

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 79 of the *Competition Act*;

IN THE MATTER OF certain policies and procedures of Reliance Comfort Limited Partnership

B E T W E E N:

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED / PRODUIT	
February 15, 2013	
Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 21

THE COMMISSIONER OF COMPETITION

Applicant
(Responding Party)

and

RELIANCE COMFORT LIMITED PARTNERSHIP

Respondent
(Moving Party)

AFFIDAVIT OF ERIN PENNEY
(Motion for Particulars)

I, Erin Penney, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a paralegal with the firm Borden Ladner Gervais LLP ("**BLG**"), the lawyers acting for the Respondent, Reliance Comfort Limited Partnership ("**Reliance**"). I am actively involved in the day to day conduct of BLG's file with respect to the Commissioner of Competition's application against Reliance. As such I have knowledge of the matters to which I hereinafter

depose. Where I do not have personal knowledge, I have identified the source of my information and verily believe it to be true.

Background to Reliance's Demand for Particulars

2. The Commissioner of Competition ("**Commissioner**") served Reliance with the Notice of Application ("**Application**") on December 20, 2012.
3. The Commissioner defines the relevant geographic market, at paragraph 31 of the Application, as "the local markets of Ontario where Union Gas distributes natural gas and certain other local rural markets in Ontario".
4. On January 18, 2013, BLG wrote to counsel for the Commissioner seeking particulars of the geographic markets referred to in the Application as "certain other local rural markets in Ontario". A copy of BLG's letter dated January 18, 2013 is attached hereto and marked as **Exhibit "A"**.
5. On January 22, 2013, counsel for the Commissioner responded to BLG's letter, stating that the "certain other local rural markets in Ontario" referred to in the Application are "those that are not supplied natural gas". A copy of counsel for the Commissioner's letter of January 22, 2013 is attached hereto and marked as **Exhibit "B"**.
6. On January 25, 2013, BLG served the Commissioner with a Demand for Particulars ("**Demand**"). A copy of the Demand and its exhibits is attached hereto and marked as **Exhibit "C"**.
7. Having received no response to the Demand satisfactory to Reliance, on January 29, 2013 Reliance filed a Notice of Motion with the Competition Tribunal, seeking among other things, an order requiring that the Commissioner provide the particulars requested in the Demand. A copy of Reliance's Notice of Motion filed January 29, 2013 is attached hereto and marked as **Exhibit "D"**.

Commissioner's Response to Reliance's Demand for Particulars

8. On February 6, 2013, the Commissioner filed his response to Reliance's Notice of Motion.

9. As at today's date, the Commissioner has not by his Response to the Motion or otherwise provided the particulars of the relevant geographic market requested as demands 2 or 3(a) of the Demand. Exhibit "A" to the Demand is a list of 560 communities enumerated in Union Gas's Conditions of Service. Reliance sought confirmation from the Commissioner that this list completely and accurately defines the communities the Commissioner refer to as "the local markets of Ontario where Union Gas distributes natural gas", and whether the municipal regions listed encompassed the cities, towns and communities of that region. The Commissioner does not address Exhibit "A" to the Demand in his Response to the Motion.

Commissioner's Response to the Motion to Strike, paragraph 12(b).

10. As at today's date, the Commissioner has not by his Response to the Motion or otherwise provided the particulars requested as demand 4 of the Demand. The Commissioner states that "[t]he Respondent knows its own RRN Return Policy". The rationale for Reliance's RRN Return Policy was recognized in *Weller v. Reliance Home Comfort Limited Partnership*, 2011 ONSC 3148. At paragraph 8 of his decision, Mr. Justice Strathy notes:

To combat [sales tactics of door-to-door sales persons, who allegedly engaged in aggressive and misleading sales practices], Reliance instituted a new policy, reflected in the contract amendment at issue, which required customers wishing to terminate their rental agreements to first telephone Reliance to obtain a "Removal Reference Number". This was intended to give Reliance an opportunity to speak to the customers, to discover whether the decision to terminate the rental contract was motivated by competitive action by National and, if possible, to persuade the customers to change their minds.

A copy of *Weller v. Reliance Home Comfort Limited Partnership*, 2011 ONSC 3148 is attached hereto and marked as **Exhibit "E"**.

Notice of Application, paragraph 17.

11. Further, with respect to demand 4 of the Demand, Mr. Justice Echlin stated in *MacGregor v. Reliance Comfort Limited Partnership*, 2010 ONSC 6925:

[16] Reliance expressed a concern that it might be liable for acting upon the instructions of an agent, if not duly appointed.

[17] In answer to such concerns, I suggest that if National is to be appointed as agent to deal with Reliance that a properly drafted and executed agency agreement be prepared and provided to Reliance to meet such concerns.

A copy of *MacGregor v. Reliance Comfort Limited Partnership*, 2010 ONSC 6925 is attached hereto and marked as **Exhibit “F”**. In these circumstances, Reliance requires particulars of what alleged barriers have in fact been created.

12. As at today’s date, the Commissioner has not by his Response to the Motion or otherwise provided the particulars requested as demand 7 of the Demand. Reliance is unaware of how it represents 76% of the market share, especially considering there are new companies who have successfully entered the market, such as National Home Services, which states that it is “[c]urrently servicing 95% of the Ontario landscape [and] National Home Services is the fastest growing home services company in Canada”. A copy of this statement from its parent company’s website is attached hereto and marked as **Exhibit “G”**.

13. As at today’s date, the Commissioner also has not by his Response to the Motion or otherwise provided the particulars requested as demands 1, 5, 6, 8 or 9 of the Demand.

Commissioner’s Response to the Motion to Strike, paragraphs 12(a), (e), (f), (h) and (i).

Attempt to Determine the Relevant Geographic Market and Relevant Market

14. In order to determine the answers to the particulars requested that are allegedly within Reliance’s knowledge, as well as to determine the relevant geographic and relevant markets, I reviewed documents provided to the Commissioner in response to an Order issued pursuant to Section 11 of the Act on June 5, 2012. Attached hereto and marked as **Exhibit “H”** is a copy of the Section 11 Order.

15. A presentation dated November 22, 2012, which contains maps of Enbridge and Union Gas' "service areas" is available on the Ontario Ministry of Energy's website. A copy of the Ontario Ministry of Energy presentation containing the relevant maps is attached hereto and marked as **Exhibit "I"**. Copies of lists of Enbridge and Natural Resource Gas' service territories are attached hereto and marked as **Exhibit "J"**.

16. Based on Exhibits "I" and "J", there are several areas in Ontario in respect of which both Union Gas and Enbridge appear to supply with natural gas. There are also areas in Ontario that both Union Gas and Natural Resource Gas appear to supply with natural gas.

17. Throughout the Application, the Commissioner describes the relevant geographic market as including the local markets in Ontario where Union Gas *distributes* natural gas. However, in the Commissioner's Response to the Motion to Strike, he refers to the markets as where Union Gas *supplies* natural gas.

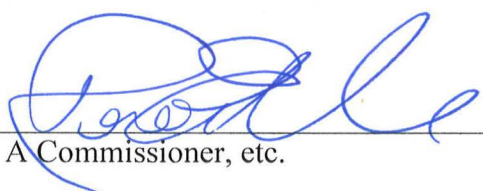
Notice of Motion, paragraphs 13, 31, 32, Schedule "A", paragraphs 5 and 6; and
Commissioner's Response to the Motion to Strike paragraphs 9 and 12(b).

18. A list of 15 low-volume natural gas suppliers in Ontario, that may also supply natural gas within the relevant geographic market, is found on the Ontario Energy Board's website. This list is attached hereto and marked as **Exhibit "K"**.

19. Union Gas states on its website that it "purchase[s] natural gas from a variety of suppliers and has access to a number of alternate pipelines to bring natural gas into our system". It therefore appears that areas to which Union Gas *distributes* natural gas may be different from the locations in which it *sells* natural gas. A copy of Union Gas' Natural Gas Q&A page is attached hereto and marked as **Exhibit "L"**.

20. In the Notice of Motion filed January 29, 2013, Reliance requests by way of an alternative prayer for relief that the Tribunal make an order requiring the Commissioner to fully respond to the Demand. I make this affidavit solely in support of that prayer for relief, and for no other purpose.

SWORN BEFORE ME at the City)
of Toronto, in the Province of Ontario)
this 15th day of February, 2013.)

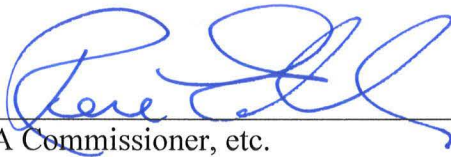


A Commissioner, etc.)



ERIN PENNEY

This is **Exhibit "A"** to the Affidavit of Erin Penney, sworn before me at the City of Toronto this 15th day of February, 2013.

A handwritten signature in blue ink, appearing to be "P. H.", written over a horizontal line.

A Commissioner, etc.

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File No. 016778/000065

January 18, 2013

Delivered by Email

Ms. Josephine A. L. Palumbo
Competition Bureau - Legal Services
50 Victoria Street
Gatineau, Quebec,
K1A 0C9

Dear Ms. Palumbo:

Re: The Commissioner of Competition v. Reliance Comfort Limited
Notice of Application pursuant to s. 79 of the *Competition Act*

We refer to the Notice of Application ("Application") filed against Reliance on December 20, 2012.

The Application fails to comply with Rule 36. (2)(c) of the *Competition Tribunal Rules*. The Commissioner purports to define the geographic market at paragraph 31 of the Application. In this paragraph, the Commissioner describes the relevant geographic markets for the supply of natural gas and electric water heaters as (i) the local markets of Ontario where Union Gas distributes natural gas and (ii) certain other local rural markets in Ontario. No material facts have been pleaded by the Commissioner with respect to the location or boundaries of these "other local rural markets".

In the interest of dealing with this issue in an expeditious and cost effective manner, we request that the Commissioner **immediately confirm** his intention to amend the Application to properly plead both the geographic market the Commissioner alleges to be relevant as well as the material facts upon which the Commissioner relies in support of that geographic market. Failing receipt of such confirmation by close of business, **Tuesday, January 22, 2013**, we are instructed to immediately apply to the Tribunal for relief.

Yours truly

A handwritten signature in dark ink, appearing to read "Robert S. Russell", is written over a horizontal line.

Robert S. Russell
Borden Ladner Gervais LLP

cc: David R. Wingfield, Executive Director and Senior General Counsel, Department of Justice
Parul Shah, Counsel, Department of Justice

This is **Exhibit "B"** to the Affidavit of Erin Penney, sworn before me at the City of Toronto this 15th day of February, 2013.

A handwritten signature in blue ink, appearing to be "Leo", written over a horizontal line.

A Commissioner, etc.



Ministère de la Justice
Canada

Department of Justice
Canada

Cote de sécurité – Security classification

PROTÉGÉ B – PROTECTED B

Bureau de la concurrence
Services juridiques

Competition Bureau
Legal Services

Notre référence – Our file

BIMS No.: 3106658

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Gatineau QC K1A 0C9

Place du Portage, Phase I
22nd Floor
50 Victoria Street
Gatineau, QC K1A 0C9

Date : 13/01/22 (AA/YY-MM-JJDD)
Téléphone/Télocopieur Telephone/Fax
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**PROTECTED AND CONFIDENTIAL
VIA EMAIL**

Borden Ladner Gervais LLP
Scotia Plaza
40 King Street West, 44th Floor
Toronto, Ontario M5H 3Y4

Attn.: Mr. Robert S. Russell

Dear Mr. Russell:

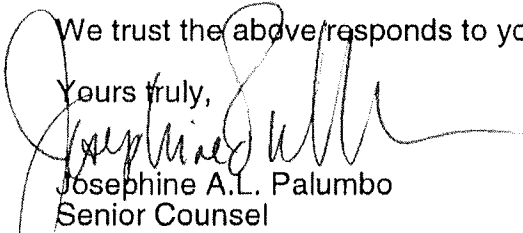
Re: The Commissioner of Competition v. Reliance Comfort Limited Partnership (CT/002)

I acknowledge receipt of your letter dated 18 January 2013 in relation to the above-noted matter and specifically your query regarding the definition of the relevant geographic markets for the supply of natural gas and electric water heaters contained in paragraph 31(ii) of the Notice of Application (the "Application").

When read in the context of the Application itself and in particular paragraph 9, we believe that the relevant geographic markets have been adequately described and therefore the Application meets the provisions of Rule 36(2)(c) of the *Competition Tribunal Rules*. Nevertheless, for the avoidance of any doubt that you might have on this point, the "certain other local rural markets in Ontario" in paragraph 31(ii) refers to the local rural markets in Ontario that are not supplied natural gas.

We trust the above responds to your query.

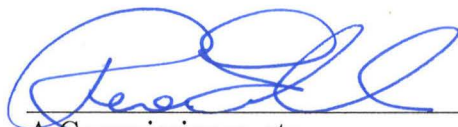
Yours truly,


Josephine A.L. Palumbo
Senior Counsel

cc. David R. Wingfield, Executive Director and Senior General Counsel, Department of Justice
Parul Shah, Counsel, Department of Justice

Canada

This is **Exhibit "C"** to the Affidavit of Erin Penney, sworn before me at the City of Toronto this 15th day of February, 2013.



A Commissioner, etc.

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File No. 016778/000065

January 25, 2013

Delivered by Email

Ms. Josephine A. L. Palumbo
Competition Bureau - Legal Services
50 Victoria Street
Gatineau, Quebec,
K1A 0C9

Dear Ms. Palumbo:

Re: The Commissioner of Competition v. Reliance Comfort Limited
Notice of Application pursuant to s. 79 of the *Competition Act*

We refer to your letter of January 22, 2013. Your response has failed to clarify our understanding of the "Relevant Market" being relied on by the Commissioner and, in fact, has confused issues further: if the product market includes gas water heaters (as pleaded) how can the relevant aggregate geographic market possibly include areas that are not supplied natural gas?

From a pleading stand point, the Commissioner's Notice of Application is in our view too ambiguous with respect to key elements of the Commissioner's claims against Reliance:

- (a) a complete list of the "related water heater services" said to be included in the Commissioner's proposed product market has not been pleaded (note the use of the word "include" in paragraphs 10 and 29 of the Notice);
- (b) neither the specific geographic limits of the proposed geographic markets nor the material facts from which those geographic limits can be ascertained have been pleaded;
- (c) it is unclear on the pleading whether there are additional return process or procedures (or elements thereof) upon which the Commissioner's allegations of abuse are based (for example, we note the use of words "various" and "among other things" at paragraphs 15 and 28 and 17 of the Notice respectively); and
- (d) it is unclear on the pleading whether there are additional fees and charges imposed by Reliance that the Commissioner relies upon as a practice of anticompetitive acts (note the use of the word "include" at paragraph 22).

Demand for Particulars

For the reasons set out in this and our January 18, 2013 letter, the Commissioner's Notice of Application fails to comply with the requirements of *Rule 36* of the *Competition Tribunal Rules* and the applicable rules of pleading set out in the *Federal Court Rules*. Reliance is unable to adequately and properly respond to the Notice of Application as currently filed.

Enclosed is a Demand for Particulars, issued to the Commissioner pursuant to *Rules 36(2) and 34(1)* of the *Competition Tribunal Rules* and *Rule 181* of the *Federal Court Rules*. We make the enclosed Demand in a further and final attempt to reach an expeditious resolution of our concerns, and without waiving our client's right to seek any further relief.

Please confirm by no later than **3.00pm, January 28, 2013** that you intend to respond by supplying the requested particulars, failing which we bring a motion to strike the Notice of Application.

Yours truly



Robert S. Russell
Borden Ladner Gervais LLP

cc: David R. Wingfield, Executive Director and Senior General Counsel, Department of Justice
Parul Shah, Counsel, Department of Justice
Renai Williams, Borden Ladner Gervais
Denes Rothschild, Borden Ladner Gervais
Zirjan Derwa, Borden Ladner Gervais
Brendan Wong, Borden Ladner Gervais

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 79 of the *Competition Act*;

IN THE MATTER OF certain policies and procedures of Reliance Comfort Limited Partnership

B E T W E E N:

THE COMMISSIONER OF COMPETITION

Applicant

and

RELIANCE COMFORT LIMITED PARTNERSHIP

Respondent

DEMAND FOR PARTICULARS

The Respondent, Reliance Home Comfort Limited Partnership ("Reliance") demands that pursuant to Rule 181(2) of the *Federal Courts Rules*, SOR/98-106 and also pursuant to Rule 36 of *Competition Tribunal Rules*, SOR/2008-141 the Commissioner of Competition ("Commissioner") serve and file further and better particulars of the allegations in the Notice of Application filed on December 20, 2012, as follows:

Demand 1:

In paragraph 10 the Commissioner states that most residential consumers who rent or purchase a water heater also obtain related water heater services '*including*' installations, repair, maintenance and disconnection. Similarly, in paragraph 29, the Commissioner has defined the purported product market to include water heater related services. The Commissioner pleads that these related services '*include*' installation, disconnection, maintenance and repair of water heaters. By using the term 'including' and 'includes' the Commissioner has failed to identify all of the other services that fall within the ambit of "related services".

Please provide particulars with respect to paragraphs 10 and 29 as to:

- (a) Identify the other services which are distinguished from "installation, disconnection, maintenance and repair of water heaters"; and,
- (b) Confirm that each of these other services are contained within the alleged aggregated product market.

Demand 2:

In paragraph 31 of the Application the Commissioner purports to define the relevant geographic markets as (i) the local markets of Ontario where Union Gas distributes natural gas; and (ii) certain other local rural markets in Ontario. In paragraph 13 the Commissioner has identified the area where Union Gas distributes natural gas as the area corresponding generally to parts of Northern Ontario, from the Manitoba border to the North Bay/Muskoka area; Southwestern Ontario, from Windsor to west of Greater Toronto Area; and Eastern Ontario, not including Ottawa. The Commissioner has not pleaded any facts on the number

of local markets or where in this area these local markets are located.

Please provide particulars with respect to paragraph 13 and 31 as to:

- (a) Geographic identifiers such as postal codes, census tract or names of streets and roads to identify the parameters and identity of these local markets.
- (b) The communities that Union Gas serves are identified on its corporate website as of January 2013 as listed in Exhibit 'A' hereto. Please confirm whether Exhibit 'A' completely and accurately defines the communities referred to as "the local markets of Ontario where Union Gas distributes natural gas".
- (c) Please further confirm with reference to the list of communities identified in Exhibit 'A', whether the "local markets of Ontario where Union Gas distributes natural gas" include the totality of the communities identified. For example, Exhibit 'A' lists Peel Region as a community, which in turn includes the cities of Mississauga, Brampton and Caledon. For example, Exhibit 'A' lists Peel Region as a community, notwithstanding that Peel Region includes the cities of Mississauga, Brampton and Caledon. Please confirm wherever such a municipal region is listed in Exhibit 'A' whether the cities, towns and communities that comprise that municipal region are intended to be included in the definition of "the local markets of Ontario where Union Gas distributes natural gas".

Demand 3:

In paragraph 31 of the Application the Commissioner purports to define the Relevant Geographic Market to include the aggregate of (i) the local markets of Ontario where Union Gas distributes natural gas; and (ii) certain other local rural markets in Ontario. The Commissioner has pled no further facts in the Application to identify or indicate where in Ontario these local rural markets are located. In a letter dated January 22, 2013, Ms. Palumbo advised that the boundaries of “certain other local rural markets in Ontario” are “those that are not supplied natural gas”. A copy of that letter is Exhibit ‘B’ hereto. This further confuses the stated market definition. Paragraph 29 of the Application states that the relevant product market for the purposes of the Application is the aggregated market of the supply of gas and electric water heaters and related services. If the geographic market includes “local rural markets in Ontario where natural gas is not supplied”, is it the position of the Commissioner that there are no substitutes for electric water heaters in these local rural markets, as obviously gas water heaters cannot be deployed. The relevant product market as defined is inconsistent with this suggested clarification.

Please provide particulars with respect to paragraph 14 and 31 as to:

- (a) Geographic identifiers such as postal codes, census tract or names of streets and roads to identify the parameters and identity of the ‘*other local rural markets*’.
- (b) Whether that Commissioner takes the position as indicated by the letter from Ms. Palumbo on January 22, 2013 that in areas that are not supplied by natural gas there are no substitutes for electric water heaters.

Demand 4:

In paragraph 17 of the Application the Commissioner alleges that Reliance creates significant barriers to the return of its water heaters through the use of its RRN Return Policy. In this paragraph the Commissioner uses the phraseology '*among other things*' and therefore fails to identify all of the ways in which it is alleged the RRN Return Policy creates barriers to return Reliance's water heaters. Please provide particulars with respect to paragraph 17 as to:

- (a) Identify the ways other than those listed in (i) to (iv) by which it is alleged the RRN Return Policy creates significant barriers to the return of Reliance's water heaters.

Demand 5:

In paragraph 20 of the Application the Commissioner alleges that Reliance imposes arbitrary restrictions on the return process at its return depots. In this paragraph the Commissioner uses the word '*including*' and therefore fails to identify all of the alleged arbitrary restrictions.

Please provide particulars with respect to paragraph 20 as to:

- (a) Identify the other alleged arbitrary restrictions imposed by Reliance.

Demand 6:

In paragraph 22 the Commissioner alleges that Reliance levies multiple and unwarranted exit fees and charges to impede, prevent and deter customers from switching to competitors and to penalize competitors. The Commissioner alleges these charges

'include' damage; account closure; drain, disconnection and pick-up as well as extra billing charges.

Please provide particulars with respect to paragraph 22 as to:

- (a) The other alleged charges imposed by Reliance upon which the Commissioner intends to rely.

Demand 7:

In paragraph 34 of the Application the Commissioner pleads that Reliance controls 76% of the Relevant Market based on **'annual revenues'**. The Commissioner pleads no further facts to identify what these annual revenues represent.

