

Assurance of Voluntary Compliance

**Pursuant to s. 112.7 of the
*Ontario Energy Board Act, 1998***

SUNWAVE GAS & POWER INC.

ER-2011-0343 and GM-2011-0299

EB-2014-0259

November 18, 2014

I. BACKGROUND

In 2013 and 2014, Board staff conducted two separate inspections of Sunwave Gas & Power Inc. ("Sunwave"), each under the authority of the *Ontario Energy Board Act, 1998* (the "Act").

The first inspection was conducted during the period from November 2013 to April 2014. The inspection was conducted in three phases: Phase I included testing of processes with which Sunwave certified it was compliant; Phase II consisted of transactional testing of verification telephone call recordings ("verification calls") for contract enrollments and cancellations; and, Phase III consisted of transactional testing of verification calls for contract renewals and extensions. During the course of this inspection, Board staff sampled various of Sunwave's contracts, price comparisons, verification calls, contract enrollment processes, and contract cancellation processes.

A second inspection was conducted during the period October 2013 to April 2014. During this inspection, Board staff requested and reviewed the following categories of marketing and promotional materials utilized by Sunwave during the period April 1 to June 30, 2013: sales brochures; product information and data sheets; visual aids used in sales demonstrations (e.g. newspaper clippings, product comparisons, statistics, visual material, etc.); sales scripts (all sales channels); and web content.

The purpose of the inspections was to enable Board staff to review Sunwave's operations and marketing and promotional materials when marketing to low-volume consumers in order to ensure their compliance with various enforceable provisions of the Act; namely certain applicable requirements under the *Energy Consumer Protection Act, 2010* (the "ECPA"), Ontario Regulation 389/10 made

under the ECPA (the "Regulation") and the Electricity Retailer Code of Conduct and Code of Conduct for Gas Marketers (together, the "Codes"); and in order to assess their appropriateness in terms of facilitating and achieving compliance, and to assess their adequacy in terms of identifying any potential need for remedial action.

Representatives of Sunwave and Board staff met to discuss Board staff's Inspection Report, to arrive at a mutual understanding of the nature of the findings, and to establish the terms of this Assurance of Voluntary Compliance.

II. FINDINGS

1. Price Comparisons - incorrect versions accompanied contracts

Board staff performed transaction testing of verification calls for 50 randomly selected contracts (25 for gas and 25 for electricity). Board staff reviewed the corresponding contracts, together with their related disclosure statements and price comparisons. In ten instances, Sunwave did not provide to the consumer a correct version of the price comparison applicable to the period when the contract was entered into.

Board staff also tested Sunwave's online enrolment process. On February 25, 2014, Board staff received, in an email confirmation, an incorrect version of the price comparison. Specifically, a price comparison for the period October 1 to December 31, 2013, was provided instead of the price comparison applicable to the period when the contract was entered into.

Sunwave admits that it contravened section 12(1) of the ECPA, section 8(3) of the Regulation and section 4.6(a) of the Codes in failing to provide correct versions of price comparisons to consumers.

2. Verification Calls – not recorded

On November 24, 2013 Sunwave self-reported that it failed to record verification calls for 21 of its contracts. Fourteen of these contracts were enrolled over the internet and therefore did not require verifications calls. However, for the seven other contracts enrolled in person, Sunwave failed to record verification calls as required by law.

Sunwave admits that its failure to record verification calls for its contracts enrolled in person is a breach of section 15(3) of the ECPA and section 13(3) of the Regulation.

3. Verification Calls – deviation from Board-approved script

Board staff reviewed the verification calls for 50 randomly selected contracts and found that Sunwave's sales representatives deviated from the Board-approved verification scripts in 22 of the calls. In twelve of the calls, the deviations were technical in nature: namely, they did not verify the correct spelling of the consumer's name or address, failed to provide the OEB's website address and did not ask consumers if they would like a copy of the verification call. However, in 10 of the calls, the deviations were of a materially substantive nature such that they likely would have impacted the consumer's decision to proceed in verifying the contract: namely, by not clearly stating the purpose of the call, by failing to disclose that the consumer is under no obligation to verify the contract, and by failing to elicit a clear "yes" or "no" answer to the question on whether or not the consumer agrees to verify the contract.

Board staff also found that Sunwave conducted verification calls for consumers who enrolled over the internet. While section 17 of the ECPA provides that there is no verification requirement for internet agreements, Board staff found that, in

18 instances, the verification calls conducted for those consumers who enrolled over the internet also deviated from the Board-approved scripts.

Sunwave admits that it contravened section 15(3) of the ECPA, section 13(2) of Ontario Regulation 389/10 and sections 4.10 and 4.11 of the Codes by failing to follow Board-approved verification scripts.

