



CASSELS BROCK  
LAWYERS

August 4, 2010

**DELIVERED BY HAND AND ELECTRONICALLY**

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

CASSELS, BROCK & BLACKWELL LLP  
sselznick@casselsbrock.com  
tel: 416.860.6883  
fax: 416.642.7147  
Our File No.: 37347-053

Attention: Ms. Kristen Walli, Board Secretary  
E Mail: boardsec@oeb.gov.on.ca

Dear Sirs/Mesdames:

**Re: IN THE MATTER OF a Notice of Intention to Make an Order for Compliance, Suspension and an Administrative Penalty Against Summitt Energy Management, dated June 17<sup>th</sup>, 2010**

**Case Number: EB-2010-0221**

Pursuant to the above-referenced Notice of Intention, please find enclosed a Notice of Motion and supporting affidavit filed on behalf of our client, Summitt Energy Management, Inc., in accordance with the Ontario Energy Board's Regulatory Electronic Submission System Guidelines and in accordance with the OEB's Rules of Practice and Procedure. We are concurrently filing two hard copies of the materials with the Board Secretary and serving a copy on OEB Compliance Staff and outside counsel by email.

At this time we have not included a memorandum of fact and law in support of the Notice of Motion, given that there may be cross-examinations on affidavit evidence that OEB Compliance Staff may profer in response to the Notice of Motion. We await advice from the OEB on a further procedural order that may issue for a motion date, and dates to file reply materials and SEM's memorandum of fact and law.



We look forward to your advice in respect of same. Should you have any questions or wish to discuss this matter, please feel free to contact the undersigned.

Yours truly,

A handwritten signature in black ink, appearing to read "Stephen Selznick". The signature is fluid and cursive, with a prominent initial 'S'.

**Stephen Selznick**

SIS/jb

cc.

Maureen Helt, Legal Counsel, Ontario Energy Board (via email)  
Phil Tunley, Stockwoods LLP (via email)  
Marc Mercier, Cassels Brock & Blackwell LLP  
Summitt Energy Management Inc.

**EB-2010-0221**

## **ONTARIO ENERGY BOARD**

**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 Summitt Energy Management Inc. dated June 17<sup>th</sup>, 2010

### **NOTICE OF MOTION (returnable on a date to be fixed by the Board)**

Summitt Energy Management Inc. ("**SEM**") will make a motion to the Ontario Energy Board (the "**Board**"), on a date and time to be fixed by the Board or as soon after that time as the motion can be heard, at 2300 Yonge Street, 27<sup>th</sup> Floor, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

#### **THE MOTION IS FOR:**

1. An order requiring Compliance Staff to disclose and provide a copy of every document upon which it intends to rely as evidence and to provide SEM the opportunity to examine any other relevant document;
2. An order requiring Compliance Staff to provide a signed witness statement for every witness upon whose oral evidence it intends to rely or, where there is no signed witness statement for a witness, a summary of the anticipated oral evidence of the witness;
3. An order requiring Compliance Staff to provide SEM with the name and current contact information for each witness it intends to call at the hearing;

4. An order permitting pre-hearing examinations of the individual SEM customers identified in the Board's June 17, 2010 Notice of Intention to Make an Order (the "**Customers**"), and any other witnesses proffered by Compliance Staff attesting to the character, propriety of conduct or competence of SEM and/or its sales agents;
5. An order requiring Compliance Staff to provide SEM with the name and current contact information for each of the 28 Customers;
6. An order requiring Compliance Staff, in respect of any expert witness it intends to call, to provide:
  - (i) a list of the expert witnesses it intends to call;
  - (ii) a copy of the curriculum vitae of every expert witness included in the list in subparagraph (i);
  - (iii) a summary of the anticipated oral evidence of every expert witness included in the list in subparagraph (i); and
  - (iv) a copy of the written report of every expert witness included in the list in subparagraph (i), if Compliance Staff intends to rely on the written report in the hearing;
7. An order providing for the exchange and filing of written interrogatories;
8. An order directing that the parties participate in a technical conference, issues conference, facilitated mediation or alternative dispute resolution ("**ADR**"), and a pre-hearing conference;
9. An order establishing a deadline or deadlines for the scheduling of motions arising out of the steps set out in paragraphs 1 - 8 above;
10. An order fixing dates by which the parties are to complete the steps set out in paragraphs 1 - 8 above, in accordance with the Case Management Timetable

proposed by SEM as amended to include provision for paragraph 6 above (the "**Timetable**"), or in accordance with such other dates as the Board may advise;

11. An order adjourning the August 23, 2010 hearing (the "**Hearing**") to a date to be determined by the Board and in accordance with the Timetable; and

12. Such further and other relief as counsel may advise and the Board see deem appropriate.

**THE GROUNDS FOR THE MOTION ARE:**

**A. Overview**

13. On June 17, 2010, the Board issued a Notice of Intention to require that SEM comply with certain provisions of the *Ontario Energy Board Act*, 1998, S.O. 1998, C. 15, (Schedule B) ("**OEB Act**") and pay administrative penalties for alleged contraventions of the Act, the Code of Conduct for Gas Marketers and the Electricity Retailers Code of Conduct (the "**Codes of Conduct**").

14. Following a request for a hearing filed by SEM, the Board issued a Notice of Hearing on July 9, 2010, and scheduled an oral hearing in this matter for August 23, 2010. The Board further indicated that it may make such further procedural orders as necessary from time to time.

**B. Pre-Hearing Procedures Proposed by SEM**

15. On July 21, 2010, counsel for SEM wrote to Compliance Staff proposing a draft Timetable for the proceeding and setting out in principal the procedural steps that in its view were necessary to ensure procedural fairness and to ensure a proper hearing on the merits.

16. Among other things, SEM contemplated that it would be necessary and appropriate to convene a technical conference to resolve procedural matters, establish deadlines for the disclosure of the evidence Compliance Staff intends to

rely upon at the hearing, to schedule times for pre-hearing examinations of Compliance Staff witnesses, to provide for the exchange of interrogatories and replies, to hold issues conference, ADR and a Pre-hearing conference as necessary, and to allow for the scheduling of any motions arising out of the foregoing.

17. SEM has since amended the Timetable to provide for procedures in respect of any expert evidence Compliance Staff intends to call, if any.

18. Such procedures are expressly provided for in the OEB Act, the *Statutory Powers Procedure Act*, R.S.O. 1990, Ch. s.22 (“**SPPA**”) and/or the Board’s *Rules of Practice and Procedure*, as amended (the “**Rules**”). Where not expressly provided for in the Acts or Rules such steps are in accordance with the principles of procedural fairness.

19. On July 22, 2010, counsel retained on behalf of Compliance Staff informed SEM counsel that Compliance Staff would neither consent to the proposed timetable, nor engage in a discussion in respect of scheduling these necessary procedural steps.

20. This is a disciplinary proceeding where the issues include the potential suspension of SEM’s licence and significant administrative penalties. It is vital that the parties, with the Board’s assistance, come to an agreement in respect of the procedural requirements necessary to proceed in an appropriate and fair manner.

21. Given the complex regulatory scheme at issue, the nature and extent of the anticipated Compliance Staff evidence, and given that the Compliance Staff allegations rest solely on the basis of the uncorroborated statements of the Customers and the credibility of those Customers, SEM’s responding evidence will likely include examinations of each of the 28 Customers in addition to other Compliance Staff witnesses as the case may be. SEM’s evidence is likely to include a number of its own witnesses in chief, including expert witnesses.

22. Accordingly, SEM brings this motion seeking such order or orders from the Board as necessary to accord with the Acts, the Rules, and to ensure the requirements of fairness are met in the within proceeding.

**C. Requirements of Full and Frank Disclosure**

23. This is a disciplinary hearing in which Compliance Staff alleges non-compliance with the OEB Act, and associated Regulations and Codes of Conduct. To date the only evidence relied upon by Compliance Staff and disclosed to SEM are witness statements of 28 Customers, along with some related documentation, who impugn the conduct of independent SEM sales agents.

24. Fairness dictates SEM's entitlement to know the case against it in advance of the hearing, and requires that SEM be provided with the right of full answer and defence including in respect of these uncorroborated allegations.

25. Disciplinary proceedings are near the judicial end of the spectrum of administrative decision-making and therefore call for a high degree of procedural fairness.

26. One of the requirements of procedural fairness is adequate disclosure. It is an essential element of a fair hearing. An affected party must have an adequate opportunity of knowing the case he or she has to meet, of answering it, and of putting in his or her own case.

27. It is appropriate and necessary in this proceeding for Compliance Staff to provide full disclosure to SEM of the evidence and documents it intends to rely upon, well in advance of the hearing, so that SEM has the opportunity to know the case against it and prepare its answer accordingly.

28. It is further appropriate and necessary to establish a deadline by which such disclosure must be provided, and allow adequate time for SEM to prepare its own case in response, including the retention of any appropriate expert witnesses.

**D. Pre-Hearing Examinations of Credibility Witnesses**

29. On June 24, 2010, Compliance Staff provided SEM with 28 Customer witness statements. To the extent that SEM has knowledge of Compliance Staff's evidence, these witness statements form the basis for the allegations in the within proceeding and raise issues of credibility with respect to SEM's sales agents. This evidence calls into question the character, propriety of conduct or competence of SEM and/or its independent sales agents.

30. Fairness dictates that SEM be provided an opportunity to test this evidence in advance of the hearing during pre-hearing oral examinations.

31. From the disclosure documents received to date, the allegations as presented are based solely on uncorroborated statements alleged to have been made to the Customers by independent SEM sales agents. It is therefore crucial to provide SEM an opportunity to examine these Customers and test the veracity of their claims and the role that current market conditions may have played in their decision to terminate their contract.

32. Such examinations will provide SEM with an opportunity to know the case it has to meet and to prepare accordingly in advance of the hearing. Pre-hearing examinations will narrow the issues in dispute and may allow SEM to admit certain facts or the proof thereof, both of which would shorten the time necessary to conduct the hearing.

33. Failing to provide SEM an opportunity to examine the Customers in advance of the hearing will likely result in delays to the proceeding. If cross-examination is left until the hearing, it is likely that evidence will proffered to which SEM will require rebuttal evidence. The hearing will need to be adjourned or otherwise delayed to provide SEM an opportunity to gather rebuttal evidence and witnesses in response to testimony given at the hearing.

34. Pre-hearing examinations will not only provide SEM with the ability to know the case it has to meet, but will also streamline the hearing process. As such, any timetable ought to include time for SEM to conduct same.

**E. Right to Witness Statements and Contact Information**

35. Separate and apart from the right to pre-hearing examinations on the witness statements of the Customers, SEM is entitled to a signed witness statement or summary of the anticipated oral evidence of each witness for every witness upon whose oral evidence Compliance Staff intends to rely. This accords with procedural fairness and is necessary for SEM to know the case it has to meet.

