

Assurance of Voluntary Compliance

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

ACTIVE ENERGY INC. AND ACTIVE ENERGY CORP.

ER-2012-0045 and GM-2012-0044

EB-2013-0394

May 13, 2014

I. BACKGROUND

In March 2013, Board staff commenced an inspection in relation to consumer complaints received by the Board against Active Energy Inc. and Active Energy Corp. operating under licences ER-2012-0045 and GM-2012-0044 (together, “Active Energy”) since August 2012. The inspection was conducted under the authority of Part VII of the *Ontario Energy Board Act, 1998* (the “Act”).

The complaints were made by consumers who alleged they were entered into contracts with Active Energy without their knowledge or consent. In most cases, it was not until the consumer reviewed a utility bill, or received a letter from Active Energy welcoming the consumer as a customer, that the consumer was made aware that they had been entered into a contract for the provision of electricity and/or gas. Staff observed the following during the course of the inspection.

II. FINDINGS

1. *Unauthorized Enrollment in Contracts*

In 22 cases (TK, LS, SS, PC, JT, QL/FO, KH, JH, BB/PB, KL/WD, CB, YF, NS, RR, LB, JG, PB, RT, SY/MS, AA/DA, ZG/OK DP), (see attached Appendix “A”) consumers were enrolled in contracts with Active Energy without their knowledge or consent.

Active Energy admits that eight salespersons were involved in the twenty two cases noted above and consumers were enrolled in contracts with Active Energy without their knowledge or consent. Active Energy admits that in each of these 22 cases the contract failed to contain the signature of the consumer, or the account holder’s agent signing the contract on behalf of the consumer in breach of section 12 (2) of the *Energy Consumer Protection Act, 2010* (the “ECPA”) and

section 7 (1) 17 and section 7 (1) 18 of Ontario Regulation 389/10 made under the ECPA (the "Regulation").

2. *Making false or misleading statements to consumers in order to enroll consumers into Active Energy contracts without the consumers' knowledge or consent*

In 15 cases (TK, LS, JT, QL/FO, KH, JH, BB/PB, KLWD, YF, NS, LB, RT, SY/MS, AA/DA, ZG/OK) Active Energy salespersons provided false or misleading statements to consumers.

Active Energy admits that in the 15 cases noted above it engaged in an unfair practice and failed to comply with section 10 (2) (b) of the ECPA, section 5 (1) (i) of the Regulation and the Fair Marketing Practices set out in section 1.1 (Part B) of Board's Electricity Retailer Code of Conduct and the Code of Conduct for Gas Marketers (together, the "Codes").

3. *Failure to display a valid identification badge*

In ten cases, (LS, JT, QL/FO, KH, JH, KLWD, YF, NS, LB, and RT) Active Energy salespersons failed to prominently display an identification badge while calling on a consumer in person.

Active Energy admits that in failing to prominently display an identification badge while calling on a consumer in person it engaged in an unfair practice contrary to section 10 (2) (b) of the ECPA , section 5 (6) (i) of the Regulation and further contrary to section 1.1(c) (Part B) of the Codes.

4. Failure to offer a business card

In 13 cases (TK, LS, JT, KH, JH, BB/PB, KL/WD, YF, NS, LB, RT, SY/MS and AA/DA), Active Energy salespersons failed to offer the consumer a business card when calling on the consumer in person.

Active Energy admits that in failing to provide a business card in the 13 cases noted above it engaged in an unfair practice contrary to section 10 (2) (b) of the ECPA, section 5 (6) (ii) of the Regulation, and further contrary to section 1.1(b) (Part B) of the Codes.

5. Failure to verify contracts

In 21 cases (TK, LS, SS, PC, QL/FO, KH, JH, BB/PB, KL/WD, CB, YF, NS, RR, LB, JG, PB, RT, SY/MS, AA/DA, ZG/OK and DP), Active Energy failed to verify the consumer contracts. Active Energy acknowledges that where a salesperson is present when a low-volume consumer signs up for a contract, such a contract requires verification.

Active Energy admits that in failing to verify the 21 contracts noted above it breached section 15 (1) of the ECPA.