Please provide particulars with respect to paragraph 34 as to:

- (a) Is this alleged revenue based on revenue from rental customers in the aggregate or based on annual sales of water heaters?
- (b) Is the basis of the market share approach based on Reliance's installed base of customers or on its annual sales of water heaters?
- (c) Identify which of the alleged markets to which this 76 % market share relates.
- (d) Identify the specific years on which these annual revenue figures are based.

Demand 8:

In paragraph 40 the Commissioner pleads that Reliance implemented **'certain water heater policies and procedures'** which were prohibited by the Direct Energy Consent Order, but does not plead any facts as to which policies and procedures he is referring to.

Please provide particulars with respect to paragraph 40 as to:

- (a) The specific return policies and procedures implemented by Reliance which are alleged to have been prohibited by the Direct Energy Consent Order;
- (b) The specific return policies and procedures implemented by Reliance which are alleged to have been similar to those prohibited under the Direct Energy Consent Order;

Demand 9:

In paragraphs 46, 49 and 56 the Commissioner alleges Reliance's exclusionary water heater return policies have caused at least '**two competitors**' to exit the Relevant Market. The Commissioner further asserts that Reliance has impeded and prevented '**several competitors**' from entering or expanding in the Relevant Market. No facts have been pled regarding these allegations.

Please provide particulars with respect to paragraphs 46, 49 and 51 as to:

- (a) a complete list of the '**two competitors**' who have purported to leave the alleged Relevant Market due to Reliance's exclusionary water heater return policies and procedures including in each instance:
 - i. the name of the competitor
 - ii. the date on which the competitor is alleged to have exited the market
 - iii. each separate local market or local rural market in Ontario forming part of the Commissioner's aggregated geographic market from which the competitors are alleged to have exited.

- (b) a complete list of the '**several competitors**' who Reliance have purported to have impeded and prevented from entering or expanding in the alleged Relevant Market including in each instance:
- i. the name of the competitor
 - ii. the date on which the competitor is alleged to have exited the market
 - iii. each separate local market or local rural market in Ontario forming part of the Commissioner's aggregated geographic market from which the competitors are alleged to have exited.

DATE: January 25, 2013

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Counsel for
Reliance Home Comfort Limited
Partnership

TO: COMPETITION BUREAU LEGAL SERVICES

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Union Gas
CONDITIONS OF SERVICE

January 1, 2013

1. About our Area and Gas Services

1.1 Area Served by Company

As outlined in these conditions of service, Union Gas has an adequate supply of gas to serve its customers, and has properly installed pipe and piping according to the appropriate legislative requirements. Union Gas supplies gas to over 400 communities within the 230 municipalities where Union Gas holds a franchise agreement. These are considered traditional place names and may not in all cases reflect the current names of these communities.

Communities

Aberfoyle	Bayham Twp	Burford
Acton	Beachville	Burford Twp
Adelaide Twp	Beardmore	Burgessville
Ailsa Craig	Belleville	Burks Falls
Alberton	Bentinck Twp	Burlington
Aldborough Twp	Berwick	Cache Bay
Alma	Bewdley	Caledonia
Alvinston	Blandford-Blen Twp	Callander
Amabel Twp	Banshard Twp	Calstock
Amherstburg	Blenheim	Cambridge
Amherstview	Blezard Valley	Camden Twp
Ancaster	Blind River	Camlachie
Appin	Bloomfield	Campbellville
Arkona	Bloomingdale	Canboro
Arran Twp	Blue Mountains	Canborough Twp
Artemesia Twp	Blyth	Canfield
Arthur	Bosanquet Twp	Cannifton
Arthur Twp	Bothwell	Capreol
Astra	Bracebridge	Caradoc Twp
Atherley	Branchton	Cardinal
Atikokan	Brant Twp	Carlisle
Atwood	Brantford	Carrick Twp
Awrey Twp	Brantford Twp	Castleton
Ayr	Breslau	Cathcart
Azilda	Brigden	Cayuga
Baden	Brighton	Cayuga N Twp
Balmertown	Brights Grove	Cayuga S Twp
Baltimore	Brockville	Cedar Springs
Barwick	Brooke Twp	Centralia
Batawa	Brookville	Centreton
Bath	Bruce Mines	Chaput Hughes
Bayfield	Brussels	Charing Cross

Charlottetown Twp
Chatham
Chatham Twp
Chatsworth
Chelmsford
Chesterville
Clifford
Clinton
Cobalt
Cobourg
Cochenour
Cochrane
Colborne
Colborne Twp
Colchester N Twp
Colchester S Twp
Collingwood Twp
Conestogo
Coniston
Copetown
Copper Cliff
Corbyville
Cornwall
Corunna
Courtland
Courtright
Crediton
Crysler
Culross Twp
Cumberland Beach
Dashwood
Dawn Twp
Delaware Twp
Delhi
Derby Twp
Dereham Twp
Desbarats
Deseronto
Devlin
Dorchester
Dorchester N Twp
Dorion
Dover Centre
Dover Twp
Dowling
Downie Twp

Drayton
Dresden
Dryden
Duart
Dumfries N Twp
Dumfries S Twp
Dundas
Dunn Twp
Dunnville
Dunwich Twp
Durham
Dutton
Ear Falls
Earlton
East Wawanosh Twp
Easthope N Twp
Easthope S Twp
Echo Bay
Eden
Egmondville
Egremont Twp
Ekfrid Twp
Elginburg
Ellice Twp
Elliot Lake
Elma Twp
Elmira
Elora
Emo
Englehart
Enniskillen Twp
Eramosa Twp
Erie Beach
Erieau
Espanola
Essex
Euphemia Twp
Exeter
Falconbridge
Fauquier
Fergus
Finch
Fisherville
Flamborough
Flamborough W Twp
Flesherton

Floradale
Florence
Forest
Fort Frances
Foxboro
Frankford
Freelton
Fullarton Twp
Gananoque
Garafraxa W Twp
Garden River
Garson
Georgetown
Geraldton
Glanbrook Twp
Glen Williams
Glencoe
Glenelg Twp
Goderich
Goderich Twp
Gosfield S Twp
Gowanstown
Grafton
Grand Bend
Gravenhurst
Greensville
Grey Twp
Guelph
Guelph Twp
Hagersville
Haileybury
Hallebourg
Halton Hills
Hamilton
Hanmer
Hanover
Harrisburg
Harriston
Harrow
Harty
Harwich Twp
Hawkesville
Hay Twp
Hearst
Heidelberg
Hensall

Hepworth
Hibbert Twp
Highgate
Hillier
Holland Twp
Holtyre
Hornell Heights
Howard Twp
Howick Twp
Hullett Twp
Huntsville
Hurkett
Huron Park
Ignace
Ingersoll
Ingleside
Inkerman
Innerkip
Inwood
Iron Bridge
Iroquois
Iroquois Falls
Jarvis
Jerseyville
Joyceville
Kakabeka Falls
Kapuskasing
Keewatin
Kenora
Kent Bridge
Keppel Twp
Kilbride
Kilsyth
Kilworth
Kilworth Heights
Kingston
Kingsville
Kirkland Lake
Kitchener
Komoka
La Salette
Lakeport
Lakeshore
Langton
Lasalle
Leamington

Levack
Linwood
Listowel
Lively
Lobo Twp
Logan Twp
Londesborough
London
London Twp
Long Sault
Longford Mills
Longlac
Lowbanks
Lowville
Lucan
Lynden
Lynedoch
Madoc
Maitland
Mannheim
Markdale
Markstay
Marmora
Maryborough Twp
Maryhill
Matheson
Mattawa
Mattice
Maynard
McGillivray Twp
McKillop Twp
Meaford
Merlin
Metcalf Twp
Middleport
Middleton Twp
Mildmay
Millgrove
Milton
Minto Twp
Mitchell
Mitchell's Bay
Monteith
Moonbeam
Moore Twp
Mooretown

Morewood
Morpeth
Morris Twp
Morrisburg
Morrison
Mosa Twp
Moulton Twp
Mount Brydges
Mount Elgin
Mount Forest
Mount Hope
Mount Pleasant
Murillo
Nairn Centre
Nanticoke
Napanee
Naughton
Neebing
New Dundee
New Hamburg
New Liskeard
Newburgh
Newbury
Nichol Twp
Nipigon
Nissouri W Twp
Norfolk Twp
Normanby Twp
North Bay
North Buxton
North Cobalt
Norval
Norwich
Norwich N Twp
Norwich S Twp
Norwich Twp
Novar
Oakland
Oakland Twp
Oakville
Odessa
Oil City
Oil Springs
Oliver Paipoonge
Onaping
Oneida Twp

Onondaga Twp	Red Rock	Stockdale
Opasatika	Red Lake	Stoney Creek
Orford Twp	Ridgetown	Stratford
Orillia	Rockwood	Strathroy
Orkney	Rodney	Stratton
Orland	Romney Twp	Sturgeon Falls
Orrville	Rondeau Park	Sudbury
Otterville	Roseville	Sullivan Twp
Owen Sound	Rothsay	Sundridge
Oxford Southwest Twp	Rutherglen	Swastika
Paincourt	Salem	Sydenham Twp
Palmerston	Sarawak Twp	Tara
Paris	Sarnia	Tavistock
Parkhill	Sauble Beach	Tecumseh
Parry Sound	Saugeen Twp	Teeswater
Peacock Point	Sault Ste. Marie	Teeterville
Peel Twp	Schumacher	Temagami
Petersburg	Scotland	Thamesford
Petrolia	Seaforth	Thamesville
Picton	Sebringville	Thedford
Pilkington Twp	Selby	Thessalon
Pinewood	Selkirk	Thornbury
Plainfield	Seneca Twp	Thorne
Plattsville	Shallow Lake	Thunder Bay
Plympton Twp	Shanty Bay	Tilbury
Point Edward	Sherbrooke Twp	Tilbury E Twp
Porcupine	Shrewsbury	Tillsonburg
Porquis Junction	Shuniah Twp	Timmins
Port Dover	South Mountain	Townsend
Port Elgin	South Porcupine	Townsend Twp
Port Hope	South River	Trenton
Port Lambton	Southampton	Trout Creek
Port Rowan	Southwold Twp	Tuckersmith Twp
Port Ryerse	Springford	Tupperville
Port Stanley	St Agatha	Turnberry Twp
Port Sydney	St Andrews West	Tweed
Powassan	St Clements	Usborne Twp
Prescott	St George	Val Caron
Princeton	St Jacobs	Val Gagne
Puslinch Twp	St Marys	Val Rita
Quinte West	St Thomas	Val Therese
Rainham Twp	St Vincent Twp	Vanastra
Rainy River	St Williams	Vermilion Bay
Raleigh Twp	Stanley Twp	Verner
Rama	Stephen Twp	Vickers Heights
Ramore	Stirling	Vittoria

Wahnapiatae
Walkerton
Wallace Twp
Wallaceburg
Wallenstein
Walpole Twp
Walsingham
Walsingham N Twp
Walsingham S Twp
Wardsville
Warren
Warwick Twp
Waterdown
Waterford
Waterloo
Watford
Wellesley
Wellesley Twp

Wellington
West Lorne
West Montrose
Westbrook
Westlake
Westminster Town
Wheatley
Whitefish
Warton
Wilkesport
Williams E Twp
Williams W Twp
Williamsburg
Wilmot Twp
Winchester
Windham Twp
Windsor
Wingham

Winterborne
Woodhouse Twp
Woodlawn
Woodslee
Woodstock
Wooler
Woolwich Twp
Wyoming
Yarmouth Twp
York
Zone Twp
Zorra Twp
Zorra-Tavistock East
Zurich

Exhibit "B"



Ministère de la Justice
Canada

Department of Justice
Canada

Cote de sécurité – Security classification

Bureau de la concurrence
Services juridiques

Competition Bureau
Legal Services

PROTÉGÉ B – PROTECTED B

Notre référence – Our file

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22e étage
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Gatineau QC K1A 0C9

Place du Portage, Phase
I
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Gatineau, QC K1A 0C9

BIMS No.: 3106658

Date : 13/01/22 (AA/YY-MM-JJDD)

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**PROTECTED AND CONFIDENTIAL
VIA EMAIL**

Borden Ladner Gervais LLP
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Toronto, Ontario M5H 3Y4

Attn.: Mr. Robert S. Russell

Dear Mr. Russell:

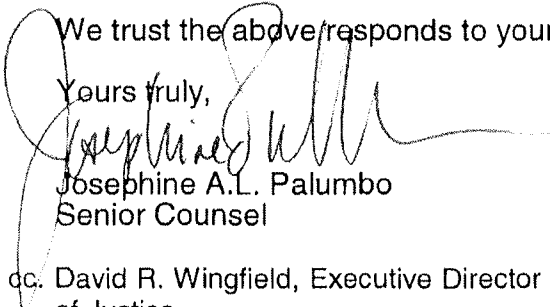
**Re: The Commissioner of Competition v. Reliance Comfort Limited
Partnership (CT/002)**

I acknowledge receipt of your letter dated 18 January 2013 in relation to the above-noted matter and specifically your query regarding the definition of the relevant geographic markets for the supply of natural gas and electric water heaters contained in paragraph 31(ii) of the Notice of Application (the "Application").

When read in the context of the Application itself and in particular paragraph 9, we believe that the relevant geographic markets have been adequately described and therefore the Application meets the provisions of Rule 36(2)(c) of the *Competition Tribunal Rules*. Nevertheless, for the avoidance of any doubt that you might have on this point, the "certain other local rural markets in Ontario" in paragraph 31(ii) refers to the local rural markets in Ontario that are not supplied natural gas.

We trust the above responds to your query.

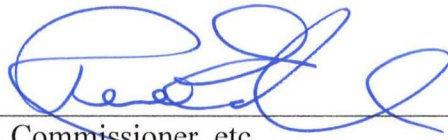
Yours truly,


Josephine A.L. Palumbo
Senior Counsel

cc. David R. Wingfield, Executive Director and Senior General Counsel, Department
of Justice
Parul Shah, Counsel, Department of Justice

Canada

This is **Exhibit "D"** to the Affidavit of Erin Penney, sworn before me at the City of Toronto this 15th day of February, 2013.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

A Commissioner, etc.

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

FILED / PRODUIT

Date: January 29, 2013

CT- 2012-002

Chantal Fortin for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

7

CT-2012-002

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 79 of the *Competition Act*;

IN THE MATTER OF certain policies and procedures of Reliance Comfort Limited Partnership

B E T W E E N:

THE COMMISSIONER OF COMPETITION

Applicant

and

RELIANCE COMFORT LIMITED PARTNERSHIP

Respondent

NOTICE OF MOTION

TAKE NOTICE THAT Reliance Comfort Limited Partnership ("Reliance") will make a motion to the Competition Tribunal, at a date, time, location and in a manner directed by the Tribunal.

THE MOTION IS FOR THE FOLLOWING RELIEF:

1. An Order, pursuant to Rule 221(1)(a) of the *Federal Courts Rules*, SOR/98-106, striking out the Notice of Application ("Application") brought by the Commissioner of Competition ("Commissioner") against Reliance on December 20, 2012;

2. In the alternative, an Order that the Commissioner amend the Application so as to clearly and completely identify and define:
 - (a) all product and geographic markets Reliance is alleged to substantially and completely control for the purposes of the Application; and
 - (b) all policies, procedures, fees, charges and any other acts relied upon by the Commissioner in support of the allegation that Reliance has or is engaged in a practice of anti-competitive acts for the purpose of the Application,and to include a concise statement of economic theory as required by sub-rule 36(2)(d) of the *Competition Tribunal Rules*.
3. In the further alternative, an Order pursuant to Rule 181(2) of the *Federal Courts Rules* that the Commissioner provide the further and better particulars demanded in the Demand for Particulars served by Reliance on the Commissioner on January 25, 2013 and attached hereto as Exhibit "A";
4. An Order extending the time for Reliance to serve and file its response to the Application;
5. The costs of the motion on a solicitor and client basis; and
6. Such further and other relief as counsel may advise and the Tribunal may permit.

THE GROUNDS FOR THE MOTION ARE:

1. The Commissioner, by his Application, seeks an Order pursuant to sections 79(1), 79(2) and 79(3.1) of the *Competition Act*, R.S.C. 1985, c. C-34 (the "*Act*") against Reliance.
2. In the absence of the pleading of a relevant market for the purpose of the

Application, the Application discloses no reasonable cause of action upon which an Order under section 79 of the *Act* can issue.

3. For an order to issue under section 79 of the *Act*, the Commissioner must prove all three criteria set out in section 79(1) of the *Act*, namely:
 - (a) that Reliance substantially or completely controls throughout Canada or any area thereof, a class or species of business;
 - (b) that Reliance has engaged in or are engaging in a practice of anti-competitive acts; and
 - (c) that practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market.
4. The pleading of a cognizable market is a necessary element of an application under section 79 of the *Act*. It is therefore incumbent upon the Commissioner to plead sufficient material facts upon which the relevant geographic and product market or markets can be unambiguously identified and defined.
5. Sub-rule 36(2)(d) of the *Competition Tribunal Rules* requires that a Notice of Application set out a concise statement of economic theory. The Commissioner's purported statement of economic theory is no more than a summary of the Application. The requirement for the inclusion of a concise statement of economic theory is a requirement distinct from pleading the grounds for the application and the material facts on which the Commissioner relies.

The Application Provides No Basis by Which the Tribunal Could Establish a Relevant Geographic Market

6. The Commissioner does not plead sufficient material facts from which a discernible geographic market could be established by the Tribunal. Further, the Commissioner

has not pled any economic theory in support of any such market. Without having pled the material facts necessary for the finding of a relevant market, the Commissioner is unable to demonstrate that Reliance has violated section 79(1), with the result that the Application discloses no reasonable cause of action.

7. The Notice of Application at paragraphs 29, 31 and 32 states that for the purposes of the Application the Relevant Market is an aggregate of these undefined markets.
8. The Commissioner purports to define the relevant geographic markets as:
 - i. the local markets of Ontario where Union Gas distributes natural gas; and
 - ii. certain other local rural markets in Ontario.

This suggests a plurality of markets. By a letter dated January 22, 2013, counsel for the Commissioner sought to clarify the boundaries of the market described as “other local rural markets in Ontario” by noting that they are “those that are not supplied natural gas”.

9. The Commissioner does not plead sufficient material facts from which the Tribunal could reasonably ascertain the geographical boundaries of “the local markets of Ontario where Union Gas distributes natural gas”. The only facts pled in support of this market definition are at paragraph 13 of the Application, where it is pled that those areas of Ontario where Union Gas distributes natural gas is within “***the area corresponding generally to parts of*** the following: Northern Ontario, from the Manitoba border to the North Bay/Muskoka area; Southwestern Ontario, from Windsor to west of the Greater Toronto Area; and Eastern Ontario, not including Ottawa” (emphasis added).
10. The facts pled at paragraph 13 of the Application are insufficient to establish a

cognizable geographic market for purposes of section 79 of the *Act*. First, the use of the phrase “corresponding generally to parts of” itself indicates that the description that follows fails to completely or accurately define the Commissioner's intended geographic market; yet no material facts have been pled as to the areas of the proposed geographic market that do not generally correspond to the description (either because the description is too broad or too narrow). Second, the date on which Union Gas' service areas purportedly determine the boundaries of the market is not provided, notwithstanding that the markets served by Union Gas' distribution network are continually evolving. Third, terms such as “Southwestern Ontario, from Windsor to west of the Greater Toronto Area” do not propose any actual geographic limiters, such as a line on a map or border cities in all directions, by which the Tribunal could define a geographic market. Fourth, the Commissioner has not pled any facts as to either the number of relevant local markets or where in the area described at paragraph 13 of the Application those local markets are located.

11. The Commissioner defines the second relevant geographic market as “certain other local rural markets in Ontario”. Again, this suggests a plurality of markets. This is imprecise, and not supported by material facts which would allow the Tribunal to define a geographic market within which to evaluate Reliance's market power and conduct. The Commissioner has pled no facts in the Application pertaining to the meaning of “local rural” markets which would allow such markets to be defined by the Tribunal for purposes of section 79 of the *Act*.
12. In a letter dated January 22, 2013, counsel for the Commissioner advised that “certain other local rural markets in Ontario” are “those that are not supplied natural gas”. However, this statement offers no means by which the areas can be

ascertained, and no further facts on which the Tribunal could define such markets. Further, such a geographic market is inconsistent with the definition of product market proposed by the Commissioner, as gas water heaters, which are claimed to be part of the product market in such areas, require the supply of natural gas.

13. In light of the foregoing, on the facts pled by the Commissioner, it is impossible to determine the relevant geographic market or markets in which Reliance is alleged to have substantially or completely controlled any product market and in which the anti-competitive acts it is alleged to have engaged in could have had, are having or are likely to have the effect of preventing or lessening competition substantially..

The Application Provides No Basis by Which the Tribunal Could Establish a Relevant Product Market

14. Although the Application should be struck out on the basis of its failure to plead facts which would allow the Tribunal to define a relevant geographic market, the Application also fails to plead facts which would allow the Tribunal to define a relevant product market, providing a further ground on which it should be struck.
15. The Commissioner purports to define the relevant product market within which Reliance's market power and conduct should be evaluated as the supply of "natural gas and electric water heaters and *related services* to residential consumers". At paragraphs 10 and 29 of the Application, related water heater services are stated to "***include***" installation, repair, maintenance and disconnection services (emphasis added). This suggests that the relevant product market is either a bundled market or a series of bundled markets.
16. The Application does not propose any limits on the services claimed to be related to the supply of natural gas and electric water heaters to residential consumers.

Reliance sells other related products and services, such as heating systems. No facts are pled to establish which services are in fact related to the supply of such equipment. Nor is any economic theory posed upon which to support the Commissioner's product market definition.

17. It is impossible for the Tribunal to engage in an assessment of Reliance's control of any purported market without a clear description of the totality of products and/or services alleged to form part of the relevant product market. As such, it is impossible for the Tribunal to determine whether Reliance has market power in a relevant product market for purposes of section 79(1)(a), or whether the anti-competitive acts it is alleged to have engaged in could have had, are having or are likely to have the effect of preventing or lessening competition substantially in a market.