36. Similarly, SEM is entitled to the name and last known contact information for each of the witnesses Compliance Staff intends to rely upon so that it may have an opportunity to interview same in advance of the hearing.

37. Any timetable established ought to include a deadline for Compliance Staff to provide both witness statements and name and contact information to SEM, and to allow SEM a reasonable amount of time to investigate and prepare its response.

**F. Scheduling of Pre-Hearing Procedures**

38. Part IV of the Rules provides for various pre-hearing procedures including the scheduling of a technical conference, the exchange of interrogatories and replies, an issues conference, ADR and a pre-hearing conference. These procedures are intended to facilitate resolution of procedural and substantive issues between the parties, to ensure that delays are avoided and to ensure that the requirements of procedural fairness are met.

*i. Technical Conference*

39. The Rules allow for the scheduling of a technical conference for the purposes of reviewing and clarifying: an originating process; the evidence of a party; or matters connected with interrogatories.

40. In this proceeding, such a conference is vital to clarifying the scope of the Notice of Intention and allegations put forward by Compliance Staff. In particular SEM seeks to clarify that the within proceeding be limited to an investigation in respect of the 28 Customers. There are no allegations of an ongoing non-compliant course of conduct by SEM, and none ought to be raised.

41. Additionally, there are significant issues with respect to evidentiary matters including the need to establish a timeline for disclosure, the provision of the names and addresses of witnesses Compliance Staff intends to rely upon, and the extent to which Compliance Staff may rely on Customers' evidence at the hearing.

42. It will be necessary to establish procedures by which SEM can examine OEB staff members involved in the investigation of the Customers' complaints and the process and procedures undertaken in formulating the Notice of Intention.

43. There is a further technical issue in respect of evidence SEM intends to provide, namely evidence in various audio/visual formats rather than transcript evidence.

44. These are matters properly resolved at a technical conference, and any timetable ought to account for the scheduling of same.

**ii. Exchange of Interrogatories**

45. As part of the discovery and disclosure process, the Board's Rules allow for the exchange of written interrogatories. These are intended to expedite proceedings by clarifying evidence filed by a party, simplifying issues, and permitting a full and satisfactory understanding of the matters to be considered.

46. This is an appropriate case for the exchange of written interrogatories. Once it receives disclosure from Compliance Staff, SEM is entitled to an opportunity to clarify this evidence in an effort to simply issues and gain a more fulsome and satisfactory understanding of the matters to be considered.

47. Allowing for the exchange of interrogatories and replies accords with procedural fairness and will assist the parties and the Board in expediting the proceedings, and any timetable ought to account for the scheduling of same.

48. Similarly, as provided for in the Board Rules, any timeline ought to permit an opportunity to bring a motion seeking direction from the Board where a party is not satisfied with an interrogatory response provided.

**iii. Issues Conference**

49. The Rules provide for an issues conference for the purposes of identifying issues and formulating a proposed issues list to be filed with the Board. Such a conference and narrowing of issues is intended to assist the Board in the conduct of the proceeding, where the documents filed do not sufficiently set out the matters in issue at the hearing, or to assist the parties to participate more effectively in the hearing.

50. In SEM's view such a conference is necessary and appropriate to ensure effective participation in the hearing and clarity in respect of the issues raised in Compliance Staff's allegations, and any timetable ought to account for the scheduling of same.

***iv. ADR Conference***

51. The Rules also provide for an ADR conference for the purposes of full and frank discussion between the parties in an attempt to clarify and assess positions or interests and encourage each party to evaluate its own position or interests in relation to other parties by introducing objective standards.

52. Ultimately, all parties to these proceedings, including the Board, seek to promote the interests of consumers and to act in the public interest. An ADR conference is a necessary and appropriate step in any potential resolution to the issues alleged by Compliance Staff. Any timetable ought to account for the scheduling of same, if a party requests ADR.

***v. Pre-Hearing Conference***

53. In addition to technical, issues and ADR conferences, the Board may direct the parties to make submissions in writing or to participate in a pre-hearing conference or conferences for the purposes of:

- (a) admitting certain facts or proof of them by affidavit;
- (b) permitting the use of documents by any party;
- (c) recommending the procedures to be adopted;
- (d) setting the date and place for the commencement of the hearing;
- (e) considering the dates by which any steps in the proceeding are to be taken or begun;
- (f) considering the estimated duration of the hearing; or
- (g) deciding any other matter that may aid in the simplification or the just and most expeditious disposition of the proceeding.

54. A pre-hearing conference will likely be necessary in this proceeding for any and all of these purposes. Accordingly, any timetable endorsed by the Board ought to include reference to a pre-hearing conference.

**G. Establishing a Timetable is Necessary and Appropriate**

55. In light of the wide scope of issues set out above, it is necessary and appropriate to establish a timetable in respect of these pre-hearing procedural issues. A timetable will assist both the parties and the Board in ensuring that this matter proceeds in an orderly fashion and in accordance with the principles of procedural fairness.

56. SEM has proposed a reasonable Timetable to Compliance Staff allowing for procedural steps necessary to ensure fairness and an orderly and just hearing.

57. Accordingly, the Board ought to order the implementation of a Timetable in accordance with the SEM proposal, or such other timetable as the Board sees fit.

58. The procedural measures proposed by SEM are non-exhaustive and are not intended to limit or otherwise confine any further requests to the Board in respect of procedural matters by any party, nor are they intended to confine the Board's powers to make any further orders in respect of procedural matters it may deem necessary.

59. Sections 3, 4.2, 4.8, 5.3, 5.4, 8, 10.1, 15, 21, 25.0.1, and 25.1 of the *Statutory Powers Procedures Act*,

60. Sections 4, 4.2, 4.4, 4.10, 19, 88.4, 88.9, 112.2, 112.3, 112.4 and 112.5 of the *Ontario Energy Board Act*, and

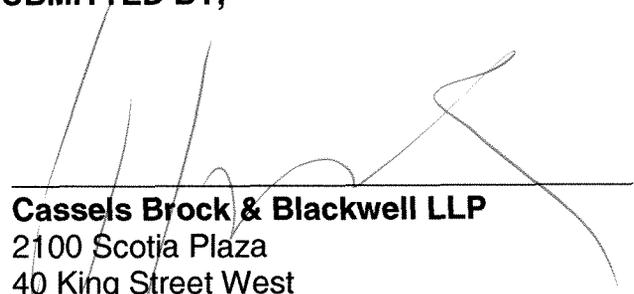
61. Rules 1, 2, 4, 8, 14, 26, 27, 28, 29, 30, 31, 33 and 34 of the *Ontario Energy Board Rules of Practice and Procedure*.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The affidavit of Daniel Lester dated August 4, 2010, and exhibits thereto;
2. Such further evidence as counsel may advise and that the Board may permit.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED BY,**

August 4, 2010



---

**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, Ontario M5H 3C2

Stephen I. Selznick LSUC#: 18593C  
Tel: 416.860.6883  
Fax: 416.642.7147  
Email: sselznick@casselsbrock.com

Jason Beitchman LSUC#: 564770  
Tel: 416.860.2988  
Fax: 647.259.7993  
Email: jbeitchman@casselsbrock.com

Lawyers for  
Summitt Energy Management Inc.

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

Attention: Kirsten Walli,  
Board Secretary  
Tel: 888.632.6273  
Fax: 416.440.7656  
Email: boardsec@oeb.gov.on.ca

AND TO: Maureen Helt  
Legal Counsel, Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, Ontario, M4P 1E4  
Tel: (416) 440-7672  
Email: Maureen.Helt@oeb.gov.on.ca

AND TO: Phil Tunley  
Stockwoods LLP  
77 King Street West  
Suite 4130, P.O. Box 140  
Toronto, Ontario, M5K 1H1  
Tel: (416) 593-3495  
Fax: (416) 593-9345  
Email: philt@stockwoods.ca

**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 and Order for Compliance, Suspension and an Administrative Penalty against Summitt Energy Management Inc., dated June 17<sup>th</sup>, 2010

**ONTARIO ENERGY BOARD**

Proceeding commenced at Toronto

**NOTICE OF MOTION**  
**(returnable on a date to be fixed by the Board)**

**Cassels Brock & Blackwell LLP**

2100 Scotia Plaza  
40 King Street West  
Toronto, Ontario M5H 3C2

Stephen I. Selznick LSUC#: 18593C  
Tel: 416.860.6883  
Fax: 416.642.7147  
Email: sselznick@casselsbrock.com

Jason Beitchman LSUC#: 56477O  
Tel: 416.860.2988  
Fax: 647.259.7993  
Email: jbeitchman@casselsbrock.com

Lawyers for:  
Summitt Energy Management Inc.

**EB-2010-0221**

## **ONTARIO ENERGY BOARD**

**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 Summitt Energy Management Inc. dated June 17<sup>th</sup>, 2010

### **AFFIDAVIT OF DANIEL LESTER (sworn August 4, 2010)**

I, Daniel Lester, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a student-at-law at Cassels Brock & Blackwell LLP and have been assisting on this file. As such, I have knowledge of the matters to which I herein depose. Where my knowledge is based on information or belief I have so stated and believe such information to be true.

2. On June 17, 2010, the Board issued a Notice of Intention to Make an Order for Compliance, Suspension and an Administrative Penalty against Summitt Energy Management Inc. (the "**Notice of Intention**"). This Notice of Intention alleges that Summitt Energy Management Inc. ("**SEM**") failed to comply with certain provisions of the *Ontario Energy Board Act*, 1998, S.O. 1998, C. 15, (Schedule B) ("**OEB Act**"), the Code of Conduct for Gas Marketers and the Electricity Retailers Code of Conduct (collectively, the "**Codes of Conduct**"). Attached as **Exhibit "A"** is a copy of the Notice of Intention.

3. On June 24, 2010, Compliance Staff informed SEM counsel that the disclosure documents were available to be picked up. Attached as **Exhibit "B"** is a copy of correspondence from Maureen Helt to Marc Mercier dated June 24, 2010.

4. These disclosure documents relate to the 28 instances of non-compliance alleged in the Notice of Intention. The documents include witness statements from 28 SEM customers (the "**Customers**") and refer to conversations between the Customers and five independent SEM sales agents who are alleged to have contravened the OEB Act and Codes of Conduct.

5. Following a request for a hearing filed by SEM, the Board issued a Notice of Hearing on July 9, 2010, and scheduled an oral hearing in this matter for August 23, 2010. The Board further indicated that it may make such further procedural orders as necessary from time to time. Attached as **Exhibit "C"** is a copy of the Notice of Hearing and Procedural Order No. 2.

6. On July 21, 2010, counsel for SEM wrote to Compliance Staff proposing a draft timetable establishing timelines to provide for significant pre-hearing procedural steps envisioned in this proceeding. Attached as **Exhibit "D"** is a copy of correspondence from Stephen Selznick to Maureen Helt dated July 21, 2010 (redacted to remove extraneous material).

