



**EB-2011-0308**

**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  
Bullfrog Power Inc. ("Bullfrog") Licence Number ER-2010-0063.

**NOTICE OF INTENTION TO MAKE AN ORDER FOR COMPLIANCE AND TO  
IMPOSE AN ADMINISTRATIVE PENALTY UNDER s. 112.3 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 and 112.5 of the Act requiring Bullfrog 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.

Ernst and Young LLP (E&Y) was retained by the Board to conduct compliance inspections of Bullfrog'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 Bullfrog'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 Bullfrog has contravened sections of Ontario Regulation 389/10, section 12 of the *Energy Consumer Protection Act, 2010* (the “ECPA”) and the Electricity Retailer Code of Conduct.

## **PARTICULARS**

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

### **Contract Content Requirements for New Contracts**

The standard form contract used by Bullfrog for the direct mail sales channel was reviewed during the inspection. The inspection also reviewed one consumer contract for a direct mail sale. Bullfrog has contravened the following requirements in relation to contract content requirements:

1. The consumer information section of the contract states that it is valid for 6 months. However, under the terms and conditions of the contract, the validity of the contract is one year; contrary to section 7(1)5 of Ontario Regulation 389/10, section 12 of the ECPA and section 3.1(a) of the Electricity Retailer Code of Conduct.
2. The contract uses the term “Provincial Benefit” instead of the term “Global Adjustment”; contrary to section 7(1)6 of Ontario Regulation 389/10 and section 12 of the ECPA.
3. The contract states the consumer can cancel the contract within 10 days after they receive a written copy of the agreement but the contract fails to state that the contract can be cancelled without cost of penalty during this 10 day period; contrary to section 7(1)8 of Ontario Regulation 389/10 and section 12 of the ECPA.

4. The contract fails to contain a statement 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 7(1)9 of Ontario Regulation 389/10 and section 12 of the ECPA.
5. The 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 7(1)10 of Ontario Regulation 389/10 and section 12 of the ECPA.
6. 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 7(1)11 of Ontario Regulation 389/10 and section 12 of the ECPA.
7. The contract fails to state that if the consumer permanently moves out of the premises to which the electricity is provided under the contract; the consumer may, without cost or penalty, cancel the contract, contrary to section 7(1)12 of Ontario Regulation 389/10 and section 12 of the ECPA.
8. The contract fails to state the applicable conditions/rights under section 21(a), (b), (d) & (e) of Ontario Regulation 389/10 where the consumer can cancel the contract without cost or penalty; contrary to section 7(1)13 of Ontario Regulation 389/10 and section 12 of the ECPA.
9. The contract fails to contain a place for the printed name of the consumer or the account holder’s agent at the bottom of the contract with the consumers signature; contrary to section 7(1)17 of Ontario Regulation 389/10 and section 12 of the ECPA.
10. The contract fails to include 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 7(1)18 of Ontario Regulation 389/10 and section 12 of the ECPA.

11. The consumer's rights section of the 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. This is contrary to section 7(2)(a) of Ontario Regulation 389/10 and section 12 of the ECPA.

### **Price Comparisons**

The price comparison document being used by Bullfrog for its direct mail sales channel was reviewed during the inspection. Bullfrog has contravened the following requirement in relation to information contained in price comparisons for electricity:

12. The price comparison being used by Bullfrog contains the following promotional statement: "In Ontario, Bullfrog Power's generators inject EcoLogoM certified wind power and low-impact hydro power into the Ontario Electricity grid to match the amount of power your home uses." This is contrary to section 4.8 of the Electricity Retailer Code of Conduct.

**THEREFORE TAKE NOTICE** that Bullfrog 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 Bullfrog comply with any of the enforceable provisions listed in this Notice and that Bullfrog 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 and/or 112.5 of the Act. Bullfrog is entitled to be present at the hearing with or without counsel and to adduce evidence and make submissions. Should Bullfrog fail to attend, the hearing may be conducted in its absence and Bullfrog will not be entitled to any further notice in the proceeding.

In order to respond to this Notice and request a hearing, Bullfrog 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