



**EB-2011-0313**

**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 morEnergy Savings Corp. Licence Number  
GM-2008-0356 and Blue Power Distributed Energy Corp.  
Licence Number ER-2008-0349 (together, “morEnergy”).

**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 morEnergy 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 \$45,000 for breaches of enforceable provisions.

The Board is also seeking an Order suspending morEnergy’s new sales activities using the following sales channel: Door-to-door. The suspension is to remain in effect until morEnergy can satisfy the Board that the issues of non-compliance identified in the particulars section of this Notice have been remedied or morEnergy 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 morEnergy’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 morEnergy'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 morEnergy 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**

1. The training material used by morEnergy for training prospective salespersons does not include adequate and accurate material in the following areas as they pertain to low volume consumers:
  - a. 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;
  - b. Information about verification; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(viii) of the Codes; and
  - c. Information relating to consumer cancellation rights; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(ix) of the Codes.
  
2. The training material used by morEnergy for training prospective verification representatives does not include adequate and accurate material in the following areas as they pertain to low volume consumers:

- a. Information about verification; contrary to section 7 of Ontario Regulation 90/99 and sections 5.3(a) and 5.3(b)(v) of the Codes; and
- b. Information relating to consumer cancellation rights; contrary to section 7 of Ontario Regulation 90/99 and sections 5.3(a) and 5.3(b)(vi) of the Codes.

### **Record Retention**

3. morEnergy 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 the retailer in relation to low-volume consumers contrary to section 5.10(g) of the Codes.

### **Requirements for Identification Badges**

4. 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.
5. 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.

### **Business Cards**

During the inspection morEnergy confirmed that all business cards used by morEnergy are produced in the same format and contain the same content. morEnergy has

contravened the following in relation to the electricity and gas business card requirements:

6. During the inspection it was observed that the business card does not state the electricity and gas licence numbers issued to morEnergy under the Act, nor does it state morEnergy's toll-free telephone number; contrary to section 5 of Ontario Regulation 90/99 and section 2.2(a) and (d) of the Codes.
7. It is also Board staff's view that as the content of the business cards provided by morEnergy are non-compliant with the legal and regulatory requirements, it is likely that salespersons that call on a consumer in person and offer 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 the Codes.

### **Contract content requirements for new contracts**

During Phase I of the inspection, the standard form gas and electricity contracts being used by morEnergy were reviewed. During Phase II of the inspection 25 gas transactions and 25 electricity transactions were reviewed. A list of the contracts reviewed is attached at Appendix "A". In each of the 25 gas and electricity verification transactions reviewed, morEnergy confirmed that the standard form gas and electricity contracts had been used. In total, in all 25 gas and electricity cases, morEnergy contravened the following requirements in relation to contract content requirements:

8. The contract including the 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.
9. 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 canceled without cost of penalty during this 10 day period; contrary to section 7(1)8 of Ontario Regulation 389/10.
10. 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.

11. 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.
12. The contract contains incorrect information regarding the calculation of a cancellation fee payable under the contract for gas and electricity as it states a cancellation fee will be based on historical consumption patterns to project future usage. This is not in accordance with section 23(1)1 and 23(1)2 of Ontario Regulation 389/10 which specifies a cancellation fee payable of not more than \$100 for gas and \$50 for electricity for each year, or part year, remaining on the contract; contrary to section 7(1)13 of Ontario Regulation 389/10.
13. The contract fails to include the applicable circumstances prescribed in section 21(b) & (e) of Ontario Regulation 389/10 which provide that the consumer can cancel the contract without cost or penalty; contrary to section 7(1)13 of Ontario Regulation 389/10.
14. The contract only provides for one signature from the consumer to give their acknowledgement that they have received a copy of the terms and conditions and their agreement to the contract. The signature of the person acting on behalf of morEnergy is found after the signature of the consumer; contrary to section 7(1)17 and 7(1)18 of Ontario Regulation 389/10.
15. The consumer’s rights section of the contract terms and conditions contains a pre ECPA reaffirmation statement that the reaffirmation period is 10 to 60 days. This 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.