7. Attached as **Exhibit "E"** is a copy of the timetable proposed on July 21, as amended on July 30 to provide for procedures in respect of any expert evidence Compliance Staff intends to call, if any, and to revise dates which have already passed (the "**Timetable**").

8. The Timetable contemplates setting a timeline for the scheduling and completion of the following procedural steps, among others:

- (a) a technical conference;
- (b) the disclosure of evidence to be relied upon by Compliance Staff, including a list of expert witnesses, if any, and related documents;

- (c) service and filing of a Notice of Motion and supporting material to allow cross-examination of the Customers and any other witnesses proffered by Compliance Staff attesting to the character, propriety of conduct or competence of SEM and/or its sales agents;
- (d) time to conduct the cross-examinations referred to in (c) above;
- (e) the exchange of interrogatories and replies, and any motions concerning interrogatories or responses thereto;
- (f) the scheduling of any or all of an issues conference, alternative dispute resolution (“**ADR**”) or Pre-hearing conferences as necessary, if requested by any party or the Board; and
- (g) setting a schedule for the hearing.

9. While assisting in this matter I have listened to audio recordings of telephone conversations between the Customers’ and SEM staff, and have been informed by SEM counsel that such calls may form part of SEM’s evidence in this proceeding. I have reviewed the Board’s Rules of Practice and Procedure allowing for the scheduling of a technical conference, and understand that such a conference may be the appropriate forum to establish procedures for how evidence of this nature is to be presented at the hearing.

10. On July 22, 2010, counsel retained on behalf of Compliance Staff informed SEM counsel that Compliance Staff could not agree to the proposed Timetable, and that SEM is not entitled to any further procedures as set out in the Timetable. Attached as **Exhibit “F”** is a copy of correspondence from Phil Tunley to Stephen Selznick, dated July 22, 2010.

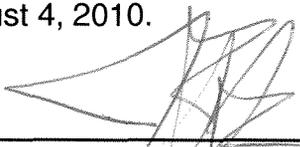
11. On July 23, 2010, counsel for SEM replied, expressing a hope that the parties could cooperate in dealing with procedural matters, which would allow them to focus

on the substantive allegations. SEM counsel also expressed concerns with respect to procedural fairness and the requirement for full disclosure and an opportunity for SEM to prepare its response. Attached as **Exhibit "G"** is a copy of correspondence from Stephen Selznick to Phil Tunley, dated July 23, 2010.

12. On July 27, 2010, counsel for Compliance Staff wrote to SEM counsel, acknowledging that the parties are in disagreement in respect of disclosure issues and the scope of the Notice of Intention and the evidence that may be admissible with respect to it. Attached as **Exhibit "H"** is a copy of correspondence from Phil Tunley to Stephen Selznick, dated July 27, 2010.

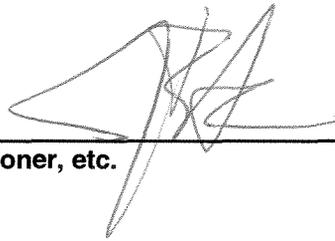
13. I swear this affidavit in support of SEM's Notice of Motion seeking to establish a procedural timetable in respect of the within proceeding, and for no other or improper purpose.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario,  
on August 4, 2010.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
Jason Beitchman

  
\_\_\_\_\_  
Daniel Lester

This is Exhibit "A" referred to in the Affidavit  
of Daniel Lester, sworn before me this  
August 4, 2010.

A handwritten signature in black ink, consisting of several overlapping, stylized strokes, positioned above a horizontal line.

**A Commissioner, etc.**



**EB-2010-0221**

**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 Summitt Energy Management

**NOTICE OF INTENTION TO MAKE AN ORDER FOR COMPLIANCE, SUSPENSION  
AND AN ADMINISTRATIVE PENALTY UNDER s. 112.3, 112.4 and 112.5 of the  
ONTARIO ENERGY BOARD ACT, 1998**

The Ontario Energy Board (the "Board"), on its own motion under section 112.2 of the *Ontario Energy Board Act, 1998* (the "Act") intends to make an Order under subsection 112.3 and 112.5 of the Act requiring Summitt Energy Management ("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 \$495,000 for breaches of enforceable provisions. The Board also intends to make an Order under section 112.4 of the Act suspending Summitt's licence until such time as Summitt has satisfied any terms and conditions as may be ordered by the Board.

**ALLEGATIONS OF NON COMPLIANCE**

Summitt has contravened sections 88.4(2)(c) and 88.4(3)(c) of the Act through the actions of five of its sales agents in twenty-eight instances who engaged in unfair practices as defined in section 2 of Ontario Regulation 200/02, by making false, misleading or deceptive statements to consumers.

Further, Summitt has contravened sections 2.1 of the Code of Conduct for Gas Marketers and the Electricity Retailers Code of Conduct (the “Codes”) through the actions of its sales agents who engaged in unfair marketing practices as defined in section 2.1 of the Codes.

Summitt has also contravened section 88.9 (1) of the Act by failing to deliver a written copy of the contract to the consumer within the time prescribed by regulation in fourteen instances. Regulation 200/02 provides, at section 3, that a written copy of the contract shall be delivered to the consumer within forty days after signing the contract

## **PARTICULARS**

Summitt sales agents are alleged to have engaged in the following particulars of non-compliance:

1. **With respect to Summitt’s sales agent MG, Summitt Representative Number NC 1721:**
  - 1.1.1 On or about April 8, 2009, MG attended at the residence of D.B and J.T. in the Village of Ayr, Ontario. MG told D.B. and J.T. that he was offering them a price cap for gas and that if the price of gas went down, so would the contract price. MG told them the current market price for gas was 41 cents/m<sup>3</sup> which was false. MG asked them to sign a document but did not explain that the document was for a five year fixed price contract with Summitt for the supply of both natural gas and electricity (Contract Number F781953). MG also did not provide a copy of the terms and conditions of the contract nor were they ever delivered to D.B. and J. T. contrary to section 88.9 (1) of the Act.
    - a. MG provided false, misleading and deceptive statements to D.B. and J.T. thereby engaging in an unfair practice contrary to section 88.4(2)(c) and 88.4(3)(c) of the Act.
    - b. MG breached section 2.1 of the Codes by failing to state the price to be paid under the contract for the supply of natural gas and electricity, and making representations or statements that were false or likely to mislead a consumer.

- c. MG also did not provide a copy of the terms and conditions of the contract nor were they delivered to D.B. and J.T. contrary to section 88.9 (1) of the Act.

1.1.2 On or about January 11, 2010, MG attended at the residence of R.C. in Milton, Ontario. He did not identify himself as being a sales agent from Summitt but rather identified himself as a representative from Union Gas. MG told R.C. that she had to re-register for the supply of gas because there was a mix up with the names in the system. MG asked R.C. to sign a document but he did not explain that the document was for a five year fixed price contract with Summitt for the supply of natural gas and electricity (Contract Number F1034641).

- a. MG provided false, misleading and deceptive statements to R.C. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
- b. MG breached section 2.1 of the Codes by failing to give the name of the marketer (Summitt) to the consumer, failing to advise R.C. that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of natural gas and electricity, and making representations or statements that were false or likely to mislead a consumer.
- c. MG also did not provide a copy of the terms and conditions of the contract nor were they delivered to R.C. contrary to section 88.9 (1) of the Act.

1.1.3 On or about March 10, 2009, MG attended at the residence of A.H. and C.M. in Milton, Ontario. He did not identify himself as being a sales agent from Summitt. MG told A.H. and C.M. that the previous owner of the residence had signed a contract offering a special price for natural gas and electricity and he could do the same deal for them. MG told them that he could save them money. MG asked them to sign a document but did not explain to them that the document was for a five year fixed price contract with Summitt for the supply of both natural gas and electricity (Contract Number F760393).

- a. MG provided false, misleading and deceptive statements to A.H. and C.M. thereby engaging in an unfair practice contrary to section 88.4 of the Act.
- b. MG breached section 2.1 of the Codes by failing to immediately and truthfully give the name of the retailer and marketer (Summitt) to the consumers, failing

to advise the consumer that Summitt was offering a contract for the supply of natural gas and electricity and that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of natural gas and electricity, and making representations or statements that were false or likely to mislead a consumer.

- 1.1.4 On or about September 12, 2009, MG attended at the residence of D.M. in Milton, Ontario. He did not identify himself as being a sales agent from Summitt but rather identified himself with a Reliance badge and represented that he was from the utility. MG stated that the price he was offering was better than the current rates and if the price went down then D.M.'s rate would go down as well. MG asked D.M. to sign a document but did not explain it was for a five year fixed price contract with Summitt for the supply of natural gas and electricity (Contract Number F975254).
  - a. MG provided false, misleading and deceptive statements to D.M. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
  - b. MG breached section 2.1 of the Codes by failing to immediately and truthfully give the name of the retailer and marketer (Summitt) to the consumer, failing to advise the consumer that Summitt was offering a contract for the supply of natural gas and electricity and that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of natural gas and electricity, and making representations or statements that were false or likely to mislead a consumer.
  - c. MG also did not provide a copy of the terms and conditions of the contract nor were they delivered to D.M. contrary to section 88.9 (1) of the Act.
- 1.1.5 On or about November 30, 2009, MG attended at the residence of P.R. in Georgetown, Ontario. He did not identify himself as being a sales agent from Summitt. MG told P.R. that the previous owner of the residence had signed a contract with a special price for the supply of natural gas and he could do the same deal for him. MG asked P.R. to sign a document but he did not explain that the document was for a five year fixed price contract with Summitt for the supply of natural gas (Contract Number F1028518).

- a. MG provided false, misleading and deceptive statements to P.R. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
- b. MG breached section 2.1 of the Code of Conduct for Gas Marketers by failing to immediately and truthfully give the name of the marketer (Summitt) to the consumer, failing to advise P.R. that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of gas, and making representations or statements that were false or likely to mislead a consumer.

1.1.6 On or about November 8, 2008, MG attended at the residence of J.S. in Guelph, Ontario. MG did not identify himself as being a sales agent from Summitt but rather had a badge that looked like it was from the Ontario Energy Board. MG told J.S. that the previous owner had a good contract and that if J.S. wanted to pay less he needed to sign the document. MG did not explain that the document was for a five year fixed price contract with Summitt for the supply of natural gas and electricity. (Contract Number A645785).

- a. MG provided false, misleading and deceptive statements to J.S. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
- b. MG breached section 2.1 of the Codes by failing to give the name of marketer (Summitt) to the consumer, failing to advise J.S. that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of natural gas and electricity, and making representations or statements that were false or likely to mislead a consumer.

1.1.7 On or about September 4, 2009, MG attended at the residence of A.S. in Guelph, Ontario. MG did not identify himself as being a sales agent from Summitt but rather said he was a supervisor from Union Gas. MG told A.S. that she would be able to get back the security deposit she paid when she set up her Union account after 3 or 4 months. MG asked A.S. to sign a document but did not advise A.S. that it was a five year fixed price contract with Summitt for the supply of natural gas and electricity (Contract Number F976610).

