



**EB-2011-0307**

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

**AND IN THE MATTER OF** a Notice of Intention to Make an  
Order for Compliance, Suspension and an Administrative  
Penalty against Ag Energy Co-operative Ltd. ("Ag Energy"),  
Licence Numbers ER-2009-0004 and GM-2009-0362

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

## **I. INTRODUCTION**

By Notice of Intention to Make an Order (the "Notice") under section 112.3, 112.4 and 112.5 of the *Ontario Energy Board Act, 1998*, (the "Act") for compliance, suspension and an administrative penalty issued August 25, 2011 the Board announced that it intended to make an order against Ag Energy to pay an administrative penalty in the amount of \$27,500. Pursuant to s. 112.2(4) Ag Energy was advised that it may, within 15 days after receiving the notice, give notice to the Board requiring the Board to hold a hearing. Ag Energy has elected not to request a hearing and in order to fully and finally resolve this matter Ag Energy is prepared to admit to the deficiencies set out in the Notice and to enter into this Assurance of Voluntary Compliance.

## **II. COMPLIANCE INSPECTION**

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

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

Ag Energy informed Board staff that it is not currently engaged in new sales to low volume consumers and has not entered into any new contracts with Low volume consumers despite having certified, in its Certificate of Compliance filed with the in December 2010, that it had controls and processes in place for the conduct of new sales which were in compliance with the ECPA.

## **III Assurance of Voluntary Compliance**

### **Training Material**

Ag Energy admits to the following deficiencies set out in the Notice:

The material for training prospective salespersons does not include adequate and accurate material in the following areas as they pertain to low volume consumers:

1. Electricity and gas market structure; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(i) of the Codes;
2. Information about the behaviour that constitutes an unfair practice; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(iii) of the Codes;
3. Information relating to renewals and extensions; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(x) of the Codes; and
4. Information about how electricity and gas pricing works, including the pricing of electricity and gas supplied by the respective distributors; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(xi) of the Codes.

The training material used by Ag Energy for training prospective verification representatives does not include adequate and accurate material in the following areas as they pertain to low volume consumers:

5. Electricity and gas market structure; contrary to section 7 of Ontario Regulation 90/99 and sections 5.3(a) and 5.3(b)(i) of the Codes;
6. Information about the behaviour that constitutes an unfair practice; contrary to section 7 of Ontario Regulation 90/99 and sections 5.3(a) and 5.3(b)(ii) of the Codes; and
7. Information about how electricity and gas pricing works, including the pricing of electricity and gas supplied by the respective distributors; contrary to section 7 of Ontario Regulation 90/99 and sections 5.3(a) and 5.3(b)(vii) of the Codes.

The training material used by Ag Energy for training prospective salespersons involved solely in the renewal or extension of contracts does not include adequate and accurate material in the following areas as they pertain to low volume consumers:

8. Electricity and gas market structure; contrary to sections 5.4(a) and 5.4(b)(i) of the Codes;
9. Information about the behaviour that constitutes an unfair practice contrary to sections 5.4(a) and 5.4(b)(ii) of the Codes;
10. Information relating to renewals and extensions; contrary to sections 5.4(a) and 5.4(b)(viii) of the Codes; and
- 11 .Information about how electricity and gas pricing works, including the pricing of electricity and gas supplied by the respective distributors; contrary to sections 5.4(a) and 5.4(b)(ix) of the Codes.

Subsequent to the issuance of the Notice, Ag Energy informed the Board that it is not engaged in new sales to low volume consumers however does engage in renewals with its membership. As such Ag Energy has been informed by the Board that in order to be in compliance the deficiencies set out at particulars 1-7 are no longer required to be remedied as Ag Energy is not engaged in any new sales activity to low volume consumers.

Ag Energy provided Board staff with a revised form of the training material for prospective salespersons involved solely in the renewal or extension of contracts with a low volume consumer. It is Board staff's view that the above noted deficiencies in paragraphs 8 – 11 have been remedied.

Ag Energy commits to ensuring that, effective as of the date of this Assurance, the form of and content of training material for salespersons involved in renewals of contracts with low volume consumers is in compliance with sections 5.4(1), 5.4(b)(i),(ii), (viii) and (ix) of the Codes.

## **Record Retention**

Ag Energy admits to the following deficiencies set out in the Notice:

12. Ag Energy does not maintain, for each salesperson and verification representative that acts on its behalf in relation to low-volume consumers a complete record including the name and title or position of the person(s) who conducted the training (updated for each time the person undergoes training); contrary to section 5.10(b) of the Codes.
  
13. Ag Energy does not maintain, for each salesperson and verification representative that acts on its behalf in relation to low-volume consumers a complete record including a signed statement from the person that he or she will comply with all applicable legal and regulatory requirements in relation to the activities the person will conduct on behalf of Ag Energy in relation to low volume consumers; contrary to section 5.10 (g) of the Codes.

Subsequent to the issuance of the Notice, Ag Energy has provided to Board staff a revised form of signed statement from the salesperson. It is Board staff's view that the above noted deficiency has been remedied.

Ag Energy commits to ensuring that, effective as of the date of this Assurance, the requirements set out in section 5.10(b) and (g) of the Codes for record retention for each salesperson and verification representative acting on its behalf are met.

## **Requirements for Identification Badges**

Ag Energy admits to the following deficiencies set out in the Notice:

14. The standard form Identification Badge issued to all salespersons who meet in person with low-volume consumers fails to state that the salesperson is (a) not

associated with any electricity or gas distributor or government contrary to section 6 of Ontario Regulation 90/99; and (b) not a representative of the consumer's electricity or gas distributor and is not associated with the Ontario Energy Board or the Government of Ontario, contrary to section 2.4(a) of the Codes.