**Written confirmation of cancellation**

During the inspection, morEnergy stated that its business practice was not to send a written confirmation to any consumers who requested cancellation of their contract where the consumer had not been provided with gas or electricity by morEnergy.

16. Three gas cancellation call transactions and three electricity cancellation call transactions were reviewed (contract numbers as set out in Appendix A) and it was noted that in all six cases, not one written confirmation was sent to the consumer following the cancellation call; contrary to section 22(4)(b) of Ontario Regulation 389/10.

**Compliance monitoring and quality assurance program**

17. During the inspection, morEnergy 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 7.5 of the Codes.

**Verification Calls - use of the applicable Board-approved verification script**

During the inspection 25 positive gas verification call transactions were reviewed against all applicable legal and regulatory requirements. Attached at Appendix A is a complete list of calls reviewed with corresponding sample numbers and contract numbers.

18. It was observed that in all 25 positive gas verification calls reviewed, the verification representative:
  - a. Confirmed the consumer's address with the consumer but did not confirm the correct spelling of the address required by step 18 of the script; and
  - b. Deviated from the applicable Board-approved script omitting the last sentence of step 23 which offers the consumer the option of contacting morEnergy using its toll free telephone number.

The allegations set out above are in breach of section 13(2) of Ontario Regulation 389/10 and section 4.10 and 4.11(a) of the Code of Conduct for Gas Marketers (the "Marketer Code").

19. It was observed that in 12 of the 25 positive gas verification calls reviewed (sample numbers 2, 11, 12, 14, 16, 17, 18, 19, 20, 23, 24 and 25), the verification representative asked the consumer if they had received the disclosure statement and price comparison but did not ask the consumer if they had signed the disclosure statement and price comparison as required by step 10 of the Board-approved script; contrary to section 13(2) of Ontario Regulation 389/10 and section 4.10 and 4.11(a) of the Marketer Code.
20. It was observed that in 11 of the 25 positive gas verification calls reviewed (sample numbers 2, 9, 11, 14, 16, 18, 19, 20, 21, 23 and 25), the verification representative deviated from the applicable Board-approved script omitting steps 19 and 20 of the script; contrary to section 13(2) of Ontario Regulation 389/10 and section 4.10 and 4.11(a) of the Marketer Code.
21. It was observed that in eight of the 25 positive gas verification calls reviewed (sample numbers 2, 9, 16, 18, 20, 23, 24 and 25), the verification representative 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 13(2) of Ontario Regulation 389/10 and section 4.10 and 4.11(a) of the Marketer Code.
22. It was observed that in four of the 25 positive gas verification calls reviewed (sample numbers 4, 5, 10 and 22), the verification representative deviated from the applicable Board-approved script omitting step 20 of the script contrary to section 13(2) of Ontario Regulation 389/10 and section 4.10 and 4.11(a) of the Marketer Code.
23. It was observed that in three of the 25 positive gas verification calls reviewed (sample numbers 12, 13 and 24), the verification representative deviated from the applicable Board-approved script omitting steps 19 and 20 of the script. In all 3 samples, the verification also failed to state the gas price when dealing with

steps 9 and 15 of the script; contrary to section 13(2) of Ontario Regulation 389/10 and section 4.10 and 4.11(a) of the Marketer Code.

