



EB-2011-0317

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
Superior Energy Management Electricity LP, Licence Number
ER-2007-0008 and Superior Energy Management Gas LP,
Licence Number GM-2007-0084, (together, "Superior"),

**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 Superior 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 \$30,000 for breaches of enforceable provisions.

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

PARTICULARS

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

Contract content requirements for renewal contracts

Two gas renewal contracts (Contract numbers 5542698 & 5573211) were reviewed and Superior has contravened the following requirements in relation to contract content requirements for gas:

1. 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.
2. The contract fails to state that if the consumer permanently moves out of the premises to which the electricity/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.
3. Contrary to section 12 of the ECPA and sections 16(1)(a), (b) and (c) of Ontario Regulation 389/10, the contract has not been amended to give the consumer the right to cancel the contract at any time during the renewed or extended term of the contract:
 - a. Without cost or penalty, if the supplier engages in an unfair practice with respect to the consumer;
 - b. Without cost or penalty if the supplier does something described in clause 21(a) of Ontario Regulation 389/10; and
 - c. Without cost or penalty if the consumer does something described in clause 21(c) of Ontario Regulation 389/10.

4. The contract does not include a description of the circumstances prescribed in section 21(b) and (e) of Ontario Regulation 389/10 where 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.

Renewal package contents

5. During the inspection, a renewal package was reviewed (Contract Number 5542698) and it was noted that it did not contain a text-based copy of the renewal form and contains only one copy of the disclosure statement and price comparison contrary to section 18 of the ECPA and section 15(1)(b)(ii) and 15(1)(b)(iii) of Ontario Regulation 389/10.

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

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