The Application Fails To Disclose a Reasonable Cause of Action

18. As the Commissioner has failed to plead any or any sufficient material facts to support the proposed definitions of the relevant geographic or product markets upon which he intends to rely, and has not provided a concise statement of economic theory to support his allegations, it follows that the Application discloses no reasonable cause of action and should be struck pursuant to Rule 221(1)(a) of the *Federal Courts Rules*.

In the Alternative, the Commissioner Must Amend the Application to Resolve Ambiguities

19. In the event that the Tribunal decides not to strike out the Application, the Tribunal should exercise its discretion under section 9(2) of the *Competition Tribunal Act* to require the Commissioner to amend the Application to resolve both the considerable

uncertainties described above with respect to the Commissioner's definitions of the relevant product and geographic markets, as well as ambiguities as to the scope of the conduct engaged in by Reliance that is alleged to constitute a practice of anti-competitive acts.

20. In order for Reliance to appropriately and meaningfully respond to the Application and to engage in the necessary factual and economic analysis, it must understand the precise nature of the allegations against it. As currently pled, the allegations made in the Application against Reliance are materially incomplete.

Demand For Particulars in the Further Alternative

21. On January 25, 2013 Reliance served the Commissioner with a Demand for Particulars in the form attached hereto as Exhibit "A" ("the Demand"). Without such particulars Reliance cannot meaningfully respond to the Commissioner's allegations.
22. In the further alternative, Reliance therefore seeks an order that the Commissioner respond to the Demand by within a time to be specified by the Tribunal.
23. Section 8 and subsection 9(2) of the *Competition Tribunal Act*.
24. Rules 34(1), 36(2) and 82 to 88 (inclusive) of the *Competition Tribunal Rules*, SOR/2008-141.
25. Rules 181 and 221 of the *Federal Courts Rules*.
26. Such further and other grounds as counsel may advise and the Tribunal may permit.

DATE: January 28, 2013

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**Counsel for
Reliance Home Comfort Limited
Partnership**

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THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 79 of the *Competition Act*;

IN THE MATTER OF certain policies and procedures of Reliance Comfort Limited Partnership

B E T W E E N:

THE COMMISSIONER OF COMPETITION

Applicant

and

RELIANCE COMFORT LIMITED PARTNERSHIP

Respondent

DEMAND FOR PARTICULARS

The Respondent, Reliance Home Comfort Limited Partnership ("Reliance") demands that pursuant to Rule 181(2) of the *Federal Courts Rules*, SOR/98-106 and also pursuant to Rule 36 of *Competition Tribunal Rules*, SOR/2008-141 the Commissioner of Competition ("Commissioner") serve and file further and better particulars of the allegations in the Notice of Application filed on December 20, 2012, as follows:

Demand 1:

In paragraph 10 the Commissioner states that most residential consumers who rent or purchase a water heater also obtain related water heater services '*including*' installations, repair, maintenance and disconnection. Similarly, in paragraph 29, the Commissioner has defined the purported product market to include water heater related services. The Commissioner pleads that these related services '*include*' installation, disconnection, maintenance and repair of water heaters. By using the term 'including' and 'includes' the Commissioner has failed to identify all of the other services that fall within the ambit of "related services".

Please provide particulars with respect to paragraphs 10 and 29 as to:

- (a) Identify the other services which are distinguished from "installation, disconnection, maintenance and repair of water heaters"; and,
- (b) Confirm that each of these other services are contained within the alleged aggregated product market.

Demand 2:

In paragraph 31 of the Application the Commissioner purports to define the relevant geographic markets as (i) the local markets of Ontario where Union Gas distributes natural gas; and (ii) certain other local rural markets in Ontario. In paragraph 13 the Commissioner has identified the area where Union Gas distributes natural gas as the area corresponding generally to parts of Northern Ontario, from the Manitoba border to the North Bay/Muskoka area; Southwestern Ontario, from Windsor to west of Greater Toronto Area; and Eastern Ontario, not including Ottawa. The Commissioner has not pleaded any facts on the number

of local markets or where in this area these local markets are located.

Please provide particulars with respect to paragraph 13 and 31 as to:

- (a) Geographic identifiers such as postal codes, census tract or names of streets and roads to identify the parameters and identity of these local markets.
- (b) The communities that Union Gas serves are identified on its corporate website as of January 2013 as listed in Exhibit 'A' hereto. Please confirm whether Exhibit 'A' completely and accurately defines the communities referred to as "the local markets of Ontario where Union Gas distributes natural gas".
- (c) Please further confirm with reference to the list of communities identified in Exhibit 'A', whether the "local markets of Ontario where Union Gas distributes natural gas" include the totality of the communities identified. For example, Exhibit 'A' lists Peel Region as a community, which in turn includes the cities of Mississauga, Brampton and Caledon. For example, Exhibit 'A' lists Peel Region as a community, notwithstanding that Peel Region includes the cities of Mississauga, Brampton and Caledon. Please confirm wherever such a municipal region is listed in Exhibit 'A' whether the cities, towns and communities that comprise that municipal region are intended to be included in the definition of "the local markets of Ontario where Union Gas distributes natural gas".

Demand 3:

In paragraph 31 of the Application the Commissioner purports to define the Relevant Geographic Market to include the aggregate of (i) the local markets of Ontario where Union Gas distributes natural gas; and (ii) certain other local rural markets in Ontario. The Commissioner has pled no further facts in the Application to identify or indicate where in Ontario these local rural markets are located. In a letter dated January 22, 2013, Ms. Palumbo advised that the boundaries of “certain other local rural markets in Ontario” are “those that are not supplied natural gas”. A copy of that letter is Exhibit ‘B’ hereto. This further confuses the stated market definition. Paragraph 29 of the Application states that the relevant product market for the purposes of the Application is the aggregated market of the supply of gas and electric water heaters and related services. If the geographic market includes “local rural markets in Ontario where natural gas is not supplied”, is it the position of the Commissioner that there are no substitutes for electric water heaters in these local rural markets, as obviously gas water heaters cannot be deployed. The relevant product market as defined is inconsistent with this suggested clarification.

Please provide particulars with respect to paragraph 14 and 31 as to:

- (a) Geographic identifiers such as postal codes, census tract or names of streets and roads to identify the parameters and identity of the ‘*other local rural markets*’.
- (b) Whether that Commissioner takes the position as indicated by the letter from Ms. Palumbo on January 22, 2013 that in areas that are not supplied by natural gas there are no substitutes for electric water heaters.

Demand 4:

In paragraph 17 of the Application the Commissioner alleges that Reliance creates significant barriers to the return of its water heaters through the use of its RRN Return Policy. In this paragraph the Commissioner uses the phraseology '*among other things*' and therefore fails to identify all of the ways in which it is alleged the RRN Return Policy creates barriers to return Reliance's water heaters. Please provide particulars with respect to paragraph 17 as to:

- (a) Identify the ways other than those listed in (i) to (iv) by which it is alleged the RRN Return Policy creates significant barriers to the return of Reliance's water heaters.

Demand 5:

In paragraph 20 of the Application the Commissioner alleges that Reliance imposes arbitrary restrictions on the return process at its return depots. In this paragraph the Commissioner uses the word '*including*' and therefore fails to identify all of the alleged arbitrary restrictions.

Please provide particulars with respect to paragraph 20 as to:

- (a) Identify the other alleged arbitrary restrictions imposed by Reliance.

Demand 6:

In paragraph 22 the Commissioner alleges that Reliance levies multiple and unwarranted exit fees and charges to impede, prevent and deter customers from switching to competitors and to penalize competitors. The Commissioner alleges these charges

'include' damage; account closure; drain, disconnection and pick-up as well as extra billing charges.

Please provide particulars with respect to paragraph 22 as to:

- (a) The other alleged charges imposed by Reliance upon which the Commissioner intends to rely.

Demand 7:

In paragraph 34 of the Application the Commissioner pleads that Reliance controls 76% of the Relevant Market based on **'annual revenues'**. The Commissioner pleads no further facts to identify what these annual revenues represent.

Please provide particulars with respect to paragraph 34 as to:

- (a) Is this alleged revenue based on revenue from rental customers in the aggregate or based on annual sales of water heaters?
- (b) Is the basis of the market share approach based on Reliance's installed base of customers or on its annual sales of water heaters?
- (c) Identify which of the alleged markets to which this 76 % market share relates.
- (d) Identify the specific years on which these annual revenue figures are based.

Demand 8:

In paragraph 40 the Commissioner pleads that Reliance implemented **'certain water heater policies and procedures'** which were prohibited by the Direct Energy Consent Order, but does not plead any facts as to which policies and procedures he is referring to.

Please provide particulars with respect to paragraph 40 as to:

- (a) The specific return policies and procedures implemented by Reliance which are alleged to have been prohibited by the Direct Energy Consent Order;
- (b) The specific return policies and procedures implemented by Reliance which are alleged to have been similar to those prohibited under the Direct Energy Consent Order;

Demand 9:

In paragraphs 46, 49 and 56 the Commissioner alleges Reliance's exclusionary water heater return policies have caused at least '**two competitors**' to exit the Relevant Market. The Commissioner further asserts that Reliance has impeded and prevented '**several competitors**' from entering or expanding in the Relevant Market. No facts have been pled regarding these allegations.

Please provide particulars with respect to paragraphs 46, 49 and 51 as to:

- (a) a complete list of the '**two competitors**' who have purported to leave the alleged Relevant Market due to Reliance's exclusionary water heater return policies and procedures including in each instance:
 - i. the name of the competitor
 - ii. the date on which the competitor is alleged to have exited the market
 - iii. each separate local market or local rural market in Ontario forming part of the Commissioner's aggregated geographic market from which the competitors are alleged to have exited.

- (b) a complete list of the '**several competitors**' who Reliance have purported to have impeded and prevented from entering or expanding in the alleged Relevant Market including in each instance:
- i. the name of the competitor
 - ii. the date on which the competitor is alleged to have exited the market
 - iii. each separate local market or local rural market in Ontario forming part of the Commissioner's aggregated geographic market from which the competitors are alleged to have exited.

DATE: January 25, 2013

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Exhibit A

Union Gas
CONDITIONS OF SERVICE

January 1, 2013

1. About our Area and Gas Services

1.1 Area Served by Company

As outlined in these conditions of service, Union Gas has an adequate supply of gas to serve its customers, and has properly installed pipe and piping according to the appropriate legislative requirements. Union Gas supplies gas to over 400 communities within the 230 municipalities where Union Gas holds a franchise agreement. These are considered traditional place names and may not in all cases reflect the current names of these communities.

Communities

Aberfoyle	Bayham Twp	Burford
Acton	Beachville	Burford Twp
Adelaide Twp	Beardmore	Burgessville
Ailsa Craig	Belleville	Burks Falls
Alberton	Bentlnck Twp	Burlington
Aldborough Twp	Berwick	Cache Bay
Alma	Bewdley	Caledonia
Alvinston	Blandford-Blen Twp	Callander
Amabel Twp	Banshard Twp	Calstock
Amherstburg	Blenheim	Cambridge
Amherstview	Blezard Valley	Camden Twp
Ancaster	Blind River	Camlachie
Appin	Bloomfield	Campbellville
Arkona	Bloomington	Canboro
Arran Twp	Blue Mountains	Canborough Twp
Artemesia Twp	Blyth	Canfield
Arthur	Bosanquet Twp	Cannifton
Arthur Twp	Bothwell	Capreol
Astra	Bracebridge	Caradoc Twp
Atherley	Branchton	Cardinal
Atikokan	Brant Twp	Carlisle
Atwood	Brantford	Carrick Twp
Awrey Twp	Brantford Twp	Castleton
Ayr	Breslau	Cathcart
Azilda	Brigden	Cayuga
Baden	Brighton	Cayuga N Twp
Balmertown	Brights Grove	Cayuga S Twp
Baltimore	Brockville	Cedar Springs
Barwick	Brooke Twp	Centralia
Batawa	Brookville	Centreton
Bath	Bruce Mines	Chaput Hughes
Bayfield	Brussels	Charing Cross

Charlotteville Twp	Drayton	Floradale
Chatham	Dresden	Florence
Chatham Twp	Dryden	Forest
Chatsworth	Duart	Fort Frances
Chelmsford	Dumfries N Twp	Foxboro
Chesterville	Dumfries S Twp	Frankford
Clifford	Dundas	Freelton
Clinton	DunnTwp	Fullarton Twp
Cobalt	Dunnville	Gananoque
Cobourg	Dunwich Twp	Garafraxa W Twp
Cochenour	Durham	Garden River
Cochrane	Dutton	Garson
Colborne	Ear Falls	Georgetown
Colborne Twp	Earlton	Geraldton
Colchester N Twp	East Wawanosh Twp	Glanbrook Twp
Colchester S Twp	Easthope N Twp	Glen Williams
Collingwood Twp	Easthope S Twp	Glencoe
Conestogo	Echo Bay	Glenelg Twp
Coniston	Eden	Goderich
Copetown	Egmondville	Goderich Twp
Copper Cliff	Egremont Twp	Gosfield S Twp
Corbyville	Ekfrid Twp	Gowanstown
Cornwall	Elginburg	Grafton
Corunna	Ellice Twp	Grand Bend
Courtland	Elliot Lake	Gravenhurst
Courtright	Elma Twp	Greensville
Crediton	Elmira	Grey Twp
Crysler	Elora	Guelph
Culross Twp	Emo	Guelph Twp
Cumberland Beach	Englehart	Hagersville
Dashwood	Enniskillen Twp	Haileybury
Dawn Twp	Eramosa Twp	Hallebourg
Delaware Twp	Erie Beach	Halton Hills
Delhi	Erieau	Hamilton
Derby Twp	Espanola	Hanmer
Dereham Twp	Essex	Hanover
Desbarats	Euphemia Twp	Harrisburg
Deseronto	Exeter	Harriston
Devlin	Falconbridge	Harrow
Dorchester	Fauquier	Harty
Dorchster N Twp	Fergus	Harwich Twp
Dorion	Finch	Hawkesville
Dover Centre	Fisherville	Hay Twp
Dover Twp	Flamborough	Hearst
Dowling	Flamborough W Twp	Heidelberg
Downie Twp	Flesherton	Hensall

Hepworth
Hibbert Twp
Highgate
Hillier
Holland Twp
Holtyre
Hornell Heights
Howard Twp
Howick Twp
Hullett Twp
Huntsville
Hurkett
Huron Park
Ignace
Ingersoll
Ingleside
Inkerman
Innerkip
Inwood
Iron Bridge
Iroquois
Iroquois Falls
Jarvis
Jerseyville
Joyceville
Kakabeka Falls
Kapuskasing
Keewatin
Kenora
Kent Bridge
Keppel Twp
Kilbride
Kilsyth
Kilworth
Kilworth Heights
Kingston
Kingsville
Kirkland Lake
Kitchener
Komoka
La Salette
Lakeport
Lakeshore
Langton
Lasalle
Leamington

Levack
Linwood
Listowel
Lively
Lobo Twp
Logan Twp
Londesborough
London
London Twp
Long Sault
Longford Mills
Longlac
Lowbanks
Lowville
Lucan
Lynden
Lynedoch
Madoc
Maitland
Mannheim
Markdale
Markstay
Marmora
Maryborough Twp
Maryhill
Matheson
Mattawa
Mattice
Maynard
McGillivray Twp
McKillop Twp
Meaford
Merlin
Metcalf Twp
Middleport
Middleton Twp
Mildmay
Millgrove
Milton
Minto Twp
Mitchell
Mitchell's Bay
Monteith
Moonbeam
Moore Twp
Mooretown

Morewood
Morpeth
Morris Twp
Morrisburg
Morrison
Mosa Twp
Moulton Twp
Mount Brydges
Mount Elgin
Mount Forest
Mount Hope
Mount Pleasant
Murillo
Nairn Centre
Nanticoke
Napanee
Naughton
Neebing
New Dundee
New Hamburg
New Liskeard
Newburgh
Newbury
Nichol Twp
Nipigon
Nissouri W Twp
Norfolk Twp
Normanby Twp
North Bay
North Buxton
North Cobalt
Norval
Norwich
Norwich N Twp
Norwich S Twp
Norwich Twp
Novar
Oakland
Oakland Twp
Oakville
Odessa
Oil City
Oil Springs
Oliver Paipoonge
Onaping
Oneida Twp

Onondaga Twp	Red Rock	Stockdale
Opasatika	Red Lake	Stoney Creek
Orford Twp	Ridgetown	Stratford
Orillia	Rockwood	Strathroy
Orkney	Rodney	Stratton
Orland	Romney Twp	Sturgeon Falls
Orrville	Rondeau Park	Sudbury
Otterville	Roseville	Sullivan Twp
Owen Sound	Rothsay	Sundridge
Oxford Southwest Twp	Rutherglen	Swastika
Paincourt	Salem	Sydenham Twp
Palmerston	Sarawak Twp	Tara
Paris	Sarnia	Tavistock
Parkhill	Sauble Beach	Tecumseh
Parry Sound	Saugeen Twp	Teeswater
Peacock Point	Sault Ste. Marie	Teeterville
Peel Twp	Schumacher	Temagami
Petersburg	Scotland	Thamesford
Petrolia	Seaforth	Thamesville
Picton	Sebringville	Thedford
Pilkington Twp	Selby	Thessalon
Pinewood	Selkirk	Thornbury
Plainfield	Seneca Twp	Thorne
Plattsville	Shallow Lake	Thunder Bay
Plympton Twp	Shanty Bay	Tilbury
Point Edward	Sherbrooke Twp	Tilbury E Twp
Porcupine	Shrewsbury	Tillsonburg
Porquis Junction	Shuniah Twp	Timmins
Port Dover	South Mountain	Townsend
Port Elgin	South Porcupine	Townsend Twp
Port Hope	South River	Trenton
Port Lambton	Southampton	Trout Creek
Port Rowan	Southwold Twp	Tuckersmith Twp
Port Ryerse	Springford	Tupperville
Port Stanley	St Agatha	Turnberry Twp
Port Sydney	St Andrews West	Tweed
Powassan	St Clements	Usborne Twp
Prescott	St George	Val Caron
Princeton	St Jacobs	Val Gagne
Puslinch Twp	St Marys	Val Rita
Quinte West	St Thomas	Val Therese
Rainham Twp	St Vincent Twp	Vanastra
Rainy River	St Williams	Vermilion Bay
Raleigh Twp	Stanley Twp	Verner
Rama	Stephen Twp	Vickers Heights
Ramore	Stirling	Vittoria

Wahnapiatae
Walkerton
Wallace Twp
Wallaceburg
Wallenstein
Walpole Twp
Walsingham
Walsingham N Twp
Walsingham S Twp
Wardsville
Warren
Warwick Twp
Waterdown
Waterford
Waterloo
Watford
Wellesley
Wellesley Twp

Wellington
West Lorne
West Montrose
Westbrook
Westlake
Westminster Town
Wheatley
Whitefish
Warton
Wilkesport
Williams E Twp
Williams W Twp
Williamsburg
Wilmot Twp
Winchester
Windham Twp
Windsor
Wingham

Winterborne
Woodhouse Twp
Woodlawn
Woodslee
Woodstock
Wooler
Woolwich Twp
Wyoming
Yarmouth Twp
York
Zone Twp
Zorra Twp
Zorra-Tavistock East
Zurich

Exhibit B



Canada

Canada

Bureau de la concurrence
Services juridiques

Competition Bureau
Legal Services

PROTÉGÉ B – PROTECTED B
Notre référence – Our file

Place du Portage, Tour I
22e étage
50, rue Victoria
Gatineau QC K1A 0C9

Place du Portage, Phase
I
22nd Floor
50 Victoria Street
Gatineau, QC K1A 0C9

BIMS No.: 3106658

Date : 13/01/22 (AA/YY-MM-JJDD)
Téléphone/Télécopieur Telephone/Fax
(819) 994-7714 (819) 953-9267

**NOW FOR PUBLIC
RELEASE**

Borden Ladner Gervais LLP

Scotia Plaza
40 King Street West, 44th Floor
Toronto, Ontario M5H 3Y4

**PROTECTED AND CONFIDENTIAL
VIA EMAIL**

Attn.: Mr. Robert S. Russell

Dear Mr. Russell:

**Re: The Commissioner of Competition v. Reliance Comfort Limited
Partnership (CT/002)**

I acknowledge receipt of your letter dated 18 January 2013 in relation to the above-noted matter and specifically your query regarding the definition of the relevant geographic markets for the supply of natural gas and electric water heaters contained in paragraph 31(ii) of the Notice of Application (the "Application").

When read in the context of the Application itself and in particular paragraph 9, we believe that the relevant geographic markets have been adequately described and therefore the Application meets the provisions of Rule 36(2)(c) of the *Competition Tribunal Rules*. Nevertheless, for the avoidance of any doubt that you might have on this point, the "certain other local rural markets in Ontario" in paragraph 31(ii) refers to the local rural markets in Ontario that are not supplied natural gas.

We trust the above responds to your query.

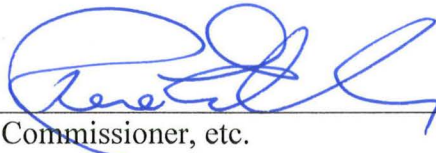
Yours truly,

Josephine A.L. Palumbo
Senior Counsel

cc. David R. Wingfield, Executive Director and Senior General Counsel, Department
of Justice
Parul Shah, Counsel, Department of Justice

Canada

This is **Exhibit "E"** to the Affidavit of Erin Penney, sworn before me at the City of Toronto this 15th day of February, 2013.

A handwritten signature in blue ink, appearing to be "Erin Penney", written over a horizontal line.

A Commissioner, etc.

CITATION: *Weller v. Reliance Home Comfort Limited Partnership*, 2011 ONSC 3148

COURT FILE NO.: CV-11-420702

DATE: 20110524

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Scott Weller, Applicant

AND:

Reliance Home Comfort Limited Partnership, Respondent

BEFORE: G.R. Strathy J.