6. Failure to provide a text-based copy of contract, disclosure statement, and price comparison

In 20 cases (LS, SS, PC, JT, QL/FO, KH, JH, BB/PB, KL/WD, CB, YF, NS, RR, LB, JG, PB, RT, SY/MS, ZG/OK and DP) Active Energy salespersons failed to provide the consumer (either before or immediately after the contract was entered into) a text-based copy of the contract, disclosure statement and price comparison.

Active Energy admits that it engaged in an unfair practice by failing to provide the consumer with a text based copy of the contract, disclosure statement and price comparison contrary to sections, section 12 (1) (a) of the ECPA, and section 5 (7), 8 (1) and 8 (3) of the Regulation.

7. Breach of Duties required by Directors and Officers of Active Energy

Active Energy admits that its officers and directors, Michael A. Stedman and John S. Klarer, failed to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances and take such measures as necessary to ensure that the corporation complied with all requirements under the Act and the ECPA in breach of section 125.2 (b) of the Act and section 1.1 (h) (Part B) of the Codes.

8. Additional Complaint related to Call Centre Representative

On July 22, 2013, in response to a call made by a consumer, M.T., an Active Energy call centre representative made false and misleading statements related to time-of-use pricing and electricity prices in general.

Active Energy admits it engaged in an unfair practice contrary to section 10 (2) (a) of the ECPA, section 5 (1) (i) of the Regulation and, breached section 1.1 (h) (Part B) of the Electricity Retailer Code of Conduct.

9. Additional Complaint related to an In-person Sale

On September 7, 2013, an Active Energy salesperson represented himself to a consumer, V.F., as being from the utility. He informed the consumer that he wanted to see her bill to ensure the 10% Clean Energy Benefit was being provided. The salesperson failed to provide the consumer with a business card before making any representations about the retailer's products, services or business, and his identification badge was not prominently displayed.

Active Energy admits that its salesperson made a false and misleading statement to the consumer thereby engaging in an unfair practice contrary to section 10 (2) (b) of the ECPA, section 5 (1) (a) of the Regulation and the Fair Marketing Practices set out in section 1.1 (a) (Part B) of the Electricity Retailer Code of Conduct. Further, the salesperson failed to provide a business card contrary to section 10 (2) (b) of the ECPA, section 5 (6) (ii) of the Regulation, and further contrary to section 1.1 (b) (Part B) of the Electricity Retailer Code of Conduct. Active Energy also admits that its salesperson failed to prominently display an identification badge while calling on a consumer in person and thereby engaged in an unfair practice contrary to section 10 (2) (b) of the ECPA , section 5 (6) (i) of the Regulation and further contrary to section 1.1 (c) (Part B) of the Electricity Retailer Code of Conduct.

III. ASSURANCE

Active Energy hereby commits to and assures the Board that it has and will take the following steps with respect to each of the findings noted above:

Refund to Consumers Enrolled without their Knowledge or Consent as described in Finding 1 above

1. Active Energy agrees that the contracts entered into by the 22 consumers identified in Finding 1 above are deemed void, as set out in section 16 (1) (a) of the ECPA, on the basis that in each of these instances, the consumer was enrolled into a contract without his/her knowledge or consent and the consumer did not provide the acknowledgements and signatures required. Active Energy commits to refunding each consumer the money paid by the consumer under the

contract in accordance with section 16 (3) of the ECPA. The refund payable is all amounts that the contract required or committed the consumer to pay with respect to the supply and/or delivery of the energy commodity under the contract, and that were in fact paid by the consumer.

Refund to Consumer described in Finding 8 above

2. Active Energy commits to cancelling the contract identified in Finding 8 above and refunding the consumer under section 19 (3) and section 23 (1) of the ECPA, as interpreted by the Board's Bulletin entitled "Refund Payable to a Low-Volume Consumer Following Cancellation of a Contract" issued on March 15, 2012". The refund payable is all amounts that the contract required or committed the consumer to pay with respect to the supply and/or delivery of the energy commodity under the contract, and that were in fact paid by the consumer.

Active Energy has informed Board staff that the consumer referred to in Finding 9 above did not enrol in a contract and as such no refund is owing to the consumer.

Verification Calls for Internet Agreements involving a salesperson

3. Active Energy commits that it will verify (in accordance with the process as set out in section 15 (1) of the ECPA) all future internet agreements where a salesperson visited a consumer's home and made representations and was paid a commission thereby in effect treating such internet agreements as direct agreements under the ECPA. Active Energy admits that the completion of a verification call for an internet agreement completed by the consumer as a result of a salesperson interaction would have reduced the number of complaints and provided greater consumer protection.

