



EB-2011-0306

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 Active Energy Inc. Licence Number ER-2007-
0076 and Active Energy Corp. Licence Number GM-2007-
0078 (together, "Active").

**NOTICE OF INTENTION TO MAKE AN ORDER FOR COMPLIANCE, SUSPENSION
AND TO IMPOSE AN ADMINISTRATIVE PENALTY UNDER s. 112.3, 112.4 and
112.5 of the *ONTARIO ENERGY BOARD ACT, 1998***

The Ontario Energy Board (the "Board"), on its own motion under section 112.2 of the *Ontario Energy Board Act, 1998* (the "Act"), intends to make an Order under sections 112.3, 112.4 and 112.5 of the Act requiring Active to comply with a number of enforceable provisions as defined in section 3 of the Act and to pay an administrative penalty in the amount of \$25,000 for breaches of enforceable provisions.

The Board is also seeking an Order suspending Active's new sales, renewals, extensions or amendments of contracts activities using the following sales channels: Door- to-Door, Exhibitions, Trade Shows, Direct Mail, Active's Place of Business and Telephone Renewals. The suspension is to remain in effect until Active can satisfy the Board that the issues of non-compliance identified in the particulars section of this Notice have been remedied or Active confirms with the Board that it is no longer engaged in the activities using the identified sales channels.

Ernst and Young LLP (E&Y) was retained by the Board to conduct compliance inspections of Active's operations in order to ensure compliance with all applicable legal and regulatory requirements pertaining to consumer protection. In order to carry out the

inspection, E&Y staff required access to relevant data related to Active's transactions and processes, as well as access to information in their data systems. E&Y provided a final report of its findings to Board staff along with supporting documentation. Board staff then reviewed the findings.

ALLEGATIONS OF NON COMPLIANCE

It is alleged that Active has contravened sections of Ontario Regulation 90/99, Ontario Regulation 389/10, section 12 of the *Energy Consumer Protection Act, 2010* (the "ECPA") and the Electricity Retailer Code of Conduct (the "Retailer Code") and the Code of Conduct for Gas Marketers (the "Marketer Code") (collectively the "Codes").

PARTICULARS

The particulars in support of the allegations set out in this Notice are as follows:

Business Cards

During the inspection Active confirmed that all business cards issued to salespersons who meet in person with low-volume consumers are in the same format and contain the same content. During the inspection, one standard business card used for both electricity and gas was reviewed and the following was observed:

1. The business card does not state the address of Active; contrary to section 5 of Ontario Regulation 90/99 and section 2.2(b) of the Codes.
2. The business card, while stating the electricity retailer licence number, it does not state the gas marketer licence number issued to Active under the Act; contrary to section 5 of Ontario Regulation 90/99 and section 2.2(a) of the Marketer Code.
3. As the standard form business card is non-compliant with the legal and regulatory requirements it is likely that salespersons offering these business cards are engaged in an unfair practice as defined in section 5(6)(ii) of Ontario Regulation 389/10 and sections 1.1(b) and 2.1 of Codes.

Contract content requirements for new contracts and renewal contracts

During the inspection, 25 electricity contracts and 25 gas contracts and one gas renewal package used by Active were reviewed as were verification transactions. A list of the contracts reviewed is attached at Appendix "A". In all 25 electricity and 25 gas cases reviewed the following deficiencies in relation to contract content requirements for both electricity and gas were noted:

New Contracts

4. The contract fails to include the applicable conditions/rights under section 21(b), (e) and (f) of Ontario Regulation 389/10 which provide 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.
5. The acknowledgement that has to be signed and dated by the consumer or the account holder's agent that he or she has received a text-based copy of the contract is before (instead of following) the signature of the person signing the contract on behalf of Active Energy. This is contrary to section 7(1)17 and 7(1)18 of Ontario Regulation 389/10 and section 12 of the ECPA.
6. The gas contract contains statements about the pre ECPA reaffirmation requirements, including the 10 to 60 day reaffirmation period that no longer applies to new contracts entered into on and after January 1, 2011; contrary to section 7(2)(a) of Ontario Regulation 389/10 and section 12 of the ECPA.
7. The gas contract states that in relation to a renewed contract, the consumer has the ability to cancel the contract within 35 days of the consumer receiving his or her first bill under the renewed contract, rather than giving the consumer the ability to cancel at any point after the contract is renewed; contrary to section 7(2)(a) of Ontario Regulation 389/10 and section 12 of the ECPA.