- a. MG provided false, misleading and deceptive statements to A.S. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
- b. MG also breached section 2.1 of the Codes by failing to give the name of the

marketer (Summitt) to the consumer, failing to advise A.S. that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of gas, and making representations or statements that were false or likely to mislead a consumer.

- c. MG also did not provide a copy of the terms and conditions of the contract nor were they delivered to A.S. contrary to section 88.9 (1) of the Act.

1.1.8 On or about February 24, 2009, MG attended at the residence of J.W. in Georgetown, Ontario. He did not identify himself as being a sales agent from Summitt but rather told J.W. that he was working for the Ontario Energy Board in conjunction with local utilities such as Enbridge. MG stated that he was there on behalf of the government to inform J.W. about the changes to meters. MG asked J.W. to sign a document but did not explain that it was a five year fixed price contract with Summitt for the supply of natural gas and electricity (Contract Number F689568).

- a. MG provided false, misleading and deceptive statements to J.W. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
- b. MG breached section 2.1 of the Codes by failing to immediately and truthfully give the name of the retailer and marketer (Summitt) to the consumer, failing to advise J.W. that Summitt was offering a contract for the supply of natural gas and electricity and that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of natural gas and electricity, and making representations or statements that were false or likely to mislead a consumer.

2. **With respect to Summitt's sales agent GW, Summitt Representative Number BL 1077:**

2.1.1 On or about September 27, 2009, GW attended at the residence of J.F. in the Village of Seeley's Bay, Ontario. He did not identify himself as being a sales agent from Summitt but rather stated he was working for Hydro One. GW told J.F. that he was there to explain how smart meters will affect them. GW asked J.F. to sign a document but did not explain it was a five year fixed price contract with Summitt for the supply of electricity (Contract Number F0994439).

- a. GW provided false, misleading and deceptive statements to J.F. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
- b. GW also breached section 2.1 of the Electricity Retailers Code of Conduct by failing to give the name of the retailer (Summitt) to the consumer and failing to advise J.F. that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of electricity, and making representations or statements that were false or likely to mislead a consumer.

2.1.2 On or about September 27, 2009, GW attended at the residence of A.G. in the Town of Harrowsmith, Ontario. He did not identify himself as being a sales agent from Summitt but rather stated he was working for Hydro One. GW told A.G. that he was there to sign A.G. up for an electricity contract with Hydro One. He did not explain to A.G. that the document he asked her to sign was for a five year fixed price contract with Summitt for the supply of electricity (Contract Number F0990096).

- a. GW provided false, misleading and deceptive statements to A.G. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
- b. GW breached section 2.1 of the Electricity Retailers Code of Conduct by failing to give the name of the retailer (Summitt) to the consumer and failing to advise A.G. that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of electricity, and making representations or statements that were false or likely to mislead a consumer.

2.1.3 On or about September 11, 2008, GW attended at the residence of C.L. in Bradford, Ontario. GW told C.L. that the price of electricity was going to increase and that he could save C.L. money if he signed a contract right away. He did not explain to C.L. that the document he asked him to sign was a five year fixed price contract with Summitt for the supply of electricity (Contract Number A612612).

- a. GW provided false, misleading and deceptive statements to C.L. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
- b. GW breached section 2.1 of the Electricity Retailers Code of Conduct by failing to state the price to be paid under the contract for the supply of

electricity, and making representations or statements that were false or likely to mislead a consumer.

- 2.1.4 On or about April 24, 2009, GW attended at the residence of Z.P. in Markham, Ontario. He did not identify himself as being a sales agent from Summitt. GW told Z.P. that he was there to talk about green energy and he explained that Z.P. could make a difference to the environment by paying \$12.99 per month for the gas company to purchase green energy. GW did not explain to Z.P. that the document he asked him to sign was for a five year fixed price contract with Summitt for the supply of natural gas (Contract Number F795190).
- a. GW provided false, misleading and deceptive statements to Z.P. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
  - b. GW breached section 2.1 of the Code of Conduct for Gas Marketers by failing to give the name of the retailer (Summitt) to the consumer and failing to advise Z.P. that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of natural gas, and making representations or statements that were false or likely to mislead a consumer.
  - c. GW also did not provide a copy of the terms and conditions of the contract nor were they delivered to Z.P. contrary to section 88.9 (1) of the Act.

**3. With respect to Summitt's sales agent GS, Summitt Representative Number MA 1002:**

- 3.1.1 On or about June 2, 2009, GS attended at the residence of A.B. in Hamilton, Ontario. He did not identify himself as being a sales agent from Summitt but rather stated he was from an energy company. GS told A.B. that he could protect her from increased electricity prices. GS asked A.B. to sign a document but did not explain that the document was a five year fixed price contract with Summitt for the supply of electricity (Contract Number F864474).
- a. GS provided false, misleading and deceptive statements to A.B. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
  - b. GS breached section 2.1 of the Electricity Retailers Code of Conduct by failing to give the name of the retailer (Summitt) to the consumer and failing to

- advise A.B. that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of electricity, and making representations or statements that were false or likely to mislead a consumer.
- c. GS also did not provide a copy of the terms and conditions of the contract nor were they ever delivered to A.B. contrary to section 88.9 (1) of the Act.
- 3.1.2 On or about March 5, 2009, GS attended at the residence of B.D. in Kitchener, Ontario. GS did not introduce himself as being a sales agent with Summitt. GS told B.D. that he could offer her the best possible price for the supply of electricity. GS told B.D. that she would remain a consumer of Kitchener Wilmot Hydro. GS asked B.D. to sign a document and that said that by signing the document the price she would pay for electricity would decrease. He did not explain that the document was a five year fixed price contract with Summitt for the supply of electricity (Contract Number F753013).
- a. GS provided false, misleading and deceptive statements to B.D. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
- b. GS breached section 2.1 of the Electricity Retailers Code of Conduct by failing to give the name of the retailer (Summitt) to the consumer and failing to advise B.D. that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of electricity, and making representations or statements that were false or likely to mislead a consumer.
- 3.1.3 On or about August 19, 2008, GS attended at the residence of W.G. in Oakville, Ontario. GS did not introduce himself as being a sales agent with Summitt but rather introduced himself as being from the utility. GS asked W.G. to sign a document but did not explain that the document was for a five year fixed price contract with Summitt for the supply of natural gas and electricity (Contract Number A615830).
- a. GS provided false, misleading and deceptive statements to W.G. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
- b. GS breached section 2.1 of the Codes by failing to give the name of the retailer (Summitt) to the consumer and failing to advise W.G. that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of natural gas and electricity, and making

representations or statements that were false or likely to mislead a consumer.

- c. GS also did not provide a copy of the terms and conditions of the contract nor were they ever delivered to W.G. contrary to section 88.9 (1) of the Act.

3.1.4 On or about April 3, 2009, GS attended at the residence of C.H. in Kitchener, Ontario. GS asked C.H. to sign a document but did not explain that the document was for a five year fixed price contract with Summitt for the supply of electricity (Contract Number F789717). Rather, GS told C.H. that he was paying too much for delivery charges and that by signing the document he would save money and get a credit back for any overcharges on the delivery cost.

- a. GS provided false, misleading and deceptive statements to C.H. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
- b. GS breached section 2.1 of the Electricity Retailers Code of Conduct by failing to state the price to be paid under the contract for the supply of electricity, and making representations or statements that were false or likely to mislead a consumer.
- c. GS also did not provide a copy of the terms and conditions of the contract nor were they delivered to C.H. contrary to section 88.9 (1) of the Act.

3.1.5 On or about August 6, 2008, GS attended at the residence of P.K. in Hamilton, Ontario. He did not identify himself as being a sales agent from Summitt but rather stated he was working for Horizon Utilities and he wanted to check the hydro bill to see if it was correct. GS told P.K. that he could provide her with an immediate discount in the price she was paying for electricity. GS asked P.K. to sign a document but did not explain that the document he wanted her to sign was for a five year fixed price contract with Summitt for the supply of electricity (Contract Number A565566).

- a. GS provided false, misleading and deceptive statements to P.K. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
- b. GS also breached section 2.1 of the Electricity Retailers Code of Conduct by failing to give the name of the retailer (Summitt) to the consumer and failing to advise P.K. that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of electricity, and making

representations or statements that were false or likely to mislead a consumer.

- c. GS also did not provide a copy of the terms and conditions of the contract nor were they delivered to P.K. contrary to section 88.9 (1) of the Act.

3.1.6 On or about October 30, 2008, GS attended at the residence of K.S. and R.S. in Kitchener, Ontario. He did not identify himself as being a sales agent from Summitt but rather stated he was a representative of Kitchener Wilmot Utilities. GS told K.S. and R.S. that the purpose of his visit was to discuss meters and he needed them to sign a document before their smart meter could be activated. GS asked R.S. to sign a document but did not explain that the document was for a five year fixed price contract with Summitt for the supply of electricity (Contract Number A657968).

- a. GS provided false, misleading and deceptive statements to K.S. and R.S. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
- b. GS breached section 2.1 of the Electricity Retailers Code of Conduct by failing to give the name of the retailer (Summitt) to the consumer and failing to advise K.S. and R.S. that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of electricity, and making representations or statements that were false or likely to mislead a consumer.
- c. GS also did not provide a copy of the terms and conditions of the contract nor were they delivered to K.S. and R.S. contrary to section 88.9 (1) of the Act.

**4 With respect to Summitt's sales agent AB, Summitt Representative Number NC 4096:**

4.1.1 On or about January 23, 2010, AB attended at the residence of Z.A. in Pickering, Ontario. He did not identify himself as being a sales agent from Summitt but rather stated he was from the utility. AB told Z.A. that he was there to install smart meters in the area. AB also told her that he was certified by the Ontario Energy Board. AB asked Z.A. to sign a document which she believed related to the installation of a smart meter. AB did not explain that the document was a five year fixed price contract with Summitt for the supply of natural gas and electricity (Contract Number F1044533).

- a. AB provided false, misleading and deceptive statements to Z.A. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
- b. AB breached section 2.1 of the Codes by failing to immediately and truthfully give the name of the retailer and marketer (Summitt) to the consumer, failing to advise the consumer that Summitt was offering a contract for the supply of natural gas and electricity and that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of natural gas and electricity, and making representations or statements that were false or likely to mislead a consumer.

4.1.2 On or about March 1, 2010, AB attended at the residence of H.G. in Mississauga, Ontario. AB stated he was there to set up a smart meter. AB asked H.G. to sign a document which he said she needed to sign in order to get her smart meter installed. He also said that smart meters were a "government required product". He did not explain that the document was a five year fixed price contract with Summitt for the supply of natural gas and electricity (Contract Number F1062523).