Refund to All Consumers who have complained to Active Energy or the Board about being enrolled without their Knowledge or Consent

4. Active Energy commits to cancelling and refunding all consumers who have complained to Active Energy or to the Board that they have been enrolled in a contract over the internet without their knowledge or consent during the period August 2012 through to the date of this Assurance of Voluntary Compliance. Active Energy commits to informing these consumers that they are entitled to cancel their contract under section 19 (3) of the ECPA and to a refund as set out in section 23 (1) of the ECPA as interpreted by the Board's Bulletin entitled "Refund Payable to a Low-Volume Consumer Following Cancellation of a Contract" issued on March 15, 2012. The refund payable is all amounts that the contract required or committed the consumer to pay with respect to the supply and/or delivery of the energy commodity under the contract, and that were in fact paid by the consumer.

5. Active Energy undertakes to provide the Board's Vice President, Consumer Services, with a report providing details of the consumers contacted and refunded as provided for paragraphs 1 - 4 noted above on a quarterly basis until December 2014.

Notice to certain existing low-volume Consumers that Entered into Contracts over the Internet since August 2012

6. Active Energy further commits to sending, depending on the circumstances of enrollment, one of two different forms of Notice to certain of its existing low-volume consumers that entered into contracts with Active over the internet with the involvement of a salesperson between the period August 2012

and the date of this Assurance. The two different forms of Notice are as follows: a Notice to Opt-In, in a form and with the content attached as Appendix "B" and Notice to Opt-Out, in a form and with the content as attached as Appendix "C".

7. Active Energy admits that 1048 consumers were entered into contracts with the involvement of one of the eight salespersons involved in the enrollment of the 22 consumers described in Finding 1 above. Of these 1048 consumers, some received a welcome call from Active Energy confirming their enrollment into a contract and others received and cashed a rebate cheque confirming enrollment in a contract. As of the date of this Assurance, 523 consumers confirmed their enrollment through a welcome call or by cashing a rebate cheque. Any consumers that have not received a welcome call and/or cashed a rebate cheque as of the Notice Date (defined below) will receive an Opt-In Notice (Appendix B). The Notice will inform each consumer that their contract with Active Energy will be terminated, without penalty, termination fees or damages, and that he/she will be returned to system supply (gas) and/or standard supply service (electricity) unless the consumer chooses to remain on contract with Active Energy. The consumer can inform Active Energy in writing within 4 weeks of the date of the Notice. In default of informing Active Energy in writing in the time specified the consumer will be reverted back to system supply (gas) or standard supply service (electricity), as appropriate as of the first meter read after the date of the Notice.

8. Active Energy admits that 1905 consumers entered into contracts with the involvement of a salesperson other than the eight salespersons involved in the enrollment of the 22 consumers described in Finding 1 above. Of these consumers, some received a welcome call from Active Energy confirming their enrollment into a contract and others received and cashed a rebate cheque confirming enrollment in a contract. As of the date of this Assurance, 1216

consumers confirmed their enrollment through a welcome call or by cashing a rebate cheque. Any consumers that have not received a welcome call and/or cashed a rebate cheque as of the Notice Date (defined below) will receive a Notice to Opt-Out as attached as Appendix C. The consumers are informed that they can cancel their contract without penalty, termination fees or damages, and they will be returned to system supply (gas) and/or standard supply service (electricity), by informing Active Energy in writing within 4 weeks of the date of the Notice confirming that they were entered into a contract without their knowledge or consent. In default of informing Active Energy in writing in the time specified the consumer will remain on contract with Active Energy.

9. The Notices will be sent by Active Energy on a date to be agreed upon with the Board's Vice President, Consumer Services (the "Notice Date"). Not later than 5 weeks after the date of the Notice, Active Energy will provide to the Board's Vice President, Consumer Services a list of the low-volume consumers to whom a Notice was sent and the response, if any, by the consumers to such Notices under paragraphs 6-8 above.

Operational Processes

10. Active Energy makes the following commitments with respect to its operational processes:

- i. Active Energy commits to retraining all of its salespersons. All salespersons identified in this inspection have been terminated.
- ii. Where there is an allegation of non-compliance related to an internet contract, Active Energy commits to immediately investigating the

complaint and taking appropriate remedial action with the salesperson, including suspension.

