



EB-2012-0282

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

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. and
Blue Power Distributed Energy Corp., Licence Numbers GM-
2010-0336 and ER-2010-0335.

BEFORE: Cathy Spoel
Presiding Member

Ken Quesnelle
Member

DECISION AND ORDER
July 18, 2013

EB-2012-0282

On July 26, 2012 the Ontario Energy Board, on its own motion under section 112.2 of the *Ontario Energy Board Act, 1998* (the "Act"), issued a Notice of Intention to Make an Order under sections 112.3 and 112.5 of the Act (the "July Notice") against morEnergy Savings Corporation and Blue Power Distributed Energy Corporation (referred to collectively as "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

\$90,000 for breaches of enforceable provisions. The Board assigned file number EB-2012-0282 to this matter.

As set out in the July Notice, morEnergy is alleged to have contravened sections of Ontario Regulation 398/10 (General) made under the *Energy Consumer Protection Act, 2010* (the “ECPA”), sections of Ontario Regulation 90/99 (Licence Requirements – Electricity Retailers and Gas Marketers) made under the Act, sections of the Electricity Retailer Code of Conduct and the Code of Conduct for Gas Marketers (collectively, the “Codes of Conduct”), and the terms of the Assurance of Voluntary Compliance accepted by the Board in EB-2011-0313 dated September 12, 2011. Particulars in support of these allegations are set out in the July Notice.

By way of letter dated August 3, 2012, morEnergy requested that the Board hold a hearing in this matter.

EB-2012-0359

On December 19, 2012 the Board, on its own motion under section 112.2 of the Act, issued a Notice of Intention to Make an Order or orders under sections 112.3, 112.4 and 112.5 of the Act (the “December Notice”) against morEnergy as follows: (a) an Order to comply with a number of enforceable provisions; (b) an order declaring certain contracts void or, in the alternative, an order requiring the verification of certain contracts, failing which they will be declared void; (c) an order to pay restitution to certain consumers; (d) an order revoking or suspending morEnergy’s electricity retailer and gas marketer licences; and (e) an order to pay an administrative penalty in the amount of \$360,000 for breaches of enforceable provisions. The Board assigned file number EB-2012-0359 to this matter.

As set out in the December Notice, morEnergy is alleged to have contravened sections of the ECPA, sections of Ontario Regulation 398/10 (General) made under the ECPA and sections of the Codes of Conduct. Particulars in support of these allegations are set out in the December Notice.

On December 19, 2012, the Board also issued an Interim Order for Compliance under section 112.3 of the Act ordering morEnergy to cease door-to-door sales activities and to take or refrain from taking certain other actions.

By way of letter dated January 2, 2013, morEnergy requested that the Board hold a hearing in this matter.

Consolidation of Proceedings and Procedural Matters

On April 5, 2013, the Board issued a Notice of Consolidation of Proceedings, Notice of Hearing and Procedural Order No. 1. In that Notice, the Board: (i) gave notice that it was combining proceedings EB-2012-0282 and EB-2012-0359; (ii) confirmed that the parties to the combined proceeding are morEnergy and the members of Board staff (assisted by external counsel) assigned to bring these matters forward (the “Enforcement Team”); and (iii) made provision for a Motions Day and for the service of supplementary materials as between the parties.

On April 29, 2013, the Enforcement Team filed a Notice of Motion requesting that a portion of the hearing be held in London, Ontario and seeking directions respecting certain elements of the hearing. On May 9, 2013, and with the consent of morEnergy, the Enforcement Team filed a letter with the Board requesting that the Motions Day scheduled for May 13, 2013 be deferred by reason of a potential settlement of the allegations.

The Settlement Agreement

On May 24, 2013, the Enforcement Team submitted, on a confidential basis and on behalf of both parties, a Confidential Settlement Agreement executed by morEnergy, together with supporting materials. In the Confidential Settlement Agreement, the parties jointly recommend and request that the Board issue an order approving the terms of the settlement. In the letter to Board counsel accompanying the Settlement Agreement, it was noted that the parties understand and intend that, if approval is given by the Board as requested, then the Confidential Settlement Agreement and such of the supporting materials as the Board may direct will be made part of the public record in connection with the issuance of the Board’s Decision and Order approving the terms of the settlement. The parties subsequently filed an agreed form of the voluntary undertakings and assurance of voluntary compliance contemplated in section IV of the Confidential Settlement Agreement.