Renewal contracts

8. The renewal gas contract that was reviewed (contract with consumer R.W.) fails to state Active's licence number issued under the Act; contrary to section 7(1)2 of Ontario Regulation 389/10 and section 12 of the ECPA.
9. The renewal gas contract with consumer R.W. also fails to state 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 7(1)11 of Ontario Regulation 389/10 and section 12 of the ECPA.

Completion of price comparison for new contracts

Twenty five gas transactions were reviewed and the following contravention was noted:

10. It was observed that in one gas contract (contract number GE154246), the rate of 34.9 cents per cubic meter included under Part B of the price comparison does not match the rate of 31.9 cents per cubic meter stated in the consumer's contract; contrary to section 8(3) of Ontario Regulation 389/10, section 12 of the ECPA and section 4.6(b) of the Marketer Code.

Conditions for contract renewals or extensions

During the inspection one gas contract renewal package (contract with consumer R.W.) that had been issued by Active at the time of the inspection was reviewed and it was observed that:

11. A text based copy of the proposed renewed contract was not included in the renewal package; contrary to section 15(1)(b)(i) of Ontario Regulation 389/10 and section 18 of the ECPA.
12. The renewal package only included one copy of the disclosure statement and price comparison; contrary to section 15(1)(b)(ii) of Ontario Regulation 389/10 which requires that two copies of the text-based disclosure statement and price

comparisons be sent by the supplier. This is also contrary to section 18 of the ECPA.

13. The disclosure statement included in the renewal package was not the Board approved version for a renewal contract, rather it was for a new contract; contrary to section 8(2) of Ontario Regulation 389/10, section 12 of the ECPA and section 4.2 of the Marketer Code.

Renewal form requirements

The standard form gas renewal forms used by Active were reviewed during the inspection and it was observed that Active has contravened the following requirement for gas renewal forms:

14. The renewal form does not contain the telephone number of the Board's Consumer Relations Centre; contrary to section 7.1 of the Codes.

Written confirmation of cancellation

During the inspection, Active stated that its business practice was not to send a written confirmation to any consumers who requested cancellation of their contract prior to the electricity or gas being provided by Active.

15. Telephone cancellations of five electricity contracts and six gas contracts were reviewed and it was noted that written confirmations of the cancellations were not sent to the consumers in these 11 cases. This is contrary to section 19 of the ECPA and section 22(4)(b) of Ontario Regulation 389/10. A list of the telephone cancellations reviewed is attached at Appendix A.

Verification Calls - Use of the applicable Board-approved script

During the inspection 25 gas verification call transactions were reviewed against all applicable legal and regulatory requirements.

