

## Report to the Director of Licensing & Applications, Ontario Energy Board

### On the Resolution of a Complaint by the Heating, Ventilation and Air Conditioning Contractors Coalition Against Enbridge Consumers Gas

#### **Background:**

On May 3, 2001 the Heating, Ventilation and Air Conditioning Contractors Coalition ("HVAC" or "HVAC Coalition") referred a complaint ("Complaint") against Enbridge Consumers Gas ("the Company" or "Consumers Gas" ) to the Ontario Energy Board ("Board"). The Complaint, which is made under the Board's *Affiliate Relationships Code for Gas Utilities*, July 31, 1999 ("the Affiliate Code ") was submitted to the Company on February 20, 2001, with a copy forwarded to the Board requesting that the matter be dealt with as part of the Board's consideration of the Company's response to the Board's decision in proceeding RP-1999-0058. The Board assigned a separate docket number (RP-2001-0006/EB-2001-0052) to the Complaint.

The Company responded to the Complaint on March 19, 2001, in accordance with the procedure set out in the Affiliate Code. It also forwarded a copy of its response to the Board. By letter dated May 3, 2001, HVAC commented on the Company's response, and referred the Complaint to the Board under section 2.9.6 of the Affiliate Code. The Board appointed the undersigned as mediator on September 4, 2001, to assist the parties in attempting to settle the Complaint.

The Complaint arose from the publication by Enbridge Inc., the parent of Consumers Gas, of advertisements in Toronto area newspapers promoting an Energy Saving Kit, the distribution by Enbridge Inc. of the kit, the Consumers Gas website link to information concerning the kit and the relationship of these activities to the Company's Demand Side Management Program ("DSM Program").

## **Resolution of the Complaint**

Having met with the facilitator on a number of occasions to discuss aspects of the Complaint, the parties agreed to settle the Complaint on the following terms:

1. **Participation by ESPs:** Where Consumers Gas initiates or sponsors a DSM Program or participates in, as a DSM initiative, a program ("Program with a DSM Component") initiated or sponsored by an affiliate (as defined in the Affiliate Code), and where the DSM Program and/or the Program with a DSM Component involves the participation of Energy Service Providers (as defined in the Affiliate Code) ("Participating ESPs"), Consumers Gas agrees that such Participating ESPs will be chosen by Consumers Gas and/or its affiliate(s) in a manner that does not preferentially endorse or support the marketing activities of any Consumers Gas affiliate, that is also an Energy Service Provider.
2. **Advertising:** Consumers Gas agrees that all advertisements in respect of DSM Programs and Programs with a DSM Component will, to the extent that such advertisements refer to Participating ESPs: (i) refer to Participating ESPs by category, generally; or (ii) identify each Participating ESP, specifically.
3. **Meeting with HVAC Coalition:** The President of Consumers Gas and members of the Executive Management Team of Consumers Gas that reports to the President will, prior to December 31, 2001 or as soon thereafter as can be arranged, meet with HVAC Coalition representatives for a minimum of two hours (unless otherwise agreed by the meeting participants), to discuss HVAC Coalition's concerns regarding the Affiliate Code, pre-conditions for future partnering between Consumers Gas and HVAC Coalition and Consumers Gas's concerns regarding

misrepresentations by HVAC Coalition members as to their relationship with Consumers Gas.

4. **Complaints under Affiliate Code:** HVAC Coalition agrees that in the event it files a complaint against Consumers Gas under the Affiliate Code, it will, for a two year period following the effective date of this settlement, refrain from providing the Board with a copy of such complaint for a period of 21 days from the date that the complaint is submitted to Consumers Gas. This provision is agreed to by HVAC Coalition without any admissions that it constitutes a proper interpretation of the Affiliate Code.
5. **Disclaimers:**
  - (a) While the parties have resolved the Complaint, such resolution does not indicate that the broader issues between the parties have been resolved.
  - (b) While the parties have resolved the Complaint, such resolution is not an admission by Consumers Gas of any violation of the provisions of the *Affiliate Code* or any wrong doing under the *Affiliate Code* or otherwise.
6. **Distribution of the Report:** Each party shall be free to distribute the Report to any party it sees fit.
7. **Dispute Resolution:** In the event that disagreement between the parties arises in respect of the fulfillment of their respective obligations under this Agreement, the parties will attempt to discuss and resolve such disagreement prior to either party taking any action in pursuit of enforcement of this Agreement.

The parties have advised me that they have executed an agreement containing the above points, and that they are satisfied with the contents of this Report to the Director.

Respectfully submitted,

Gail Morrison, Facilitator.