IV. ADMINISTRATIVE MONETARY PENALTY

Active Energy agrees to pay an administrative monetary penalty to the Board in the amount of \$380,000. The amount of the administrative monetary penalty reflects the nature and number of alleged breaches of enforceable provisions as set out above. The Board will use the funds to support activities related to consumer education, outreach and other activities in the public interest.

The payment of the administrative monetary penalty shall be made in three equal installments with the first payment immediately and no later than two weeks from the date of the filing of this Assurance, which has been accepted by the Board, and the subsequent payments 30 and 60 days, respectively, from the date of the first payment, and shall be in certified funds, or by way of electronic funds transfer.

V. CONSUMER RIGHTS


Nothing in this Assurance affects any rights a consumer may have under his or her contract, or under any applicable laws.

VI. FAILURE TO COMPLY

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

VIII. EXECUTION OF ASSURANCE

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

Name: 
Michael Steadman

Title: President, COO

Company: Active Energy Inc. Corp

Dated this 8th day of May, 2014

APPENDIX A

<u>Consumer</u>	<u>Contract Numbers:</u>
TK	GEW8777956
LS	GEW3384184
SS	GEW1804883
PC	GEW562080
ML	GEW5209627
JT	GEW6131341
KH	GEW9137549
JH	GEW7188008
BB	GEW4471300
KLWD	GEW5510301
CB	GEW8457425
YF	GEW7220480
NS	GEW4183548 Gas GEW11641 Electricity
RR	GEW8014021
LB	GEW5279176
JG	GEW7480819 Gas GEW1743245 Electricity
PB	GEW1757546
RT	GEW8334065
SY/MS	GEW1741544
AA/DA	GEW5581986
OK/ZG	GEW2977013
DP	GEW6923088
MT	GEW340009
VF	No contract entered into

APPENDIX B

Opt-In Notice

[Date]

[Contract No. _____]

[Name of Customer]

[Address]

Dear [Customer]:

Re: [Name of Account Holder / Distributor / Account Number]

On [date] our records show you entered into a contract with Active Energy Inc. and / or Active Energy Corp. (together, "Active Energy") over the internet for the supply of electricity / natural gas. A recent investigation by the Ontario Energy Board identified that customers may have been enrolled in a contract without their knowledge or consent. This has resulted in us having to contact a number of our customers, including you. You may cancel your contract as a result of this investigation without penalty or being charged a termination or cancellation fee.

Alternatively, if you wish to remain in your contract with Active Energy for the supply of electricity / natural gas, you are required to notify us in writing within 4 weeks of receipt of this letter.

If you do not notify us in writing within the required timeframe, your contract will be cancelled and you will continue to receive electricity / natural gas from the local utility without interruption. In this respect, you do not need to take any further action.

If you have any questions about this letter or your enrollment with Active Energy, please contact the Ontario Energy Board at **1-877-632-2727** or market.operations@ontarioenergyboard.ca .

Yours truly,

Active Energy Inc. / Active Energy Corp.

APPENDIX C

Opt-Out Notice

[Date]

[Contract No. _____]
[Name of Customer]
[Address]

Dear [Customer]:

Re: [Name of Account Holder / Distributor / Account Number]

On [date] our records show you entered into a contract with Active Energy Inc. and / or Active Energy Corp. (together, "Active Energy") over the internet for the supply of electricity / natural gas. A recent investigation by the Ontario Energy Board identified that customers may have been enrolled in a contract without their knowledge or consent. This has resulted in us having to contact a number of our customers, including you. You may cancel your contract as a result of this investigation without penalty or being charged a termination or cancellation fee.

If you wish to remain in your contract with Active Energy you do not need to take any further action.

Alternatively, if you wish to cancel your contract with Active Energy you are required to notify us in writing within 4 weeks of receipt of this letter and confirm that you were entered into a contract with Active Energy without your knowledge or consent and that you wish to cancel your contract.

If you have any questions about this letter or your enrollment with Active Energy, please contact the Ontario Energy Board at **1-877-632-2727** or market.operations@ontarioenergyboard.ca.

Yours truly,

Active Energy Inc. / Active Energy Corp.