16. It was observed that in one of the 15 positive gas verification calls reviewed (sample number 10, contract number GE155759), the Active verification representative:
- a. Confirmed the name of the consumer however did not confirm if he was speaking to the account holder or the account holder's agent; contrary to section 15 of the ECPA; section 13(2) of Ontario Regulation 389/10; and section 4.10 and 4.11(a) of the Marketer Code;
 - b. Did not advise the consumer that the call was being recorded; contrary to section 15 of the ECPA; section 13(2) and section 13(3) of Ontario Regulation 389/10; and section 4.10 and 4.11(a) of the Marketer Code; and
 - c. Skipped the following steps of the Board-approved script: 3 to 14 and 20 to 23; contrary to section 15 of the ECPA, section 13(2) of Ontario Regulation 389/10, and section 4.10 and 4.11(a) of the Marketer Code.
17. It was observed that in one of the 15 positive gas verification calls reviewed (sample number 1, contract number GE154246) the Active Energy verification representative used the electricity verification script instead of the gas verification script; contrary to section 15 of the ECPA; section 13(2) of Ontario Regulation 389/10; and section 4.10 and 4.11(a) of the Marketer Code.
18. It was observed that in one of the nine negative gas verification calls reviewed (sample number 21, contract number GE164020), the verification representative failed to end the verification process when advised by the consumer of an act or omission that appeared to be an unfair practice. The consumer stated numerous times that he/she wanted to cancel the contract before the verification representative terminated the call. This is contrary to section 15 of the ECPA, section 13(2) and section 13(5) of Ontario Regulation 389/10, and section 4.10 and 4.11(e) of the Marketer Code.

THEREFORE TAKE NOTICE that Active may request, within fifteen days after receiving this Notice, that the Board hold a hearing on these matters. If no request for hearing is made within this time period, the Board may proceed to make an Order that Active comply with any of the enforceable provisions listed in this Notice, an Order suspending Active from engaging in any sales activity using the following sales channels: Door- to-

channels: Door- to-Door, Exhibitions, Trade Shows, Direct Mail, Active's Place of Business and Telephone Renewals until such time as it can satisfy the Board that the areas of non-compliance have been remedied and that Active pay an administrative penalty.

FURTHER TAKE NOTICE that if a hearing is requested, the Board is not bound by the above noted penalty and has discretion, upon finding a contravention(s) of the Act, to make any order it deems appropriate under sections 112.3, 112.4 and/or 112.5 of the Act. Active is entitled to be present at the hearing with or without counsel and to adduce evidence and make submissions. Should Active fail to attend, the hearing may be conducted in its absence and Active will not be entitled to any further notice in the proceeding.

In order to respond to this Notice and request a hearing, Active must file 3 copies of this request with the office of the Board Secretary at the following address:

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, Ontario
M4P 1E4
Attention: Board Secretary
Email: Boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273
Fax: 416-440-7656

If a hearing is requested it will proceed before a Panel of the Board, at the offices of the Ontario Energy Board, 2300 Yonge Street, Toronto, Ontario, on a date to be set by the Board.

DATED at Toronto, August 25, 2011

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Appendix A
Active Energy Inc. and Active Energy Corp.
EB-2011-0306

New Contracts

Electricity

Sample Number	Contract Number
1	GE154047
2	GE154051
3	GE154195
4	GE154281
5	GE154298
6	GE154304
7	GE154334
8	GE154338
9	GE154863
10	GE154890
11	GE154891
12	GE154941
13	GE155018
14	GE155042
15	GE155752
16	GE159098
17	GE159112
18	GE163151
19	GE163198
20	GE163203
21	GE163591
22	GE164011

23	GE164027
24	GE164039
25	GE164058

New Contracts

Gas

Sample Number	Contract Number
1	GE154246
2	GE154282
3	GE154313
4	GE154316
5	GE154318
6	GE154327
7	GE154879
8	GE155747
9	GE155749
10	GE155759
11	GE159055
12	GE159071
13	GE159083
14	GE162221
15	GE163131
16	GE163176
17	GE163195
18	GE163196
19	GE163227
20	GE163579
21	GE164020

22	GE164023
23	GE164050
24	GE164053
25	GE164062

Price Comparison

Gas

Sample Number	Contract Number
1	GE154246

Written Confirmation of Cancellation

Electricity

GE155743
GE155789
GE154960
GE163574
GE163599

Gas

GE154957
GE154911
GE163227
GE163156
GE164024

GE163168

Verification Calls

Gas

Sample Number

Contract Number

10

GE155759

1

GE154246

21

GE164020