- a. AB provided false, misleading and deceptive statements to H.G. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
- b. AB breached section 2.1 of the Codes by failing to advise her that Summitt was offering a contract for the supply of natural gas and electricity and that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of natural gas and electricity, and making representations or statements that were false or likely to mislead a consumer.

4.1.3 On or about January 29, 2010, AB attended at the residence of P.S. in Mississauga, Ontario. He did not identify himself as being a sales agent from Summitt but rather stated he was there to set up the smart meter. AB told P.S. that as she was a new homeowner she needed to set up her smart meter. AB told P.S. she needed to sign a document in order to get her smart meter installed. He did not explain that the document he asked her to sign was a five year fixed price contract with Summitt for the supply of natural gas and electricity (Contract Number F1044536).

- a. AB provided false, misleading and deceptive statements to P.S. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
- b. AB breached section 2.1 of the Codes by failing to immediately and truthfully give the name of the retailer and marketer (Summitt) to the consumer, failing to advise her that Summitt was offering a contract for the supply of natural gas and electricity and that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of natural gas and electricity, and making representations or statements that were false or likely to mislead a consumer.

4.1.4 On or about August 22, 2009, AB attended at the residence of V.T. in Mississauga, Ontario. He did not identify himself as being a sales agent from Summitt but rather stated he was a representative of Enersource Hydro. AB told V.T. that electricity prices were going to increase because of smart meters and that she needed price protection. He guaranteed V.T. that she would save money with the price protection. AB told V.T. that she needed to sign a document to guarantee price protection from increasing electricity prices. He did not explain that the document he asked her to sign was a five year fixed price contract with Summitt for the supply of natural gas and electricity (Contract Number F946380).

- a. AB provided false, misleading and deceptive statements to V.T. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
- b. AB also breached section 2.1 of the Codes by failing to immediately and truthfully give the name of the retailer and marketer (Summitt) to the consumer, failing to advise the consumer that Summitt was offering a contract for the supply of natural gas and electricity and that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of natural gas and electricity, and making representations or statements that were false or likely to mislead a consumer.
- c. AB also did not provide a copy of the terms and conditions of the contract nor were they delivered to V.T. contrary to section 88.9 (1) of the Act.

4.1.5 On or about January 7, 2010, AB attended at the residence of T.V. in Pickering, Ontario. He did not identify himself as being a sales agent from Summitt but rather stated he was a representative of Veridian, the local utility in Pickering. AB

told T.V. that he had just changed the meter outside her home and she needed to sign a document to prove that he had attended at the residence. He did not explain that the document was for a five year fixed price contract with Summitt for the supply of natural gas and electricity (Contract Number F1041673).

- a. AB provided false, misleading and deceptive statements to T.V. and thereby engaged in an unfair practice contrary to section 88.4 of the Act.
- b. AB breached section 2.1 of the Codes by failing to immediately and truthfully give the name of the retailer and marketer (Summitt) to the consumer, failing to advise her that Summitt was offering a contract for the supply of natural gas and electricity and that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of natural gas and electricity, and making representations or statements that were false or likely to mislead a consumer.
- c. AB also did not provide a copy of the terms and conditions of the contract nor were they delivered to T.V. contrary to section 88.9 (1) of the Act.

**5 With respect to Summitt's sales agent AT, Summitt Representative Number NC 1046:**

5.1.1 On or about September 13, 2008, AT attended at the residence of J.L. in Toronto, Ontario. AT did not tell J.L. that he was a sales agent from Summitt. AT said he was there to set up a gas account. AT told J.L. that the previous owner of the residence had a gas account with Summitt. He also said that the price J.L. was paying for gas would increase dramatically if he did not sign up with Summitt. AT asked J.L. to sign a document but did not explain that the document was for a five year fixed price contract with Summitt for the supply of natural gas and electricity. (Contract Number A598000).

- a. AT provided false, misleading and deceptive statements to J.L. thereby engaging in an unfair practice contrary to section 88.4 of the Act.
- b. AT also breached section 2.1 of the Codes by failing to immediately and truthfully give the name of the retailer and marketer (Summitt) to the consumer, failing to advise him that Summitt was offering a contract for the supply of natural gas and electricity and that Summitt is not the consumer's

distributor, failing to state the price to be paid under the contract for the supply of natural gas and electricity, and making representations or statements that were false or likely to mislead a consumer.

- c. AT also did not provide a copy of the terms and conditions of the contract nor were they delivered to J.L. contrary to section 88.9 (1) of the Act.

5.1.2 On or about February 28, 2009, AT attended at the residence of J.M. in Toronto, Ontario. AT told J.M. that she was a sales agent from the local gas utility and that he was there to set up a gas account. AT told J.M. that the previous owner of the residence had a gas account with Summitt. AT asked J.M. to sign a document but did not explain that the document was for a five year fixed price contract with Summitt for the supply of natural gas and electricity. (Contract Number F758371).

- a. AT provided false, misleading and deceptive statements to J.M. thereby engaging in an unfair practice contrary to section 88.4 of the Act.
- b. AT also breached section 2.1 of the Codes by failing to immediately and truthfully give the name of the retailer and marketer (Summitt) to the consumer, failing to advise her that Summitt was offering a contract for the supply of natural gas and electricity and that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of natural gas and electricity, and making representations or statements that were false or likely to mislead a consumer.
- c. AT also did not provide a copy of the terms and conditions of the contract nor were they delivered to J.M. contrary to section 88.9 (1) of the Act.

5.1.3 On or about June 28, 2009, AT attended at the residence of J.M. in Toronto, Ontario. AT told J.M. that he was a sales agent from Summitt and that he was there to set up a gas account. AT told J.M. that the previous owner of the residence had a gas account with Summitt. AT asked J.M. to sign a document but did not explain it was a five year fixed price contract with Summitt for the supply of natural gas and electricity. (Contract Number F907878).

- a. AT provided false, misleading and deceptive statements to J.M. thereby engaging in an unfair practice contrary to section 88.4 of the Act.

- b. AT also breached section 2.1 of the Codes by failing to advise him that Summitt was offering a contract for the supply of natural gas and electricity and that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of natural gas and electricity, and making representations or statements that were false or likely to mislead a consumer.

5.1.4 On or about July 23, 2009, AT attended at the residence of L.M. in Toronto, Ontario. AT told L.M. that the previous owner of the residence had a contract with Summitt. AT told L.M. that he had to sign a contract with Summitt in order to receive gas supply. AT told L.M. that it was not possible to have his gas supplied directly from the utility. AT presented L.M. with a document and asked him to sign it. He did not explain that it was a five year fixed price contract with Summitt for the supply of natural gas and electricity. (Contract Number F937447).

- a. AT provided false, misleading and deceptive statements to L.M. thereby engaging in an unfair practice contrary to section 88.4 of the Act.
- b. AT also breached section 2.1 of the Codes by failing to advise them that Summitt was offering a contract for the supply of natural gas and electricity and that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of natural gas and electricity, and making representations or statements that were false or likely to mislead a consumer..

5.1.5 On or about May 15, 2009, AT attended at the residence of A.Z. in Toronto, Ontario. AT told A.Z. that he was a sales agent from Summitt and that he was there to offer a better price than what A.Z. was currently paying for natural gas but only if A.Z. signed up with Summitt right away. AT asked A.Z. to sign a document but did not explain that it was a five year fixed price contract with Summitt for the supply of natural gas and electricity. (Contract Number F868935).

- a. AT provided false, misleading and deceptive statements to A.Z. thereby engaging in an unfair practice contrary to section 88.4 of the Act.
- b. AT breached section 2.1 of the Codes by failing to advise him that Summitt

was offering a contract for the supply of natural gas and electricity and that Summitt is not the consumer's distributor, failing to state the price to be paid under the contract for the supply of natural gas and electricity, and making representations or statements that were false or likely to mislead a consumer.

**THEREFORE TAKE NOTICE** that Summitt 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 Summitt comply with any of the enforceable provisions listed in this Notice, that Summitt pay an administrative penalty and that Summitt's licence be suspended until such time that Summitt has satisfied any terms and conditions as may be ordered by the Board.

**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. Summitt is entitled to be present at the hearing with or without counsel and to adduce evidence and make submissions. Should Summitt fail to attend, the hearing may be conducted in its absence and Summitt will not be entitled to any further notice in the proceeding.

In order to respond to this Notice and request a hearing, Summitt 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, Ontario  
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

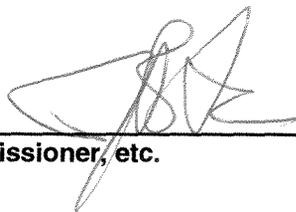
If a hearing is requested it will proceed before a Panel of the Board, at the offices of the Ontario Energy Board, 2300 Yonge Street, Toronto, Ontario on a date to be set by the Board.

**Dated** at Toronto, June 17, 2010  
**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary

This is Exhibit "B" referred to in the Affidavit of Daniel Lester, sworn before me this August 4, 2010.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

**A Commissioner, etc.**

**From:** Maureen Helt [mailto:Maureen.Helt@oeb.gov.on.ca]  
**Sent:** Thursday, June 24, 2010 11:36 AM  
**To:** Mercier, Marc  
**Subject:** Discloure  
**Importance:** High

Marc

Please be advised that the Disclosure is ready for pick up at the Board. It will be available at our Reception desk on the 27<sup>th</sup> Floor. We have also burned an electronic copy on a DVD for you as well and as such will not be sending by email.

---

Reduce Your Carbon Footprint, Please Think Before You Print.

---

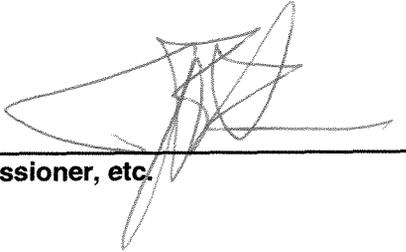
This electronic transmission, including any accompanying attachments, may contain information that is confidential, privileged and/or exempt from disclosure under applicable law, and is intended only for the recipient(s) named above. Any distribution, review, dissemination or copying of the contents of this

7/30/2010

communication by anyone other than the intended recipient(s) is strictly prohibited. If you have received this communication in error, please notify the sender immediately by return e-mail and permanently delete the copy you have received.

Ce message, transmis par courriel, y compris tout fichier joint, peut contenir des renseignements qui sont confidentiels, qui sont protégés par le secret professionnel ou qui ne peuvent être divulgués aux termes des lois applicables et s'adressent exclusivement au(x) destinataire(s) indiqué(s) ci-dessus. La distribution, la diffusion, l'examen ou la reproduction du contenu du courriel par une autre personne que le(s) destinataire(s) voulu(s) sont strictement interdits. Si vous recevez ce message par erreur, veuillez le supprimer définitivement et en aviser l'expéditeur immédiatement par retour du courriel..

This is Exhibit "C" referred to in the Affidavit  
of Daniel Lester, sworn before me this  
August 4, 2010.