24. It was observed that in three of the 25 positive gas verification calls reviewed (sample numbers 5, 6 and 10), the verification representative provided the consumer with the incorrect website address for the Ontario Energy Board stating the website address as [www.oeb.ca](http://www.oeb.ca) contrary to section 13(2) of Ontario Regulation 389/10 and section 4.10 and 4.11(a) of the Marketer Code.
25. It was observed that in two of the 25 positive gas verification calls reviewed (sample numbers 6 and 8), the verification representative deviated from the applicable Board-approved script omitting steps 14 and 20 of the script. In both samples, the verification representative also failed to state the gas price when dealing with steps 9 and 15 of the script; contrary to section 13(2) of Ontario Regulation 389/10 and section 4.10 and 4.11(a) of the Marketer Code.
26. It was observed that in two of the 25 positive gas verification calls reviewed (sample numbers 1 and 3), the verification representative deviated from the applicable Board-approved script omitting steps 17, 18, 19 and 20 of the script contrary to section 13(2) of Ontario Regulation 389/10 and section 4.10 and 4.11(a) of the Marketer Code.
27. It was observed that in two of the 25 positive gas verification calls reviewed (sample numbers 7 and 15), the verification representative deviated from the applicable Board-approved script omitting step 20 of the script. The verification also failed to state the gas price when dealing with steps 9 and 15 of the script contrary to section 13(2) of Ontario Regulation 389/10 and section 4.10 and 4.11(a) of the Marketer Code.
28. It was observed that in one of the 25 positive gas verification calls reviewed (sample number 17), the verification representative deviated from the applicable Board-approved script omitting steps 14, 19 and 20 of the script; contrary to section 13(2) of Ontario Regulation 389/10 and section 4.10 and 4.11(a) of the Marketer Code.



29. It was observed that in one of the 25 positive gas verification calls reviewed (sample number 16), the verification representative provided incorrect information to the consumer regarding cancellation fees that may be payable under the contract. The verification representative stated that the cancellation fees will apply only after 30 days of the receipt of the 1st bill; contrary to section 13(2) of Ontario Regulation 389/10 and section 4.10 and 4.11(a) of the Marketer Code.

During the inspection 25 positive electricity verification call transactions were reviewed against all applicable legal and regulatory requirements. Attached at Appendix A is a complete list of calls reviewed with corresponding sample numbers and contract numbers.

30. It was observed that in all 25 positive electricity verification calls reviewed, the verification representative:

- a. Deviated from the applicable Board-approved script by not informing the consumer about the “Ontario Clean Energy Benefit”;
- b. Deviated from the applicable Board-approved script by not confirming the consumer's telephone number; and
- c. Deviated from the applicable Board-approved script by omitting the last sentence of step 25 which offers the consumer the option of contacting morEnergy using its toll free telephone number.

The allegations set out above are in breach of section 13(2) of Ontario Regulation 389/10 and section 4.10 and 4.11(a) of the Electricity Retailer Code of Conduct (the “Retailer Code”).

31. It was observed that in 21 of the 25 positive electricity verification calls reviewed (sample numbers 1, 2, 3, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25), the verification representative confirmed the consumer's address with the consumer but did not confirm the correct spelling of the address required by step 20 of the Board-approved script; contrary to section 13(2) of Ontario Regulation 389/10 and section 4.10 and 4.11(a) of the Retailer Code.

32. It was observed that in 16 of the 25 positive electricity verification calls reviewed (sample numbers 2, 3, 7, 8, 9, 11, 12, 14, 15, 16, 17, 19, 20, 21, 22 and 24), the verification representative 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 13(2) of Ontario Regulation 389/10 and section 4.10 and 4.11(a) of the Retailer Code.
33. It was observed that in 14 of the 25 positive electricity verification calls reviewed (sample numbers (2, 3, 5, 7, 12, 14, 15, 16, 17, 18, 19, 20, 21 and 24), the verification representative did not confirm the consumer's electricity account; contrary to section 13(2) of Ontario Regulation 389/10 and section 4.10 and 4.11(a) of the Retailer Code.
34. It was observed that in 13 of the 25 positive electricity verification calls reviewed (sample numbers 2, 3, 4, 7, 12, 14, 15, 16, 17, 18, 19, 20 and 24), the verification representative asked the consumer if they had received the disclosure statement and price comparison but did not ask the consumer if they had signed the disclosure statement and price comparison as required by step 10 of the Board-approved script; contrary to section 13(2) of Ontario Regulation 389/10 and section 4.10 and 4.11(a) of the Retailer Code.
35. It was observed that in one of the 25 positive electricity verification calls reviewed (sample number 21), the verification representative did not state the date during the call; contrary to section 13(2) of Ontario Regulation 389/10 and section 4.10 and 4.11(a) of the Retailer Code.
36. It was observed that in one of the 25 positive electricity verification calls reviewed (sample number 21), 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; contrary to sections 13(2) and 13(5) of Ontario Regulation 389/10 and section 4.10 and 4.11(e) of the Retailer Code.
37. It was observed that in one of the 25 positive electricity verification calls reviewed (sample number 4), the verification representative did not confirm the correct

