



EB-2011-0316

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 Summitt Energy Management Inc., Licence
Numbers ER-2010-0368 and GM-2010-0369.

BEFORE: Ken Quesnelle
Presiding Member

Cathy Spoel
Member

DECISION AND ORDER

June 14, 2012

Background

The Ontario Energy Board (the “Board”), on its own motion under section 112.2 of the *Ontario Energy Board Act, 1998* (the “Act”), issued a Notice of Intention (Notice) stating that it intends to make an Order under sections 112.3 and 112.5 of the Act requiring Summitt Energy Management Inc. (“Summitt”) to comply with a number of enforceable provisions as defined in section 112.1 of the Act and to pay an administrative penalty in the amount of \$15,000 for breaches of enforceable provisions. By way of letter dated September 7, 2011, Summitt, in accordance with the opportunity provided in the Notice, requested that the Board hold a hearing on this matter. The Board therefore held a hearing into this matter. The parties to this proceeding are Summitt and the staff members of the Board (assisted by external counsel) assigned to bring forward this matter (“Compliance”).

The Board issued Procedural Order No. 1 on November 22, 2011, which established December 22nd as a provisional date for the hearing of any motions pertaining to the hearing, as well as the schedule for filings pertaining to potential motions.

Summitt filed a Notice of Motion on December 15th, 2011. The Motion sought various orders of the Board with respect to, among other things, the confidential treatment of certain information, requirements of the compliance staff to disclose certain information, a requirement for certain witness statements or summaries of anticipated oral evidence, contact information of intended witnesses, information pertaining to intended expert witnesses, the establishment of an interrogatory process, and the fixing of a hearing schedule according to a proposed timetable.

The motion was argued before the Board on December 22, 2011. Compliance agreed at the hearing to provide much of the information Summitt was requesting. The Board established January 13, 2012 as the date for the production of the “agreed to” information. Several issues, however, remained contested. The Board issued a Decision and Order and Procedural Order No. 3 regarding these outstanding issues.

On March 20, 2012, the Board heard a motion to amend the Notice brought by Compliance, and a cross motion brought by Summitt for a determination of the proper statutory interpretation of sub-sections 17 and 18 of Section 7(1) of Ontario Regulation 389/10 under the *Energy Consumer Protection Act, 2010*. The Board issued its decision on these motions on April 2, 2012.

On April 30, 2012, Summitt filed a letter with the Board requesting that the proceeding be treated as suspended since the parties were engaged in discussions concerning the settlement of the allegations.

On May 30, 2012, Compliance submitted an executed Settlement Agreement between Compliance and Summitt for the Board’s approval. A copy of the Settlement Agreement is provided in Appendix A.

Decision on Settlement Agreement

The Board has reviewed the Settlement Agreement and is satisfied that it is appropriate. The Board approves the Settlement Agreement in its entirety.

Costs

The Settlement Agreement states that there shall be no costs sought by any party or ordered by the Board with respect to this proceeding or its settlement. Since the Board has accepted the Settlement Agreement in this proceeding, the Board makes no order as to costs in this proceeding.

THE BOARD THEREFORE ORDERS THAT:

1. Summitt shall comply with terms and conditions described in the Settlement Agreement that was filed with the Board on May 30, 2012.

ISSUED at Toronto, June 14, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX A
SETTLEMENT AGREEMENT

EB-2011-0316

SUMMITT ENERGY MANAGEMENT INC.

DATED: June 14, 2012



EB-2011-0316

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
Summitt Energy Management Inc., Licence Numbers ER-
2010-0368 and GM-2010-0369

SETTLEMENT AGREEMENT

I. INTRODUCTION

The Ontario Energy Board (the "Board"), on its own motion under section 112.2 of the *Ontario Energy Board Act, 1998* (the "Act"), issued a Notice of Intention (the "Notice") on August 25, 2011 stating that it intends to make an Order under sections 112.3 and 112.5 of the Act requiring Summitt Energy Management Inc. ("Summitt") to comply with a number of enforceable provisions as defined in section 112.1 of the Act and to pay an administrative penalty in the amount of \$15,000 for breaches of enforceable provisions. By way of letter dated September 7, 2011, Summitt, in accordance with the opportunity provided in the Notice, requested that the Board hold a hearing on this matter.

