

October 21, 2010

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, Suite 2700
Toronto, Ontario M4P 1E4

Dear Ms. Walli,

Re: Notice of Revised Proposed Revocation and Re-issuance of Electricity Retailer and Gas Marketer Codes of Conduct October 15, 2010; (EB-2010-0245)

Pursuant to the filing of the Final Regulations in relation to the Energy Consumer Protection Act, (O. Reg 389/10), the Ontario Energy Board (the Board) released a Notice of Revised Proposal (the Notice) on October 15th, in the above noted matter. Prior to this, the Board had issued its original Notice of Proposal issued August 12, 2010, and invited written comments from Interested Parties on the proposed amendments to the Retailer/Marketer Codes of Conduct.

In the comments made during the consultation process, Active Energy, Direct Energy, Just Energy, and Summitt Energy (the Suppliers) described the operational and compliance issues in meeting the requirements of the new regulations and codes for customer contracts renewing after the Effective ECPA Date. The Suppliers noted the difficulties in simultaneously having to abide by both the "old" and "new rules" for compliance, and requested a transition period up to 120 days after the Effective ECPA date. In fact the Suppliers specifically stated:

"In retrospect, if the Suppliers were provided final approved regulations and Board Codes well before the Effective Date, such that they could have implemented the business and system changes needed in time to "send" renewal notices that are compliant with the New Rules out by September 1, 2010, then the transition period would have been September 1, 2010 until the Effective Date (January 1, 2011).¹"

In reviewing O.Reg 389/10 it is evident that such an appropriate transition for renewals has not been contemplated by the Government. As a result, in reference to the Suppliers request for a transition period, the Board rightfully noted on page 18 of the Notice, "These comments relate to the implementation issues that arise from the legislative regime and not from the Board's specific proposals. It is not within the Board's authority to alter that legislative regime...".

The Suppliers would not support the Board acting beyond its authority, and do not request that the Board attempt to alter the legislative regime. The Suppliers submit however, that the Board does have within its authority the ability to ensure a smooth transition for consumers and market participants within the legislative framework; and without constraining market activity. In this regard, the Board has rightfully noted in both the initial and revised Notices that it does not wish to unduly constrain market activity for suppliers that are in compliance with their Certification obligations.

¹ EB-2010-0245: "Supplier" Response to Board Proposals; Page 10

While the Suppliers appreciate the ability to consult on the final documents required by the Regulations and the Codes of Conduct, and encourages comments by Interested Parties, the mere fact that such documents are not finalized, results in significant constraints in market activities. The Board has clearly stated that existing contracts due to expire after the Effective ECPA date can only be automatically renewed in accordance with the new rules set out in the ECPA and the Final Regulation². However, the Board has not finalized the Disclosure Statements and Price Comparisons required for compliant renewal packages to be sent to customers whose contracts expire post January 1, 2011. As the Board is aware, under both the "old" and "new" rules, retailers and marketers must notify customers of their renewal options no earlier than 120 days and no later than 60 days prior to the expiry of the current contract. Because these documents are not finalized, retailers and marketers are unable to compliantly advise customers of their renewal options; significantly constraining market activities and consumers' ability to continue service with their supplier of choice.

As such, the Suppliers request that the Board allow retailers and marketers to compliantly advise customers of their renewal options by either:

- a. Allowing retailers and marketers to use the proposed disclosure statements and price comparisons found within the latest Notice issued October 15, 2010 for renewal packages. This would also necessitate that the Board immediately provide marketers and retailers with the utility rates and consumption scenarios outlined in the price comparison documents; or
- b. Allowing retailers and marketers to send renewal packages which are compliant with current rules in order to meet the 60 day window, followed by a subsequent mailing of the finalized documents within 10 business days of their release; and prior to December 15, 2010.

The Suppliers believe that either option will allow the intent of the Legislation, Regulations and Codes of Conduct to be carried out, without unduly constraining market activities. As such, the Suppliers urgently request that the Board respond to this request by October 22, 2010 in the manner which the Board deems appropriate.

The Suppliers would like to thank the Board for this opportunity to comment, and we look forward to the continuing consultation in this matter. Should you have any questions or comments, please contact any of the undersigned.

Yours faithfully,

Original signed by

Ric Forster
Director
Government & Regulatory Affairs
Direct Energy Marketing Limited

On behalf of Direct Energy and the Suppliers:

Michael Stedman
President- Active Energy

² EB-2010-0245 Ontario Energy Board Notice of Revised Proposal to Revoke and Re-issue a Code – October 15, 2010, page 18.

Gord Potter
Executive Vice President - Just Energy

Gerry Haggerty
President- Summitt Energy