spelling of the consumer's name and address; contrary to section 13(2) of Ontario Regulation 389/10 and section 4.10 and 4.11(a) of the Retailer Code.

38. It was observed that in one of the 25 positive electricity verification calls reviewed (sample number 10), the verification representative deviated from the applicable Board-approved script omitting steps 14 and 16 of the script; contrary to section 13(2) of Ontario Regulation 389/10 and section 4.10 and 4.11(a) of the Retailer Code.

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

In order to respond to this Notice and request a hearing, morEnergy 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**  
**morEnergy Savings Corp. / Blue Power Distributed Energy Corp.**  
**EB-2011-0313**

**Contract Requirements for New Contracts**

Electricity

Sample Number	Contract Number
1	RBE20145
2	RBE21099
3	RBE21375
4	ELR03835
5	RBE20193
6	RBE21527
7	ELR01372
8	ELR03630
9	RBE21526
10	RBE21525
11	ELR03612
12	RBE20140
13	ELR03212
14	RBE21465
15	RBE20030
16	ELR03622
17	RBE20308
18	ELR03240
19	ELR03214
20	ELR03948
21	ELR03215
22	ELR02054

23	ELR01408
24	ELR03608
25	RBE21525

Gas

Sample Number	Contract Number
1	RBG17544
2	RBG15726
3	RBG19757
4	RBG17610
5	RBG19514
6	RIG1038
7	RIG1040
8	RIG1068
9	RBG18129
10	RBG19525
11	RBG18393
12	RIG1003
13	RIG1057
14	RBG19528
15	RIG1355
16	RIG1349
17	RIG1325
18	RIG1361
19	RIG1017
20	RIG1353
21	RBG17925
22	RBG17573
23	RIG1055

24	RIG1035
25	RIG1000

**Written Confirmation of Cancellation**

Electricity

Sample Number	Contract Number
9	ELR 01386
12	RBE21095 (RBG19538)
24	ELR02023

Gas

Sample Number	Contract Number
7	RBG19538 (RBE21095)
12	RIG1092
21	RIG1360

**Verification Calls**

Electricity

Sample Number	Contract Number
1	RBE20145
2	RBE21099
3	RBE21375

4	ELR03835
5	RBE20193
6	RBE21527
7	ELR01372
8	ELR03630
9	RBE21526
10	RBE21525
11	ELR03612
12	RBE20140
13	ELR03212
14	RBE21465
15	RBE20030
16	ELR03622
17	RBE20308
18	ELR03240
19	ELR03214
20	ELR03948
21	ELR03215
22	ELR02054
23	ELR01408
24	ELR03608
25	RBE21525

Gas

Sample Number	Contract Number
1	RBG17544
2	RBG15726
3	RBG19757



4	RBG17610
5	RBG19514
6	RIG1038
7	RIG1040
8	RIG1068
9	RBG18129
10	RBG19525
11	RBG18393
12	RIG1003
13	RIG1057
14	RBG19528
15	RIG1355
16	RIG1349
17	RIG1325
18	RIG1361
19	RIG1017
20	RIG1353
21	RBG17925
22	RBG17573
23	RIG1055
24	RIG1035
25	RIG1000