4. Contract Enrollment Processing

Board staff reviewed the verification recordings for 50 randomly selected contracts. In four of those recordings, the price verified during the recording and then entered into Sunwave's consumer billing system differed from the price stated in the consumers' contracts.

Following the inspection, under cover of letter to the Board's Vice President of Consumer Services, dated May 28, 2014, Sunwave self-reported and provided additional information on such instances of non-compliance. Sunwave described the issue as "unintentional reaffirmation and process errors resulting from a system calculation error". In total, Sunwave identified 207 consumers who had collectively been overbilled in the amount of \$1,221.13 (99 gas contracts totaling \$501 and 108 electricity contracts totaling \$720.13). Sunwave confirmed to Board staff that in June 2014, Sunwave sent notification letters to all affected consumers and that electricity customers would receive a credit on their July bills, and gas customers would be issued cheques.

Sunwave admits that it contravened section 1.1(h) Part B of the Codes, section 7.2 of the RSC and section 6 of the GDAR by providing misleading and inaccurate pricing information in its verification calls with consumers.

5. Cancellations

The terms and conditions of Sunwave's contracts state that customers are only able to cancel their contracts with Sunwave in writing (by email, letter or fax) and that cancellations by telephone are not permitted. When inspecting the "pre-flow" cancellation transactions for 50 randomly selected contracts, Board staff found that, in 27 instances, Sunwave accepted notices of cancellations provided by telephone despite the fact that the contracts' terms and conditions specifically prohibited cancellation by telephone. While Sunwave may have the ability to waive provisions in its contracts if in the favour of consumers, where it accepts a cancellation by telephone, such telephone call should be recorded. In none of the aforementioned 27 instances did Sunwave make a recording of the telephone call.

Sunwave admits that it contravened section 22(4)(a) of the Regulation by failing to record notices of cancellation given by consumers over telephone.

6. Marketing and Promotional Materials

Sunwave's sales brochure to consumers for its "depend-a-bill" electricity product states a contract price but fails to disclose additional energy charges relating to that price, specifically for the global adjustment.

Sunwave admits that its promotional and marketing materials for its "depend-a-bill" electricity product fail to disclose that additional energy charges are not included in the contract price and would be payable by the consumer upon entering into the contract, in breach of section 10 of the ECPA, sections 5.1 vi and 5.5 i of the Regulation and section 1.1(h) of the Electricity Retailer Code of Conduct (Part B).

III. ASSURANCE OF VOLUNTARY COMPLIANCE

Sunwave hereby assures the Board that, effective as of the date of this Assurance, it has voluntarily taken and will continue to take the following steps with respect to each of the findings noted above:

1. As of September 2014 Sunwave ceased offering, and entering into, any new contracts, or renewals of existing contracts, with low-volume residential consumers in Ontario. For the remainder of the terms of Sunwave's electricity retailer licence ER-2011-0343 and gas marketer licence GM-2011-0299 (each of which have an expiry date of June 20, 2017), Sunwave will refrain from entering into any new contracts, or renewals of existing contracts, with low-volume residential consumers in Ontario.
2. Sunwave will continue to service its existing low-volume customers through to the expiry of their contracts.

IV. ADMINISTRATIVE MONETARY PENALTY

Sunwave agrees to pay an administrative monetary penalty to the Board in the amount of \$20,000. The amount of the administrative monetary penalty reflects the nature and number of alleged breaches of enforceable provisions as set out above, and Sunwave's commitment to refrain from contracting with low-volume residential consumers for the remainder of the terms of its current licenses. The payment shall be made no later than two weeks from the date of the filing of this Assurance. The Board will use the funds to support activities related to consumer education, outreach and other activities in the public interest.

V. CONSUMER RIGHTS

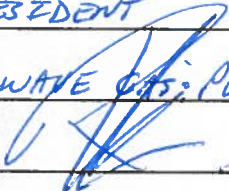
Nothing in this Assurance of Voluntary Compliance affects any rights a consumer may have under his or her contract, or under any applicable laws.

VI. FAILURE TO COMPLY

This Assurance of Voluntary Compliance has the same force and effect as an order of the Board pursuant to section 112.7(2) of the *Ontario Energy Board Act, 1998* and any failure to comply with its terms shall be deemed to be a breach of an order of the Board.

VII. EXECUTION OF ASSURANCE

I have the authority to bind Sunwave Gas & Power Inc. to the terms set out in this Assurance of Voluntary Compliance.

Name: ROBERT WEIR
Title: PRESIDENT
Company: SUNWAVE GAS & POWER INC.
Signature: 

Dated this 18th day of November, 2014.