COUNSEL: *M. Teplitsky and B. Teplitsky*, for the Applicant

B. Bresner and B. Wong, for the Respondent

HEARD: May 3, 2011

REASONS FOR JUDGMENT

[1] The applicant, Scott Weller (“Weller”) rents a water heater tank from the respondent, Reliance Home Comfort Limited Partnership (“Reliance”). Reliance proposes to amend the rental contract and has sent Weller a notice to that effect. Weller applies for a declaration that the amendment is invalid because the contract does not comply with regulations under the *Consumer Protection Act*, 2002, S.O. 2002, c. 30, sched. A (the “C.P.A.”).

[2] While ostensibly a simple consumer dispute, this application is really part of a war for control of the water heater rental market in Ontario. Weller is bringing this application on behalf of one of the protagonists.

[3] Some background is necessary to put the issues in this motion in context. I will begin with a short description of the water heater war. I will then examine the terms of the rental contract at issue, followed by the relevant provisions of the C.P.A. and regulations. I will then outline the submissions of the parties and my analysis of the issues.

The Water Heater War

[4] Since early 2010, there has been aggressive competition in the water heater sector in Ontario. One of the players in that market is National Energy Corporation, which carries on businesses as “National Homes Services” (“National”). The respondent, Reliance, is also a player. The battle has been litigious.

[5] In June 2010, National commenced an action against Reliance seeking damages for defamation and injunctive relief, alleging that Reliance had falsely published statements that National was misleading the public, was untrustworthy and was unable to service its water heaters. A demand for particulars was served, but there has been no response.

[6] National commenced another action against Reliance in July 2010, claiming that Reliance had levied unlawful charges against its own customers, asserting the claim as assignee of those customers. That action has been dismissed as abandoned.

[7] A third proceeding was commenced by National against Reliance in June 2010. It arose out of allegations by Reliance that its water heater rental customers were being misled by National's door-to-door sales personnel or "door knockers" who allegedly engaged in aggressive and misleading sales practices, including misleading consumers about the condition of their Reliance water heaters. It was asserted that salespeople would induce the customers to rent a new National water heater and would then, acting as the customer's agent, cancel the customer's contract with Reliance and return the water heater to Reliance.

[8] To combat these tactics, Reliance instituted a new policy, reflected in the contract amendment at issue, which required customers wishing to terminate their rental agreements to first telephone Reliance to obtain a "Removal Reference Number". This was intended to give Reliance an opportunity to speak to the customers, to discover whether the decision to terminate the rental contract was motivated by competitive action by National and, if possible, to persuade the customers to change their minds.

[9] An application to challenge this new policy was commenced by Douglas MacGregor ("MacGregor"), a Vice-President of National and a former employee of Reliance. MacGregor admitted that he brought the application at the behest of National.

[10] By judgment dated November 17, 2010, in *MacGregor v. Reliance Comfort Limited Partnership*, 2010 ONSC 6925, [2010] O.J. No. 5419 (S.C.J.), Echlin J. found that Reliance's new return policy was not a breach of MacGregor's water heater rental agreement, but found that, in the absence of a specific contract provision to the contrary, MacGregor was entitled to appoint an agent to fulfill his contractual obligations – in other words, he could appoint National as his agent to terminate his agreement with Reliance. Echlin J. noted that it would be open to Reliance to amend its contract to address this issue.

[11] Reliance then implemented an amendment to its water heater rental agreement which provides that it can, in its discretion, refuse to deal with any agent or delegate the customer may appoint to terminate the rental agreement. This amendment, if effective, will give Reliance a chance to speak directly to its customer before the termination becomes operative.

[12] The application before me is National's next assault in this high-stakes commercial war.

Weller and His Contract

[13] Weller happens to be married to the Senior Vice-President, Finance, of National's parent company. It is admitted that he is bringing this application at the request of his wife and of National.

[14] In August 2007, Weller purchased a residence in which a Reliance water heater had been installed. The previous owner had terminated the rental agreement and Weller received a Reliance "welcome package", which set out its rental terms and conditions and its rates and methods of payment. Weller has been paying rental fees on the water heater to Reliance from the outset.

[15] The terms and conditions in the standard Reliance water heater rental agreement provide that the agreement may be amended by Reliance from time to time on written notice to the customer:

You [the Reliance customer] agree that we may change our rental charges, interest rates, service charges, administrative fees, other charges or other terms of this agreement from time to time by announcing such changes to you in advance by written communication.

I will refer to this as the "Amendment Provision".

[16] Under the heading "Termination of the Rental Agreement", the terms and conditions also provide that the customer may terminate the rental contract at any time:

You may (so long as you are not in default under this agreement) terminate this agreement at any time. You agree to return the water heater to us in the same condition that it was delivered to you, normal wear and tear (reflecting its age, normal use and local water conditions and assuming that it has been maintained as required by this agreement) excepted. At your option, you may request us to remove the water heater or, at your own risk, have your own qualified contractor remove it... If you choose to terminate this agreement or if we terminate this agreement because you have breached any term of this agreement, you will pay us our standard removal charges as follows: (i) our account closure charge (currently \$200, if the water heater is one year old or less, or \$40, if the water heater is over one year old, or \$0 if the water heater is over 10 years old) plus (ii) if we remove the water heater, our drain and disconnect charge (currently \$125) or, if the water heater is drained and disconnected by your own qualified contractor...our water heater pick-up charge (currently \$65 for a gas water heater or \$125 for an electric water heater). You will pay such charges when billed by us.

I will refer to this as the “Termination Provision”.

[17] Following the judgment of Echlin J., Reliance amended its standard terms and conditions to prevent customers from terminating their agreements through an agent. It sent Weller the following notice, which was attached to his account in February 2011:

Important Information About Your Water Heater Rental Agreement

The Terms & Conditions under which you rent your water heater will be amended to include the following paragraph as the last paragraph under the heading “Termination of the Rental Agreement”: “Any return of your water heater must occur in accordance with the return processes and procedures as set by Reliance Home Comfort from time to time. Reliance Home Comfort may in its sole discretion refuse to deal with any agent or delegate you appoint to comply with any such processes and procedures.” All of your other Terms & Conditions will remain unchanged except as otherwise provided. If you do not agree to this amendment, please call us at 1-866-RELIANCE prior to this amendment taking effect in order to terminate your rental. If you do not respond to this notice, this amendment will take effect automatically on April 1, 2011.

I will refer to this as the “Proposed Amendment”.

[18] As I will explain, it is Weller’s position that the Proposed Amendment is invalid because Reliance has failed to comply with the *C.P.A.*

[19] Weller commenced this application in response to the notice of the Proposed Amendment. He claims that he wants to continue to rent from Reliance and to retain his right to appoint an agent to facilitate the return of the tank, in the event he decides to terminate the rental agreement.

The Consumer Protection Act

[20] The parties agree that Reliance’s water heater rental agreement is a “consumer agreement” and a “remote agreement”, as defined by the *C.P.A.* It is a consumer agreement because, at the time the agreement was entered into, Weller was an individual acting for household purposes and Reliance was “in the business of selling, leasing or trading in goods or

services.” It is a remote agreement, because it was entered into when the consumer and supplier were not present together.¹

[21] The *C.P.A.* and its regulations contain provisions requiring a supplier to disclose certain information to consumers before the consumer enters into a consumer agreement. Such disclosure must be “clear, comprehensible and prominent”.²

[22] The *C.P.A.* also gives statutory effect to the *contra proferentem* principle in the case of consumer agreements. Any ambiguity is to be interpreted in favour of the consumer.³

[23] Section 93 of the *C.P.A.* provides that a consumer agreement is not binding unless made in accordance with the *C.P.A.* and its regulations, but provides that the court may give effect to a non-compliant agreement if it would be inequitable for the consumer not to be bound:

(1) A consumer agreement is not binding on the consumer unless the agreement is made in accordance with this Act and the regulations.

(2) Despite subsection (1), a court may order that a consumer is bound by all or a portion or portions of a consumer agreement, even if the agreement has not been made in accordance with this Act or the regulations, if the court determines that it would be inequitable in the circumstances for the consumer not to be bound.

[24] There are statutory disclosure requirements with respect to remote agreements. Section 45 provides that “[B]efore a consumer enters into a remote agreement, the supplier shall disclose the prescribed information to the consumer and shall satisfy the prescribed requirements.”

[25] Section 37 of O. Reg. 17/05 made under the *C.P.A.* (the “*Regulation*”) requires a supplier under a remote agreement to disclose certain information to the consumer before the consumer enters into the agreement and to provide a copy of the remote agreement to the consumer.

[26] The *Regulation* also limits the circumstances in which a remote agreement may be amended:

¹ *C.P.A.*, s. 1: A “consumer” means an individual acting for personal, family or household purposes and does not include a person who is acting for business purposes; a “supplier” means a person who is in the business of selling, leasing or trading in goods or services or is otherwise in the business of supplying goods or services, and includes an agent of the supplier and a person who holds themselves out to be a supplier or an agent of the supplier; a “consumer agreement” means an agreement between a supplier had to the consumer in which the supplier agrees to supply goods or services for payment.

² *C.P.A.*, s. 5(1).

³ *C.P.A.*, s. 11: “Any ambiguity that allows for more than one reasonable interpretation of a consumer agreement provided by the supplier to the consumer or of any information that must be disclosed under this Act shall be interpreted to the benefit of the consumer.”

42(2) A consumer agreement mentioned in subsection (1) that provides for amendment, renewal or extension may, in addition to being amendable, renewable or extendable under section 41, be amended, renewed or extended if the following conditions are satisfied:

1. The agreement indicates what elements of the agreement the supplier may propose to amend, renew or extend and at what intervals the supplier may propose an amendment, renewal or extension.
 2. The agreement gives the consumer at least one of the following alternatives to accepting the supplier's proposal to amend, renew or extend:
 - i. terminating the agreement, or
 - ii. retaining the existing agreement unchanged.
 3. The agreement requires the supplier to give the consumer advance notice of a proposal to amend, renew or extend.
- (3) The amendment, renewal or extension takes effect on the later of,
- (a) the date specified in the notice; and
 - (b) the date that is 30 days after the day on which the consumer receives the notice.
- (4) The amendment, renewal or extension does not retroactively affect rights and obligations acquired by the consumer before the effective date of the amendment, renewal or extension.
- (5) The supplier's notice of a proposal to amend, renew or extend shall,
- (a) provide an update of all of the information that was required by the Act or this Regulation to be set out in the agreement when it was first entered into and ensure that the update reflects the effect of the proposal to amend, renew or extend;
 - (b) disclose all changes proposed to be made to the agreement, including, for each provision that is to be changed, the text of the provision as it would read after the change;
 - (c) be consistent with those aspects of the agreement mentioned in paragraphs 1 and 2 of subsection (2);
 - (d) specify the date on which the amendment, renewal or extension would become effective;
 - (e) specify a means that complies with subsection (6) for the consumer to respond to the notice;
 - (f) state what the effect will be if the consumer does not respond to the notice;
 - (g) be provided to the consumer in such a way that it is likely to come to his or her attention; and

(h) be provided to the consumer at least 30 days but not more than 90 days before the date on which it is proposed that the amendment, renewal or extension would take effect.

(6) The means for the consumer to respond to the notice shall involve no cost to the consumer and shall be easy for the consumer to use.

(7) A purported amendment, renewal or extension under this section that does not comply with subsections (5) and (6) is not effective. [Emphasis added.]

[27] The underlined portions of this section, ss. 42(2)2 and 42(5)(c), are most applicable to this proceeding.

The Submissions of the Parties

Weller's Submissions

[28] Weller says that Reliance has no right to amend the agreement because its terms and conditions do not comply with the *C.P.A.* and the *Regulation*. He says that, at the time he entered into the agreement with Reliance, he was not informed of his right to terminate the rental agreement if he did not accept a proposed amendment.

[29] Weller says that under s. 42(2)2 of the *Regulation*, Reliance was required to disclose to him, at the time he entered into the rental agreement, that he had at least one of two options in response to any amendment – either to reject any proposed amendment and continue with the existing terms, or to terminate the rental agreement. Weller says that, having failed to make this disclosure, Reliance is not entitled to amend the agreement and cannot compel him to terminate the agreement if he does not accept the amendment.

[30] Weller also says that although there is a general right of termination in the agreement,

- (a) there is no specific reference to the right of termination being available in response to a proposed amendment to the contract: referring to *Smith v. Co-Operators General Insurance Co.*, 2002 SCC 30, [2002] 2 S.C.R. 129; and
- (b) the right of termination is not absolute and unqualified – it may only be exercised if the customer is not in default and there are financial consequences because the customer must pay Reliance's removal charges.

[31] Weller also submits that Reliance's notice of the proposed amendment is not valid because it does not comply with s. 42(5) of the *Regulation*, which requires that the notice of amendment must be consistent with the mandated language regarding termination.

[32] He also says that the notice cannot compensate for the deficiencies of the contractual terms and conditions, which are required to inform the consumer of his/her rights at the time of entering into the contract.

Reliance's Submissions

[33] Reliance makes three submissions. It says that:

- (a) it has substantially complied with the *C.P.A.* and that the arguments made by National are purely technical and procedural;
- (b) under s. 93(2) of the *C.P.A.* it would be inequitable in the circumstances for Weller not to be bound by the amendment; and
- (c) this proceeding is brought at the behest of National, and the *C.P.A.* is being used by National in this case for a collateral purpose – namely, to advance its own commercial interests.

[34] On the first submission, Reliance says that it was not necessary for the reference to the right of termination to be immediately adjacent to the amendment provision of the terms and conditions – it was sufficient that the terms and conditions gave a right of termination. From a consumer protection perspective, the customer did not have to accept a unilateral amendment to the agreement – he or she had a right to terminate the agreement.

[35] Reliance says that the Proposed Amendment satisfies s. 42(5)(c) of the *C.P.A.* because it is consistent with the statutory right to make amendments to terms and conditions “from time to time by announcing such changes ... in advance by written communication.” The Proposed Amendment is also consistent with s. 42(2)1 of the *Regulation*, since it indicates the portion of the agreement that will be amended and how it will be amended. It is also consistent, says Reliance, with s. 42(2)2 of the *Regulation* since it draws the attention of the customer to the ability to terminate the water heater agreement instead of accepting the amendment.

[36] On the second submission, Reliance says that it would be inequitable in the circumstances for Weller not to be bound by the amendment. Weller admitted that he had not read Reliance's terms and conditions and he did not have his copy of those conditions when he received the proposed amendment. If there was a “technical deficiency” in the amendment process, says Reliance, it was not unfair to Weller, who has no real interest in the litigation and is simply a pawn on behalf of National.

[37] The third submission is related to the second submission. Reliance says that the *C.P.A.* was intended to advance the interests of consumers and was not intended to be used by corporations as a tool to attack their competitors.

Discussion

[38] The *C.P.A.* is – precisely as its name suggests – intended to protect consumers: *Québec v. Kellogg's Co. of Canada*, [1978] 2 S.C.R. 211 at 224-225. It should be interpreted with that goal in mind. I accept the proposition of Weller that the *C.P.A.* is remedial legislation, and that it should be given a broad and liberal interpretation to ensure the attainment of its objects.

[39] I begin with an examination of section 42 of the *Regulation*. This provision recognizes that a supplier may have a legitimate reason to amend a remote agreement from time to time and seeks to achieve a fair balancing of the interests of the parties in the context of a standard form consumer contract. The supplier has no right to force an amendment on an unwilling consumer. The consumer must be given either the right to terminate the agreement or the right to retain the existing agreement, unamended.

[40] The Amendment Provision, when read in conjunction with the Termination Provision, does just that. The consumer has the right to terminate the agreement, at any time, and cannot be forced to accept an amendment that he or she does not want. I do not accept the submission, advanced by Weller, that the *Regulation* requires that the agreement must expressly state that if the customer does not accept an amendment he or she can terminate the agreement. Nor is there anything in the *Regulation* that requires an amendment clause to be contiguous with a termination clause. It is sufficient that the agreement gives a right of termination in the event the supplier proposes an unacceptable amendment. That right must be clearly and unambiguously expressed, and I find that it is in this case.

[41] It is not unreasonable to require, as Reliance's terms and conditions do, that the consumer must not be in default (i.e., not be in arrears of rental payments) in order to terminate the agreement; nor is it unreasonable to say that the supplier's standard removal charges must be paid. Otherwise, consumers could seize upon an inconsequential amendment to avoid their contractual obligations.

[42] To the extent that there is any technical deficiency in the language of the Amendment Provision, it was cured by the Proposed Amendment, which was sent to every customer of Reliance, and which makes it crystal clear that the consumer has a right to terminate the agreement and explains how that right is to be exercised.

[43] I turn, next, to an examination of the nature and purpose of the contractual term at issue.

[44] The amendment being introduced by Reliance is, from the consumer's point of view, entirely innocuous. It imposes no additional burden on the consumer, other than the burden of picking up the telephone and informing Reliance that he or she wishes to terminate the contract and have the water heater removed – and perhaps the additional burden of being subjected to questions about the reasons for the termination and possibly a sales pitch as to why the customer should continue to do business with Reliance. If, as Reliance asserts and this proceeding suggests, the amendment is impeding National's efforts to convert Reliance's customers, it may not be a bad thing, from a consumer protection perspective, to provide some counter-balance to the entreaties of the "door knockers".

[45] I doubt that many customers, on receiving notice of the proposed amendment, would be likely to say “That’s the last straw; I’m going to cancel my contract.” In fact, the only reason Weller wants to raise this issue is that his wife, and his wife’s employer, have put him up to it.

[46] In the context of this particular case, considering the purpose of s. 42 of the *Regulation*, the Amendment Provision, the Termination Provision, the Proposed Amendment and the nature of the amendment, I cannot find that the protection of consumers is advanced by accepting the interpretation put forward by Weller.

[47] In coming to this conclusion, I cannot overlook the fact that this interpretation is put forward not by Weller, but by National. As I have observed, the *C.P.A.* is intended to be used to protect consumers. It would be dangerous to construe the statute in the context of a contrived *lis* – this is not, at its core, a dispute between a consumer and a supplier. It is a dispute between two suppliers. It does not advance consumer protection to construe the legislation in the absence of a real factual dispute, particularly a dispute that has been brought for a collateral purpose.

[48] Reliance says that the *C.P.A.* was not enacted for the purpose of being used as a tool by business competitors to advance their commercial interests. It invites me to find that this proceeding offends the principle that litigation should not be used for a collateral purpose: see *Re Fengar Investments Corp.* (1993), 17 C.B.R. (3d) 167, [1993] O.J. No. 422 (Ont. Gen. Div.) at para. 102; *Rona Inc. v. Sevenbridge Developments Ltd.* [2002] O.J. No. 2260 (S.C.J.) at para. 15; *Re Laserwords Computer Services Inc.* (1998), 6 C.B.R. (4th) 69, [1998] N.S.J. No. 60 (C.A.) at para. 54. This is clearly a case in which the action is being used for a collateral purpose. I have already noted my concern that the interpretation of an important piece of legislation should not take place in the absence of a true *lis*.

[49] For this reason, if I am wrong in my conclusion that the Amendment Provision, the Termination Provision and the Proposed Amendment comply with the *Regulation*, I accept the submission of Reliance that this is a case in which s. 93(2) of the *C.P.A.* should be applied and the court should order that Weller is bound by the Proposed Amendment even if it was not made in strict compliance with the *C.P.A.* or the *Regulation*, because it would be inequitable in the circumstances if he were not bound.

[50] Weller argues that s. 93(2) can only be invoked where a consumer is seeking to resile from a consumer agreement that is not compliant. He says that he is not seeking to withdraw from the agreement and is simply asking that the terms of the agreement be enforced against the party that drafted it.

[51] I disagree with this restrictive interpretation of s. 93(2). That provision states that a court may order that a consumer is bound by all “or a portion or portions of a consumer agreement”, that is not compliant. That clearly includes the Amendment Provision, the Termination Provision and the Proposed Amendment.

[52] In this case, there is absolutely no evidence that any consumer, including Weller, has been or will be prejudiced by the Proposed Amendment or that anyone, other than Weller, has the slightest concern about the Proposed Amendment. Indeed, Weller had not read Reliance’s

terms and conditions and the notice he received, containing the Proposed Amendment, made his rights very clear to him. This is a case in which it would be inequitable for Weller not to be bound by the Proposed Amendment, even if it was not made in accordance with the *C.P.A.* and the *Regulation*.

[53] In light of my conclusions, it is not necessary to address Reliance's third argument, that the proceeding should be dismissed because it was brought for a collateral purpose.

[54] For these reasons, the application is dismissed. The parties may make written submissions as to costs, if not otherwise resolved.

G.R. Strathy J.

Date: May 24, 2011

CITATION: *Weller v. Reliance Home Comfort Limited Partnership*, 2011 ONSC 3148

COURT FILE NO.: CV-11-420702

DATE: 20110524

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

SCOTT WELLER

Applicant

And

**RELIANCE HOME COMFORT LIMITED
PARTNERSHIP**

Respondent

REASONS FOR JUDGMENT

G.R. Strathy_J.

Released: 20110524

2011 ONSC 3148 (CanLII)

This is **Exhibit "F"** to the Affidavit of Erin Penney, sworn before me at the City of Toronto this 15th day of February, 2013.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

A Commissioner, etc.

CITATION: MacGregor v. Reliance Comfort Limited Partnership, 2010 ONSC 6925
COURT FILE NO.: CV-10-404539
DATE: 20101117

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
DOUGLAS MACGREGOR)	Martin Teplitsky, Q.C. and Brad Teplitsky,
)	for the Applicant
)	
Applicant)	
)	
– and –)	
)	
RELIANCE / COMFORT LIMITED)	Barry H. Bresner and Brendon Y. B. Wong,
PARTNERSHIP)	for the Respondent
)	
Respondent)	
)	
)	
)	
)	HEARD: November 17, 2010
)	DECISION RENDERED: November 17,
)	2010

2010 ONSC 6925 (CanLII)

ECHLIN J.

ENDORSEMENT REASONS FOR DECISION

[1] This is an application for a declaration that a hot water heater rental agreement has been terminated and/or that Mr. MacGregor is entitled to communicate such termination by a duly appointed agent.

