



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.

**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 Direct Energy Marketing Limited ("Direct 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 \$20,000 for breaches of enforceable provisions.

Ernst and Young LLP (E&Y) was retained by the Board to conduct compliance inspections of Direct 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 Direct 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 Direct Energy has contravened sections 7(1)11 of Ontario Regulation 389/10, section 12 of the *Energy Consumer Protection Act, 2010* (the "ECPA") and section 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.

PARTICULARS

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

Contract Content Requirements for Renewal Contracts

1. With respect to 25 electricity contracts and 25 gas contracts reviewed, the renewal contract 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" as required by section 7(1)11 of Ontario Regulation 389/10. The specific contracts referred to in this paragraph are listed in the attached Appendix A.

Transfer requests where consumer enters into contract with another company

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.

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

In order to respond to this Notice and request a hearing, Direct 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, 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
Direct Energy Marketing Ltd.
EB-2011-0310

Renewal Contracts

Electricity

Sample Number	Consumer Name / Date on Renewal Package	
1	PJC	December 20, 2010
2	RL	February 4, 2011
3	HR	January 24, 2011
4	EI	February 4, 2011
5	GK	February 22, 2011
6	HW	January 24, 2011
7	SYCC	February 4, 2011
8	JCUU	February 4, 2011
9	RGM	December 20, 2010
10	GSD	December 20, 2010
11	JKOD	January 24, 2011
12	AR	January 24, 2011
13	LT	January 24, 2011
14	PI	January 24, 2011
15	FB	January 24, 2011
16	AIT	January 24, 2011
17	MD	February 22, 2011
18	ITS	January 24, 2011
19	MD	January 24, 2011
20	SS	December 20, 2010
21	LM	December 20, 2010
22	AKRG	January 24, 2011

23	CAM	January 24, 2011
24	MJG	February 4, 2011
25	CP	February 4, 2011

Gas

Sample Number	Consumer Name / Date on Renewal Package
---------------	---

1	RD	December 28, 2010
2	LN	December 28, 2010
3	DF	January 21, 2011
4	JM	January 21, 2011
5	KMP	January 21, 2011
6	IG	February 4, 2011
7	MAR	January 21, 2011
8	DA	February 4, 2011
9	AAR	January 21, 2011
10	REM	February 4, 2011
11	YFT	February 4, 2011
12	MI	December 28, 2010
13	TG	January 21, 2011
14	BA	December 28, 2010
15	RG	January 21, 2011
16	PAJ	January 21, 2011
17	KK	February 4, 2011
18	SS	December 28, 2010
19	DS	February 4, 2011
20	WE	January 21, 2011
21	WM	January 21, 2011
22	GM	February 4, 2011

23	APG	January 21, 2011
24	DL	January 21, 2011
25	TK	February 18, 2011