staged evidentiary process, culminating in a commission decision. Intervenors, such as OPUC, participate.
Ohio	The charter was written and implemented by the Public Utilities Commission of Ohio (PUCO).	The rights are based on PUCO rules, and not legislation.	Applying to all residential consumers, the charter focuses on: - streamlining complaint procedures; - prompt installation - disconnections - being informed of visits by service personnel.	Consumers can complain to the PUCO directly. But there is no strictly defined mechanisms in place to enforce rights.	Consumers can contact the Office of the Ohio Consumers' Counsel (OCC). The OCC also carries out energy literacy initiatives.  Consumers can directly contact the PUCO to complain about service as well.
Pennsylvania	The Pennsylvania Public Utility Commission (PUC) developed the bill of rights in partnership with the Pennsylvania Office of Consumer Advocate (OCA) and state lawmakers.	The rights are based on PUC rules, and not legislation.	Applying to all residential consumers, the charter focuses on: - dispute resolution - clearer information for customers - price and service comparisons in easy to understand format - anti-fraud and misinformation - disconnections.	The OCA is a state agency that represents the interests of Pennsylvania utility consumers before the PUC federal regulatory agencies, and state and federal courts  Consumers can complain to the PUC directly.	The OCA represents consumers in regulatory and policy matters. The OCA provides information to consumers on working with utilities and price comparison.  Consumers can complain either to the OCA or the PUC.
Mississippi	The Mississippi Public Service Commission (PSC) developed the charter.  The rights presented are a summary of pre-existing consumer rights and general practices.	Rights are not set by legislation, and are not legally binding.	Applying to all residential consumers, the charter focuses on: - termination and disconnections - providing clear information to customers - complaints process.	The PSC enforces the rights, consumers may directly complain to Commission	Consumers can directly contact PSC.
Ireland (EU)	EU directives require member states to develop a consumer charter, and sets minimum standards.	Ireland has incorporated the EU directive on the consumer charter in national legislation.	The main rights are outlined in an EU directive on the European Energy Consumer Charter of Rights.  Applying to all Irish residential consumers, the charter focuses on: - contracts and changing supplies - disconnection and connections - disputes - complaints process - fraudulent practices.	The enforcement of the rights at the EU level is spotty, despite the rights being enshrined in binding legislation. In many cases enforcement mechanisms have not been applied consistently.	Commission for Energy Regulation (CER) has information for consumers on their rights and how to participate in the market. Complaints first go to operators (Gas Networks Ireland or ESB Networks), then to the CER.

<sup>4</sup> Information derived from the website of the various jurisdictional regulators, as well as interviews with regulators and consumer representatives.

# A principled and proactive approach to consumer rights

Ontario consumers already have strong reactive consumer rights through various laws and Ontario Energy Board Codes and Rules. The *Energy Consumer Protection Act*, for example, provides rights to consumers when interacting with energy retailers. Similarly, OEB Rules and Codes provide for a wide range of protections for consumers governing their relationship with utilities.

Communicating the rights and ensuring that the public is aware of them is another matter. Many consumers have a very imperfect understanding of the nature of their relationship with their utility. As the Board itself reported recently, one third of consumers with contracts with energy retailers were not even aware they had such contracts.<sup>5</sup> Many, if not most, consumers may not be aware of their rights in the energy sector, and could benefit from a plain-language summary of consumer rules and rights in Ontario.

But a proactive approach to consumer rights seeks more than merely ensuring that consumers are protected from the actions of others. Rather, it seeks to ensure that consumers are also empowered and endowed with enforceable rights to engage in the energy market and regulatory system.

Proactive consumer rules should establish some structure and rules of engagement for consumers while a much more diversified, decentralized and flexible system emerges. This would ensure that no one class of consumers is unreasonably disadvantaged by this transition and that every consumer has a predictable and enforceable set of rules to govern their participation.

5 Ontario Energy Board, *Consumers Come First: A Report of the Ontario Energy Board on the Effectiveness of Part II of the Energy Consumer Protection Act, 2010*, Report to the Minister of Energy, May 28, 2015. At [http://www.ontarioenergyBoardBoard.ca/oeb/\\_Documents/EB-2014-0158/OEB\\_Report\\_to\\_Minister\\_ECPA\\_Review\\_20150528.pdf](http://www.ontarioenergyBoardBoard.ca/oeb/_Documents/EB-2014-0158/OEB_Report_to_Minister_ECPA_Review_20150528.pdf).