[2] At present, there is a commercial war being waged between Reliance Comfort Limited Partnership and National Home Services. This application is for a declaration that Douglas MacGregor's water heater rental agreement with Reliance has been terminated by Reliance's actions in requiring that if he wished to return his tank he must call first to obtain a tank removal authorization number and complete a water heater return form. These requirements were indicated to MacGregor on May 5, 2010 effective May 17, 2010. In addition, the issue of whether a customer could appoint an agent and whether Reliance was required at law to deal with such agent was raised and responded to.

[3] It is clear to me that I am one of the first steps of many more to come in the litigation which has arisen and will continue in the context of a heated competitive environment.

[4] Given that the parties seek an expeditious result for which a review will undoubtedly be sought, I am providing this Endorsement decision immediately.

[5] While originally budgeted for a mere 90 minute argument, this application has consumed the better part of a day's Court time. I must say that while the parties obviously have very little use for one another, the counsel have exemplified the highest standards of advocacy and civility as would be expected of senior Ontario litigants.

[6] Having regard for the material before me, I find that Reliance has not terminated its water heater rental agreement with MacGregor simply by requiring him to call them, obtain an authorization number and complete a Water Heater Return form. I further find that Reliance is not free to refuse to deal with properly appointed agents of its customers.

[7] I make these findings for the following reasons:

[8] Mr. Teplitsky urged that by adding new requirements, Reliance was unilaterally varying or amending its contract with its customers. I disagree. When the small print terms are examined closely, it is notable that the termination provisions are quite general, and much is left to be determined between the parties regarding the manner of terminating the contract and the return of the tank. In interpreting this contract, I find that the requirements advised by Reliance to MacGregor on May 5, 2010 were reasonable and, given the structure of the relationship between the parties, as evidenced by the contract, do not amount to an amendment or variation. I can find no term that has been modified. Rather, the method of termination and return of the tank has been clarified in a contractual arrangement that did not contain all of the specifics.

[9] The fact remains that customers continue to be at liberty to terminate the contract after May 17, 2010, as they were, before that date.

[10] Having determined that these provisions are valid, I turn next to whether MacGregor is at liberty to appoint an agent to fulfill his contractual obligations. I find that he is. While Reliance may not be desirous of dealing with National as agent, I can find no reason at law why it should be entitled to require its customers to seek approval of the appointment of an agent, in the absence of a specific contractual provision to that effect. It was open to Reliance to provide for this in its contract. It did not do so. My understanding of basic agency law (*vis Boustead & Reynolds On Agency* (2006), London, Sweet v. Maxwell at Article 6 pp. 44ff and *Halsbury On Agency*, Vol. 1(2) at pp. 6-10) is that a person may act by way of agency in nearly every instance except when prohibited by statute or where a personal services contract is involved. Mr. Bresner was unable to point me to any authority to the contrary.

[11] I do not find the customer's duties in this contract to be of a non-delegatable nature.

[12] While Mr. Bresner urged that equitable relief such as a declaration ought not to be awarded in an instance such as this due to the actions of MacGregor and National, I prefer the approach adopted by Lang J. (as she then was) in *Harrison v. Anthopoulos* (2002), 62 O.R. (3d) 463 (S.C.) at para. 27. I applaud the attempts of counsel to attempt to define their client's respective rights in this fashion.

[13] Rather than to engage in inflammatory pleadings, interlocutory proceedings, endless discoveries and a lengthy trial, Messrs. Bresner and Teplitsky have significantly narrowed the issues and agreed upon most facts.

[14] While I am pessimistic enough to believe that there will be considerable further litigation, I reject the suggestion that this was an inappropriate way to proceed.

[15] I received costs submissions from counsel who suggested that partial-indemnity costs ought to be in the \$5,000 - \$10,000 range. While these amounts are fair and reasonable and in keeping with the *Boucher* principles, I am exercising my discretion not to award any costs, having regard for the divided result.

ADDENDUM

[16] Reliance expressed a concern that it might be liable for acting upon the instructions of an agent, if not duly appointed.

[17] In answer to such concerns, I suggest that if National is to be appointed as agent to deal with Reliance that a properly drafted and executed agency agreement be prepared and provided to Reliance to meet such concerns.

ECHLIN J.

CITATION: MacGregor v. Reliance Comfort Limited Partnership, 2010 ONSC 6925

COURT FILE NO.: CV-10-404539

DATE: 20101117

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

DOUGLAS MACGREGOR

Applicant

– and –

RELiance COMFORT LIMITED PARTNERSHIP

Respondent

ENDORSEMENT REASONS FOR DECISION

ECHLIN J.

Released: November 17, 2010

2010 ONSC 6925 (CanLII)

This is **Exhibit "G"** to the Affidavit of Erin Penney, sworn before me at the City of Toronto this 15th day of February, 2013.

A handwritten signature in blue ink, appearing to be "J. Smith", written over a horizontal line.

A Commissioner, etc.

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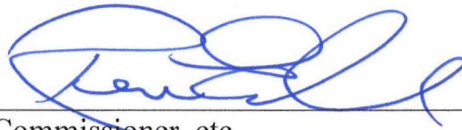
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This is **Exhibit "H"** to the Affidavit of Erin Penney, sworn before me at the City of Toronto this 15th day of February, 2013.

A handwritten signature in blue ink, appearing to be "Erin Penney", written over a horizontal line.

A Commissioner, etc.

Federal Court



Cour fédérale

Date: 20120605

Docket: T-1059-12

Ottawa, Ontario, June 5, 2012

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

IN THE MATTER OF the *Competition Act*,
R.S.C. 1985, c. C-34 (as amended);

AND IN THE MATTER OF an inquiry pursuant
to subparagraph 10(1)(b)(ii) of the *Competition Act*
relating to an alleged abuse of a dominant position
by Reliance Comfort Limited Partnership in the
market for residential water heaters in certain areas
of Ontario pursuant to section 79 of the
Competition Act;

AND IN THE MATTER OF an *ex parte*
application by the Commissioner of Competition
for the issuance an Order requiring that certain
persons produce certain records pursuant to
paragraph 11(1)(b) of the *Competition Act* and
provide written returns of information pursuant to
paragraph 11(1)(c) of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

AND

**RELIANCE COMFORT LIMITED
PARTNERSHIP**

Applicant

Respondent

**ORDER FOR THE PRODUCTION OF RECORDS
AND WRITTEN RETURNS OF INFORMATION**

UPON APPLICATION made the 5th day of June, 2012, by the Commissioner of Competition (the "**Commissioner**") appointed under the *Competition Act* (the "**Act**"), *ex parte*, for an Order pursuant to paragraphs 11(1)(b) and 11(1)(c) of the Act, and heard this day at the Federal Court, Ottawa, Ontario;

AND UPON READING the Affidavit of Guillaume Couillard, sworn on the 31st day of May, 2012, (the "**Affidavit**") attaching the proposed Appendices I and II to the Draft Order, and upon reading the Draft Order filed;

AND UPON being satisfied that an inquiry is being made pursuant to subparagraph 10(1)(b)(ii) of the Act (the "**Inquiry**") relating to an alleged abuse of a dominant position by Reliance Comfort Limited Partnership (the "**Respondent**") in the market for residential water heaters in certain areas of Ontario pursuant to section 79 of the Act;

AND UPON being satisfied that the Respondent has or is likely to have the records or other things listed in Appendix I, attached herein;

AND UPON being satisfied that the Respondent has or is likely to have the information for which written returns of information are requested as listed in Appendix II, attached herein;

AND UPON being satisfied that the requested records or other things and the written returns of information are relevant to the Inquiry;

1. **THIS COURT ORDERS** that, pursuant to paragraph 11(1)(b) of the Act, the Respondent, by a duly authorized representative of the Respondent, shall produce to the Commissioner or her authorized representative all records and other things identified in Appendix I, attached herein, in the possession, control or custody of the Respondent, as per the instructions contained herein.

2. **THIS COURT FURTHER ORDERS** that pursuant to paragraph 11(1)(c) of the Act, the Respondent, by a duly authorized representative of the Respondent, shall make and deliver to the Commissioner or her authorized representative all information and other things identified in Appendix II, attached herein, in the possession, control or custody of the Respondent, as per the instructions contained herein.
3. **THIS COURT FURTHER ORDERS** that in order to facilitate the handling and orderly maintenance of records or other things and to ensure the accurate and expeditious return of records or other things produced pursuant to this Order, the following procedures shall be observed:
 - a. unless otherwise specified, the Respondent shall produce and deliver records or other things created or modified on or after 1 January 2010 to the date of this Order and shall produce and deliver written returns of information for each of the years from 1 January 2009 to the date of this Order. If data are kept based on a 12-month period other than the calendar year, the 12-month period used shall be indicated;
 - b. records or other things, whether in handwritten, printed, typewritten, or electronically-stored form, in the possession, custody or control of the Respondent shall be produced;
 - c. the records or other things produced shall be either original records or certified by affidavit of a duly authorized representative of the Respondent to be true copies;
 - d. if a portion of any record or other thing is responsive to any paragraph or subparagraph of the Order, then the entire record shall be produced;

- e. records or other things that are stapled or attached together in any manner shall remain attached; records shall not be shuffled or otherwise rearranged, but shall be produced in the order in which they appear in the Respondent's files;
- f. an index of all records or other things shall be provided. The index shall include the title, date the record was prepared, the name of each author, the title or position of each author, each addressee, the title or position of each addressee, and the paragraphs or subparagraphs of the Order to which the record is responsive. Where a record or other thing is responsive to more than one paragraph or subparagraph, that record or other thing shall be produced only once;
- g. all calendars, appointment books, telephone logs, planners, diaries, and items of a similar nature that are produced in response to this Order shall be marked with the name of the person or persons by whom they were used and the dates during which they were used;
- h. before sending a return to the Bureau and in order to facilitate receipt of documents in electronic format, an employee of the Respondent responsible for the preparation of electronic records responsive to this Order shall contact François Brabant, Technical Specialist for the Bureau, at: (819) 994-5173 to discuss these instructions;
- i. all electronic records or other things (*i.e.* those readable in a computer system) shall be produced either in their existing format or as described below:
 - i. database records shall be provided as a flat file, in a non-relational format, and exported as a comma-delimited (CSV) text file;
 - ii. spreadsheets shall be provided in MS Excel format;
 - iii. word processing files shall be provided in MS Word format or searchable PDF format;

- iv. e-mail records and attachments shall be provided in a native email format such as Outlook Express EML format, Outlook MSG format, PST format, searchable PDF format, or in paper form; and
 - v. map records shall be provided in either a MS MapPoint or MS Streets & Trips format;
- j. in the event that an electronic record or other thing cannot be delivered in a format described above, the electronic record or other thing shall be provided along with all available instructions and other materials, including software, as necessary for the retrieval and use of the record;
- k. notwithstanding subparagraph i, litigation application exports may be produced by providing a cross-reference file (*e.g.*, CSV, Dii, or MDB database) and related images (*e.g.*, single page TIFF files) and/or electronic records and, where available, additional field information (*e.g.*, title, description, date, etc.). Where feasible, electronic records shall be sent in the predefined Ringtail MDB format;
- l. all electronic records or other things shall be provided on portable storage media appropriate to the volume of data (*e.g.*, USB drive, CD, DVD, or hard drive) and shall be identified with a label describing the contents. Files (*e.g.*, native files or images or combinations of both) shall be sent to the Bureau in batches of no more than 250,000 files;
- m. if a record or other thing contains privileged material, the entire record shall be produced, with the privileged material redacted and recorded in the manner set forth in paragraph n, outlined below;
- n. for each record or other thing, or portion thereof, withheld under a claim of privilege, the Respondent shall submit a sworn or certified statement from the Respondent's counsel, or a corporate officer, identifying the basis upon which privilege is claimed; describing the withheld or redacted record by author,

addressee, date, number of pages and in a manner sufficient to identify the nature of the document and to allow verification of the appropriateness of the said claim for privilege; and describing the subject matter, listing the following: (1) the paragraphs, and subparagraphs in this Order to which the record is responsive; and (2) each person, identified by name, title and address, to whom the withheld material or its contents, or any part thereof, was disclosed. The Respondent shall preserve any record or part of a record withheld under a claim of privilege. The Commissioner may thereafter require, by written notice to the Respondent, that it provide those records to a person identified in subsection 19(3) of the Act at or before 4:00 p.m. Eastern Standard Time, 21 calendar days after the Respondent has complied with the Order;

- o. the meaning of any accounting terms, including those related to revenues, costs and margins, shall be in accordance with generally accepted accounting principles (“GAAP”) or other accounting principles that the Respondent uses in its financial statements and, where accounting principles other than GAAP are used, the Respondent shall provide explanatory notes sufficient for the Applicant to understand the meaning of such accounting terms;
 - p. use of the singular or the plural in this Order shall not be deemed a limitation, and the use of the singular shall be construed to include, where appropriate, the plural; and vice versa; and
 - q. use of a verb in the present or past tense in this Order shall not be deemed a limitation, and the use of either the present or past tense shall be construed to include both the present and past tense.
- 4. **THIS COURT FURTHER ORDERS** that the Respondent, by a duly authorized representative of the Respondent, shall provide an explanation of how to read/interpret all records and other things produced in response to paragraph 1 above, whose meanings are not self evident on their face.

5. **THIS COURT FURTHER ORDERS THAT:**

- a. communications or inquiries regarding this Order shall be addressed to:

Mr. David Wingfield
Executive Director and Senior General Counsel
Competition Bureau Legal Services
Department of Justice
50 Victoria Street
Gatineau, Quebec
K1A 0C950
Phone #: (819) 953-3902
Fax #: (819) 953-9267

- b. all records or other things and written returns of information described in Appendices I and II attached herein, shall be delivered to the Commissioner at the following address:

Competition Bureau
Civil Matters Branch
50 Victoria Street, 15th Floor
Gatineau, Quebec
K1A 0C9
Attention: David Harding, Senior Competition Law Officer; and

- c. the person producing the records or other things, and written returns of information, shall provide them under oath or solemn affirmation explaining that all records or other things in their possession, control or custody were produced, and that the records or other things produced are either originals or certified true copies.

6. **THIS COURT FURTHER ORDERS** that the Respondent shall provide information that discloses what, if any, records or other things not currently in the Respondent's possession, control or custody, previously were in the Respondent's possession, control or custody and are now in the possession, control or custody of another person, and information sufficient to disclose to whom the records were provided and when such records were provided to such person.
7. **THIS COURT FURTHER ORDERS** that the Respondent, by a duly authorized representative of the Respondent, shall provide an explanation for any case where:
 - a. records or other things requested in Appendix I, attached, are not available; or
 - b. written returns of information requested in Appendix II, attached, cannot be supplied.
8. **THIS COURT FURTHER ORDERS** that, with regard to certain records or information that the Respondent may have previously provided to the Commissioner, the Respondent is not required to produce a further copy of such records or information in response to the Order, provided that the Respondent: (1) identifies to the Commissioner's satisfaction any records or information in the Commissioner's possession that are responsive to the Order; (2) agrees and confirms that such records or information shall be deemed to have been provided to the Commissioner pursuant to the Order; and (3) receives confirmation from the Commissioner that such records or information are, and continue to be, in the Commissioner's possession.
9. **THIS COURT FURTHER ORDERS** that, where the Respondent produces records or information that are, in the view of the Commissioner, adequate for the purposes of the Inquiry, the Commissioner may, by written notice, waive production of any additional records or information that would have otherwise been responsive to the Order.

10. **THIS COURT FURTHER ORDERS** that this Order may be served by means of facsimile machine, electronic mail (with acknowledgement of receipt) or registered letter on a duly authorized representative of the Respondent.
11. **THIS COURT FURTHER ORDERS** that:
 - a. all of the requirements herein, including the return of the records and written returns of information, but not including specifications 5 and 6 in Appendix II, shall be effected within 45 calendar days of the service of this Order; and
 - b. the written returns of information described herein at Appendix II, specifications 5 and 6, shall be effected within 60 calendar days of the service of this Order.

"Michel Beaudry"

Judge

APPENDIX I
RECORDS TO BE PRODUCED PURSUANT TO
PARAGRAPH 11(1)(b) OF THE *COMPETITION ACT*

Notice Concerning Obstruction

Any person who in any manner impedes or prevents or attempts to impede or prevent any inquiry or examination under the *Competition Act* (the “Act”), or who destroys or alters or causes to be destroyed or altered, any record or thing that is required to be produced under section 11 of the Act may be subject to criminal prosecution for obstruction of justice, contempt of court or other federal criminal violations. Where a corporation commits such an offence, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence may also be prosecuted. Conviction of any of these offences is punishable by fine or imprisonment or both.

Definitions

For the purpose of this Appendix and Order, the following definitions apply:

“**account closure charge**” means the amount charged to a customer upon termination of a rental water heater agreement ostensibly for closing the customer’s account;

“**Act**” means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

“**affiliate**” means in relation to another entity, control of that entity or that both entities are controlled by the same entity or person;

“**agent**” means any party, other than the customer, who has any communications, interactions or dealings of any nature whatsoever with Reliance on behalf of the customer;

“**and**” and “**or**” have both conjunctive and disjunctive meanings;

“**any**” means one or more. The term is mutually interchangeable with “all” and each term encompasses the other;

“**buy-out option**” means the customer’s option to purchase his or her Reliance rental water heater;

“buy-out price” means any amount, related to the value of a rental water heater, charged to the customer by Reliance: (i) for exercising their buy-out option; (ii) for breaching the rental agreement; or (iii) in lieu of damage charges.

“control” includes “control” as defined in section 2 of the Act and also includes the ability to materially influence the economic behaviour of a business or entity;

“customer” means any residential water heater rental customer of Reliance in Ontario;

“damage charge” means any amount charged to a customer by Reliance upon return of a water heater ostensibly for the degradation of the water heater, including for missing parts or attachments, dents or cosmetic damage, but not including the rental rate;

“discount” means any reduction in the rental rate or in the periodic fees charged to a customer by Reliance;

“drain and disconnect charge” means any amount charged to a customer by Reliance ostensibly to drain, disconnect and remove a water heater from a customer’s premises;

“Enbridge Territory” means the municipalities that are supplied natural gas in Ontario by Enbridge Inc., its affiliates or predecessors;

“identify” means to state:

- (a) in the case of a person other than a natural person, its corporate name, business names, the address of the principal place of business (including the postal code), its telephone number, and the name of the chief executive officer, and any website addresses;
- (b) in the case of a natural person, his or her name, business address, business phone number, employer and title;
- (c) in the case of a record, the name of each author, the title or position of each author, each addressee, the titles or position of each addressee, and the date the record was prepared;
- (d) in the case of intellectual property, the registration title, the registration number, the registered owner, the filing date and expiry date; and
- (e) in the case of unincorporated organizations, the registered name, address, telephone number, name of the chief executive officer and any website addresses;

“incentive” means any discount, rebate, allowance, rate reduction or other monetary or non-monetary benefit;

“including” means including, but not limited to, and **“includes”** means includes, but not limited to;

“other termination fees” means the sum of all fees charged to a customer upon termination of a rental water heater agreement, excluding the rental rate, damage charges, buy-out price, account closure charge, drain and disconnect charge, pick-up charge, and taxes;

“periodic fees” means any fees charged to a customer while the customer is under a rental water heater agreement with Reliance, excluding the rental rate, other termination fees, damage charges, buy-out price, account closure charge, drain and disconnect charge, pick-up charge, and taxes;

“pick-up charge” means any amount charged by Reliance to a customer for pick-up of a water heater that has been drained and disconnected by another party;

“record” has the meaning of the term as defined in subsection 2(1) of the Act;

“related to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating;

“removal reference number” or **“RRN”** means an identification number that must be obtained from Reliance, in certain circumstances, prior to the return of a Reliance rental water heater;

“Reliance” means Reliance Comfort Limited Partnership, also doing business in Ontario under various names, including as Reliance Home Comfort;

“Respondent” means Reliance Comfort Limited Partnership;

“sales” means, in the case of a product, the amount of the product sold or to be sold, and does not include any sales or transfers of the product made within an entity;

“supply” includes any aspect of supply including producing, transporting, distributing, wholesaling, retailing, selling for resale, licensing, leasing, and renting, but not sales or transfers within an entity;

“supplier” means any person who provides supply to Reliance;

“Union Gas Territory” means the municipalities that are supplied natural gas in Ontario by Union Gas Limited, its affiliates or predecessors;

“water heaters” means residential water heaters;

“year” means calendar year, unless Reliance keeps its data based on some other 12-month period; If so, “year” means that 12-month period; and

“yearly” coincides with the 12-month period defined by the term “year.”

Records to be produced:

1. Provide all internal records (not including records of communications with the general public, including customers) related to policies, plans or processes concerning the setting or changing of Reliance’s water heater rental rates, periodic fees, account closure charges, pick-up charges, drain and disconnect charges, buy-out prices, damage charges, incentives and other termination fees (whether finalized, planned, considered, implemented, or otherwise).
2. Provide all records, created or modified on or after 1 January 2008 to the date of this Order, related to competition in the supply of rental water heaters and related services in Ontario, including:
 - (a) market studies, forecasts and surveys;
 - (b) business plans;
 - (c) records related to the market share or competitive position of Reliance or its competitors;
 - (d) records related to the relative strength or weakness of competitors;
 - (e) records related to entry or attempted entry by water heater companies;
 - (f) acquisitions by Reliance or its competitors of water heater providers or water heater portfolios;
 - (g) all records, including policies, guidelines, customer service scripts and auto-dialing scripts, relating to customer attrition and to attempts to win customers from other companies or stem losses of customers, including those created,

modified or reviewed by any internal committee, but not including transcripts from telephone calls with customers or audio recordings of those calls; and

- (h) all records related to any actual or potential effect on supply, demand, cost, or price in the supply of rental water heaters and related services in Ontario as a result of competition from any other possible substitute products or services, including water heater ownership.
3. Provide one copy of each version of Reliance's water heater Terms and Conditions.
 4. Provide all records related to the water heater return processes and policies of Reliance, including records related to the number of facilities that accept or accepted Reliance water heater returns; their actual hours of operation and any variation thereto; any limitations on who may return water heaters; any limitations on where or when water heaters may be returned; how many may be returned per day; and any closure of such facilities.
 5. Provide all records related to the development and implementation of any policy requiring customers to call Reliance, obtain a RRN, and complete a Water Heater Return Form prior to returning a rental water heater, including any scripts used by customer service personnel upon being contacted by customers seeking to return a water heater.
 6. Provide all records related to agents and agency agreements between customers and competitors of Reliance, including records related to the development and implementation of policies and records related to legal proceedings involving such agency agreements.
 7. Provide all records related to any Return Authorization Number policy implemented by Direct Energy Marketing Limited or its affiliates.