A copy of the Confidential Settlement Agreement (including Appendix A thereto) is attached as Appendix A to this Decision and Order.

Board Findings

The Board has reviewed the Confidential Settlement Agreement and is satisfied that it is appropriate. The Board approves the Confidential Settlement Agreement in its entirety, and accepts the voluntary undertakings and assurance of voluntary compliance in the form submitted by the parties.

The Confidential Settlement Agreement includes, as one of the terms of the settlement, that the Board make no further order as to the costs of these proceedings. Given the Board's acceptance of the Confidential Settlement Agreement in its entirety, the Board makes no order as to the payment of costs in respect of this combined proceeding.

THE BOARD THEREFORE ORDERS THAT:

1. morEnergy Savings Corp. and Blue Power Distributed Energy Corp. shall, no later than August 1, 2013, file for the public record an executed copy of the voluntary undertakings and assurance of voluntary compliance in the form submitted to and accepted by the Board.
2. Each of morEnergy Savings Corp. and Blue Power Distributed Energy Corp. shall comply with all other terms and conditions of the Confidential Settlement Agreement as submitted to and approved by the Board.
3. The Interim Order for Compliance issued on December 19, 2012 shall cease to have effect on the date on which the Board receives the voluntary undertakings and assurance of voluntary compliance referred to in paragraph 1.

ISSUED at Toronto, July 18, 2013

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX A

**To
Decision and Order dated July 18, 2013**

**EB-2012-0282
EB-2012-0359**

Confidential Settlement Agreement

[See separate document attached]

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 morEnergy Savings Corp. and Blue Power Distributed Energy Corp., Licence Numbers GM-2010-0336 and ER-2010-0335.

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. and Blue Power Distributed Energy Corp., Licence Numbers GM-2010-0336 and ER-2010-0335.

CONFIDENTIAL SETTLEMENT AGREEMENT

I. INTRODUCTION

On July 26, 2012 the Ontario Energy Board, on its own motion under section 112.2 of the *Ontario Energy Board Act, 1998* (the "Act"), issued a Notice of Intention to Make an Order under sections 112.3 and 112.5 of the Act (the "July Notice") against morEnergy Savings Corporation and Blue Power Distributed Energy Corporation (referred to collectively as "morEnergy") to comply with a number of enforceable provisions as defined in section 3 of the Act and to pay an administrative penalty. By way of letter dated August 3, 2012, morEnergy requested that the Board hold a hearing in this matter.

On December 19, 2012 the Board, on its own motion under section 112.2 of the Act, issued a Notice of Intention to Make an Order or orders under sections 112.3, 112.4 and 112.5 of the Act (the "December Notice") against morEnergy as follows: (a) an order to comply with a number of enforceable provisions; (b) an order declaring certain contracts void or, in the alternative, an order requiring the verification of certain contracts, failing which they will be declared void; (c) an order to pay restitution to certain consumers; (d) an order revoking or suspending morEnergy's electricity retailer and gas marketer licenses; and (e) an order to pay an administrative penalty. On December 19, 2012, the Board also issued an Interim Order for Compliance under section 112.3 of the Act, requiring morEnergy to cease door-to-door sales activities and to take or refrain from taking certain other actions. By way of letter dated January 2, 2013, morEnergy requested that the Board hold a hearing in this matter.

In March 2013, the Regulatory Audit division of the Board's Compliance Staff issued an Audit Report in regards to morEnergy's contract pricing (the "Contract Pricing Audit"). Hereinafter, the July Notice, the December Notice and the Contract Pricing Audit are collectively referred to as the "Proceedings".

