

Ontario Energy
Board

Commission de l'énergie
de l'Ontario



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").

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

I. INTRODUCTION

By Notice of Intention to Make an Order (the "Notice") under section 112.3, 112.4 and 112.5 of the *Ontario Energy Board Act, 1998*, (the "Act") for compliance, suspension and an administrative penalty issued August 25, 2011 the Board announced that it intended to make an order against MorEnergy to pay an administrative penalty in the amount of \$45,000. Pursuant to s. 112.2(4) MorEnergy was advised that it may, within 15 days after receiving the notice, give notice to the Board requiring the Board to hold a hearing. MorEnergy has elected not to request a hearing and in order to fully and finally resolve this matter MorEnergy is prepared to admit to the deficiencies set out in the Notice and enter into this Assurance of Voluntary Compliance.

II. COMPLIANCE INSPECTION

Following the enactment of the *Energy Consumer Protection Act, 2010* (the "ECPA") and supporting regulatory instruments on January 1, 2011, the Board had a series of compliance inspections of electricity retailers and gas marketers operating in the Ontario market.

The purpose of the inspections was to confirm the statements made in the Certificate of Compliance filed by the supplier and to assess the extent to which electricity retailers' and gas marketers' practices and processes are in compliance with all applicable legal and regulatory requirements including the ECPA, Ontario Regulation 389/10, Ontario Regulation 90/99, the Code of Conduct for Gas Marketers ("~~Marketers Code~~") and the Electricity retailer Code of Conduct ("Retailer Code") (collectively referred to as the "Codes"). In addition, the extent to which supplier systems, processes and business practices are appropriate in terms of facilitating and achieving compliance and identifying the need for remedial action was assessed. The inspection was limited to the activities of suppliers related to the retailing of electricity or the marketing of gas to low-volume consumers as defined in the Act.

III Assurance of Voluntary Compliance

Training Material

morEnergy admits to the following deficiencies as set out in the Notice:

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.

Subsequent to the issuance of the Notice, morEnergy provided to Board staff a revised form of the new agent training manual and verification agent training manual to be used when morEnergy is entering into a contract with a low volume consumer. It is Board staff's view that the above noted deficiencies have been remedied.

morEnergy commits to ensuring that, effective as of the date of this Assurance, the form of and content of contract entered into with a low volume consumer meets the requirements set out in section 7 of Ontario Regulation 90/99 and section 5.2(a), 5.2(b)(i), (viii) and (ix), and 5.3(a), 5.3(b) (v) and (vi) of the Codes .

Record Retention

morEnergy admits the following deficiency as set out in the Notice:

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.

Subsequent to the issuance of the Notice, MorEnergy has provided to Board staff a revised form of signed statement from the salesperson. It is Board staff's view that the above noted deficiency has been remedied.

MorEnergy commits to ensuring that, effective as of the date of this Assurance, the requirements set out in section 5.10(g) of the Codes for record retention for each salesperson and verification representative acting on its behalf are met.

Requirements for Identification Badges

morEnergy admits the following deficiencies as set out in the Notice:

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.

Subsequent to the issuance of the Notice, MorEnergy has provided to Board staff a revised form of identification badge issued to all salespersons who meet with low volume consumers. It is Board staff's view that the above noted deficiencies have been

remedied.

MorEnergy commits to ensuring that, effective as of the date of this Assurance, the identification badge issued to every salesperson who meets in person with low volume consumers meets the requirements set out in section 6 of Ontario Regulation 90/99, section 5.6 (i) of Ontario Regulation 389/10 and sections 1.1 (c), 2.3 and 2.4(a) of the Codes.

Business Cards

The following deficiencies are set out in the Notice:

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.

Subsequent to the issuance of the Notice, MorEnergy informed Board staff that it made a mistake in providing the inspectors the incorrect form of the business card and that the business cards issued to all salespersons who meet in person with low volume consumers are in fact in compliance. Board staff requests that the above two paragraphs 6 & 7 be withdrawn from the Notice.

Contract content requirements for new contracts

morEnergy admits the following deficiencies as set out in the Notice:

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 or 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.

Subsequent to the issuance of the Notice, MorEnergy provided to Board staff a revised form of the new contract to be used when MorEnergy is entering into a contract with a low volume consumer. It is Board staff's view that the above noted deficiencies have been remedied.

MorEnergy commits to ensuring that, effective as of the date of this Assurance, the form of and content of contract entered into with a low volume consumer meets the requirements set out in section 7(1) 1,8,11,12,13,17,18 , section 7(2)(a), and sections 21 (b), 21 (e) and 23(1)1 and 23(1)2 of Ontario Regulation 389/10.

Written confirmation of cancellation

morEnergy admits the following deficiencies as set out in the Notice:

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.

Subsequent to the issuance of the Notice, MorEnergy provided to Board staff a template of the letter providing for written confirmation of cancellation. It is Board staff's view that the above noted deficiencies have been remedied.

morEnergy commits to ensuring that, effective as of the date of this Assurance, written confirmation of a cancellation to a consumer will be made promptly and in accordance with section 22(4)(b) of Ontario Regulation 389/10.

Compliance monitoring and quality assurance program

morEnergy admits the following deficiencies as set out in the Notice:

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.

Subsequent to the issuance of the Notice, morEnergy provided to Board staff details of their compliance monitoring and quality assurance program to monitor compliance. It is Board staff's view that the above noted deficiencies have been remedied.

morEnergy commits to ensuring that, effective as of the date of this Assurance, the compliance monitoring and quality assurance program to monitor compliance meets the requirements set out in section 7.4 and 7.5 of the Codes.

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

morEnergy admits the following deficiencies as set out in the Notice:

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 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.

morEnergy commits to ensuring that, effective as of the date of this Assurance, morEnergy verification representatives will act in accordance with section 13 (2) of Ontario Regulation 389/10 and sections 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.

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.

morEnergy commits to ensuring that, effective as of the date of this Assurance, morEnergy verification representatives will act in accordance with section 13 (2) of Ontario Regulation 389/10 and section 4.10 and 4.11 (a) of the Retailer Code.

IV Administrative Monetary Penalty

MorEnergy agrees to pay an administrative monetary penalty in the amount of \$40,000 to the Board by way of certified cheque and payable in four installments as follows:

1. October 1, 2011 – payment of \$10,000
2. November 1, 2011 – payment of \$10,000
3. December 1st, 2011 – payment of \$10,000
4. January 1, 2012 – payment of \$10,000

V Consumer Rights

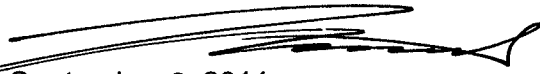
Nothing in this Assurance affects any rights a consumer may have under his or her contract, the ECPA or any other law.

VII Failure to Comply

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

I have authority to bind morEnergy Savings Corp. and Blue Power Distributed Energy

Corp to the terms set out in this Assurance of Voluntary Compliance:

Name: 

Dated: September 2, 2011

John Nesson
President