8. Provide all records related to:
 - (a) communication to customers related to water heater refurbishment; and
 - (b) Reliance's formal or informal policies, procedures or practices regarding the refurbishment of water heaters, including the criteria used to determine whether a returned water heater is to be refurbished or recycled.

9. Provide all records related to customer or agent complaints regarding Reliance's rental water heater return policies or procedures, including complaints related to: rental water heater returns; termination of rental water heater agreements; removal or pick-up of rental water heaters; RRNs; buy-out options; buy-out prices; account closure charges; drain and disconnect charges; damage charges, pick-up charges; periodic fees; and other termination fees.

APPENDIX II

WRITTEN RETURNS OF INFORMATION PURSUANT TO PARAGRAPH 11(1)(c) OF THE *COMPETITION ACT*

Notice Concerning Obstruction

Any person who in any manner impedes or prevents or attempts to impede or prevent any inquiry or examination under the *Competition Act* (the “Act”), or who destroys or alters or causes to be destroyed or altered, any record or thing that is required to be produced under section 11 of the Act may be subject to criminal prosecution for obstruction of justice, contempt of court or other federal criminal violations. Where a corporation commits such an offence, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence may also be prosecuted. Conviction of any of these offences is punishable by fine or imprisonment or both.

Definitions

For the purpose of this Appendix and Order, the following definitions apply:

“**account closure charge**” means the amount charged to a customer upon termination of a rental water heater agreement ostensibly for closing the customer’s account;

“**Act**” means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

“**affiliate**” means in relation to another entity, control of that entity or that both entities are controlled by the same entity or person;

“**agent**” means any party, other than the customer, who has any communications, interactions or dealings of any nature whatsoever with Reliance on behalf of the customer;

“**and**” and “**or**” have both conjunctive and disjunctive meanings;

“**any**” means one or more. The term is mutually interchangeable with “all” and each term encompasses the other;

“**buy-out option**” means the customer’s option to purchase his or her Reliance rental water heater;

“buy-out price” means any amount, related to the value of a rental water heater, charged to the customer by Reliance: (i) for exercising their buy-out option; (ii) for breaching the rental agreement; or (iii) in lieu of damage charges.

“control” includes “control” as defined in section 2 of the Act and also includes the ability to materially influence the economic behaviour of a business or entity;

“customer” means any residential water heater rental customer of Reliance in Ontario;

“damage charge” means any amount charged to a customer by Reliance upon return of a water heater ostensibly for the degradation of the water heater, including for missing parts or attachments, dents or cosmetic damage, but not including the rental rate;

“discount” means any reduction in the rental rate or in the periodic fees charged to a customer by Reliance;

“drain and disconnect charge” means any amount charged to a customer by Reliance ostensibly to drain, disconnect and remove a water heater from a customer’s premises;

“Enbridge Territory” means the municipalities that are supplied natural gas in Ontario by Enbridge Inc., its affiliates or predecessors;

“identify” means to state:

- (a) in the case of a person other than a natural person, its corporate name, business names, the address of the principal place of business (including the postal code), its telephone number, and the name of the chief executive officer, and any website addresses;
- (b) in the case of a natural person, his or her name, business address, business phone number, employer and title;
- (c) in the case of a record, the name of each author, the title or position of each author, each addressee, the titles or position of each addressee, and the date the record was prepared;
- (d) in the case of intellectual property, the registration title, the registration number, the registered owner, the filing date and expiry date; and
- (e) in the case of unincorporated organizations, the registered name, address, telephone number, name of the chief executive officer and any website addresses;

“incentive” means any discount, rebate, allowance, rate reduction or other monetary or non-monetary benefit;

“including” means including, but not limited to, and **“includes”** means includes, but not limited to;

“other termination fees” means the sum of all fees charged to a customer upon termination of a rental water heater agreement, excluding the rental rate, damage charges, buy-out price, account closure charge, drain and disconnect charge, pick-up charge, and taxes;

“periodic fees” means any fees charged to a customer while the customer is under a rental water heater agreement with Reliance, excluding the rental rate, other termination fees, damage charges, buy-out price, account closure charge, drain and disconnect charge, pick-up charge, and taxes;

“pick-up charge” means any amount charged by Reliance to a customer for pick-up of a water heater that has been drained and disconnected by another party;

“record” has the meaning of the term as defined in subsection 2(1) of the Act;

“related to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating;

“removal reference number” or **“RRN”** means an identification number that must be obtained from Reliance, in certain circumstances, prior to the return of a Reliance rental water heater;

“Reliance” means Reliance Comfort Limited Partnership, also doing business in Ontario under various names, including as Reliance Home Comfort;

“Respondent” means Reliance Comfort Limited Partnership;

“sales” means, in the case of a product, the amount of the product sold or to be sold, and does not include any sales or transfers of the product made within an entity;

“supply” includes any aspect of supply including producing, transporting, distributing, wholesaling, retailing, selling for resale, licensing, leasing, and renting, but not sales or transfers within an entity;

“supplier” means any person who provides supply to Reliance;

“Union Gas Territory” means the municipalities that are supplied natural gas in Ontario by Union Gas Limited, its affiliates or predecessors;

“water heaters” means residential water heaters;

“year” means calendar year, unless Reliance keeps its data based on some other 12-month period; If so, “year” means that 12-month period; and
“yearly” coincides with the 12-month period defined by the term “year.”

Written Returns of Information to be produced:

1. Provide a description of each of the principal businesses of Reliance.
2. For each affiliate of Reliance which is engaged in or otherwise involved in the water heater industry in Ontario, provide:
 - (a) the affiliate’s name and address; and
 - (b) a description of each of the principal businesses of the affiliate listed in 2(a).
3. Provide a chart and description of the relationship between Reliance and the affiliates listed in 2(a).
4. For each make and model of rental water heater, sold or rented to customers by Reliance, indicate its tank volume, expected lifespan, energy source (*e.g.*, natural gas, electric), configuration (*e.g.*, conventionally-vented, power-vented, tankless) and the cost to acquire each make and model from suppliers.
5. Provide a database, on a monthly basis and in electronic form, showing Reliance’s installed base of rental water heaters in Ontario that includes:
 - (a) customer account number and water heater location (street address, including postal code);
 - (b) water heater make, model and serial number;
 - (c) date water heater was installed;

- (d) indication if the water heater was new or refurbished at the time it was installed at the customer's site; and
 - (e) monthly rental rate charged.
6. Provide a database, in electronic form, showing each occurrence when a customer or agent expressed intent to terminate the customer's rental agreement with Reliance that includes (where applicable):
- (a) customer account number and water heater location (street address, including postal code);
 - (b) date when customer or agent first expressed intent to terminate customer's rental agreement with Reliance;
 - (c) indication of who initiated the termination (*e.g.*, customer, agent, or both);
 - (d) first date when a RRN was requested by customer, agent or both;
 - (e) date when a RRN was produced by Reliance to customer, agent or both;
 - (f) indication of customer being retained with an incentive;
 - (g) indication of customer being retained without an incentive;
 - (h) indication of customer exercising their buy-out option;
 - (i) indication if the customer was charged the buy-out price owing to a breach of the rental agreement;
 - (j) indication if the customer was charged the buy-out price owing to damage to the returned water heater;
 - (k) date water heater was removed by Reliance;
 - (l) date water heater was picked-up by Reliance;
 - (m) date water heater was removed by a competitor or agent;
 - (n) date water heater was received by Reliance;
 - (o) account closure charge;

- (p) pick-up charge;
- (q) drain and disconnect charge;
- (r) other termination fees;
- (s) buy-out price;
- (t) damage charges applied;
- (u) final bill issue date;
- (v) date account balance fully paid;
- (w) date customer account was sent to collections, either internally or to an outside collection agency;
- (x) amount outstanding on the account at the time it was sent to collections; and
- (y) date when efforts to collect amount outstanding on the account ceased.

7. Describe the following, related to the refurbishment of water heaters:

- (a) the number of returned Reliance water heaters that were refurbished each year and the total cost of refurbishing these water heaters;
- (b) for each make and model of water heater sold or rented by Reliance, the average cost to refurbish each water heater and the average cost for each type of damage (*e.g.*, dent, scratch, missing dip tube); and
- (c) the number of refurbished water heaters that were re-used each year, by the type of end-use (*e.g.*, used as rentals in households, sold to other businesses, sold to consumers).

8. Provide the addresses of all facilities that accept, or have accepted, returned Reliance water heaters, and for each facility provide the following:

- (a) the hours of operation;
- (b) the storage capacity of the facility;

- (c) the average monthly capacity; and
 - (d) the total number of water heaters accepted at the facility per month.
9. For the Ontario water heater rental and service segment of Reliance, provide quarterly summary financial data including:
- (a) gross revenue;
 - (b) net revenue;
 - (c) direct costs incurred, including:
 - i. material costs for installations and repairs (excluding costs that are depreciated);
 - ii. labour costs for installation, repairs and refurbishment;
 - iii. transportation costs for installations and repairs;
 - iv. costs of facilities used for installations, repairs, returns and refurbishment; and
 - v. other direct costs;
 - (d) gross margin;
 - (e) operating margin;
 - (f) capital expenditures; and
 - (g) indirect costs incurred, including:
 - i. selling expenses;
 - ii. advertising and promotional costs;
 - iii. billing expenses;
 - iv. other general and administrative costs;

- v. depreciation costs of fixed assets, including water heaters;
 - vi. amortization costs of intangible assets; and
- other indirect costs.

"Michel Beaudry"
Judge

FEDERAL COURT

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34 (as amended);

AND IN THE MATTER OF an inquiry pursuant to subparagraph 10(1)(b)(ii) of the *Competition Act* relating to an alleged abuse of a dominant position by Reliance Comfort Limited Partnership in the market for residential water heaters in certain areas of Ontario pursuant to section 79 of the *Competition Act*;

AND IN THE MATTER OF an *ex parte* application by the Commissioner of Competition for the issuance of an Order requiring that certain persons produce certain records pursuant to paragraph 11(1)(b) of the *Competition Act* and provide written returns of information pursuant to paragraph 11(1)(c) of the *Competition Act*.

B E T W E E N:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

RELIANCE COMFORT LIMITED PARTNERSHIP


Respondent

**ORDER FOR THE PRODUCTION OF RECORDS AND WRITTEN
RETURNS OF INFORMATION**

**David R. Wingfield
Josephine A.L. Palumbo
Parul Shah**
Department of Justice
Competition Bureau Legal Services
50 Victoria Street, Gatineau QC
K1A 0C9
Tel: (819) 953-3902
Fax: (819) 953-9267

Counsel to the Commissioner of Competition

This is **Exhibit "I"** to the Affidavit of Erin Penney, sworn before me at the City of Toronto this 15th day of February, 2013.

A handwritten signature in blue ink, appearing to be 'Erin Penney', written over a horizontal line.

A Commissioner, etc.



OMAFRA BIOMASS FORUM

Natural Gas Access

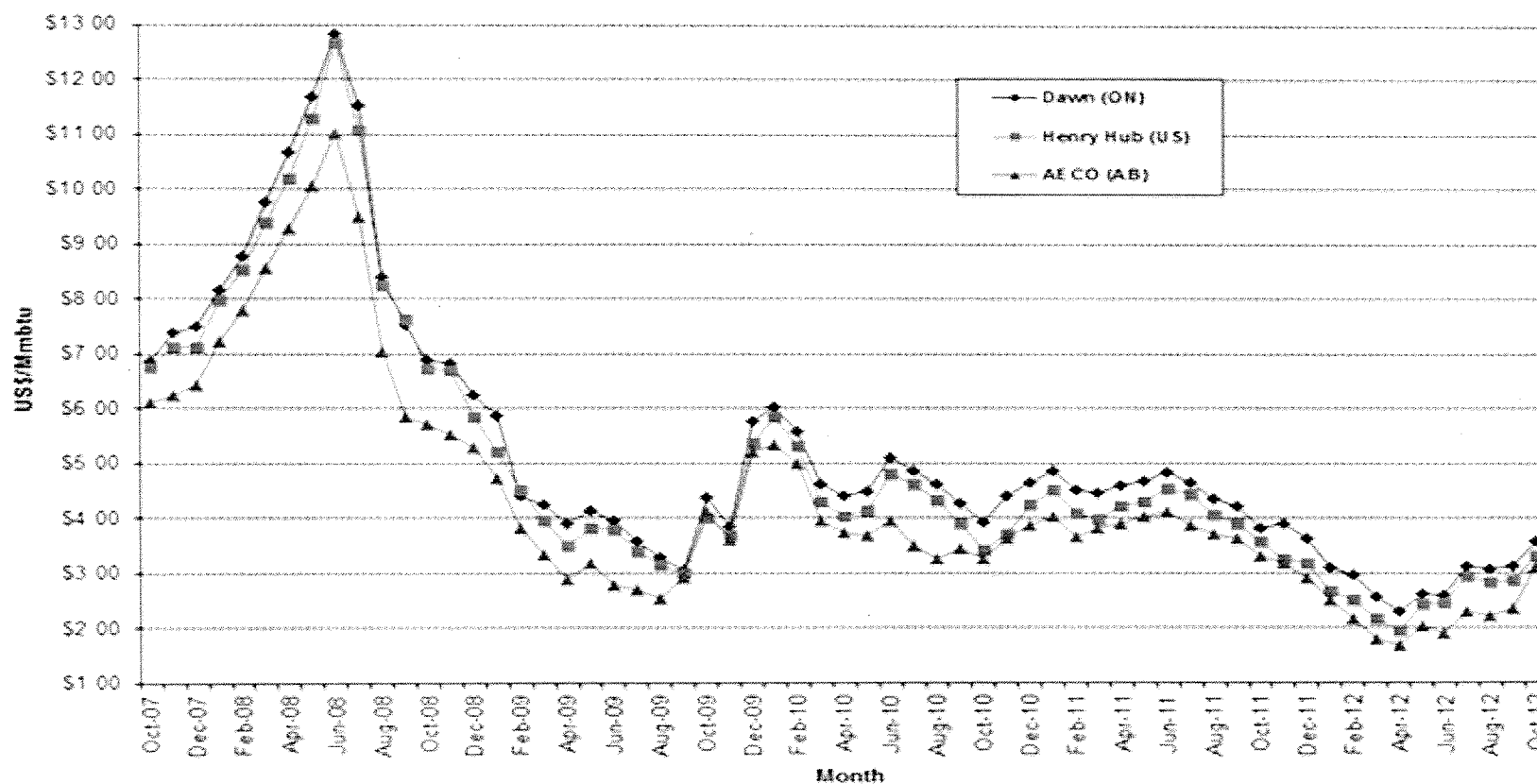
November 22, 2012
Bill Greenizan
Senior Advisor, Oil
Ontario Ministry of Energy

Presentation Overview

1. Natural Gas Overview
 - Price trends & shale gas
2. Ontario Natural Gas Summary
 - Pipeline Access (Western Canada, Dawn, Marcellus)
 - Enbridge & Union Gas Service Areas
3. Natural Gas Distribution
 - Regulated by Ontario Energy Board (OEB)
4. Price Comparisons
 - Residential natural gas rates
 - Electricity / heating oil / propane comparison

