



EB-2011-0306

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

AND IN THE MATTER OF a Notice of Intention to Make an
Order for Compliance, Suspension and an Administrative
Penalty against Active Energy Inc. Licence Number ER-2007-
0076 and Active Energy Corp. Licence Number GM-2007-
0078 (together, "Active").

**Assurance of Voluntary Compliance
Pursuant to s. 112.7 of the
*Ontario Energy Board Act, 1998***

I. INTRODUCTION

By Notice of Intention to Make an Order (the "Notice") under section 112.3, 112.4 and 112.5 of the *Ontario Energy Board Act, 1998*, (the "Act") for compliance, suspension and an administrative penalty issued August 25, 2011 the Board announced that it intended to make an order against Active to pay an administrative penalty in the amount of \$25,000. Pursuant to s. 112.2(4) Active was advised that it may, within 15 days after receiving the notice, give notice to the Board requiring the Board to hold a hearing. Active has elected not to request a hearing and in order to fully and finally resolve this matter Active is prepared to admit the deficiencies set out in the Notice and

to enter into this Assurance of Voluntary Compliance.

II. COMPLIANCE INSPECTION

Following the enactment of the *Energy Consumer Protection Act, 2010* (the "ECPA") and supporting regulatory instruments on January 1, 2011, the Board had a series of compliance inspections of electricity retailers and gas marketers operating in the Ontario market.

The purpose of the inspections was to confirm the statements made in the Certificate of Compliance filed by the supplier and to assess the extent to which electricity retailers' and gas marketers' practices and processes are in compliance with all applicable legal and regulatory requirements including the ECPA, Ontario Regulation 389/10, Ontario Regulation 90/99, the Code of Conduct for Gas Marketers ("Marketers Code") and the Electricity retailer Code of Conduct ("Retailer Code") (collectively referred to as the "Codes"). In addition, the extent to which supplier systems, processes and business practices are appropriate in terms of facilitating and achieving compliance and identifying the need for remedial action was assessed. The inspection was limited to the activities of suppliers related to the retailing of electricity or the marketing of gas to low-volume consumers as defined in the Act.

III Assurance of Voluntary Compliance

Business Cards

Active admits to the following deficiencies set out in the Notice:

1. The business card does not state the address of Active; contrary to section 5 of Ontario Regulation 90/99 and section 2.2(b) of the Codes.

2. The business card, while stating the electricity retailer licence number, it does not state the gas marketer licence number issued to Active under the Act; contrary to section 5 of Ontario Regulation 90/99 and section 2.2(a) of the Marketer Code.

3. As the standard form business card is non-compliant with the legal and regulatory requirements it is likely that salespersons offering these business cards are engaged in an unfair practice as defined in section 5(6)(ii) of Ontario Regulation 389/10 and sections 1.1(b) and 2.1 of Codes.

Subsequent to the issuance of the Notice, Active provided to Board staff a revised form of the business cards issued to all salespersons who meet in person with low volume consumers. It is Board staff's view that the above noted deficiencies have been remedied.

Active commits to ensuring that, effective as of the date of this Assurance, the business card issued to every salesperson who meets in person with low volume consumers meets the requirements set out in section 5 of Ontario Regulation 90/99, section 5.6(ii) of Ontario Regulation 389/10 and section 1.1 (b), 2.1 and 2.2 (a) and (b) of the Codes.

Contract content requirements for new contracts and renewal contracts

New Contracts

Active admits to the following deficiencies set out in the Notice:

4. The contract fails to include the applicable conditions/rights under section 21(b), (e) and (f) of Ontario Regulation 389/10 which provide that the consumer can cancel the contract without cost or penalty; contrary to section 12 of the ECPA and section 7(1)13 of Ontario Regulation 389/10.

