



**EB-2012-0359**

**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 or Revocation, and an  
Administrative Penalty against morEnergy Savings Corp. &  
Blue Power Distributed Energy Corp., Licence Numbers GM-  
2010-0336 and ER-2010-0335.

**NOTICE OF INTENTION TO MAKE AN ORDER FOR COMPLIANCE, SUSPENSION  
OR REVOCATION, AND AN ADMINISTRATIVE PENALTY UNDER s. 112.3, 112.4  
and 112.5 of the *ONTARIO ENERGY BOARD ACT, 1998* (the “Notice”)**

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 or Orders under sections 112.3, 112.4 and 112.5 of the Act against morEnergy Savings Corp. and Blue Power Distributed Energy Corp. morEnergy Savings Corp. and Blue Power Distributed Energy Corp. market natural gas and retail electricity respectively. They are owned by the same parent company, share a management team and use many of the same sales agents. They are referred to collectively as “morEnergy” in this Notice. The particular Order or Orders the Board intends to make are:

- a) an order under section 112.3 of the Act requiring morEnergy to comply with a number of enforceable provisions as defined in section 3 of the Act;
- b) an order under section 112.3 declaring that any contract for which a morEnergy representative was present during any portion of the enrollment process that was not verified pursuant to section 15 of the ECPA is void;

- c) in the alternative to (b), an order under section 112.3 requiring morEnergy to verify, in accordance with a script approved by the Board, any contract for which a morEnergy representative was present during any portion of the enrollment process, failing which the contracts will be declared void;
- d) an order under section 112.3 of the Act requiring morEnergy to pay restitution to any consumers who were improperly enrolled in morEnergy contracts, whether it be by: 1) misrepresentation, or 2) by failure to verify the contract;
- e) an order under section 112.4 of the Act revoking or suspending morEnergy's electricity retailer and gas marketer licences; and
- f) an order under section 112.5 of the Act requiring morEnergy to pay an administrative penalty in the amount of \$360,000 for breaches of enforceable provisions.

## **ALLEGATIONS OF NON-COMPLIANCE**

It is alleged that morEnergy has contravened sections of the *Energy Consumer Protection Act, 2010* ("ECPA"), sections of Ontario Regulation 389/10, and sections of the Electricity Retailer Code of Conduct and the Code of Conduct for Gas Marketers (together, the "Codes of Conduct"). The alleged contraventions fall into two broad categories: 1) misrepresentation and the unauthorized enrollment of consumers into morEnergy contracts, and 2) failure to verify contracts.

### ***1. Misrepresentation and Unauthorized Enrollment in Contracts***

morEnergy has enrolled at least thirteen consumers in natural gas or electricity contracts ("Contracts") without the knowledge or consent of those consumers. Since February 2012, the Board received complaints from consumers that they had been enrolled in Contracts by morEnergy without their knowledge or consent. In particular, consumers variously alleged as follows:

- a) morEnergy sales agents misrepresented who they were and the purpose of their visit in the course of their door-to-door sales activities.

- b) morEnergy sales agents falsely represented that they were not enrolling the consumer into a Contract, whereas in fact these consumers were enrolled – without their knowledge or consent – in Contracts with morEnergy.
- c) The consumers learned at a later time that they had been enrolled without their knowledge or consent in a Contract with morEnergy.
- d) In none of the cases had the consumer agreed to enter into a Contract with morEnergy.

The details of all such consumer complaints were forwarded to morEnergy for a response in accordance with standard Board practice.

Although all such complaints were forwarded to morEnergy as indicated above, the conduct by morEnergy sales agents as outlined above continued and the Board has continued to receive similar complaints

This conduct constitutes a breach of enforceable provisions.

Further particulars are set out below.