Wholesale Natural Gas Prices: Consumer-Friendly Trend

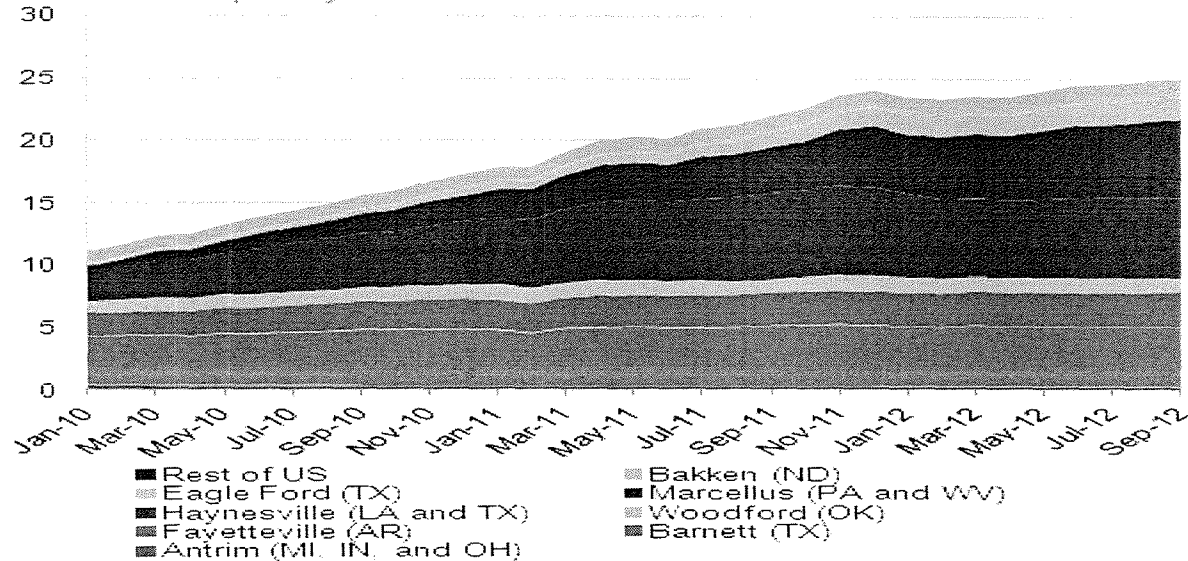
Monthly Average Natural Gas Spot Prices



US Shale Gas Production Growth

Monthly dry shale gas production

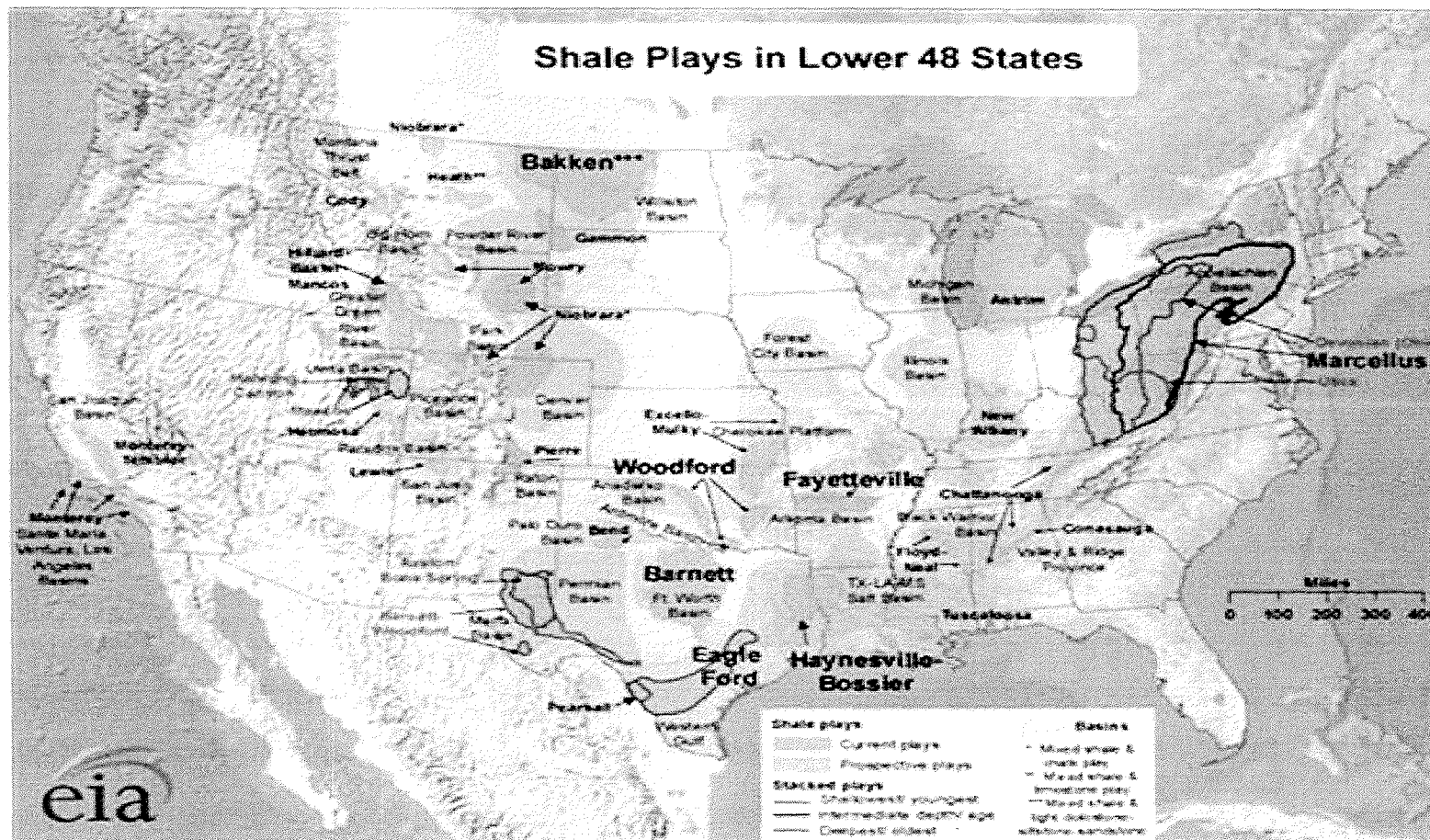
billion cubic feet per day



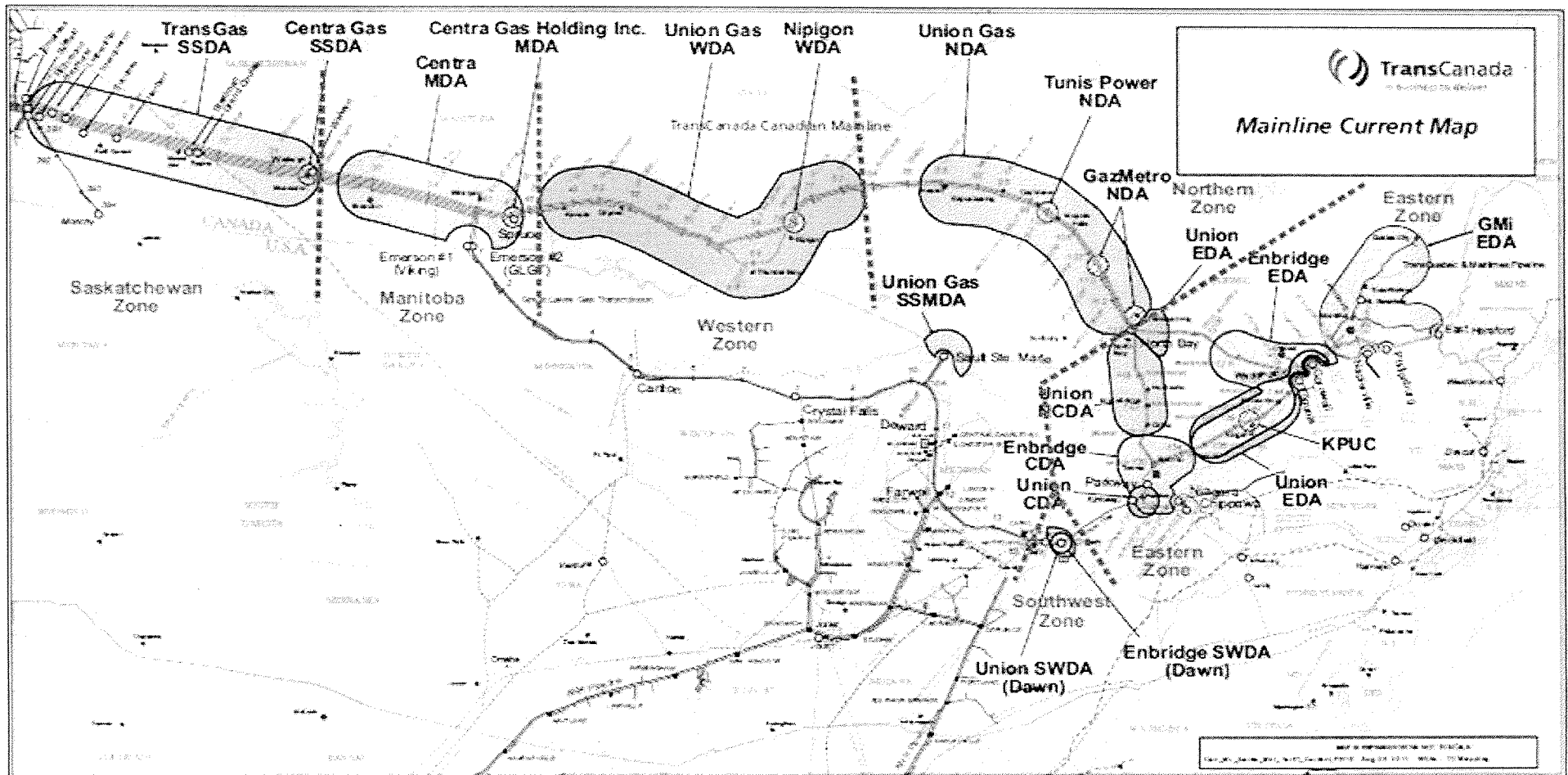
Source: Lippman Consulting, Inc. Gross withdrawal estimates are as of September 2012 and converted to dry production estimates with EIA-calculated average

- US has added ~ 15 bcf/d of production in just over 2 years from shale gas resources. Canada produced ~ 14.7 bcf/d in 2010
- Note significant addition from Marcellus - on the doorstep of Ontario-Quebec & US Northeast demand centres

US Shale Gas Basins

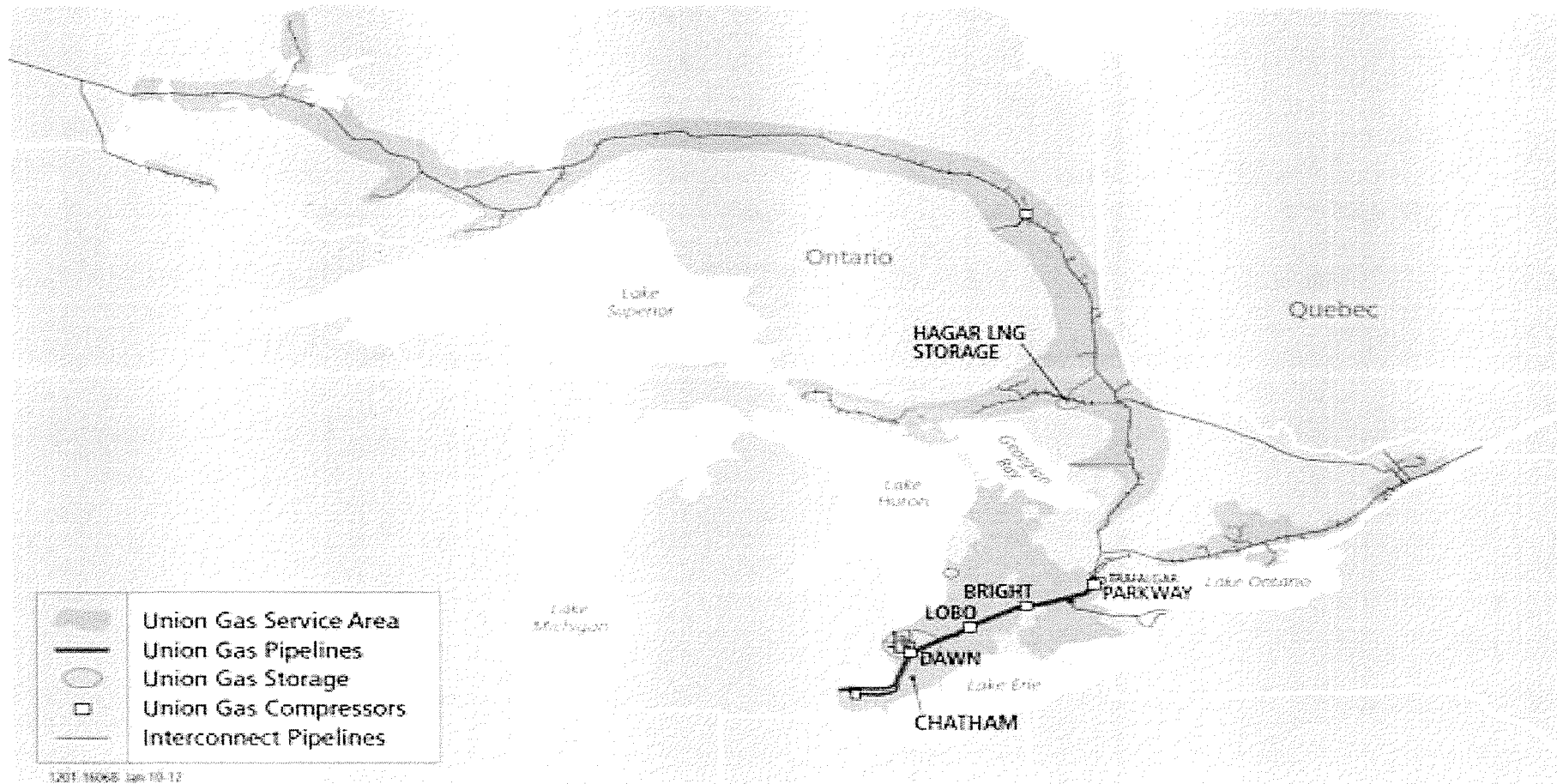


TransCanada Natural Gas Mainline - Map



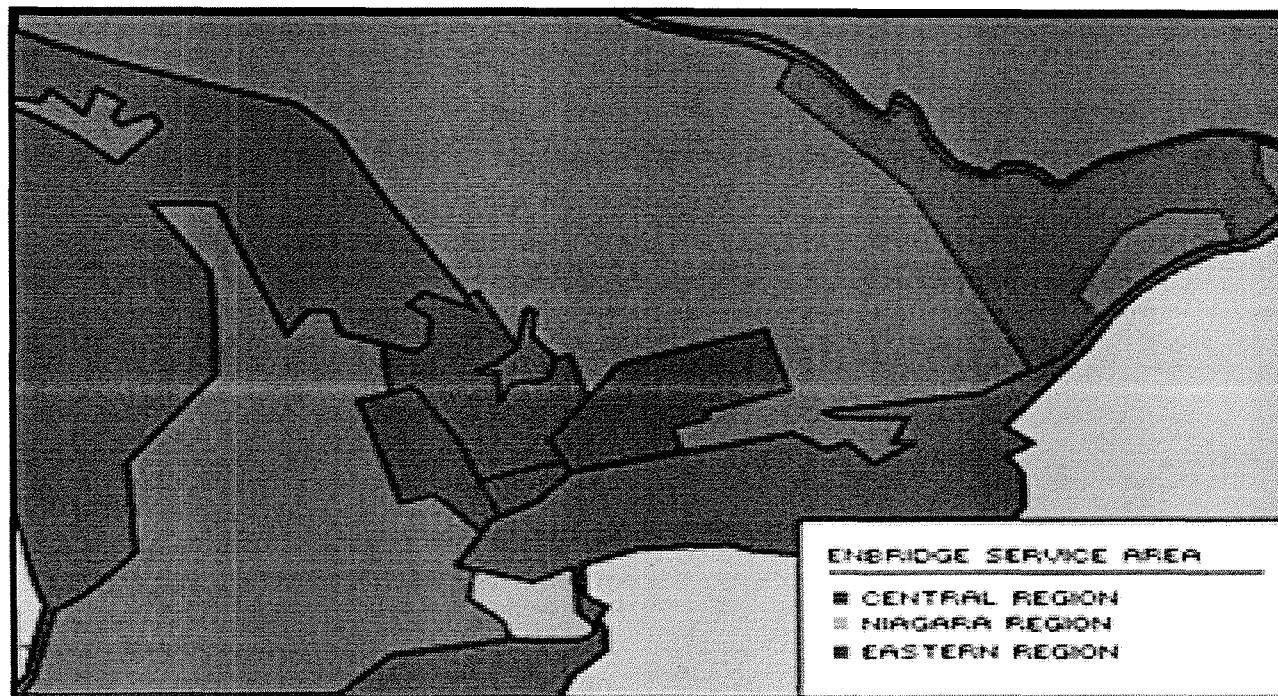
Union Gas Service Area

SW Ontario, Northern Ontario + Along TransCanada Mainline



Enbridge Service Area

Niagara, GTA, Eastern Ontario

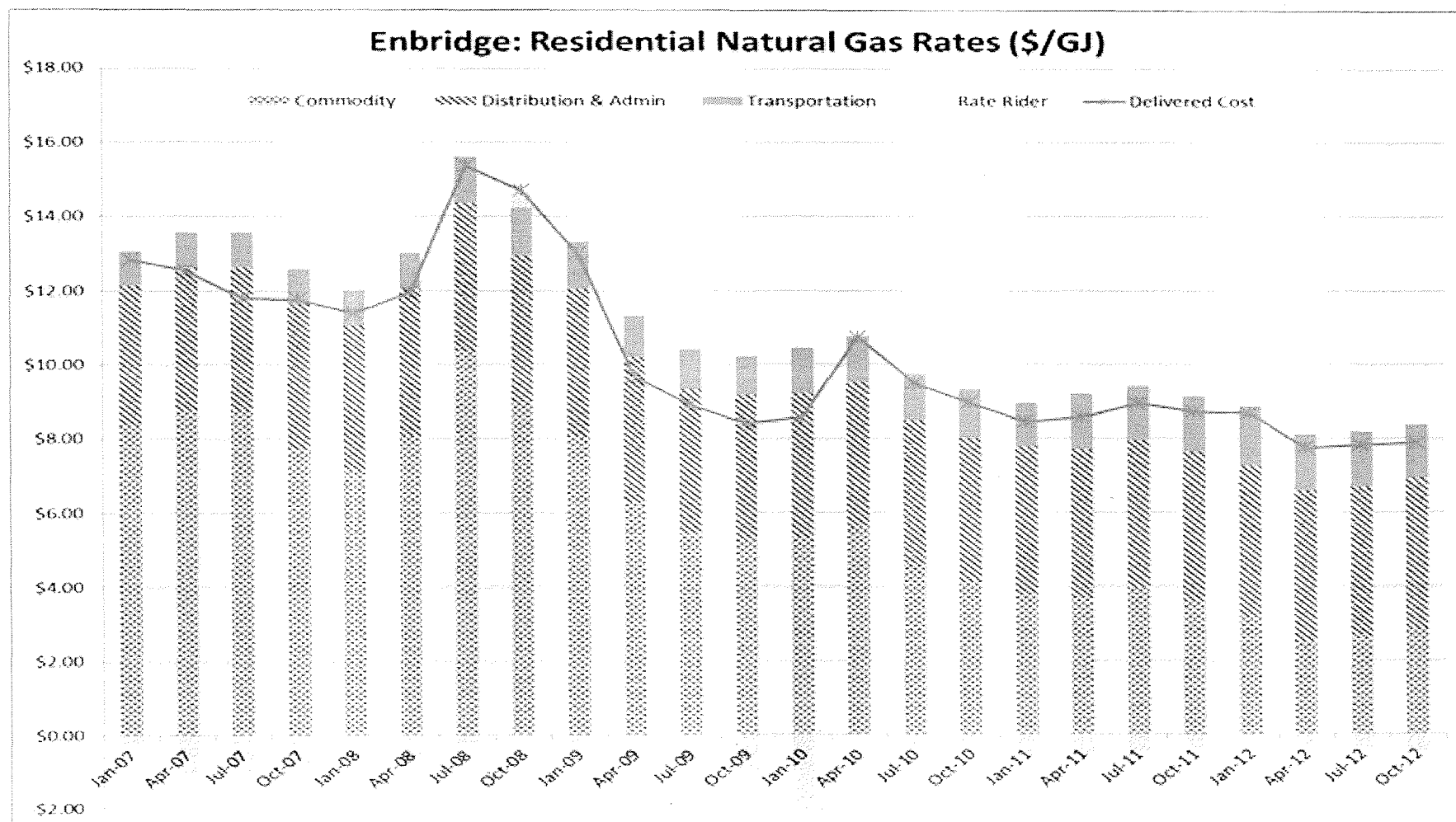


OEB Regulation of Natural Gas Distribution

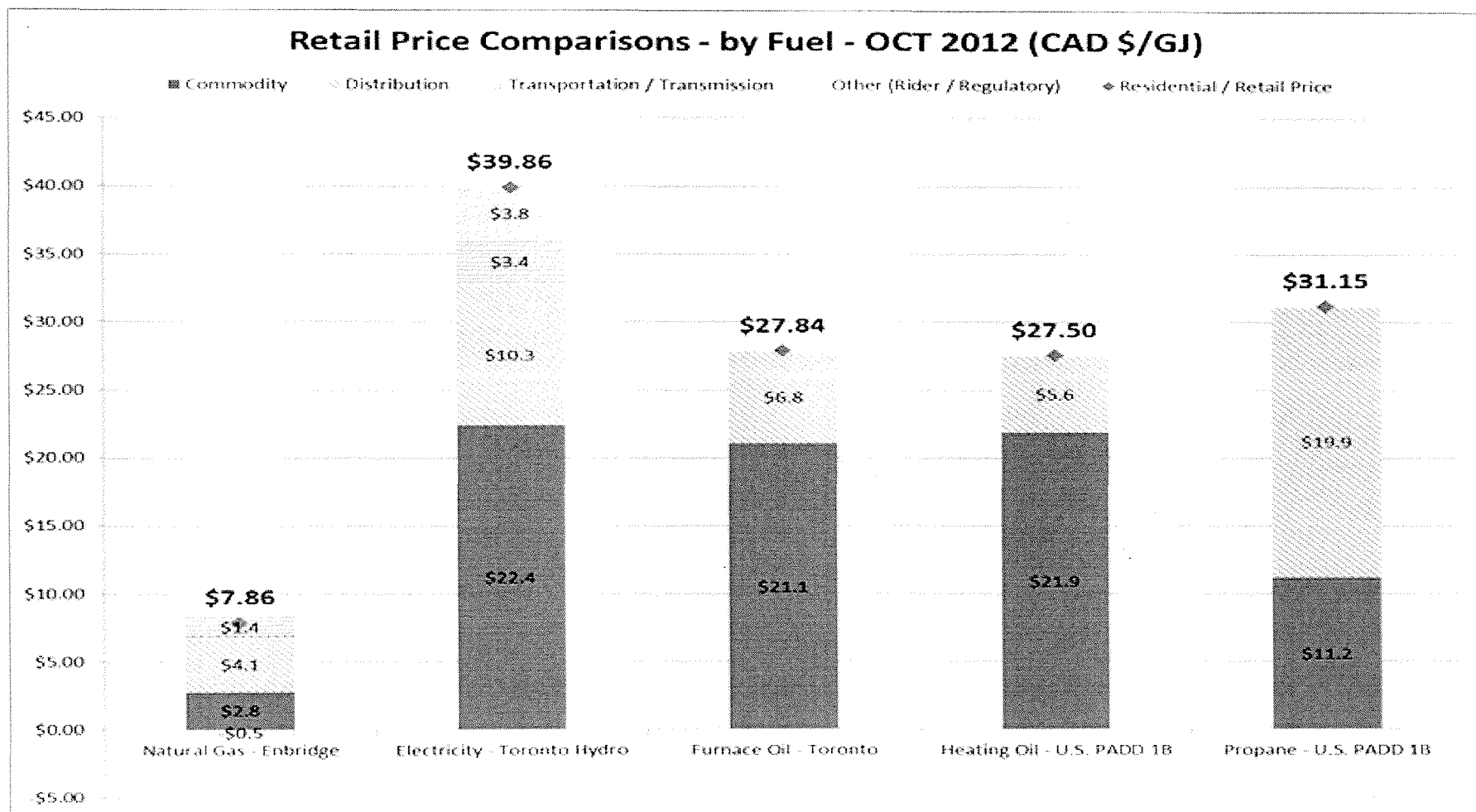
Implications for communities seeking service

- Utilities expand only when economic to do so
 - OEB does not permit expansions to be subsidized by existing ratepayers
 - “Aid to construct” funding may be required (e.g. \$10.9 M for Red Lake Phase II – municipal expansion)
- Industrial demand can underpin expansions
 - E.g. Goldcorp mining load ~ 72% of total Red Lake expansion
- Heating system age & conversion costs impact consumer decision to switch to natural gas
- Utility biomethane (i.e. renewable natural gas) distribution also subject to OEB approval

Enbridge: Residential Natural Gas Rates

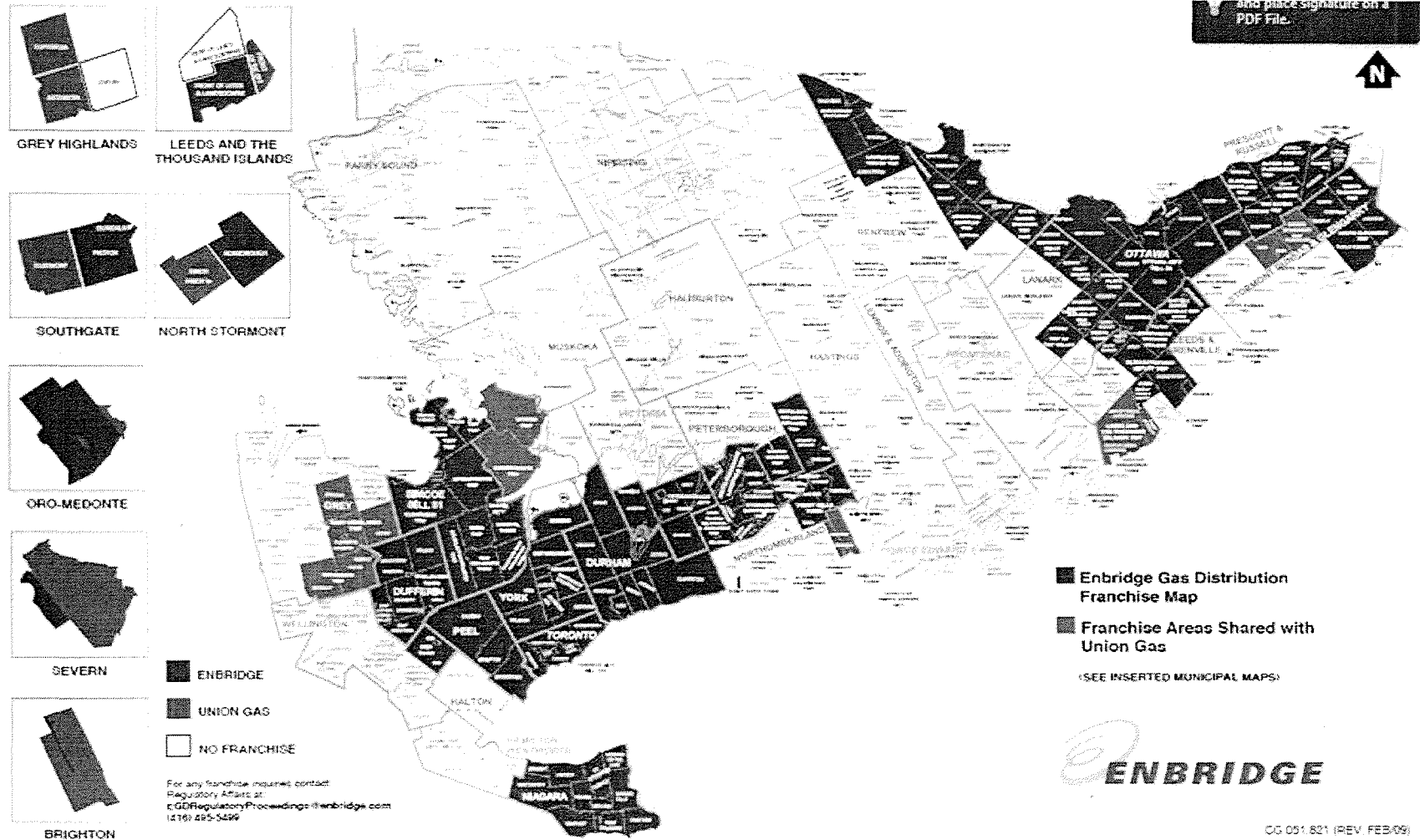


Fuel Cost Comparisons (ex-Tax)



