

ASSURANCE OF VOLUNTARY COMPLIANCE

Pursuant to s. 112.7 of the
Ontario Energy Board Act, 1998

XOOM Energy ONT, ULC

Licence Nos. ER-2018-0297 & GM-2018-0298

OEB File No. EB-2022-0143

January 26, 2023

I. INTRODUCTION

Ontario Energy Board (OEB) staff conducted an inspection of XOOM Energy ONT, ULC (XOOM Energy), a licensed electricity retailer and gas marketer. The inspection focused on the description of the contract price in XOOM Energy's low-volume electricity and gas contracts and the associated price comparisons required under O. Reg. 389/10 (General) under the *Energy Consumer Protection Act, 2010* (ECPA). Following the inspection, XOOM Energy provided this Assurance of Voluntary Compliance to the OEB under sections 112.7 and 112.12 of the *Ontario Energy Board Act, 1998* (OEB Act).

II. STATEMENT OF FACTS

XOOM Energy is licensed by the OEB to retail electricity to low volume consumers and large volume consumers and to market gas to low volume consumers.

The OEB's Inspection and Enforcement department conducted an inspection of XOOM Energy's low volume consumer contracts in use during the period 2017 to 2020. The inspection was initiated further to an industry relations enquiry (IRE) from XOOM where it sought guidance on the appropriate format for describing its natural gas contract price within the OEB approved price comparison template. The example provided by XOOM as part of this IRE identified potential non-compliance. The inspection reviewed the contracts for compliance with the conditions of XOOM Energy's licences, the ECPA and the regulation under that Act, as well as the Electricity Retailer Code of Conduct and the Code of Conduct for Gas Marketers (collectively, the Codes of Conduct). OEB staff did not receive any consumer complaints on the concerns raised below.

Following the inspection, OEB staff raised concerns that XOOM Energy's low volume contracts and associated price comparisons did not adequately disclose to prospective (or renewing) customers the manner in which the variable price for electricity or gas would be calculated in any given month.

More specifically, the OEB staff raised the following concerns:

1. Disclosure of Price in Contract

XOOM Energy's low volume contracts for gas and electricity contained a variable contract price. The contract described this price (for electricity) as follows:

"Your electricity price is variable and will change monthly during the Contract Length. It is based on XOOM Energy's actual and estimated supply costs which may include prior period adjustments, balancing costs, line losses, unaccounted for energy, load shaping, and administration fees. Your variable rate may fluctuate and may be higher or lower than your local utility."

The contract did not explain how the "administration fees" or any other component of the variable price would be calculated from month to month.

OEB staff expressed the view that although a contract may provide for a variable rather than a fixed price, the price must be described in a manner that allows consumers to ascertain how it will be calculated. OEB staff concluded that XOOM's contract price description did not comply with this and therefore amounted to an "unfair practice" under the ECPA.

In response to OEB staff's concerns, XOOM Energy has agreed to adjust its low volume customer contracts (gas and electricity) to include a description of how

and when a price change will be calculated so as to result in an exact dollar figure. OEB staff has reviewed and is satisfied with the revised pricing description in the contracts.

2. Disclosure of Price Calculation in Price Comparison Form

During the inspection period, XOOM Energy's price comparison forms for its low volume customer contracts (gas and electricity) disclosed a two-month initial promotional price followed by the words "after which your price will change throughout the term of the contract". The price comparison also included a note using similar language as the contract itself. For electricity, it said that the "electricity supply price is variable and may increase or decrease each month throughout the term of the contract, as it is based on XOOM Energy's actual and estimated supply costs which may include prior period adjustments, balancing costs, line losses, unaccounted for energy, load shaping, and administration fees."

The inspection found that, by showing the two-month promotional price and not clearly explaining how the price would be calculated in any given month after the promotional period, the price comparison did not comply with the OEB's *Electricity Retailer Code of Conduct* and the *Code of Conduct for Gas Marketers*, in particular section 4.7 which requires that the price comparison include "an accurate reflection of the contract price over the term of the contract and is not presented in a manner that is misleading in any way".

In response to OEB staff's concerns, XOOM Energy has agreed to update its price comparison forms (gas and electricity) in a similar manner to the revisions

to the contracts themselves. The revised language, which OEB staff has reviewed and is satisfied with, explains how the price will be calculated so as to provide for an exact dollar figure after the end of the promotional period.

III. ASSURANCE

XOOM Energy hereby assures the OEB that it will take the following measures:

1. Beginning ten business days after the date this Assurance of Voluntary Compliance is accepted by the OEB, XOOM Energy will ensure that any electricity and gas contracts it enters into, amends, or renews with low volume consumers reflect the revised price description that has been reviewed by OEB staff, and are accompanied by the revised price comparison discussed above. For greater certainty, this does not preclude XOOM Energy from offering different contract prices in the future, as long as the description of the price in the contract and the price comparison are compliant with all applicable requirements.
2. Within 60 days of the OEB's acceptance of this Assurance of Voluntary Compliance, XOOM Energy will notify its existing gas and electricity low volume customers, using a form of notice to be approved by OEB staff, of the changes to the description of the price in the contract, and include the updated contract and price comparison, and provide them with the option of continuing with the contract or cancelling the contract with no penalty.

IV. ADMINISTRATIVE MONETARY PENALTY

XOOM Energy agrees to pay an administrative monetary penalty to the OEB in the amount of \$15,000. Payment will be made electronically with notice sent to the Registrar, within two weeks of the OEB's acceptance of this Assurance of Voluntary Compliance.

V. CONSUMER RIGHTS

Nothing in the Assurance of Voluntary Compliance affects any rights a consumer may have under any applicable laws.

VI. FAILURE TO COMPLY

XOOM Energy acknowledges that this Assurance of Voluntary Compliance has the same force and effect as an order of the OEB pursuant to section 112.7(2) of the OEB Act.


VII. EXECUTION

I have the authority to bind XOOM Energy to the terms set out in this Assurance of Voluntary Compliance.

Name: Leonard Gardner III

Title: Vice President

Company: XOOM Energy ONT, ULC

Signature: 

Dated this 26th day of January, 2023.