II. ADMITTED FACTS AND ASSURANCES

In order to fully and finally resolve this matter, and subject to the Board issuing an Order on the following terms, Summitt and Compliance Staff jointly recommend to the Board that an Order be issued finding the following:

Summitt admits to the following breaches set out in the Notice:

1. With respect to 25 electricity contracts and 25 gas contracts reviewed, Summitt has failed to ensure that the physical placement of the signature of the person signing the contract on behalf of Summitt appears before (i.e. physically above) the acknowledgment that has to be signed and dated by the consumer or the account holder's agent; contrary to sections 7(1)17 and 7(1)18 of Ontario Regulation 389/10 and section 12 of the *Energy Consumer Protection Act, 2010*, S.O. 2010, c. 8 (the "ECPA"). A list of the contracts referred to in this paragraph is attached as Appendix A.

Summitt commits to ensuring that, effective as of the date of this Settlement Agreement, the form and content of an electricity and/or gas contract entered into with a low-volume consumer shall be in compliance with sections 7(1)17 and 7(1)18 of Ontario Regulation 389/10 and section 12 of the ECPA.

2. Board staff noted that in one of the 25 electricity transactions reviewed (Contract number F1284631), the price information in the electricity price comparison template provided to the consumer did not match the price of the program selected by the consumer under the contract. The price comparison template given to the consumer indicated time of use prices over five years as opposed to the fixed price over five years as selected by the customer; contrary to section 8(3) of Ontario Regulation 389/10, section 12 of the ECPA and sections 4.6(a) and 4.7 of the Electricity Retailer Code of Conduct.

Summitt advises Compliance Staff that this is an isolated incident and that the customer cancelled the contract one day after verification of the contract and before Summitt enrolled the contract with the utility.

Summitt commits to ensuring that, effective as of the date of this Settlement Agreement, a price comparison template that is provided to a low-volume electricity and/or gas consumer shall be in compliance with section 8(3) of Ontario Regulation 389/10, section 12 of the ECPA, and sections 4.6(a) and 4.7 of the Electricity Retailer Code of Conduct.

III. ADMINISTRATIVE MONETARY PENALTY

Summitt agrees to pay an administrative monetary penalty in the amount of \$10,000.00 to the Board by way of certified cheque within 30 days from the date this Settlement Agreement is approved by the Board.

IV. CONSUMER RIGHTS

Nothing in this Settlement Agreement affects any legal rights a consumer may have, whether under his or her contract, under the ECPA, or otherwise.

V. COSTS

There shall be no costs sought by any party or ordered by the Board with respect to this proceeding or its settlement.

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



SIGNATURE

Name: Gerry Haggarty
Title: President and Chief Executive Officer
Dated: May 29th, 2012

**Appendix A
Settlement Agreement (EB-2011-0316)**

Contract Content Requirements for New Contracts

Electricity

Sample Number	Contract Number
1	F1290722
2	F1290903
3	F1290655
4	F1289640
5	F1289572
6	F1290125
7	F1287271
8	F1290607
9	F1286652
10	F1287184
11	F1285302
12	F1287162
13	F1285314
14	F1290594
15	F1285456
16	F1289269
17	F1282610
18	F1285370
19	F1282598
20	F1282592
21	F1291254
22	F1286633
23	F1284751
24	F1284631
25	F1282762

Contract Content Requirements for New Contracts

Gas

Sample Number	Contract Number
1	F1292253
2	F1289640
3	F1289314
4	F1289350
5	F1284594
6	F1290069
7	F1289155
8	F1285254
9	F1289438
10	F1285412
11	F1289344
12	F1283302
13	F1290982
14	F1291475
15	F1290801
16	F1289282
17	F1289064
18	F1285405
19	F1286981
20	F1286839
21	F1284805
22	F1284504
23	F1287297
24	F1286649
25	F1287050