



EB-2011-0311

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 Energhx Green Energy Corporation
("Energhx"), Licence Numbers ER-2009-0189 and GM-2009-
0188

**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 Energhx 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 \$32,500 for breaches of enforceable provisions. The Board also intends to make an Order under section 112.4 of the Act to suspend Energhx's activities with respect to sales, renewals, extensions or amendments of contracts using the following sales channels: Door-to-Door; Exhibitions, Trade Shows and Direct Mail. The suspension will remain in effect until Energhx can satisfy the Board that the particulars of non-compliance identified in this Notice have been remedied or Energhx confirms they are no longer engaged in these activities using the above mentioned sales channels.

Ernst and Young LLP (E&Y) was retained by the Board to conduct compliance inspections of Energhx'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 Energhx'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 Energhx 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

Salespersons

The electricity and gas training material used by Energhx for prospective salespersons was reviewed during the inspection. At the time of the inspection three prospective salespersons had completed the Energhx training. The training material in use by Energhx does not include adequate and accurate material in the following areas as they pertain to low volume consumers:

1. How to complete a contract application; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(ii) of the Codes.
2. Use of business cards; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(iv) of the Codes.

3. Use of Identification badges; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(v) of the Codes.
4. Disclosure statements; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(vi) of the Codes.
5. Price Comparisons; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(vii) of the Codes.
6. Consumer cancellation rights set out in section 21 of Ontario Regulation 389/10; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(ix) of the Codes.
7. 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.
8. Persons with whom Energhx may enter into, verify, renew or extend a contract; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(xii) of the Codes.

Verification representatives

The electricity and gas training material used by Energhx for prospective verification representatives was reviewed during the inspection. At the time of the inspection one prospective verification representative had completed the Energhx training. The training material in use by Energhx does not include adequate and accurate material in the following areas as they pertain to low volume consumers:

9. Disclosure statements; contrary to section 7 of Ontario Regulation 90/99 and sections 5.3(a) and 5.3(b)(iii) of the Codes.
10. Price comparisons; contrary to section 7 of Ontario Regulation 90/99 and sections 5.3(a) and 5.3(b)(iv) of the Codes.

11. Consumer cancellation rights set out in section 21 of Ontario Regulation 389/10; contrary to section 7 of Ontario Regulation 90/99 and sections 5.3(a) and 5.3(b)(vi) of the Codes.
12. Persons with whom Energhx may enter into and verify a contract; contrary to section 7 of Ontario Regulation 90/99 and sections 5.3(a) and 5.3(b)(viii) of the Codes.

Training test

The electricity and gas training test questions used by Energhx which are designed to assess the state of the salesperson's or verification representative's knowledge of the required topic areas stated in the Codes were reviewed during the inspection .

13. Energhx confirmed with the inspector that it requires a salesperson or verification representative to achieve a minimum 75% pass mark on the training test; contrary to section 5.6(c) of the Codes which requires a pass mark of 80%.
14. In one case reviewed the prospective salesperson (initials A. Z.) attempted the test twice but scored 70% each time however, the individual was considered to have passed the test; contrary to section 5.6(c) and (d) of the Codes.

Record retention

Energhx has contravened the following requirements in relation to record retention of salespersons and verification representatives for electricity and gas:

15. Energhx does not have its salespersons and verification representatives sign a statement 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 Energhx in relation to low volume consumers. The required records are therefore not retained; contrary to section 5.10(g) of the Codes.

16. Energhx stated during the inspection that it plans on maintaining salesperson and verification representative records for a period of one year; contrary to section 5.10 of the Codes.

Business cards

During the inspection Energhx 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. Energhx has contravened the following in relation to the electricity and gas business card requirements:

17. During the inspection it was observed that the business card does not state the electricity and gas licence numbers issued to Energhx under the Act nor does it state Energhx's toll-free telephone number; contrary to section 5 of Ontario Regulation 90/99 and section 2.2(a) and (d) of the Codes.
18. As the content of the business cards provided by Energhx are in breach of section 2.2(a) and (d) of the Codes, it is likely that the use of such business cards by Energhx salespersons in their current form will result in a breach of section 5(6)(ii) of Ontario Regulation 389/10 and sections 1.1(b) and 2.1 of the Codes.