In order to fully and finally resolve the Proceedings, morEnergy and the Board's Compliance Staff jointly recommend and request that the Panel of the Board assigned to these Proceedings issue an Order approving this Settlement Agreement between morEnergy and the Board's Compliance Staff based on the following terms:

II. ADMITTED FACTS

1. Subject to the Panel approving this Settlement Agreement, and as the basis for the findings, assurances, remedial actions and other terms set out herein:
 - a. morEnergy admits to all of the facts and to all of the allegations of non-compliance set out in the July Notice and the December Notice, and in the Contract Pricing Audit, with the exception of the allegations in the December Notice regarding Misrepresentations and Unauthorized Enrollment in Contracts by morEnergy sales agents and the Particulars in respect thereof (the "Misrepresentation Allegations"), which allegations and particulars morEnergy agrees not to dispute; and
 - b. In respect of all consumer complainants referred to in paragraph 4, below, morEnergy (i) agrees that the customers' written complaints and/or will-says will be admitted in evidence without formal proof before the Panel at the hearing of the joint submission to approve this Settlement Agreement, for the truth of their contents; (ii) agrees not to contest that those written complaints and/or will-says are sufficient to prove the truth of the Misrepresentation Allegations and to support Orders of the Panel implementing these terms of settlement in all respects, and (iii) agrees not to lead any evidence or make submissions to the contrary.

III. NOTICES TO CONSUMERS AND RESTITUTION

2. morEnergy agrees to send a notice in a form and with the content attached as Appendix "A" to all of its existing low-volume customers that were signed up over the internet during an in-person visit by a sales agent equipped with an iPad since October 11, 2011, and that were not subsequently verified and affirmed (the "iPad Customers"). The notices will be sent by morEnergy on a date to be agreed upon with the Board's Compliance Staff (the "Notice Date"). morEnergy agrees that the terms of the notice offer each such customer the option, without paying any penalty or termination fee or damages in either event (and notwithstanding any provision in their contracts with morEnergy restricting their rights to terminate or providing for any such penalty, fee, or damages), either
 - a. by delivering a notice of election to morEnergy in writing within 4 weeks of the Notice Date, to reaffirm and continue in their contract with morEnergy; or
 - b. in default of sending any notice of election under paragraph 2.a., to revert automatically to system supply or standard supply, as appropriate, as of the first meter read after the Notice Date.
3. Not later than 4 weeks after the Notice Date, morEnergy will provide to the Board's Compliance Staff a list of the low-volume customers to whom a notice was sent under

paragraph 2, together with a copy of any notices of election received from such customers.

4. morEnergy agrees to pay restitution to all 13 consumer complainants referred to in the December Notice, and to any iPad Customers who may, as a result of the notices provided under paragraphs 2 and 8 complain to the Board within 4 weeks of the Notice Date that they are entitled to cancel their contracts in accordance with s. 19 (3) of the ECPA because the supplier has engaged in an unfair practice or because the agent fraudulently enrolled the customer. The restitution payable under this paragraph shall be calculated back to the date of enrollment in accordance with the terms of the ECPA, as interpreted by the Board's Bulletin entitled "Refund Payable to a Low-Volume Consumer Following Cancellation of a Contract" issued on March 15, 2012.

IV. VOLUNTARY UNDERTAKINGS AND ASSURANCES

5. morEnergy agrees to file and comply with a voluntary undertaking not to solicit or sign any new contracts for the supply of electricity or gas with any new low-volume customers for a period of 3 years from December 31, 2012, being the end of the last month in which morEnergy solicited and enrolled any low-volume customers.
6. morEnergy agrees to file and comply with a voluntary undertaking not to re-apply for a submeter license from the Board for a period of 3 years from December 31, 2012.
7. morEnergy agrees to file and comply with a voluntary assurance of compliance with respect to their continued servicing of all low volume customers.

V. RESPONSE TO CONTRACT PRICING AUDIT

8. morEnergy agrees to address the findings of the Contract Pricing Audit by reviewing all price comparison forms in respect of Energy Club and small commercial customers, and any other low volume residential consumers (other than customers referred to in paragraph 2) who were not subsequently verified and affirmed, and where such price comparison forms contain any of the deficiencies identified in the Contract Pricing Audit, morEnergy shall send a notice in a form and with content to be agreed to between morEnergy and the Board's Compliance Staff, enclosing a corrected price comparison form. The notices will be sent by morEnergy on a date to be agreed upon with the Board's Compliance Staff (the "Second Notice Date). The terms of the notice will offer each such customer the option, without paying any penalty or termination fee or damages in either event (and notwithstanding any provision in their contracts with morEnergy restricting their rights to terminate or providing for any such penalty, fee, or damages), either
 - a. by delivering a notice of election to morEnergy in writing within 4 weeks of the Second Notice Date, to opt out of their contract with morEnergy and revert automatically to system supply or standard supply, as appropriate, as of the first meter read after the Second Notice Date; or
 - b. in default of sending any notice of election, to continue in their contract with morEnergy.

