



EB-2011-0312

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
Just Energy Ontario L.P., Licence Numbers ER-2010-0153
and GM-2010-0152

**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 Just Energy to pay an administrative penalty in the amount of \$50,000.

Pursuant to s. 112.2(4) Just 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. Just Energy has elected not to request a hearing and in order to fully and finally resolve this matter Just Energy is prepared to admit to the deficiencies cited in the Notice as set out below and 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 initiated 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

Requirements for Identification Badges

Just Energy admits the following deficiencies set out in the Notice:

1. A review of one 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.
2. 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.

Just Energy commits to ensuring that, effective as of the date of this Assurance, the business card issued to every salesperson who meets in person with low volume consumers meets the requirements set out in section 6 of Ontario Regulation 90/99, section 5.6(i) of Ontario Regulation 389/10 and sections 1.1(c), 2.1 and 2.3 and 2.4(a) of the Codes.

Contract content requirements for renewal contracts and renewal forms

Just Energy admits the deficiencies set out in paragraphs 3 and 5 following as set out in the Notice:

3. In 19 of 25 electricity transactions reviewed (sample numbers 1, 3-5, 7-11, and 16-25) and in 18 of the 25 gas transactions reviewed (sample numbers 1, 3-5, 7-12, 14, 16, 17, 19, 20, 21, 23, 25), Just Energy failed to state its licence number issued under the Act; contrary to section 7(1)2 of Ontario Regulation 389/10 and section 12 of the ECPA. A list of the contract numbers for each sample reviewed is attached hereto at Appendix "A".
4. In the 25 gas contracts reviewed the gas contract fails to include information about whether the contract may be assigned by either Just Energy or the consumer and any provisions relating to an assignment; contrary to section 7(1)14 of Ontario Regulation 389/10 and section 12 of the ECPA. A list of the contract numbers for each sample reviewed is attached hereto at Appendix "A".
5. In each of the renewal transactions reviewed for both electricity and gas the renewal form does not contain the telephone number of the Board's Consumer Relations Centre; contrary to section 7.1 of the Codes.

Subsequent to the issuance of the Notice Just Energy provided to Board staff further information with respect to allegation number 4 noted above. Board staff requests that allegation number 4 be withdrawn.

Just Energy commits to ensuring that, effective as of the date of this Assurance, the form of and content of a renewal contract entered into with a low volume consumer include the content identified in paragraphs 3 and 5 of the Notice.

Disclosure Statements and Price Comparison Documents

Just Energy admits the deficiencies set out at paragraphs 6 and 7 following as set out in the Notice:

6. Just Energy, in one transaction for electricity (Contract number 8853479) and in one transaction for gas (Contract Number 8860165) sent the consumer the incorrect version of the disclosure statement (dated October 15, 2010); contrary to section 8(1) of Ontario Regulation 389/10, section 12 of the ECPA and section 4.1 of the Codes.
7. In reviewing a price comparison document (Contract number 8856313) Just Energy sent the consumer an incorrect version of the price comparison document (Union Gas instead of Enbridge) contrary to section 8(3) of Ontario Regulation 389/10 and section 12 of the ECPA and section 4.6(a) of the Code of Conduct for Gas Marketers.
8. In a gas renewal transaction (Contract number 6064233), based on the consumer's address, the incorrect price comparison was provided to the consumer (specifically the Union gas Eastern price comparison was provided as opposed to the Union Gas Northern price comparison); contrary to section 8(3) of Ontario Regulation 389/10, section 12 of the ECPA and section 4.6(a) of the Code of Conduct for Gas Marketers.

Subsequent to the issuance of the Notice Just Energy provided to Board staff further information with respect to paragraph number 8 noted above. Board staff requests that allegation number 8 be withdrawn.

Just Energy commits to ensuring that, effective as of the date of this Assurance, a disclosure statement with an accompanying price comparison document that is

provided to a consumer will be in compliance with section 8(1) and 8(3) of Ontario Regulation 389/10 , section 4.1 of the Codes and section 4.6 (a) of the Marketer Code.

Renewal Calls

Just Energy admits the following deficiencies set out in paragraph 9 of the Notice, and the deficiency in paragraph 10 which was not self-corrected (as further set out below):

9. In one of the 15 positive electricity renewal calls reviewed, (Contract number 6123344) the Just Energy representative confirmed the name of the consumer however did not confirm if he/she was speaking to the account holder or the account holder's agent contrary to section 15(4)(c) of Ontario Regulation 389/10, section 18 of the ECPA and sections 4.13 and 4.14(a) of the Electricity Retailer Code of Conduct.

10. In one of the 15 positive gas renewal calls reviewed (Contract number 1714116) the Just Energy representative confirmed the name of the consumer however did not confirm if he/she was speaking to the account holder or the account holder's agent, didn't advise the consumer that the telephone call was being recorded, and omitted steps 5, 7 to 12 and 16 to 18 of the Board-approved script; contrary to section 15(4)(c) of Ontario Regulation 389/10, section 18 of the ECPA and sections 4.13 and 4.14(a) of the Code of Conduct for Gas Marketers.

Just Energy has provided Board staff with a second call related to the positive gas renewal call referenced in paragraph 10 above. The second call was intended to remedy the deficiencies of the first call and did remedy such deficiencies but for one aspect of the Board approved script. Just Energy commits to ensuring that, effective as of the date of this Assurance, Just Energy verification representatives confirm all of the matters enumerated in paragraphs 9 and 10 of the Notice.

Momentis Independent Representatives

The Notice recites that Just Energy has an affiliate company, Momentis, through which multi-level marketing is performed. Momentis independent representatives use network marketing with Just Energy's programs and are then paid a commission if the consumer enters into a contract. Momentis representatives attend at friends' and families' homes and refer consumers to their own personal websites. All Momentis contracts are entered into over the internet.

The Notice further recites that Momentis representatives are acting as "salespersons" as defined in section 2 of the ECPA in that they are acting as persons who are engaged in an activity, the purpose of which is effecting sales of gas or electricity with consumers on behalf of a gas marketer or electricity retailer. During the inspection, Just Energy confirmed that it does not consider Momentis representatives to be salespersons and Momentis representatives are not given ID badges and business cards.

The following deficiencies are set out in the Notice:

11. Momentis representatives fail to wear ID badges when calling on a consumer in person; contrary to section 6 of Ontario Regulation 90/99 and section 5(6)(i) and (ii) of Ontario Regulation 389/10.

Just Energy commits to ensuring that any Momentis representatives wear prescribed ID badges when calling on a consumer in person on Just Energy's behalf.

IV. Administrative Monetary Penalty

Just Energy agrees to pay an administrative monetary penalty in the amount of \$40,000 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 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 Just Energy Ontario LP to the terms set out in this Assurance of Voluntary Compliance:



Name: Gord Potter
Title: Executive Vice President, Regulatory & Legal Affairs
Dated: September 12, 2011