  
\_\_\_\_\_  
**A Commissioner, etc.**



**EB-2010-0221**

**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 Summitt Energy Management Inc.

## **NOTICE OF HEARING AND PROCEDURAL ORDER NO. 2**

On June 17, 2010 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 to Make an Order under subsection 112.3, 112.4 and 112.5 of the Act (the “Notice”) against Summitt Energy Management Inc. (“Summitt”). The Notice informed Summitt that the Board intended to make an Order requiring Summitt to comply with a number of enforceable provisions as defined in section 112.1 of the Act, to pay an administrative penalty in the amount of \$495,000 for breaches of enforceable provisions, and that Summitt’s licence would be suspended until such time as Summitt has satisfied any terms and conditions as may be ordered by the Board.

Also on June 17, 2010 the Board issued an Interim Order under section 112.3 of the Act requiring Summitt to comply with a number of enforceable provisions as defined in section 112.1 of the Act.

The allegations of non-compliance set out in the Notice are described as follows:

1. Summitt has contravened sections 88.4(2)(c) and 88.4(3)(c) of the Act through the actions of five of its sales agents in twenty-eight instances who engaged in unfair practices as defined in section 2 of Ontario Regulation 200/02, by making false, misleading or deceptive statements to consumers as detailed in the Notice.

2. Summitt has contravened sections 2.1 of the Code of Conduct for Gas Marketers and the Electricity Retailers Code of Conduct (the "Codes") through the actions of its sales agents who engaged in unfair marketing practices as defined in section 2.1 of the Codes as detailed in the Notice.
3. Summitt has also contravened section 88.9 (1) of the Act by failing to deliver a written copy of the contract to the consumer within the time prescribed by regulation in fourteen instances as detailed in the Notice. Regulation 200/02 provides, at section 3, that a written copy of the contract shall be delivered to the consumer within forty days after signing the contract.

The particular allegations for each instance described above are set out in the Notice.

The Notice stated that Summitt may make a request, within fifteen days after receiving the Notice, requiring the Board to hold a hearing on these matters. By way of letter dated June 25, 2010 Summitt requested that the Board grant an extension of time for Summitt to elect whether or not to request a hearing.

The Board issued Procedural Order No. 1 on June 28, 2010 granting an extension of time to request a hearing from July 2, 2010 to July 9, 2010. Summitt filed a letter with the Board on July 8, 2010 setting out its request requiring the Board to hold a hearing on this matter.

The Board has determined that it will proceed with this matter by way of oral hearing. Summitt is entitled to be present at the hearing with or without counsel and to adduce evidence and make submissions. Should Summitt fail to attend, the hearing may be conducted in its absence and Summitt will not be entitled to any further notice in the proceeding.

The Board considers it necessary to make provisions for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

**THE BOARD ORDERS THAT:**

1. An oral hearing will commence in the Board's Hearing room the week of August 23, 2010 at 2300 Yonge Street, 25<sup>th</sup> Floor, Toronto, at 9:30 am.

2. Any filings to the Board must quote file number EB-2010-0221, be made through the Board's web portal at [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca), and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca). If the web portal is not available you may email your document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.
  
3. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

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

Filings : [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca)  
E-mail: [Boardsec@oeb.gov.on.ca](mailto:Boardsec@oeb.gov.on.ca)

Tel: 1-888-632-6273 (toll free)  
Fax: 416-440-7656

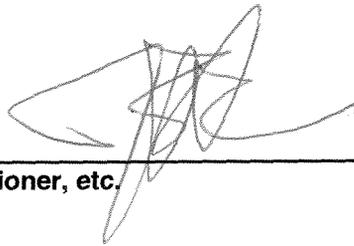
**ISSUED** at Toronto, July 9, 2010  
**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary



This is Exhibit "D" referred to in the Affidavit of Daniel Lester, sworn before me this August 4, 2010.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

---

**A Commissioner, etc.**

---

**From:** Selznick, Stephen  
**Sent:** Wednesday, July 21, 2010 1:55 PM  
**To:** Maureen Helt (maureen.helt@oeb.gov.on.ca)  
**Cc:** Gardiner, Alma; Mercier, Marc; Burden, Bill; chris.marijan@oeb.gov.on.ca  
**Subject:** OEB EB-2010-0221 - Hearing in Respect of Notice of Intention to Make an Order for Compliance against Summitt Energy Management Inc. Our File No.: 37347-053

Hello Maureen,

I write following our telephone conference last Friday.

Attached you will find a draft Timetable in Word format setting out the principal procedural steps that I envision in this case leading up to the proposed Hearing. I would like to see us work co-operatively on these procedural matters so that we both might then be able to focus our efforts on the more substantive aspects of the case. I would welcome your input.

As we discussed, I intend to bring a Motion before the OEB seeking an Order allowing Summitt Energy, prior to the Hearing, to cross-examine the evidentiary complainants referenced by initials in the June 17th, 2010 Notice of Intent to Make an Order of Compliance on their Affidavit evidence to be presented at the Hearing. In our call last Friday I advised you of my principal reasons for this step, and those reasons will be more fully set out in our Motion materials. I would hope that currently or prior to that Motion we might jointly submit a request for a Technical Conference in order to put the attached Timetable, or a mutually acceptable variation of it, before the OEB with the request for a procedural Order that encompasses that Timetable. If we are unable to come to an agreement on the major procedural steps and their timing, then I suggest that we just request a Technical Conference next week, and then put both our respective positions on the procedural steps before the OEB.

**REDACTED FOR PRIVILEGE**

7/30/2010

# REDACTED FOR PRIVILEGE

I look forward to hearing from you and will diarize my file forward to tomorrow.

**Stephen Selznick**

**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto Canada M5H 3C2

tel 416 860 6883  
fax 416 642 7147  
sselznick@casselsbrock.com

[www.casselsbrock.com](http://www.casselsbrock.com)



---

 Please consider the environment before printing this email.

7/30/2010

**EB-2010-0221**

## **ONTARIO ENERGY BOARD**

**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 Summitt Energy Management  
Inc., dated June 17<sup>th</sup>, 2010

### **CASE MANAGEMENT TIMETABLE** (as at July 20<sup>th</sup>, 2010)

<b>Item</b>	<b>Step to be completed</b>	<b>By which Party</b>	<b>Date to be completed by:</b>
1.	Technical Conference to canvas procedural matters such as this proposed Timetable, at the request of either OEB Compliance Staff ("CS") or Summitt Energy Management Inc. ("SEM")	N/A	TBD by the OEB
2.	Serve and file evidence to be relied upon by CS in this matter including Affidavits and documents furnished and disclosure to SEM	CS	By July 27, 2010

<b>Item</b>	<b>Step to be completed</b>	<b>By which Party</b>	<b>Date to be completed by:</b>
3.	Serve and file Notice of Motion and supporting material for Order to allow cross-examination of the individual SEM Customers Identified in the June 17, 2010 Notice of Intention to Make an Order, and any other affiants proffered by CS attesting to the character, propriety of conduct or competence of SEM and/or its sales agents	SEM	July 29, 2010
4.	Serve and file Responding Materials to Motion for Order to allow cross-examination (Rule 8.03), if Motion is not on consent	CS	At least 2 calendar days prior to Motion hearing date
5.	Motion hearing date for Motion referenced in Item 3 above	N/A	TBD by the OEB
6.	Cross-Examinations to be conducted of individuals pursuant to the Order sought in Item 3 above	SEM	Within 2.5 weeks of the issue date of the Order sought in Item 3 above
7.	Transcripts of cross-examinations to be filed and served with the OEB	SEM	Within 10 days following conclusion of cross-examinations
8.	Serve and file Notices of Motion (if any) compelling answers to matters refused, or in respect of undertakings given, in cross-examination	SEM	Within 10 days following conclusion of cross-examinations

<b>Item</b>	<b>Step to be completed</b>	<b>By which Party</b>	<b>Date to be completed by:</b>
9.	Serve and file SEM's evidence and documents, as well as any Motions to compel confidentiality of any evidence or documents	SEM	Within 10 days following: (a) the fulfilment of the matters ordered pursuant to the Motion in Item 8 above; (b) the date SEM could have sought an Order per item 8 above, if it chooses not to; or (c) the date the OEB rules that no such matters need to be fulfilled, which ever is applicable in the circumstances.
10.	Parties to serve and file/exchange Interrogatories in writing	SEM and CS	Within 1 week following: (a) the expiration of the 10 day period in item 9; or (b) the date the OEB rules on any Motion brought pursuant to Item 9, which ever is applicable in the circumstances.
11.	Parties to serve and file/exchange responses in writing to the Interrogatories made by the other of them	SEM and CS	Within 1 week following the conclusion of Item 10.
12.	Parties to file and serve Notices of Motion (if any) concerning Interrogatories or responses thereto	SEM and CS	Within 1 week following the conclusion of Item 11.

<b>Item</b>	<b>Step to be completed</b>	<b>By which Party</b>	<b>Date to be completed by:</b>
13.	Request for Issues Conference to be served and filed	SEM or CS	Within 5 days following: (a) the fulfilment of the matters ordered pursuant to the Motion in Item 12 above; (b) the date a party could have sought an Order per item 12 above if neither do; or (c) the date the OEB rules that no such matters need to be fulfilled out of Interrogatories, which ever is applicable in the circumstances.
14.	Issues Conference	N/A	TDB by the OEB
15.	Request for Facilitated Meditation ADR on some or all issues	SEM or CS	Within 3 days following the Issues Conference
16.	Pre-Hearing Conference	N/A	TBD by the OEB following any Facilitated Meditation pursuant to Item 15
17.	Hearing (anticipate 10 days - i.e. two 5 day weeks)	N/A	TBD by the OEB on 1 week's notice to the Parties

July 21st, 2010

Cassels Brock & Blackwell LLP  
2100 Scotia Plaza  
40 King Street West  
Toronto, Ontario M5H 3C2

Stephen I. Selznick LSUC#: 18593C  
Tel: 416.860.6883  
Fax: 416.642.7147  
E Mail: [sselznick@casselsbrock.com](mailto:sselznick@casselsbrock.com)

Lawyers for:  
Summitt Energy Management Inc.

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

Attention: Kirsten Walli,  
Board Secretary  
Tel: 888.632.6273  
Fax: 416-440-7656  
E Mail: [Boardsec@oeb.gov.on.ca](mailto:Boardsec@oeb.gov.on.ca)

**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 and Order for Compliance, Suspension and an Administrative Penalty against Summitt Energy Management Inc., dated June 17<sup>th</sup>, 2010

**ONTARIO ENERGY BOARD**

Proceeding commenced at Toronto

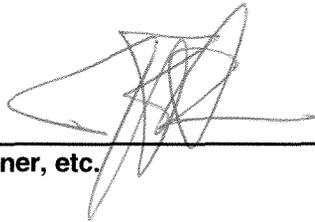
**CASE MANAGEMENT TIMETABLE**  
(as at July 20<sup>th</sup>, 2010)

Cassels Brock & Blackwell LLP  
2100 Scotia Plaza  
40 King Street West  
Toronto, Ontario M5H 3C2

Stephen I. Selznick LSUC#: 18593C  
Tel: 416.860.6883  
Fax: 416.642.7147

Lawyers for:  
Summitt Energy Management Inc.