9. Not later than 4 weeks after the Second Notice Date, morEnergy will provide to the Board's Compliance Staff a list of the low-volume customers to whom a notice was sent under paragraph 8, together with a copy of any notices of election received from such customers.

VI. ADMINISTRATIVE MONETARY PENALTY

10. morEnergy agrees to pay to the Board an amount as an administrative penalty and costs in the amount of \$120,000 not later than two weeks following the date of the Panel's order referred to in paragraph 13, below.

VII. EFFECT OF SETTLEMENT AGREEMENT

11. This Settlement Agreement shall constitute a full and final resolution and settlement of all issues and matters that are the subject matter of these proceedings and of all issues and matters that are known to the Board's Compliance Staff as of March 21, 2013. In respect of the three-year period commencing December 31, 2012 and for so long as morEnergy is compliant with the voluntary undertaking referred to in paragraph 5, the Board's Compliance Staff will not initiate as against morEnergy or seek to involve morEnergy in, any further inspections, investigations, audits or other compliance procedures of or relating to morEnergy's sales or contracting practices during that period up to, but not later than December 31, 2015. For better certainty, the Board's Compliance Staff is not precluded from at any time taking such steps in relation to morEnergy's practices relating to its servicing of existing low-volume customers in respect of any period or periods.
12. This Settlement Agreement is without prejudice to any rights of existing customers of morEnergy signed up by any other method or in any other periods than those referred to in paragraph 2.

VIII. JOINT REQUEST FOR ORDERS GIVING EFFECT TO THIS SETTLEMENT

13. morEnergy and the Board's Compliance Staff hereby jointly request an order of the Panel, based on the admitted facts and assurances outlined above and any findings the Panel may thereupon make in its decision and order, to the effect that:
 - a. the Panel approves this Settlement Agreement in its entirety;
 - b. morEnergy shall comply with the terms and conditions described in this Settlement Agreement, including payment of the restitution required in accordance with paragraph 4 and the administrative monetary penalty and costs amount required in accordance with paragraph 10;
 - c. the Panel accepts the voluntary undertakings and assurances referred to in paragraphs 5, 6 and 7; and
 - d. the Panel make no further order as to costs of these proceedings.
-

I have authority to bind morEnergy to the terms set out in this Settlement Agreement



SIGNATURE

Name: *John Nasser,*

Title: *President*

Dated: May ~~07~~¹⁶, 2013

Appendix A

Blue Power Distributed Energy Corp. /
morEnergy Savings Corp.
185 The West Mall
Toronto ON M9C 5L5
www.bluepwr.com

[Date]

[Contract No. _____]

[Name of Customer]

[Address]

Dear [Customer]:

Re: [Name of Account Holder / Distributor / Account Number]

On [date] you entered into a contract with Blue Power Distributed Energy Corp. / morEnergy Savings Corp. over the internet for the supply of electricity / natural gas. A recent investigation by the Ontario Energy Board has resulted in us having to contact a number of our customers, including you. We are required to advise you that we did not comply with the legal and regulatory requirement that we subsequently verify by telephone the electricity / natural gas contract that we entered into with you on [date] and you may cancel your contract as a result.

Alternatively, if you wish to remain in your contract with Blue Power Distributed Energy Corp. / morEnergy Savings Corp. for the supply of electricity / natural gas, you are required to notify us in writing within 3 weeks of receipt of this letter.

If you do not notify us in writing within the required timeframe, your contract will be cancelled and you will receive electricity / natural gas from the local utility without interruption. In this respect, you do not need to take any further action.

If you have any questions about this letter or your enrollment with Blue Power Distributed Energy Corp. / morEnergy Savings Corp., please contact the Ontario Energy Board at 1-877-632-2727 or market.operations@ontarioenergyboard.ca.

Yours truly,

Blue Power Distributed Energy Corp. / morEnergy Savings Corp.