## **2. Failure to Verify Contracts**

morEnergy sales agents used a portable electronic device to enroll consumers in Contracts with morEnergy over the internet, either in the presence of the consumers or after they had left the presence of the consumers. morEnergy then failed to verify many of these Contracts with consumers as is required by section 15 of the ECPA:

- a) morEnergy improperly treated Contracts that were entered into in the presence of morEnergy sales agents to be “internet agreements”, and therefore treated them as exempt from verification requirements pursuant to section 17 of the ECPA.
- b) This contravention relates not only to the Contracts discussed above (i.e. Contracts that were the subject of specific consumer complaints), but to several hundred additional Contracts as well.
- c) This conduct is in breach of several enforceable provisions. Further particulars are set out below.

The particulars in support of both of these allegations are set out below.

## **PARTICULARS**

### **1. Making false or misleading statements to consumers in order to enroll consumers into morEnergy Contracts without the consumers' knowledge or consent**

1.1 In thirteen cases (see the witness statements for AA, AT, AY, CN, DG, PC, KB, GD, BC, RV, MH, RL and BH), morEnergy sales agents provided false or misleading statements to consumers thereby engaging in an unfair practice contrary to section 10 of the ECPA and section 5(1) of O. Reg. 389/10, and further contrary to section 1.1(h) (Part B) of the Code of Conduct for Gas Marketers or the Electricity Retailer Code of Conduct.

In the case of AA, AT, DG, PC, KB, AY, CN, GD, BC, RV, MH, RL and BH the morEnergy sales agents falsely represented that they were not enrolling the consumer into a morEnergy Contract, whereas in actual fact these consumers were enrolled – without their knowledge or consent – in morEnergy Contracts.

In the case of KB, AT, CN, RL and BC, morEnergy sales agents represented that they were acting on behalf of the consumers' local utility or the Ontario Energy Board (which is further a breach of Section 1.1(a) (Part B) of the Code of Conduct for Gas Marketers or the Electricity Retailer Code of Conduct).

In the case of GD and DG, the morEnergy sales agent falsely stated that he could reduce the consumer's bill by a set amount every month.

In the case of BH and DG, morEnergy sales agents falsely represented that morEnergy was acting on behalf of the government to allow consumers to switch back from an energy retailer to their local utility.

In the case of KB, a morEnergy sales agent falsely stated to the consumer that her smart meter was not working properly, and that by entering into a 5-year Contract with morEnergy she would save \$30 per month on her electricity bill and \$10 per month on her natural gas bill.

In the case of BC, a morEnergy sales agent falsely stated to the consumer that he could guarantee her savings of \$80 per month if she enrolled in a morEnergy Contract.

In the case of MH, a morEnergy sales agent falsely stated to the consumer that he knew a way to circumvent the consumer's smart meter that would save \$40 – \$50 per month.

## **2. Taking an unconscionable action with respect to a consumer**

- 2.1 In one case, (see witness statement for PC, supported by the witness statement of DB) a morEnergy sales agent took action where he knew, or ought to have known, that the consumer was unable to protect her interests on account of illiteracy, thereby engaging in an unfair practice contrary to section 10 of the ECPA and section 5(2) of O. Reg. 389/10.

## **3. Failure to display a valid identification badge**

- 3.1 In seven cases (see witness statements for AA, AT, PC, GD, CN, RL and KB), morEnergy sales agents failed to prominently display an identification badge while calling on a consumer in person, thereby engaging in an unfair practice contrary to section 10 of the ECPA and section 5(6)(i) of O. Reg. 389/10, and further contrary to section 1.1(c) (Part B) of the Code of Conduct for Gas Marketers or the Electricity Retailer Code of Conduct.

## **4. Failure to offer a business card**

- 4.1 In seven cases (see witness statements for AA, AT, GD, DG, RL, CN and KB), morEnergy sales agents failed to offer the consumer a business card when calling on the consumer in person, thereby engaging in an unfair practice contrary to section 10 of the ECPA and section 5(6)(ii) of O. Reg. 389/10, and further contrary to section 1.1(b) (Part B) of the Code of Conduct for Gas Marketers or the Electricity Retailer Code of Conduct.