15. As the Identification Badges are non-compliant with the legal and regulatory requirements it is likely that salespersons using these Identification Badges are engaged in an unfair practice as defined in section 5(6)(i) of Ontario Regulation 389/10; contrary to section 10 of the ECPA and section 1.1(c) and section 2.3 of the Codes.

Subsequent to the issuance of the Notice, Ag Energy informed Board staff that it is no longer engaged in the sale of new contracts to low volume consumers and as such does not require identification badges. As such Ag Energy has been informed by the Board staff that as Ag Energy is not engaged in any new low volume sales activity requiring identification badges the deficiencies set out above are no longer need to be remedied.

### **Contract Content Requirements for new contracts**

Ag Energy admits the following deficiencies as set out in the Notice:

16. The contract terms and conditions are in a font size of less than 12; contrary to section 12 of the ECPA and section 7(1) of Ontario Regulation 389/10.
17. The contract fails to state the website address of Ag Energy; contrary to section 12 of the ECPA and section 7(1)1 of Ontario Regulation 389/10.
18. The contract fails to state the terms for late payment, other charges, interest or penalties that may be payable under the contract; contrary to section 12 of the ECPA and section 7(1)7 of Ontario Regulation 389/10.

19. The contract fails to state that the consumer has the right under the Act to cancel the contract without cost or penalty up to 10 days after the consumer acknowledges receipt or is deemed to acknowledge receipt of a text-based copy of the contract; contrary to section 12 of the ECPA and section 7(1)8 of Ontario Regulation 389/10.
20. The contract fails to state that if the consumer cancels the contract within that 10-day period, the consumer is entitled to a full refund of all amounts paid under the contract; contrary to section 12 of the ECPA and section 7(1)9 of Ontario Regulation 389/10.
21. The electricity contract fails to state that the consumer may cancel the contract without cost or penalty up to 30 days after receiving the first bill under the contract; contrary to section 12 of the ECPA and section 7(1)10 of Ontario Regulation 389/10.
22. The contract fails to contain a statement that “nothing in the contract negates or varies the consumer’s rights to cancel the contract under and in accordance with the Act and this Part”; contrary to section 12 of the ECPA and section 7(1)11 of Ontario Regulation 389/10.
23. The contract fails to state that if the consumer permanently moves out of the premises to which the electricity or gas is provided under the contract, the consumer may, without cost or penalty, cancel the contract; contrary to section 12 of the ECPA and section 7(1)12 of Ontario Regulation 389/10.
24. The contract does not contain an acknowledgement to be signed and dated by the consumer or account holder’s agent that he or she has received a text-based copy of the contract; contrary to section 12 of the ECPA and section 7(1)18 of Ontario Regulation 389/10.
25. The contract states that amendments will be effective 30 days after Ag Energy notifies the consumer of a contract amendment; contrary to section 12 of the ECPA and section 7(2)(a) of Ontario Regulation 389/10.

26. The electricity contract allows for the automatic renewal of a contract; contrary to section 12 of the ECPA and section 7(2)(a) of Ontario Regulation 389/10.

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

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

Subsequent to the issuance of the Notice, Ag Energy informed Board staff that it is no longer engaged in new sales to low volume consumers, however does engage in renewals with its membership. As such Ag Energy has been informed by Board staff that as Ag Energy is not engaged in any new low volume sales activity requiring identification badges the deficiencies set out above are no longer need to be remedied.

#### **Written confirmation of cancellation**

Ag Energy admits to the following deficiencies set out in the Notice:

29. During the inspection, one sample electricity cancellation telephone transaction, dated February 9, 2011, was reviewed and it was observed that Ag Energy issued the required written confirmation of the cancellation to the consumer 35 days after the consumer requested cancellation. This is contrary to the requirement to issue the written confirmation promptly following the cancellation call; contrary to section 22(4)(b) of Ontario Regulation 389/10 and section 19 of the ECPA.

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



## **Compliance monitoring and quality assurance program**

Ag Energy admits to the following deficiency as set out in the Notice:

30. During the inspection, Ag Energy confirmed that it does not maintain a compliance monitoring and quality assurance program to monitor compliance with the OEB Act, the ECPA, Ontario Regulation 389/10, and the Board's Codes; contrary to section 7.4 and section 7.5 of the Codes.

Subsequent to the issuance of the Notice, Ag Energy provided to Board staff details of their compliance monitoring and quality assurance program to monitor compliance. It is Board staff's view that the above noted deficiencies have been remedied.

Ag Energy commits to ensuring that, effective as of the date of this Assurance, the compliance monitoring and quality assurance program to monitor compliance meets the requirements set out in section 7.4 and 7.5 of the Codes.

## **IV Renewal Contracts**

Ag Energy confirms that it will not engage in any low volume renewal activities until such time as it has satisfied Board staff that its renewal contracts for low volume consumers are compliant with all legal and regulatory obligations.

## **IV Administrative Monetary Penalty**

Ag Energy agrees to pay an administrative monetary penalty in the amount of \$22,500 to the Board by way of certified cheque and payable in the following installments:

1. October 1, 2011 – payment of \$7,500
2. November 15, 2011 – payment of \$7,500
3. January 1<sup>st</sup>, 2012 – payment of \$7,500

## **V Consumer Rights**

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

## **VII Failure to Comply**

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

I have authority to bind Ag Energy Co-Operative Ltd. to the terms set out in this Assurance of Voluntary Compliance:

A handwritten signature in cursive script that reads "Rose Marie Gage". The signature is written in black ink and is positioned centrally below the text of the assurance.

Name: Rose Marie Gage,  
Chief Executive Officer, Ag Energy Co-operative Ltd.  
Dated: September 9, 2011