To capture the true value of a proactive consumer charter, one that both protects and empowers consumers, Ontario's charter needs to ensure that concerns associated with changes in the energy sector are captured, and that regulatory processes can be effectively influenced by informed consumer engagement.

*“Consumers and other stakeholders need to have a full and fair opportunity within a predictable evidence-based model to have their interests and concerns explicitly considered.”*

Notably, the current transition in the energy sector is driven by the development of a range of consumer-side opportunities in storage, generation and conservation. These technologies can make it increasingly attractive for consumers, of all sizes, to explore alternate means of managing their energy supply.

A proactive consumer charter would empower consumers to participate in these developments on a predictable and principled basis. This would enable consumers to more effectively help shape the regulatory structures designed to accommodate them.

Our research, and stakeholder feedback we have received, suggests four areas that need to be included in a charter to ensure effective, proactive consumer involvement:

- + effective consultation
- + independent representation
- + fair participation in and access to the energy market
- + renewed focus on energy poverty and environmental sustainability.

## 3.1 Effective consultation

In Ontario there is no definable, structured and enforceable process to ensure that policy is developed with full consideration of various points of view and that it is demonstrably evidence-based. This gives rise to the perception that consultation processes conducted by the Board are consultations in name only, with the Board not wavering from a preferred outcome, notwithstanding any submissions by stakeholders.<sup>6</sup>

Even if false, this is a corrosive perception. It is in the interest of consumers and the Board to ensure that this very key activity has credibility thanks to a reliable and predictable process. Consumers and other stakeholders need to have a full and fair opportunity within a predictable evidence-based model to have their interests and concerns explicitly considered.

In some jurisdictions substantive policy development by regulators occurs within an adjudicative model, with all of its procedural protections. While this model is demanding, public consultations must occur within an environment that is rigorous and predictable, their outcomes must be demonstrably evidence-based and objective, and there must be Board accountability for them. This approach would conform to the models used by other energy regulators, such as in Texas, where regulators follow a rigorous and staged evidentiary and staff reporting model.

The Board is obliged by statute to follow a prescribed process for the adoption of changes to its Codes and Rules (as provided for in Sections 45 and 70-70.3 of the *OEB Act*). It makes sense to have at least the same rigour when dealing with consultations, the outcomes of which can often have equally – and often, much more – far-reaching practical consequences. For simplicity, the Board may want to consider adopting the rule- and code-making procedures mandated by the *OEB Act* to all consultations.

<sup>6</sup> For an example of such concerns, see Ian Mondrow, “Ontario Energy Board Decision on Cap & Trade Costs: Why Reasons for Decision Are Essential to Demonstrate Regulatory Independence,” *Gowling WLG* blog, August 9, 2016. At <https://gowlingwlg.com/en/canada/insights-resources/ontario-energy-board-decision-on-cap-trade-costs-why-reasons-for-decision-are-essential-to-demonstrate-regulatory-independence>.

Whatever approach is taken, it should include the engagement of Board Members to preside over and decide the consultation, rules respecting notice, the filing of materials within the process and replies. It should also include an explicit requirement that the Board be obliged in its determinations to canvas in detail the relevant points of view expressed by stakeholders, and to do so in a manner consistent with the decisional standard of a quasi-judicial administrative tribunal.

Such an approach would ensure conformity with the process. It would also provide stakeholders with genuine purposive guidance respecting the meaning of the Board's determination and the reasoning that resulted in it. This is particularly important at a time when the Board has migrated to a "part-time" Member structure. Part-time Board Members need as much help as possible in coming to the rationale behind a consultation outcome.

The outcomes should also be subject to the Board's appeals procedures, as provided for in Section 44 of the *OEB Act*. A rigorous process would enable all stakeholders, and future Board Members, to thoughtfully consider the underlying rationale for a policy or guideline and when exceptions to the resulting policy or guideline should be made.

The creation of this structure should itself be the subject of an initiating consultation engaging stakeholders.

## 3.2 Independent representation

Consumers from all customer classes have a reasonable expectation that their respective interests be represented in consultations and regulatory decision making.<sup>7</sup>

A key factor in achieving such representation is independence. Consumer representation embedded in any fashion within either government or the regulator itself is not reliably independent. The regulator and the government can each have favoured outcomes which are not necessarily aligned with the interests of consumers or classes of consumers.

<sup>7</sup> For additional research on representation at the Ontario Energy Board, see Richard Carlson and Eric Martin, *Re-energizing the Conversation: Engaging the Ontario Public on Energy Issues*, Mowat Centre, October 2014. At <https://mowatcentre.ca/re-energizing-the-conversation/>.