## **5. Failure to provide a text-based copy of Contract, disclosure statement, and price comparison**

5.1 Although a morEnergy sales agent purported to enter the consumer into a morEnergy Contract, in thirteen cases (see witness statements for AY, AA, AT, DG, PC, BH, BC, GD, CN, RV, MH, RL and KB) the morEnergy sales agent failed to provide the consumer (either before or immediately after the Contract was entered into) a text-based copy of the Contract, disclosure statement and price comparison, thereby engaging in an unfair practice contrary to section 10 of the ECPA and section 5(7) of O. Reg. 389/10, and further in breach of sections 13 and 14 of the ECPA, and section 10(1) of O. Reg. 389/10.

## **6. Entering into a Contract with someone other than the account holder or account holder's agent**

6.1 In thirteen cases (see witness statements for AY, AA, AT, DG, PC, BH, BC, GD, CN, RV, MH, RL and KB), morEnergy entered into a purported Contract with a party that was not the account holder or the account holder's agent, thereby engaging in an unfair practice contrary to section 10 of the ECPA and section 5(8) of O. Reg. 389/10. In all thirteen cases the Contract was entered into without the account holder's (or account holder's agent's) knowledge or consent. As such, the Contract was entered into with someone other than the account holder or account holder's agent.

## **7. Directing an energy distributor to provide electricity or gas to a consumer under a Contract where the Contract has not been verified**

7.1 In eight cases (see witness statements for AY, AA, AT, PC, BC, MH, RL and GD), morEnergy submitted a request to an electricity or gas distributor for a change of electricity or gas supply for the consumer and supplied electricity or gas to the consumer under a Contract to which verification applies without giving the consumer a text based copy of the Contract, disclosure statement and price comparison, without obtaining the consumer's acknowledgment of receipt of those documents, and failing to verify the Contract, contrary to section 10 of the ECPA, section 5(12) of O. Reg. 389/10 and Part B, section 3.3 (a)(b)(c)(d) and (e) of the Electricity Retailer Code of Conduct and the Code of Conduct for Gas Marketers. In all of these cases morEnergy directed an

energy distributor to provide gas or electricity to a consumer under a Contract without having verified the Contract.

## **8. Failure to state price to be paid under Contract and term of Contract**

8.1 In twelve cases (see witness statements for AY, AA, AT, BH, BC, GD, DG, CN, RV, MH, RL and KB), morEnergy sales agents failed to state the price to be paid under the Contract for the supply of gas or electricity, and failed to state the term of the Contract when speaking to the consumer for the purposes of enrolment, contrary to Section 1.1(d) (Part B) of the Code of Conduct for Gas Marketers or the Electricity Retailer Code of Conduct.

## **9. Failure to verify Contracts**

9.1 In numerous cases, including but not limited to the thirteen specific cases identified in the disclosure (see witness statements for AY, AA, AT, DG, PC, BH, BC, GD, CN, RV, MH, RL and KB), morEnergy did not verify Contracts, contrary to section 15 of the ECPA and sections 11-13 of O. Reg. 389/10. morEnergy improperly classifies Contracts entered into by a consumer in the presence of a morEnergy salesperson as an “internet agreement”, which would not require verification pursuant to an exemption in section 17 of the ECPA. However, Contracts entered into in the presence of a morEnergy salesperson are not “internet agreements” and are not subject to the exemption in section 17 of the ECPA. morEnergy has confirmed that it does not verify what it considers to be “internet agreements” (see disclosure).

**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, and that morEnergy pay an administrative penalty, and that morEnergy’s licence be revoked or suspended. Further particulars in support of the allegations set out in this Notice are provided in the disclosure.

**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 s. 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 ON 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, December 19, 2012

**ONTARIO ENERGY BOARD**

*Original signed by*

Rosemarie T. Leclair  
Chair and CEO