



**EB-2012-0435**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S. O. 1998, c.15, Schedule B (the "Act");

**AND IN THE MATTER OF** an application by Just Energy Ontario L.P. ("Just Energy") to amend its gas marketer licence and electricity retailer licence.

**BEFORE:** Cynthia Chaplin  
Vice-Chair and Presiding Member

Ellen Fry  
Member

**Decision**  
**June 20, 2013**

**Introduction**

Just Energy has filed an application with the Ontario Energy Board (the "Board") dated December 18, 2012 under sections 52 and 74 of the Act to amend its gas marketer and electricity retailer licences<sup>1</sup>. The application requests exemptions from the provisions of these licences concerning compliance with certain requirements of the Code of Conduct for Gas Marketers and the Electricity Retailer Code of Conduct. The Board has proceeded by way of written hearing.

**Participation**

Direct Energy Marketing Limited and Union Gas Limited were granted intervenor status by the Board, but did not file any interrogatories or submissions. Ag Energy Co-operative Ltd. and the City of Kitchener filed letters of comment. The following parties participated as observers: Access Gas Services Inc., Planet Energy Corp., Summitt

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<sup>1</sup> GM-2010-0152 and ER-2012-0153.

Energy L.P. and Sunwave Gas and Power Inc. Board staff filed interrogatories and submissions. Just Energy filed a response to the Board staff interrogatories but not the Board staff submissions.

### **The Application**

Just Energy is required to follow Board-approved scripts when it conducts telephone verifications with customers who have signed new contracts or renewed their contracts.

The Board-approved scripts that are the subject of this application are as follows:

You should also be aware that energy cost savings under the contract are not guaranteed<sup>2</sup>

You should also be aware that energy cost savings under the renewed contract are not guaranteed<sup>3</sup>

Essentially, Just Energy seeks an exemption from the requirement to follow these scripts because in its view it is marketing products for which the energy cost savings to customers are guaranteed.

The requirement to follow Board-approved scripts is imposed by sections 4.11(b), 4.14(a) and 4.14(b) of the Code of Conduct for Gas Marketers and the Electricity Retailer Code of Conduct (collectively the “Codes”), which provide as follows:

4.11(b) ...the verification representative shall not deviate from the applicable Board-approved script except ... to provide a factual answer to a question from the consumer or to provide a factual clarification...

4.14(a) ...the salesperson shall ensure that the [renewal] call includes all of the statements and questions set out in the applicable script approved for that purpose by the Board...

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<sup>2</sup>Verification Call Script – Natural Gas and Electricity, Question 14

<sup>3</sup> Contract Renewal/Extension Call Script – Natural Gas and Electricity, Question 11

4.14(b) ...the salesperson shall not make any representation that is inconsistent with or contrary to any of the statements or questions set out in the applicable Board-approved script.

Just Energy is required to comply with the Codes by section 5.1 of its Gas Marketer Licence and section 5.1(a) of its Electricity Retailer Licence, which provide as follows:

5.1 The Licensee shall at all times comply with all applicable provisions of the *Code of Conduct for Gas Marketers...*

5.1 The Licensee shall at all times comply with the following Codes...except where the Licensee has been specifically exempted from such compliance by the Board:

(a) The *Electricity Retailer Code of Conduct*

Just Energy has requested additions to its Gas Marketer and Electricity Retailer Licences to state that

The Licensee shall be exempt from Sections 4.11(b), 4.14(a) and 4.14(b) of the *Code of Conduct for [Gas Marketers/Electricity Retailers]* in the following circumstances:

- a) the Licensee is directed by the Board approved script to inform a consumer that energy cost savings under a(n) [natural gas/electricity] contract are not guaranteed, when in fact energy cost savings are guaranteed, provided that the Licensee's claim of guaranteed savings can be substantiated.

Just Energy has not proposed language for a script that could be used to implement the change it is requesting. The Board notes that in any future such applications, it would be helpful if the applicant provided a specific wording proposal.

### **Criteria for the Board Analysis**

In EB-2010-0245 the Board stated that

...where a supplier believes that it can demonstrate to the satisfaction of the Board that a particular product or offer will, in all cases, guarantee savings to

consumers relative to the utility supply price over the entire term of the contract, the Board is prepared to consider an application by that supplier to allow it to use a modified version of the disclosure statements<sup>4</sup> (and other applicable materials such as the Board-approved scripts) that do not contain the “no guarantee of savings” statement<sup>5</sup>

Accordingly, to approve the application, the Board must be satisfied that each specific product for which the request is made guarantees savings to the consumer. Because the application concerns an important consumer protection, the Board will only approve the application if it is supported by clear and compelling evidence. The Board notes that the comments received from Ag Energy Co-operative Ltd. and the City of Kitchener express the view that it is important to communicate clearly with consumers.

### **Board Analysis**

As outlined below, the Board does not consider that Just Energy has provided sufficient evidence to show that any specific product guarantees savings to the consumer. The Board notes that Just Energy did not file any response to Board staff submissions concerning aspects of Just Energy’s pricing that Board staff considered to raise issues.

Just Energy has made this application for both its gas and its electricity retailing activities, but has not provided information concerning any specific electricity retailing product that in its view guarantees savings.

With respect to gas marketing, Just Energy has described two specific products that in its view guarantee savings.

However, Just Energy states that these savings are only guaranteed if the customer remains in the agreement for the full term and that the customer will not receive any guaranteed cost savings if the agreement ends early. Just Energy submits that it would not demonstrate the savings to the customer during the course of the contract and

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<sup>4</sup> In this context, “disclosure statements” are statements in required form comparing the retailer’s price to the utility supply price

<sup>5</sup> Notice of Revised Proposal to Revoke and Re-issue a Code, EB-2010-0245, page 21

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would pay any amount owing to the customer at the end of the quarter following the end of the contract term.

Board staff submits that based on this information, consumers who cannot remain in the agreement for the full term may not receive any cost savings. They submit that because the price calculation within the term of the contract is unclear, there is a risk that consumers will pay significantly more if they have to leave the contract prematurely. They also submit that because the savings would not be realized until after the end of the term, there is a risk that the customers would pay a higher price during the term of the contract.

The Board agrees with Board staff that there is a risk that customers may not receive any cost savings until after the end of the contract and may not realize any savings if they have to leave the contract prematurely.

Board staff also submits that it is not clear whether the price comparison used by Just Energy to demonstrate its savings guarantee covers all price components that a customer would reasonably expect to have included. Board staff submits that based on the evidence filed by Just Energy, Just Energy will only consider three factors in making cost comparisons: consumption, transportation and supply inputs.

However, Board staff submits that there are additional costs that customers would have to pay that, if not factored in, could result in the customer paying more than to a utility. Board staff submits that it is not clear how Just Energy will factor in these charges. One such charge is a gas storage charge that would be payable by some customers who live within Union Gas's franchise area. A second such charge is a regulatory charge that does not apply to customers billed by a gas utility, described as "a variable monthly charge passed through to you in order to cover costs incurred under the Ontario Energy Board's Cost Assessment Model".

The Board agrees with the submission of Board staff that Just Energy has not provided clear evidence that gas storage charges and regulatory charges have been factored into the price comparison that is the basis of its savings guarantee.

**Board Finding**

As outlined above, Just Energy has not provided evidence to demonstrate clearly that any specific product guarantees savings to the consumer. Accordingly, the Board denies the application.

**DATED** at Toronto, June 20, 2013

**ONTARIO ENERGY BOARD**

*Original signed by*

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Cynthia Chaplin  
Vice-Chair and Presiding Member

*Original signed by*

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Ellen Fry  
Member