This is Exhibit "E" referred to in the Affidavit  
of Daniel Lester, sworn before me this  
August 4, 2010.

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above a horizontal line.

**A Commissioner, etc.**

**EB-2010-0221**

## **ONTARIO ENERGY BOARD**

**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 Summitt Energy Management Inc., dated June 17<sup>th</sup>, 2010

### **CASE MANAGEMENT TIMETABLE** (as at July 30<sup>th</sup>, 2010)

<b>Item</b>	<b>Step to be completed</b>	<b>By which Party</b>	<b>Date to be completed by:</b>
1.	Technical Conference to canvas procedural matters such as this proposed Timetable, at the request of either OEB Compliance Staff ("CS") or Summitt Energy Management Inc. ("SEM")	N/A	TBD by the OEB

<b>Item</b>	<b>Step to be completed</b>	<b>By which Party</b>	<b>Date to be completed by:</b>
2.	Serve and file evidence to be relied upon by CS in this matter including Affidavits and documents furnished and disclosure to SEM including <ul style="list-style-type: none"><li>(i) a list of the expert witnesses it intends to call, if any;</li><li>(ii) a copy of the curriculum vitae of every expert witness included in the list in subparagraph (i);</li><li>(iii) a summary of the anticipated oral evidence of every expert witness included in the list in subparagraph (i); and</li><li>(iv) a copy of the written report of every expert witness included in the list in subparagraph (i), if CS intends to rely on the written report in the hearing;</li></ul>	CS	TBD by the OEB
3.	Serve and file Notice of Motion and supporting material for Order to allow cross-examination of the individual SEM Customers Identified in the June 17, 2010 Notice of Intention to Make an Order, and any other affidants proffered by CS attesting to the character, propriety of conduct or competence of SEM and/or its sales agents	SEM	TBD by the OEB
4.	Serve and file Responding Materials to Motion for Order to allow cross-examination (Rule 8.03), if Motion is not on consent	CS	At least 2 calendar days prior to Motion hearing date
5.	Motion hearing date for Motion referenced in Item 3 above	N/A	TBD by the OEB

Item	Step to be completed	By which Party	Date to be completed by:
6.	Cross-Examinations to be conducted of individuals pursuant to the Order sought in Item 3 above	SEM	Within 2.5 weeks of the issue date of the Order sought in Item 3 above
7.	Transcripts of cross-examinations to be filed and served with the OEB	SEM	Within 10 days following conclusion of cross-examinations
8.	Serve and file Notices of Motion (if any) compelling answers to matters refused, or in respect of undertakings given, in cross-examination	SEM	Within 10 days following conclusion of cross-examinations
9.	Serve and file SEM's evidence and documents, as well as any Motions to compel confidentiality of any evidence or documents	SEM	Within 10 days following: (a) the fulfilment of the matters ordered pursuant to the Motion in Item 8 above; (b) the date SEM could have sought an Order per item 8 above, if it chooses not to; or (c) the date the OEB rules that no such matters need to be fulfilled, which ever is applicable in the circumstances.
10.	Parties to serve and file/exchange Interrogatories in writing	SEM and CS	Within 1 week following: (a) the expiration of the 10 day period in item 9; or (b) the date the OEB rules on any Motion brought pursuant to Item 9, which ever is applicable in the circumstances.

Item	Step to be completed	By which Party	Date to be completed by:
11.	Parties to serve and file/exchange responses in writing to the Interrogatories made by the other of them	SEM and CS	Within 1 week following the conclusion of Item 10.
12.	Parties to file and serve Notices of Motion (if any) concerning Interrogatories or responses thereto	SEM and CS	Within 1 week following the conclusion of Item 11.
13.	Request for Issues Conference to be served and filed	SEM or CS	Within 5 days following: (a) the fulfilment of the matters ordered pursuant to the Motion in Item 12 above; (b) the date a party could have sought an Order per item 12 above if neither do; or (c) the date the OEB rules that no such matters need to be fulfilled out of Interrogatories, which ever is applicable in the circumstances.
14.	Issues Conference	N/A	TDB by the OEB
15.	Request for Facilitated Meditation ADR on some or all issues	SEM or CS	Within 3 days following the Issues Conference
16.	Pre-Hearing Conference	N/A	TBD by the OEB following any Facilitated Meditation pursuant to Item 15
17.	Hearing (anticipate 10 days - i.e. two 5 day weeks)	N/A	TBD by the OEB on 1 week's notice to the Parties

July 30th, 2010

**Cassels Brock & Blackwell LLP**

2100 Scotia Plaza  
40 King Street West  
Toronto, Ontario M5H 3C2

Stephen I. Selznick LSUC#: 18593C

Tel: 416.860.6883

Fax: 416.642.7147

E Mail: [sselznick@casselsbrock.com](mailto:sselznick@casselsbrock.com)

Jason Beitchman LSUC#: 564770

Tel: 416.860.2988

Fax: 647.259.7993

Email: [jbeitchman@casselsbrock.com](mailto:jbeitchman@casselsbrock.com)

Lawyers for:

Summitt Energy Management Inc.

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

Attention: Kirsten Walli,  
Board Secretary  
Tel: 888.632.6273  
Fax: 416-440-7656  
E Mail: [Boardsec@oeb.gov.on.ca](mailto:Boardsec@oeb.gov.on.ca)

**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 and Order for Compliance, Suspension and an Administrative Penalty against Summitt Energy Management Inc., dated June 17<sup>th</sup>, 2010

**ONTARIO ENERGY BOARD**

Proceeding commenced at Toronto

**CASE MANAGEMENT TIMETABLE**  
(as at July 30<sup>th</sup>, 2010)

**Cassels Brock & Blackwell LLP**

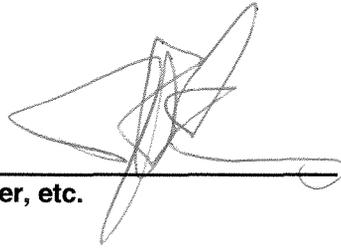
2100 Scotia Plaza  
40 King Street West  
Toronto, Ontario M5H 3C2

Stephen I. Selznick LSUC#: 18593C  
Tel: 416.860.6883  
Fax: 416.642.7147

Jason Beitchman LSUC#: 56477O  
Tel: 416.860.2988  
Fax: 647.259.7993  
Email: [jbeitchman@casselsbrock.com](mailto:jbeitchman@casselsbrock.com)

Lawyers for:  
Summitt Energy Management Inc.

This is Exhibit "F" referred to in the Affidavit of Daniel Lester, sworn before me this August 4, 2010.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

---

**A Commissioner, etc.**

---

**From:** Phil Tunley [mailto:PhilT@stockwoods.ca]  
**Sent:** Thursday, July 22, 2010 4:11 PM  
**To:** Selznick, Stephen  
**Cc:** Maureen.Helt@oeb.gov.on.ca  
**Subject:** OEB EB-2010-0221 - Summitt Energy Management Inc. - Your File No.: 37347-053

Stephen:

I have been retained by the Ontario Energy Board as compliance counsel in respect of the hearing in this matter, scheduled for the week of August 23, 2010. Maureen Helt remains involved as co-counsel, and we ask that you copy both of us on future correspondence.

Maureen has provided me with a copy of your e-mail and enclosure of July 21, 2010 regarding the procedure and timetable for the matter. In that regard, I can advise as follows:

1. The hearing dates have been set by the Board and, in accordance with its practice, can only be changed by the hearing Panel. As compliance counsel, we cannot agree to any unnecessary delay in the hearing dates, especially as the Board has been made aware of further, similar complaints about the conduct of Summitt sales agents since the Board's Interim Compliance Order was made.
2. As a result, any delay in the hearing dates which you may seek is not on consent, and should proceed by formal motion to the hearing Panel.
3. It is not the Board's normal practice to hold a technical conference in compliance proceedings of this nature, nor do we view any of the issues raised concerning the allegations of false, misleading and deceptive conduct by Summitt's sales agents to be technical in nature. As such, we do not believe a technical conference is either necessary or appropriate, and we will not join in any request you may make in that regard.

7/30/2010

4. More generally, the Act entitles Summitt to require the Board to hold a hearing in this matter, but it does not entitle Summitt to any further procedures as set out in your e-mail and enclosure. The Board's Procedural Order, setting a hearing date without more, is fully in accordance with best practices and procedural fairness in such matters.

5. As compliance counsel, we intend to call as witnesses at the hearing all of the complainants who are available. In those cases, we do not intend to file Affidavits. As such, any cross-examination should occur at the hearing, not before.

6. However, if any of the complainants are unable to attend the hearing, and we decide to file their evidence in Affidavit form, then in those particular cases we would agree to arrange for a pre-hearing cross-examination as requested.

Maureen will be responding separately to your points with respect to the audit, likely early next week.

Either Maureen or I can be available to discuss these matters further. Although I am not in the office tomorrow or Monday morning, I can be reached by e-mail or mobile, and will return any messages as quickly as I can.

I trust this is satisfactory,

**M. Philip Tunley**

**STOCKWOODS LLP**

**Barristers**

*Stockwoods LLP has moved!*

Royal Trust Tower • 77 King Street West

Suite 4130, P.O. Box 140 • Toronto-Dominion Centre

Toronto, Ontario, Canada M5K 1H1

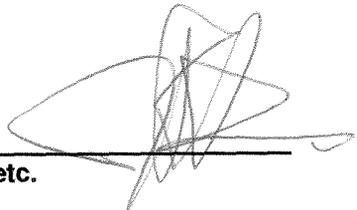
**Direct:** (416) 593-3495 | **Fax:** (416) 593-9345

**Mobile:** (647) 500-3495

[www.stockwoods.ca](http://www.stockwoods.ca) | [philt@stockwoods.ca](mailto:philt@stockwoods.ca)

*This message is intended only for the persons to whom it is addressed. It should not be read by, or delivered to any other person, as it may contain privileged or confidential information. If you have received this message in error, please notify us immediately by returning it to [philt@stockwoods.ca](mailto:philt@stockwoods.ca).*

This is Exhibit "G" referred to in the Affidavit of Daniel Lester, sworn before me this August 4, 2010.

  
\_\_\_\_\_  
**A Commissioner, etc.**

## Beitchman, Jason

---

**From:** Selznick, Stephen  
**Sent:** Friday, July 23, 2010 2:00 PM  
**To:** 'Phil Tunley'  
**Cc:** Maureen.Helt@oeb.gov.on.ca; Gardiner, Alma; Mercier, Marc; Beitchman, Jason  
**Subject:** RE: OEB EB-2010-0221 - Summitt Energy Management Inc. - Your File No.: 37347-053  
**Follow Up Flag:** Follow up  
**Flag Status:** Green  
**Categories:** Filed To Worksite

Thank you for your E Mail Phil.