5. The acknowledgement that has to be signed and dated by the consumer or the account holder's agent that he or she has received a text-based copy of the contract is before (instead of following) the signature of the person signing the contract on behalf of Active Energy. This is contrary to section 7(1)17 and 7(1)18 of Ontario Regulation 389/10 and section 12 of the ECPA.
6. The gas contract contains statements about the pre ECPA reaffirmation requirements, including the 10 to 60 day reaffirmation period that no longer applies to new contracts entered into on and after January 1, 2011; contrary to section 7(2)(a) of Ontario Regulation 389/10 and section 12 of the ECPA.
7. The gas contract states that in relation to a renewed contract, the consumer has the ability to cancel the contract within 35 days of the consumer receiving his or her first bill under the renewed contract, rather than giving the consumer the ability to cancel at any point after the contract is renewed; contrary to section 7(2)(a) of Ontario Regulation 389/10 and section 12 of the ECPA.

Subsequent to the issuance of the Notice, Active provided to Board staff a revised form of the new contract to be used when Active is entering into a contract with a low volume consumer. It is Board staff's view that the above noted deficiencies have been remedied.

Active commits to ensuring that, effective as of the date of this Assurance, the form of and content of contract entered into with a low volume consumer meets the requirements set out in section 7(1) 13, 7(1)17, 7(1)18, 7(2)a, 21(b), (e) and (f) of Ontario Regulation 389/10.

Renewal contracts

Active admits to the following deficiencies set out in the Notice:

8. The renewal gas contract that was reviewed (contract with consumer R.W.) fails to state Active's licence number issued under the Act; contrary to section 7(1)2 of Ontario Regulation 389/10 and section 12 of the ECPA.
9. The renewal gas contract with consumer R.W. also fails to state that "nothing in the contract negates or varies the consumer's rights to cancel the contract under and in accordance with the Act and this Part"; contrary to section 7(1)11 of Ontario Regulation 389/10 and section 12 of the ECPA.

Subsequent to the issuance of the Notice, Active provided to Board staff a revised form of the renewal contract to be used when Active is entering into a contract with a low volume consumer. It is Board staff's view that the above noted deficiencies have been remedied.

Active commits to ensuring that, effective as of the date of this Assurance, the form of and content of a renewal contract entered into with a low volume consumer meets the requirements set out in section 7(1)2 and 7(1)11 of Ontario Regulation 389/10.

Completion of price comparison for new contracts

Active admits to the following deficiency set out in the Notice:

10. It was observed that in one gas contract (contract number GE154246), the rate of 34.9 cents per cubic meter included under Part B of the price comparison does not match the rate of 31.9 cents per cubic meter stated in the consumer's contract; contrary to section 8(3) of Ontario Regulation 389/10, section 12 of the ECPA and section 4.6(b) of the Marketer Code.

Active commits to ensuring that, effective as of the date of this Assurance, a disclosure statement with an accompanying price comparison document that is provided to a consumer will be in compliance with section 8(3) of Ontario Regulation 389/10 and 4.6 (b) of the Marketer Code.

Conditions for contract renewals or extensions

Active admits to the following deficiencies:

11. A text based copy of the proposed renewed contract was not included in the renewal package; contrary to section 15(1)(b)(i) of Ontario Regulation 389/10 and section 18 of the ECPA.
12. The renewal package only included one copy of the disclosure statement and price comparison; contrary to section 15(1)(b)(ii) of Ontario Regulation 389/10 which requires that two copies of the text-based disclosure statement and price comparisons be sent by the supplier. This is also contrary to section 18 of the ECPA.
13. The disclosure statement included in the renewal package was not the Board approved version for a renewal contract, rather it was for a new contract; contrary to section 8(2) of Ontario Regulation 389/10, section 12 of the ECPA and section 4.2 of the Marketer Code.

Subsequent to the issuance of the Notice, Active provided to Board staff a revised form of the renewal package. It is Board staff's view that the above noted deficiencies have been remedied.

Active commits to ensuring that, effective as of the date of this Assurance, the renewal package will be in compliance with section 8(2) and 15(1)(b)(i) and (ii) of Ontario Regulation 389/10 and section 4.2 of the Marketer Code.

