



**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.

**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 Ag Energy 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 \$27,500, for breaches of enforceable provisions.

The Board is also seeking an Order suspending Ag Energy's new sales, renewals, extensions or amendments of contracts activities using the following sales channels: Exhibitions, Trade Shows, Direct Mail, Ag Energy's Place of Business and Telephone Renewals. The suspension is to remain in effect until the licensee can satisfy the Board that the issues of non-compliance identified in the particulars section of this Notice have been remedied or Ag Energy 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 Ag Energy'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 Ag Energy'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 Ag Energy 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 and the Code of Conduct for Gas Marketers (the "Codes").

## **PARTICULARS**

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

### **Training Material**

The training material used by Ag Energy 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.

## Record Retention

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.

## Requirements for Identification Badges

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.

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

### **New Contracts**

The standard form electricity and gas contracts used by Ag Energy were reviewed and Ag Energy confirmed with the E&Y inspector that the 23 contracts entered into since January 1, 2011 used the same format and content as the standard form contracts. The following deficiencies were noted:

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.

**Written confirmation of cancellation**

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.

**Compliance monitoring and quality assurance program**

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.

**THEREFORE TAKE NOTICE** that Ag Energy 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 Ag Energy comply with any of the enforceable provisions listed in this Notice, an Order suspending Ag Energy from engaging in any sales activity using the following sales channels: Exhibitions, Trade Shows, Direct Mail, Ag Energy'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 Ag Energy 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. Ag Energy is entitled to be present at the hearing with or without counsel and to adduce evidence and make submissions. Should Ag Energy fail to attend, the hearing may be conducted in its absence and Ag Energy will not be entitled to any further notice in the proceeding.

In order to respond to this Notice and request a hearing, Ag Energy 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, 27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4  
Attention: Board Secretary  
Email: [Boardsec@ontarioenergyboard.ca](mailto: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**  
**Ag Energy Co-operative Ltd.**  
**EB-2011-0307**

**Written Confirmation of Cancellation**

Electricity

Sample Number

Reference Number

Phase 1 Sample

Ref\_III\_A\_01\_Cancel\_Whytock\_Feb 9