Independent representation of the varied and often competing consumers' interest should be effectively facilitated and supported at consultations and rates cases. To the extent that the regulator or the government expresses views on outcomes – which in itself would be controversial, insofar as the regulator may have to adjudicate on the subject – such views should not have any enhanced influence over case-specific consumer representation.

*“This independence of consumer representation is all the more important in the context of a possible progressive de-centralization of the transmission and distribution systems, as may occur in Ontario.”*

This independence of consumer representation is all the more important in the context of a possible progressive de-centralization of the transmission and distribution systems, as may occur in Ontario. In such a context, the allocation of costs and revenues between consumer classes may become significantly more complicated and contentious, making effective consumer representation imperative.

The problem of knowledge asymmetry should be explicitly acknowledged in Ontario's consumer charter, accompanied by reasonable efforts and procedures to address it.

The Board has recently announced a regional consumer representation initiative. Whatever its merits might be as a consumer education tool, this initiative should not in any degree supplant the opportunity for consumer interests to be fairly represented at the Board by genuinely independent actors.

The Board has ample tools at its disposal to control cost eligibility and to ensure that consumer representation is as efficient as reasonably possible, and that unfocussed or ineffective representation is not rewarded with costs awards. The experience at the Board has been that independent intervenors, supported by reasonable costs awards, have been an extremely valuable resource in controlling energy prices.

### 3.3 Participation in the distributed energy market

New technology has enabled individual consumers to have a greater say in their own energy use. Technological advances offer ever-expanding opportunities for consumers to actively participate in the market. In this new reality, consumers of all classes – residential, commercial and industrial – need to have the right to be active participants, if they so choose.

Government policy has encouraged small-scale generation, for example through feed-in tariffs. Nonetheless, greater clarity on how consumers can participate in the energy market and consequential costs allocation will encourage more efficient consumer participation.

It is expected that some of these developments will have the potential for significant inter rate class impacts. Ontario's consumer charter should require that the resolution of these inter-class effects be explicitly addressed in Board decisions.

Much of the underlying policy structures governing this transition will be predicated on government policy combined with implementation guidelines and policies developed at the Board through its consultation processes. Consumers should be empowered and supported to engage effectively in all aspects of such policy development. In a new energy environment the regulator should be signaling to consumers of all stripes that they are entitled to participate in a decentralized and flexible system, subject only to their assumption of the natural economic consequences of their choices.

## 3.4 Focus on energy poverty and environmental protection

As noted above, the transition to a more diverse energy supply can lead to some customers having to pay more as a result of other customers investing in new energy resources, as in the case of inter rate class impacts. Indeed, balancing the interests of respective rate classes is a key challenge of the emerging energy market. Ontario's consumer charter should require that Board decisions, reports and consultations explicitly address the inter-rate class implications of the outcome. The charter should also make explicit the basis upon which the balancing of interests has been adjudicated.

Over the last few years efforts have been made by the government and the Board to assist low income consumers in a period of rising prices, particularly as it concerns electricity. Consistent with this concern, it is suggested that the charter should require that every consultation and regulatory decision effectively and explicitly consider the impact of the outcome on vulnerable consumers and energy poverty. The charter should also make explicit the basis upon which the Board has dealt with these concerns.

Ontario has recently seen very rapid development of government policy respecting climate change and environmental protection. Consumers have in various ways expressed their interest in ensuring that this policy direction is responsibly maintained and supported. Ontario's consumer charter should include a requirement that all Board regulatory decisions and consultation outcomes should explicitly address the implications of that outcome with respect to climate change and environmental protection.

# 4

## Conclusion

The energy sector in Ontario, as elsewhere, is undergoing transformative changes. And it is consumers that in many ways are leading this change, and will be affected by the changes. As such, ensuring that all consumers are protected and know their rights in this emerging marketplace is crucial.

A consumer charter that incorporates these proactive consumer rights would set principles and requirements which would give effect to the reasonable expectations of consumers in a dynamic energy environment.

It is not possible or advisable for a charter to explicitly and rigidly stipulate how to balance different consumer interests. Rather, the charter should set the principles under which the balancing is to be considered, and require that it be clearly addressed in regulatory outcomes, following predictable and evidence-based processes.

If consumer rights are to be effectively protected it is critical that the development of rules governing the energy sector be conducted in a transparent, inclusive and accountable process.



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