Renewal form requirements

Active admits to the following deficiency set out in the Notice:

14. The renewal form does not contain the telephone number of the Board's Consumer Relations Centre; contrary to section 7.1 of the Codes.

Subsequent to the issuance of the Notice, Active provided to Board staff a revised form of the renewal form provided to low volume consumers. It is Board staff's view that the above noted deficiencies have been remedied.

Active commits to ensuring that, effective as of the date of this Assurance, the renewal form will contain the telephone number of the Board's Consumer Relations Centre.

Written confirmation of cancellation

Active admits to the following deficiency set out in the Notice.

15. Telephone cancellations of five electricity contracts and six gas contracts were reviewed and it was noted that written confirmations of the cancellations were not sent to the consumers in these 11 cases. This is contrary to section 19 of the ECPA and section 22(4)(b) of Ontario Regulation 389/10. A list of the telephone cancellations reviewed is attached at Appendix A.

Active commits to ensuring that, effective as of the date of this Assurance, written confirmation of a cancellation to a consumer will be made promptly and in accordance with section 22(4)(b) of Ontario Regulation 389/10.

Verification Calls - Use of the applicable Board-approved script

Active admits to the following deficiencies set out in the Notice:

16. It was observed that in one of the 15 positive gas verification calls reviewed (sample number 10, contract number GE155759), the Active verification representative:
- a. Confirmed the name of the consumer however did not confirm if he was speaking to the account holder or the account holder's agent; contrary to section 15 of the ECPA; section 13(2) of Ontario Regulation 389/10; and section 4.10 and 4.11(a) of the Marketer Code;
 - b. Did not advise the consumer that the call was being recorded; contrary to section 15 of the ECPA; section 13(2) and section 13(3) of Ontario Regulation 389/10; and section 4.10 and 4.11(a) of the Marketer Code; and
 - c. Skipped the following steps of the Board-approved script: 3 to 14 and 20 to 23; contrary to section 15 of the ECPA, section 13(2) of Ontario Regulation 389/10, and section 4.10 and 4.11(a) of the Marketer Code.
17. It was observed that in one of the 15 positive gas verification calls reviewed (sample number 1, contract number GE154246) the Active Energy verification representative used the electricity verification script instead of the gas verification script; contrary to section 15 of the ECPA; section 13(2) of Ontario Regulation 389/10; and section 4.10 and 4.11(a) of the Marketer Code.
18. It was observed that in one of the nine negative gas verification calls reviewed (sample number 21, contract number GE164020), the verification representative failed to end the verification process when advised by the consumer of an act or omission that appeared to be an unfair practice. The consumer stated numerous times that he/she wanted to cancel the contract before the verification representative terminated the call. This is contrary to section 15 of the ECPA, section 13(2) and section 13(5) of Ontario Regulation 389/10, and section 4.10 and 4.11(e) of the Marketer Code.

Active commits to ensuring that, effective as of the date of this Assurance, Active

verification representatives will act in accordance with section 13(2), 13 (3), 13(5) of Ontario Regulation 389/10 and sections 4.10 and 4.11(a) and (e) of the Marketer Code

IV Administrative Monetary Penalty

Active agrees to pay an administrative monetary penalty in the amount of \$20,000 to the Board by way of certified cheque and payable in three installments as follows:

1. October 1, 2011 – payment of \$7,000
2. November 15, 2011 – payment of \$7,000
3. January 1st, 2012 – payment of \$6,000

V Consumer Rights

Nothing in this Assurance affects any rights a consumer may have under his or her contract, the ECPA or any other law.

VII Failure to Comply

This Assurance has the same force and effect as an order of the Board pursuant to section 112.7(2) of the Act and any failure to comply with its terms shall be deemed to be a breach of an order of the Board.

I have authority to bind Active Energy Inc. and Active Energy Corp. to the terms set out in this Assurance of Voluntary Compliance:

Name: *Michael Stedman*
Dated: *September 12, 2011*

A handwritten signature in black ink, appearing to read "Michael Stedman", written over a horizontal line.