



**EB-2011-0310**

**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 and an Administrative Penalty against  
Direct Energy Marketing Limited, Licence Numbers ER-2010-  
0045 and GM-2009-0058

**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 and 112.5 of the *Ontario Energy Board Act, 1998*, (the "Act") for compliance and an administrative penalty issued August 25, 2011 the Board announced that it intended to make an order against Direct to pay an administrative penalty in the amount of \$20,000. Pursuant to s. 112.2(4) Direct was advised that it may, within 15 days after receiving the notice, give notice to the Board requiring the Board to hold a hearing. Direct has elected not to request a hearing and in order to fully and finally resolve this matter Direct is prepared to admit 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.

## **III Assurance of Voluntary Compliance**

### **Contract Content Requirements for Renewal Contracts**

Direct admits to the following deficiency as set out in the Notice:

1. With respect to 25 electricity contracts and 25 gas contracts reviewed, the renewal contract does not include the statement "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" as required by section 7(1)11 of Ontario Regulation 389/10.

Direct has confirmed that it has amended its renewal contracts so as to include the statement set out above. Direct commits to ensuring that, effective as of the date of this Assurance, the form of and content of each renewal contract delivered to a low volume consumer following that date will meet the requirement set out in section 7(1)11 Ontario Regulation 389/10.

### **Transfer requests where consumer enters into contract with another company**

Direct admits to the following deficiency as set out in the Notice:

2. Direct Energy provided the E&Y inspectors with a system-generated list which indicated that 393 notices of a pending transfer request were received by Direct Energy from a distributor for the period January 1 to February 14, 2011. For each notice of pending transfer received from the distributor Direct Energy, in response to inquiries made by E&Y inspectors, confirmed that it did not notify the consumer of the pending transfer request contrary to sections 3.8 and 3.9 of the Electricity Retailer Code of Conduct and sections 3.6 and 3.7 of the Code of Conduct for Gas Marketers. E&Y also confirmed that in each of the 393 cases Direct Energy confirmed that it decided not to send a notice as it was not charging the consumer any cancellation fees.

Direct has confirmed that it has amended its practice with respect to notifying consumers of a pending transfer request and can ensure that, effective as of the date of this Assurance, for each notice of pending transfer request received by Direct from a distributor, Direct notifies the consumer.

### **IV Administrative Monetary Penalty**

Direct agrees to pay an administrative monetary penalty in the amount of \$15,000 to the Board by way of certified cheque on or before September 30, 2011.

### **V Consumer Rights**

Nothing in this Assurance affects any rights a consumer may have under 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 Direct Energy Marketing Limited to the terms set out in this Assurance of Voluntary Compliance:



Adèle Malo  
EVP and General Counsel  
Direct Energy Marketing Limited

Dated: September 9, 2011