Identification badges (ID badges)

During the inspection Energhx confirmed that ID badges issued to salespersons who meet in person with low-volume consumers are in the same format and contain the same content. Energhx has contravened the following in relation to the electricity and gas ID badge requirements:

19. During the inspection, it was noted that the ID badge does not 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. It was also observed that the ID badge does not state an expiry date. This is contrary to section 2.4(a) and (g) of the Codes.

20. As the content of the ID badges provided by Energhx are in breach of section 2.4(a) and (g) of the Codes, it is likely that the use of such ID badges by Energhx salespersons in their current form will result in a breach of section 5(6)(i) of Ontario Regulation 389/10 and sections 1.1(c) and 2.3 of the Codes.

Contract content requirements for new contracts

One transaction for electricity and one transaction for gas were reviewed. In both transactions Energhx contravened the following requirements in relation to electricity and gas contract content requirements:

21. The contract fails to include a statement that if the consumer cancels the contract within the 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.
22. The contract fails to include a description of any other circumstances in which the consumer or Energhx is entitled to cancel the contract with or without notice or cost or penalty, the length of any notice period, the manner in which notice can be given and the amount of any cost or penalty; contrary to section 12 of the ECPA and section 7(1)13 of Ontario Regulation 389/10.
23. The contract fails to include the applicable conditions/rights under section 21(a), (b) & (e) 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.
24. The signature and printed name of the consumer, or the account holder's agent signing the contract on behalf of the consumer, and of the person signing the contract on behalf of Energhx, is contained below the acknowledgment 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. The signature of the person signing on behalf of Energhx and the acknowledgement of the consumer are therefore in the reverse order to the specified requirements in Ontario Regulation 389/10;

contrary to section 12 of the ECPA and section 7(1)17 & section 7(1)18 of Ontario Regulation 389/10.

Completion of price comparisons for new contracts

25. Energhx advised that it has one five-year contract offer available to residential and non-residential electricity and gas consumers. Board staff observed that the price comparison had been completed accurately according to the template instructions with the exception of the document control number box which also includes a date which is not in accordance with instruction number 8; contrary to section 12 of the ECPA, section 8(3) of Ontario Regulation 389/10, and section 4.6(b) of the Codes.

Verification Calls - Use of the applicable Board-approved script

Energhx had only conducted one verification call during the period covered by the inspection, January 1 to February 28, 2011. This was a dual fuel verification call to verify both electricity and gas contracts. The inspection reviewed the verification call and observed that Energhx contravened the following requirements in relation to the verification of dual fuel contracts as the verification representative deviated from the Board-approved script in the following areas:

26. The verification representative did not introduce her name to the consumer and did not identify herself as calling on behalf of Energhx; contrary to section 15 of the ECPA, section 13(2) of Ontario Regulation 389/10, and section 4.10 and section 4.11(a) of the Codes.

27. The verification representative did confirm the consumer's name however did not confirm if she 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 section 4.11(a) of the Codes.

28. The verification representative did not ask if the customer was comfortable to proceed with the call in English; contrary to section 15 of the ECPA, section 13(2) of Ontario Regulation 389/10, and section 4.10 and section 4.11(a) of the Codes.

29. The verification representative 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 section 4.11(a) of the Codes.

Compliance monitoring and quality assurance program

30. During the inspection, Energhx confirmed that it does not maintain a compliance monitoring and quality assurance program to monitor compliance with the Act, the ECPA, Ontario Regulation 389/10 made under the ECPA, and the Board's Codes; contrary to section 7.4 and section 7.5 of the Codes.

THEREFORE TAKE NOTICE that Energhx 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 Energhx comply with any of the enforceable provisions listed in this Notice, an Order suspending Energhx from engaging in any sales activity using the following sales channels: Door-to-Door; Exhibitions, Trade Shows and Direct Mail, until such time as it can satisfy the Board that the areas of non-compliance have been remedied and that Energhx 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. Energhx is entitled to be present at the hearing with or without counsel and to adduce evidence and make submissions. Should Energhx fail to attend, the hearing may be conducted in its absence and Energhx will not be entitled to any further notice in the proceeding.

In order to respond to this Notice and request a hearing, Energhx 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
Energhx Green Energy Corporation
EB-2011-0311

Contract Content Requirements for New Contracts

Electricity

Sample Number	Contract Number
1	HOTT06301021ETHA6000

Gas

Sample Number	Contract Number
1	ENGD06301021STEA3406

Verification Call

Electricity

Sample Number	Contract Number
1	HOTT06301021ETHA6000

Gas

Sample Number	Contract Number
1	ENGD06301021STEA3406