



# **ONTARIO ENERGY BOARD**

## **STAFF SUBMISSION**

APPLICATION FOR RENEWAL OF A  
GAS MARKETER LICENCE  
BY  
DIRECT ENERGY MARKETING LIMITED

EB-2009-0058

April 27, 2009

## Background

On March 26, 2009, Direct Energy Marketing Limited (DE) filed an application with the Board for a renewal of its gas marketer licence.

On April 23, 2009, the Board's Compliance Office published Notice of Intention to Make an Order for an Administrative Penalty (the "Notice") against DE for contravening an enforceable provision of the Ontario Energy Board Act, 1998 and the Code of Conduct for Gas Marketers.

The Notice states that on March 20, 2009, the Canadian Broadcasting Corporation aired its Marketplace program which featured a DE door-to-door sales agent making a false, misleading or deceptive statement to a consumer. As a result, "DE contravened section 88.4(2) of the Act, in that it engaged in an unfair practice as defined in section 2 of Ontario Regulation 200/02. DE also contravened section 2.1 of the Code of Conduct for Gas Marketers".<sup>1</sup>

On receiving a gas marketer or electricity retailer licence application Board staff review the materials contained in the application and the applicant's history. Staff will make a submission if there are issues that are of concern and may recommend conditions be placed on a licence. In reviewing an applicant's history staff examines its conduct in Ontario and other jurisdictions, the background of key individuals in the organization, and its financial information. Staff may also bring forward information on its conduct, or the conduct of any affiliates, in other jurisdictions.

## Code of Conduct for Gas Marketers

Section 2 of the Board's Code of Conduct for Gas Marketers deals with fair marketing practices. Section 2.1 (f) states that:

"A gas marketer or salesperson of a gas marketer, when marketing to a consumer, shall not make any representation or statement or give any answer or take any measure that is false or is likely to mislead a consumer".<sup>2</sup>

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<sup>1</sup> Notice of Intention to Make an Order for an Administrative Penalty under s. 112.5 of the *Ontario Energy Board Act, 1998*.

<sup>2</sup> Code of Conduct for Gas Marketers, Ontario Energy Board, December 20, 2004.

## **Direct Energy's Agent Conduct**

Although the Notice concerns a single DE sales agent infraction, it is still a significant concern that should be brought to the attention of the decision maker. Maintaining public confidence in the retail energy market is important to the Board as gas marketers and electricity retailers do business directly with the consumer. It is critical that the Board ensure that marketers and retailers are in compliance with the applicable rules.

Board staff recognizes that Direct Energy is one of Ontario's largest gas marketers. In light of the fact that the applicant is also a licensed retailer and wholesaler, and that this is the only infraction levied by the Board since 2003, staff submits that no actions or conditions be placed on DE's gas marketer licence.

Appendix A attached: Notice of Intention to Make an Order for an Administrative Penalty – Direct Energy

All of which is respectfully submitted.



**EB-2009-0117**

**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 an Administrative Penalty against  
Direct Energy Marketing Limited.

**NOTICE OF INTENTION TO MAKE AN ORDER FOR AN ADMINISTRATIVE  
PENALTY UNDER s. 112.5 of the *Ontario Energy Board Act*, 1998**

The Ontario Energy Board (the "Board"), on its own motion, intends to make an Order under subsection 112.5 of the *Ontario Energy Board Act*, 1998 (the "Act") requiring Direct Energy Marketing Limited ("DE") to pay an administrative penalty in the amount of \$15,000 for contravening an enforceable provision of the Act and the Code of Conduct for Gas Marketers.

**PARTICULAR**

The particular of non-compliance is as follows:

1. On March 20, 2009 the Canadian Broadcasting Corporation aired its Marketplace program which highlighted the conduct of door-to-door sales agents of electricity retailers and gas marketers. A DE door-to-door agent is featured making a false, misleading or deceptive statement to a consumer. DE has therefore contravened section 88.4(2) of the Act, in that it has engaged in an unfair practice as defined in section 2 of Ontario Regulation 200/02. DE has also contravened section 2.1 of the Code of Conduct for Gas Marketers. More specifically a DE sales agent with the

initials S.R, employed by DE from October 27, 2007 to March 8, 2009, is shown making the following false, misleading or deceptive statement: to a consumer:

- "now what the protection actually does is it keeps you guys at one price so whenever you guys are using your natural gas, like in the winter time, you guys are actually going to less than what the actual market price is."

**THEREFORE TAKE NOTICE** that DE may request, within fifteen days after receiving this Notice, that the Board hold a hearing on these matters. If no request for hearing is made within this time period, the Board may proceed to make an Order that DE pay an administrative penalty in the amount of \$15,000 pursuant to s. 112.5 of the Act.

**FURTHER TAKE NOTICE** that if a hearing is requested, the Board is not bound by the above noted penalty and has discretion, upon finding a contravention(s) of the Act, to make any order it deems appropriate under s. 112.3, 112.4 or 112.5 of the Act. DE is entitled to be present at the hearing with or without counsel and to adduce evidence and make submissions. Should DE fail to attend, the hearing may be conducted in its absence and DE will not be entitled to any further notice in the proceeding.

In order to respond to this Notice and request a hearing, DE must file 6 copies of this request with the office of the Board Secretary at the following address:

Ontario Energy Board  
P.O.Box 2319  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4  
Attention: Board Secretary

Email: [Boardsec@oeb.gov.on.ca](mailto:Boardsec@oeb.gov.on.ca)

Tel: 1-888-632-6273  
Fax: 416 440-7656

If a hearing is requested it will proceed before a Panel of the Board, at the offices of the Ontario Energy Board, 2300 Yonge Street, Toronto, Ontario on a date to be set by the Board.

**DATED** at Toronto, April 23, 2009

ONTARIO ENERGY BOARD

*Original signed by*

Kirsten Walli  
Board Secretary