APPENDIX

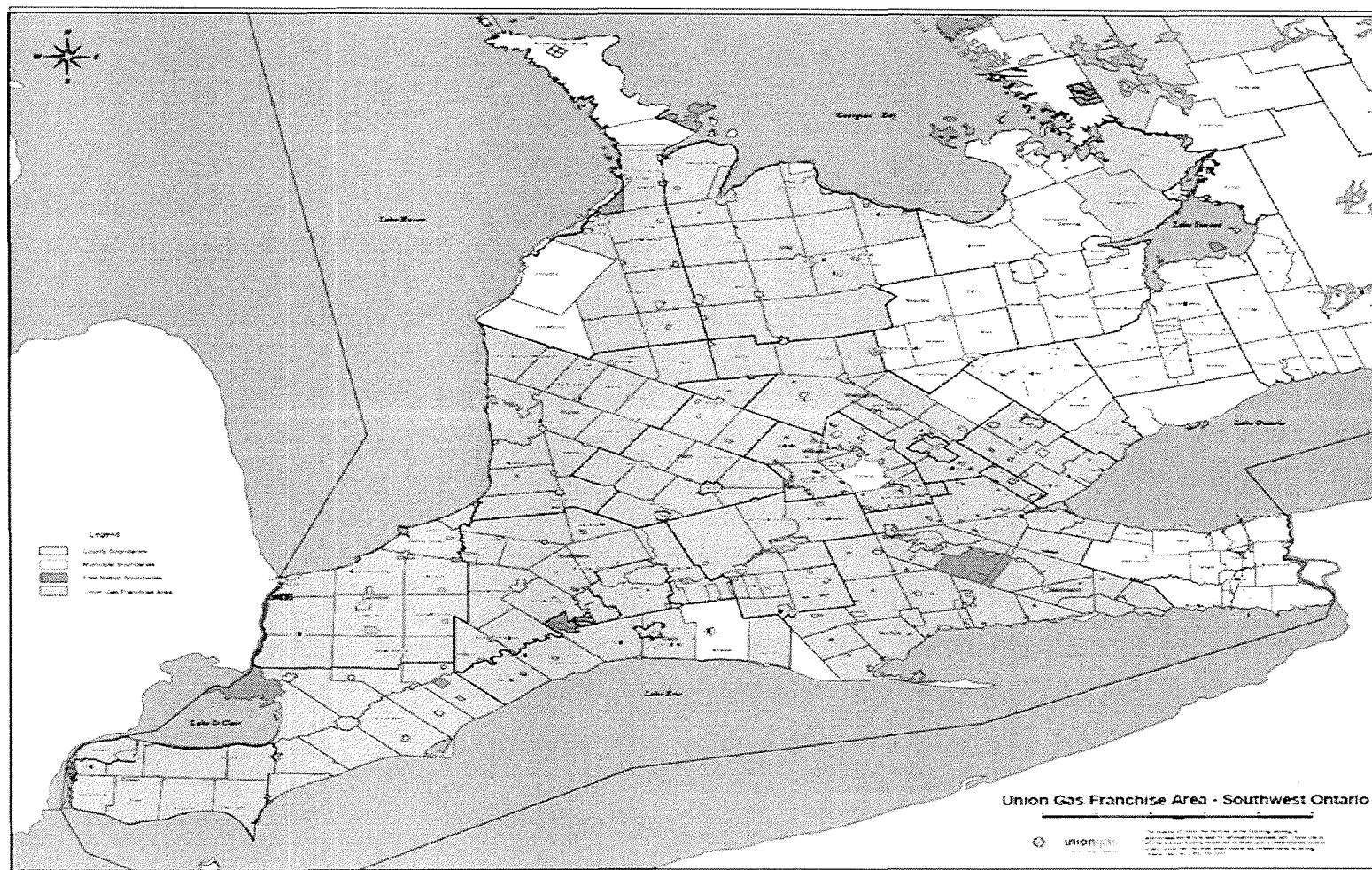
Detailed Enbridge Service Area Map



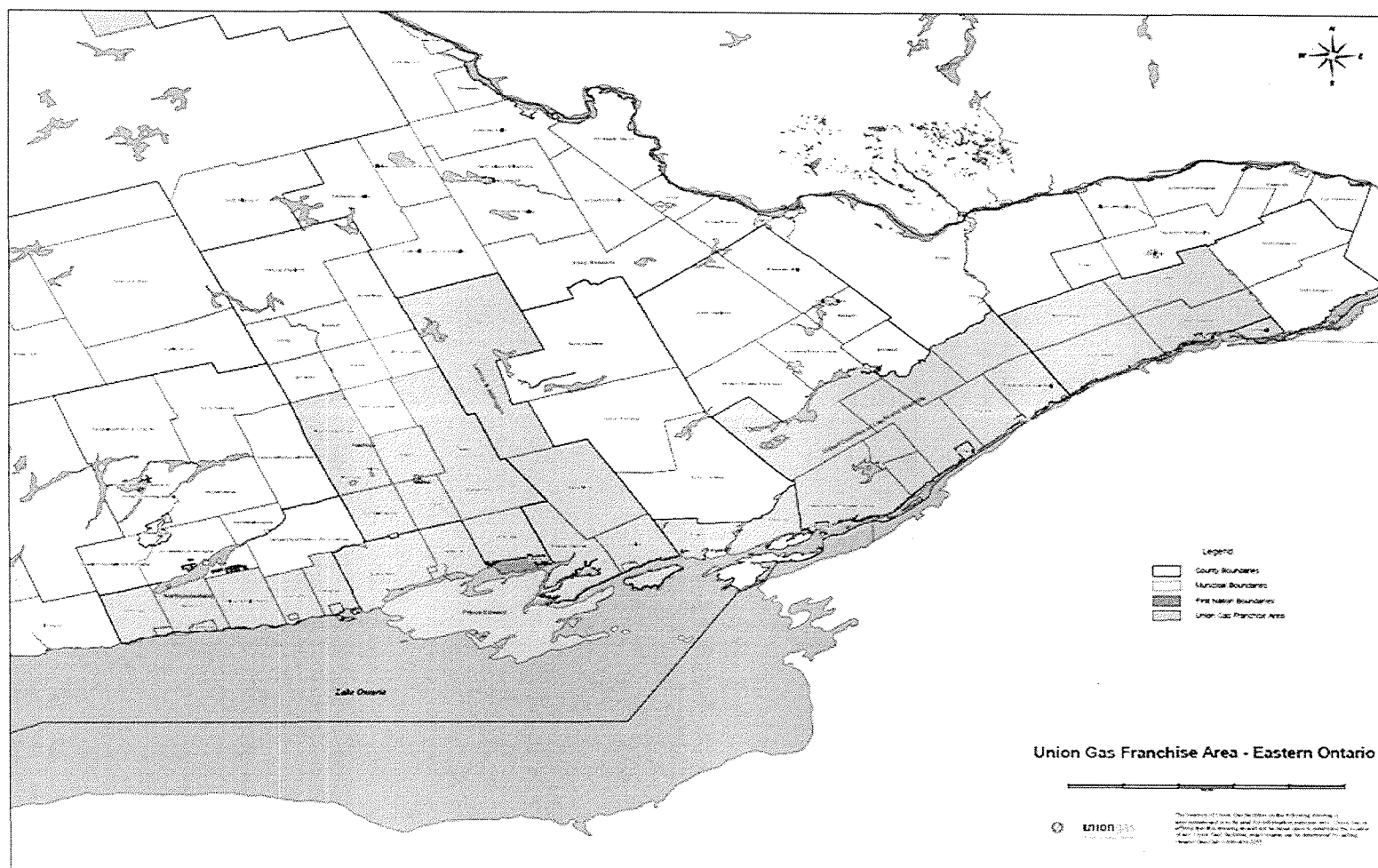
Detailed Union Gas Service Area: North



Detailed Union Gas Service Area: Southwest



Detailed Union Gas Service Area: Eastern

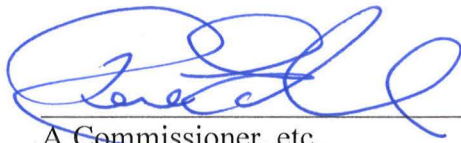


Data Sources & Explanations

Ex-Tax Energy Price Comparisons

Natural Gas	Enbridge Residential rates as filed with OEB Assumed 3,063 cubic metres per year of usage 37.69 MJ/cubic metre http://www.ontarioenergyboard.ca/OEB/Documents/Decisions/dec_order_EGD_QRAM_20120912.pdf
Electricity	OEB approved RPP rates for commodity http://www.ontarioenergyboard.ca/OEB/Consumers/Electricity/Electricity+Prices Toronto Hydro rates for distribution / transmission / regulatory Assumed usage of 800 kWh per month, split 64%/18%/18% (off-peak/mid-peak/peak) Ontario Clean Energy Benefit not included 0.28 GJ/MWh
Furnace Oil – Toronto	Available from Natural Resources Canada http://www.nrcan.gc.ca/energy/sources/petroleum-crude-prices/1424 38.68 GJ/cubic metre
US Propane / Heating Oil	US Energy Information Administration, PADD 1B: Central Atlantic (NY, NJ, PA, MD, DE) 25.53 GJ /cubic metre for propane, 38.68 GJ/cubic metre for Heating Oil http://www.eia.gov/petroleum/heatingoilpropane/

This is **Exhibit "J"** to the Affidavit of Erin Penney, sworn before me at the City of Toronto this 15th day of February, 2013.

A handwritten signature in blue ink, appearing to be "Sarah", is written over a horizontal line.

A Commissioner, etc.



Ontario Energy Board

Find Your Natural Gas Utility

QUICK FIND: Start typing your city or community (separated by spaces) in the box below. As you type, the table will automatically refresh to only show utilities that match.

**Local
Utility**

Service Territory

Enbridge **Eastern Region**

Gas Admaston, Alfred & Plantagenet, Arnprior, Beckwith, Brockville, Carleton Place, Casselman,
Distribution Champlain, Clarence-Rockland, Deep River, Drummond-North Elmsley, Elizabethtown-Kitley,
Inc. Hawkesbury, Horton, Laurentian Hills, Laurentian Valley, Leeds and Grenville, McNab-Braeside,
Merrickville-Wolford, Mississippi Mills, Montague, North Glengarry, North Grenville, North
Stormont, Ottawa, Pembroke, Perth, Petawawa, Renfrew, Rideau Lakes, Russell, Smiths Falls, South
Glengarry, Tay Valley, The Nation, Whitewater Region

Central Region

Adjala, Ajax, Amaranth, Asphodel-Norwood, Athens, Aurora, Barrie, Bradford-West Gwillimbury,
Brampton, Brighton, Brock, Caledon, Cavan Monaghan, Clarington, Clearview, Collingwood,
Douro-Dummer, Dufferin, Durham, East Garafraxa, East Gwillimbury, East Luther Grand Valley, Erin,
Essa, Georgina, Grey Highlands, Havelock, Belmont Methuen, Innisfil, Kawartha Lakes, King,
Markham, Melancthon, Midland, Mississauga, Mono, Mulmur, New Tecumseh, Newmarket,
Orangeville, Oshawa, Otonabee S- Monaghan, Penetanguishene, Peterborough, Pickering, Richmond
Hill, Scugog, Severn, Shelburne, Smith-Ennismore-Lakefield, Southgate, Springwater, Tay, Tiny,
Toronto, Trent Hills, Uxbridge, Vaughan, Wasaga Beach, Wellington, Whitby, Whitechurch-Stouffville

Niagara Region





Fort Erie, Grimsby, Lincoln, Niagara Falls, Niagara-on-the-Lake, Pelham, Port Colborne,
St.Catharines, Thorold, Wainfleet, Welland, West Lincoln

Natural

Resource Town of Aylmer, Township of Norfolk, Township of Bayham, Township of Malahide, Township of
Gas Thames Centre, Township of South West Oxford, Township of Central Elgin
Limited

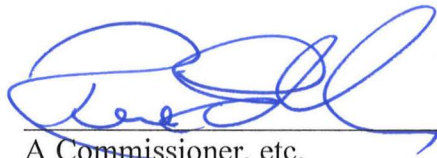
Union Gas
Limited

Page last updated 2011-10-04

 SHARE    ...

[mobile version](#)[desktop version](#)

This is **Exhibit "K"** to the Affidavit of Erin Penney, sworn before me at the City of Toronto this 15th day of February, 2013.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

A Commissioner, etc.



Ontario Energy Board

Active Gas Marketers and Electricity Retailers

In order to provide low volume consumers with information regarding their retail energy options, the OEB is providing the following lists of active licensees that market gas or retail electricity to low volume consumers. A "low-volume consumer" means a person who annually uses less than 50,000 cubic meters of gas or 150,000 kWh of electricity.

Gas marketers and electricity retailers ("licensees") cannot enter into, renew, amend or extend the term of a contract with a low volume consumer on or after January 1, 2011 unless and until such time as a compliant Certificate of Compliance (Appendix A of the Electricity Retailer Code of Conduct and the Code of Conduct for Gas Marketers, the "Codes") has been filed with the Board and the licensee has received a written acknowledgement from the Board. Where the licensee indicated "no" or "N/A" in the Certificate of Compliance, the licensee cannot conduct those activities unless the licensee has filed with the Board a further Certificate of Compliance (Appendix B of the Codes), and received written acknowledgement of it from the Board. Commencing in 2012 and annually thereafter, suppliers must file with the Board by April 30 a self-certification statement on compliance. The lists below include links to the certificates of compliance filed, acknowledgement letters issued, and annual self-certification statements.

For a complete list of all licensed gas marketers and electricity retailers, please click [here](#).

The lists provided below are for informational purposes only and do not in any way represent any endorsement or recommendation by the OEB of any person or company on these lists.

List of Licensed Active Gas Marketers for Low Volume Consumers

Natural Gas Marketer	Contact	Certificate of Compliance (click button to view)	OEB Acknowledgement (click button to view)	Annual Self- Certification
Access Gas Services www.accessgas.com	Customers Service 1-877-813-7779	Appendix A	Appendix A	2012
Active Energy ULC www.activeenergyulc.com	Customers Sales 1-866-628-9427	Appendix A Appendix B	Appendix A Appendix B	2012
Canadian RiteRate Energy Corporation	Customer Service 1-877-866-8056	Appendix A	Appendix A	2012

www.riterate.ca service@riterate.ca

Direct Energy www.directenergy.com	Customer Service 1-800-348-2999	Appendix A	Appendix A	2012
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Energhx Green Energy Corporation www.energhx.com	Customer Service 1-888-215-0437	Appendix A	Appendix A	2012
		Appendix B	Appendix B	

FireFly Energy acting on behalf of Ag Energy Co-operative Ltd. www.fireflyenergy.ca	Customer Service 519-780-5230 info@fireflyenergy.ca	Appendix A	Appendix A	2012
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Hudson Energy Canada Corp. www.hudsonenergy.net	Customer Service 1-855-552-5551 cson@hudsonenergy.net	Appendix A	Appendix A	2012
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Just Energy www.justenergy.com	Customer Service 1-866-587-8674 cs@justenergy.com	Appendix A	Appendix A	2012
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MorEnergy www.morenergysavings.com	Customer Service 1-866-225-7204 Customerservice@morenergysavings.com	Appendix A	Appendix A	2012
		Appendix B	Appendix B	

MXenergy www.mxenergy.com	Customer Service 1-800-785-4373	Appendix A		2012
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Planet Energy (Ontario) Corp. www.planetenergy.ca	Customer Service 1-866-360-8569 customerservice@planetenergy.ca	Appendix A	Appendix A	2012
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Summitt Energy Management Inc., acting on behalf of Summitt Energy LP www.summittenergy.ca	Customer Service 1-877-222-9520 customerservice@summittenergy.ca	Appendix A	Appendix A	2012
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Sunwave Gas & Power Inc. Customer Service
www.sunwavegas.com 1-888-953-2514
customerservice@sunwavegas.com

Appendix A

Appendix A

Appendix B

Appendix B

Superior Energy Management
www.superiorenergy.ca

Customer Service
1-866-772-7727

Appendix A

Appendix A

2012

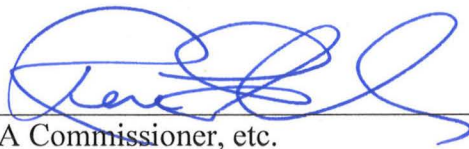
Appendix B

Appendix B

Universal Energy Corporation
www.universalenergy.ca

Customer Service
1-866-900-2373
customerservice@universalenergy.ca

This is **Exhibit "L"** to the Affidavit of Erin Penney, sworn before me at the City of Toronto this 15th day of February, 2013.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

A Commissioner, etc.



ABOUT US

[Home](#) > [About Us](#) > [About Natural Gas](#) > Natural Gas Questions and Answers

Natural Gas Q&A

What is Natural Gas?

Natural gas forms when plant and animal matter are trapped beneath solid rock under tons of pressure for millions of years. Made up mostly of methane, natural gas is both odourless and tasteless in its original form. To see the chemical composition of natural gas, [click here](#).

Where does our natural gas come from?

Union Gas buys natural gas from a variety of suppliers and has access to a several alternate pipelines to transport natural gas into our system. Western Canadian suppliers comprise the largest source of natural gas which is then transported to our pipeline system through TransCanada Pipelines Limited. Additional natural gas is purchased from U.S. sources and Ontario producers. Through diversity of suppliers and a prudent mix of short and long term gas supply contracts, we secure a reliable supply at a fair price.

How safe is natural gas?

Statistics clearly show natural gas to be the safest energy form. Compared to other energy sources, it has an enviable safety record because of several factors. Natural gas is non-toxic. The odourant that we add makes it easy to detect small leaks. Since natural gas is lighter than air, it dissipates quickly in a well-ventilated area. These factors, combined with the rigorous controls and safety standards that regulate the industry, make natural gas a safe energy choice.

Why does natural gas have an odour?

Mercaptan, a harmless, non-toxic substance that has a strong "rotten egg" smell is added as a safety precaution to natural gas (and propane) to make it easier to detect in case of a leak -- Natural gas is itself colourless and odourless. If you should detect this odour in your home, immediately open windows, leave the house and call us from a neighbour's telephone. We'll send a Service Representative to investigate. We provide 24-hour emergency response to anyone who calls in and tells us they smell gas. We work very hard at maintaining exacting safety standards and we take pride in our safety record.

What should I do if I smell gas?

We advise all customers to call 1-877-969-0999. Our staff are trained to analyze your problem quickly. They'll walk you through a series of questions so they can determine the severity of the problem.

They can then advise you on how you should respond. Here are some of the questions you could be asked. How long have you smelled a gas odour? Do you hear a hissing noise? Is there construction going on?

Depending on your answers, you may be asked to shut-off the supply of gas to the appliance (we'll talk you through the procedure) or you may be asked to vacate the premises. Again, if you smell gas, open the windows, leave the home and call from a neighbour's telephone. A Union Gas representative will advise you on the severity of the problem and how you should respond.

These calls are given the highest priority. When we receive one of these calls, we dispatch a Service Representative immediately.

How does Union Gas transport natural gas?

As natural gas enters our pipeline network, compressors, at the Trafalgar, Parkway, Bright, Lobo and Dawn stations, move it throughout a network of underground pipelines in southwestern Ontario. This modern system delivers a safe, constant, year-round supply of natural gas, in all kinds of weather, to you and your neighbours.

Can Union Gas store natural gas?

Union Gas has an extensive underground storage system. We store enough natural gas in depleted, underground wells to heat 1.2 million homes for a year. Centered in Dawn Township, near Dresden, Ontario, and Enniskillen Township near Oil Springs, these facilities take advantage of porous rock formations that were once underground reefs. Now entombed by layers of solid rock, they are ideal natural storage depots. We inject natural gas into these ancient reservoirs during the summer months when demand is low and withdraw it during colder periods when demand is high. Additionally, Union Gas is able to liquify natural gas and store it for high demand periods. At Hagar, Ontario, we store enough liquefied natural gas to heat 3,700 homes for a year.

How is the price for natural gas established?

Natural gas like other commodities, is publicly traded and the market price varies in response to factors such as weather or availability of supply. Union Gas adjusts the rates we charge our customers for natural gas every three months to reflect ongoing changes in the market price of natural gas and these costs are passed through to customers without any mark-up. All rate changes require Ontario Energy Board approval.

How can I be sure of an uninterrupted supply?

At Union Gas we impose and follow stringent operating procedures and standards to ensure you have a reliable supply of natural gas. We purchase natural gas from a variety of suppliers and have access to a number of alternate pipelines to bring natural gas into our system. This gives us operational flexibility and lowers the risk of service disruption. In addition we have backup facilities to ensure continuous operation of important lines and equipment and we conduct periodic reviews of our emergency response system.

Can we run out of natural gas?

There is an abundant supply of natural gas -- so much so that natural gas will continue to be the energy source of choice for Canadians for many decades to come. This conclusion is strongly supported by statistics put out by both the National Energy Board and Natural Resources Canada's Geological Survey of Canada.

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