I look forward to working with you on this file.

I have to be candid though and tell you that I am somewhat disappointed with your response to the draft Timetable that I provided to Maureen for comment and suggestion.

That draft Timetable contemplates the major steps in any Hearing before the OEB in accordance with its own Rules of Procedure, not that every step will in fact be taken. We will have to see as the case develops which steps will be required. It is for that reason that I proffered the Timetable with periods or time that are fairly short, rather than fixed dates. If a step is not actually taken, then the Timetable collapses into the next milestone. I would have expected some sort of contextual response from OEB Compliance Staff on steps and dates and time periods that you do think are appropriate in this proceeding, including the dates by which we expect to receive the OEB's evidence in support of the allegations, since there is no reverse onus upon my client to disprove anything until the OEB Compliance Staff overcomes its evidentiary burden. Right now we have received some disclosure about third party witnesses that the OEB Compliance Staff MIGHT call, and I hear from you now that that disclosure material might not be fulsome because you might not rely upon it if third party witnesses give oral testimony (which may go farther a field than the disclosure already made). You cannot expect my client to accept that it will only know the case it has to meet on the date of the disciplinary Hearing. Moreover, my client is not in a position to properly marshal and prepare its own evidence (including expert evidence) unless and until the OEB Compliance Staff evidence supporting the allegations against Summitt Energy is disclosed in full to our client. Procedural fairness dictates full disclosure and that the evidence supporting the allegations be locked sufficiently in advance of the Hearing so that my client can properly prepare. This is even more the case in a disciplinary proceeding such as the one at hand.

I also want to mention, as I have advised Maureen on previous occasions, that I am concerned with the political overtones that have been raised earlier and again in your E Mail, and the institutional bias they may demonstrate. The June 17th, 2010 Notice of Intention to Make an Order is limited to 28 specific alleged incidents committed by a total of 5 separate alleged agents. There is no stated allegation in the June 17th, 2010 Notice of Intention to Make an Order that Summitt Energy directed the activity alleged, promoted or engaged in a course of conduct resulting in this alleged activity, or that Summitt Energy ought reasonably to have known that this alleged conduct was being engaged in and thereby tacitly approved and condoned the same. I will ask you once, and would ask you to relay to OEB Compliance Staff, that there be no mention or allusion in this case by OEB Compliance Staff or the OEB itself to alleged other complaints or any suggestion that the alleged incidents the subject of the June 17, 2010 Notice of Intention to make an Order are but the tip of the alleged iceberg.

I see no point in getting into a paper war with you on the other points addressed in your letter. Suffice it to say that we do not acquiesce in your position on any of them.

We will proceed with the appropriate Motions and provide you with the appropriate notice under the OEB Rules of Procedure, although I would have thought that some measure of cooperation in dealing with procedural matters would have allowed the parties to focus on the substance of the allegations.

Stephen Selznick

Cassels Brock & Blackwell LLP

7/30/2010

2100 Scotia Plaza  
40 King Street West  
Toronto Canada M5H 3C2

tel 416 860 6883  
fax 416 642 7147  
sselznick@casselsbrock.com

www.casselsbrock.com



 Please consider the environment before printing this email.

---

**From:** Phil Tunley [mailto:PhilT@stockwoods.ca]  
**Sent:** Thursday, July 22, 2010 4:11 PM  
**To:** Selznick, Stephen  
**Cc:** Maureen.Helt@oeb.gov.on.ca  
**Subject:** OEB EB-2010-0221 - Summitt Energy Management Inc. - Your File No.: 37347-053

Stephen:

I have been retained by the Ontario Energy Board as compliance counsel in respect of the hearing in this matter, scheduled for the week of August 23, 2010. Maureen Helt remains involved as co-counsel, and we ask that you copy both of us on future correspondence.

Maureen has provided me with a copy of your e-mail and enclosure of July 21, 2010 regarding the procedure and timetable for the matter. In that regard, I can advise as follows:

1. The hearing dates have been set by the Board and, in accordance with its practice, can only be changed by the hearing Panel. As compliance counsel, we cannot agree to any unnecessary delay in the hearing dates, especially as the Board has been made aware of further, similar complaints about the conduct of Summitt sales agents since the Board's Interim Compliance Order was made.
2. As a result, any delay in the hearing dates which you may seek is not on consent, and should proceed by formal motion to the hearing Panel.
3. It is not the Board's normal practice to hold a technical conference in compliance proceedings of this nature, nor do we view any of the issues raised concerning the allegations of false, misleading and deceptive conduct by Summitt's sales agents to be technical in nature. As such, we do not believe a technical conference is either necessary or appropriate, and we will not join in any request you may make in that regard.
4. More generally, the Act entitles Summitt to require the Board to hold a hearing in this matter, but it does not entitle Summitt to any further procedures as set out in your e-mail and enclosure. The Board's Procedural Order, setting a hearing date without more, is fully in accordance with best practices and procedural fairness in such matters.
5. As compliance counsel, we intend to call as witnesses at the hearing all of the complainants who are available. In those cases, we do not intend to file Affidavits. As such, any cross-examination should occur at the hearing, not before.
6. However, if any of the complainants are unable to attend the hearing, and we decide to file their evidence in Affidavit form, then in those particular cases we would agree to arrange for a pre-hearing cross-examination as requested.

7/30/2010

Maureen will be responding separately to your points with respect to the audit, likely early next week.

Either Maureen or I can be available to discuss these matters further. Although I am not in the office tomorrow or Monday morning, I can be reached by e-mail or mobile, and will return any messages as quickly as I can.

I trust this is satisfactory,

**M. Philip Tunley**

**STOCKWOODS LLP**

**Barristers**

***Stockwoods LLP has moved!***

Royal Trust Tower • 77 King Street West

Suite 4130, P.O. Box 140 • Toronto-Dominion Centre

Toronto, Ontario, Canada M5K 1H1

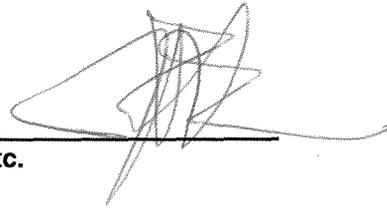
**Direct:** (416) 593-3495 | **Fax:** (416) 593-9345

**Mobile:** (647) 500-3495

**www.stockwoods.ca | [philt@stockwoods.ca](mailto:philt@stockwoods.ca)**

*This message is intended only for the persons to whom it is addressed. It should not be read by, or delivered to any other person, as it may contain privileged or confidential information. If you have received this message in error, please notify us immediately by returning it to [philt@stockwoods.ca](mailto:philt@stockwoods.ca).*

This is Exhibit "H" referred to in the Affidavit of Daniel Lester, sworn before me this August 4, 2010.

A handwritten signature in black ink, consisting of several overlapping, stylized loops and lines, positioned above a horizontal line.

**A Commissioner, etc.**

---

**From:** Phil Tunley [mailto:PhilT@stockwoods.ca]  
**Sent:** Tuesday, July 27, 2010 9:31 AM  
**To:** Selznick, Stephen  
**Cc:** Maureen.Helt@oeb.gov.on.ca  
**Subject:** RE: OEB EB-2010-0221 - Summitt Energy Management Inc. - Your File No.: 37347-053

Stephen:

I agree with you that there is no point in a paper war, and I share your interest in getting to the substance of the allegations in this matter. However, in light of your comments, some clarification is required.

First, I do believe the disclosure provided to you by the Board is “fulsome”, and nothing in my e-mail suggested otherwise. The disclosure you have includes witness statements, which set out the substance of the evidence that compliance counsel intend to lead from the witnesses to be called at the hearing. That is standard practice, not only in disciplinary and compliance matters such as this, but even in true criminal proceedings. It has more than met the requirements of fairness and disclosure due to your client.

Second, the disclosure you have received includes the relevant documents, forms, and even notes from the Boards’ complaint and investigation files for each of the complainants, and the Briefing Note setting out the relevant background, Staff’s analysis and recommendations leading to the Notice of Intention to Make an Order. If you believe there are specific items or categories of information missing, please tell me what they are and we will respond.

Third, the Board does not intend to call expert evidence. While that does not preclude you from doing so, equally it does

7/30/2010

not constitute any deficiency in the disclosure provided to your client.

Fourth, I can assure you there are no "political overtones" in my e-mail. I have no idea even what you mean or are referring to by that term. While you claim to have advised Maureen about such matters on previous occasions, she has no idea either.

Finally, while I take your positions with respect to the scope of the Notice of Intention and the evidence that may be admissible with respect to it to be as stated and implied in your e-mail, I do not agree with them. However, these are matters for the hearing Panel at the appropriate time, and I agree there is no need for a paper war about them at this time.

That said, as we prepare for the hearing, we will continue to review the disclosure to ensure that the matter is ready to proceed as scheduled.

**M. Philip Tunley**

**STOCKWOODS LLP**

*Stockwoods LLP has moved!*

Royal Trust Tower • 77 King Street West  
Suite 4130, P.O. Box 140 • Toronto-Dominion Centre  
Toronto, Ontario, Canada M5K 1H1

---

**From:** Selznick, Stephen [mailto:SSelznick@CasselsBrock.com]

**Sent:** July 23, 2010 2:00 PM

**To:** Phil Tunley

**Cc:** Maureen.Helt@oeb.gov.on.ca; Gardiner, Alma; Mercier, Marc; Beitchman, Jason

**Subject:** RE: OEB EB-2010-0221 - Summitt Energy Management Inc. - Your File No.: 37347-053

Thank you for your E Mail Phil.

I look forward to working with you on this file.

I have to be candid though and tell you that I am somewhat disappointed with your response to the draft Timetable that I provided to Maureen for comment and suggestion.

That draft Timetable contemplates the major steps in any Hearing before the OEB in accordance with its own Rules of Procedure, not that every step will in fact be taken. We will have to see as the case develops which steps will be required. It is for that reason that I proffered the Timetable with periods or time that are fairly short, rather than fixed dates. If a step is not actually taken, then the Timetable collapses into the next milestone. I would have expected some sort of contextual response from OEB Compliance Staff on steps and dates and time periods that you do think are appropriate in this proceeding, including the dates by which we expect to receive the OEB's evidence in support of the allegations, since there is no reverse onus upon my client to disprove anything until the OEB Compliance Staff overcomes its evidentiary burden. Right now we have received some disclosure about third party witnesses that the OEB Compliance Staff MIGHT call, and I hear from you now that that disclosure material might not be fulsome because you might not rely upon it if third party witnesses give oral testimony (which may go farther a field than the disclosure already made). You cannot expect my client to accept that it will only know the case it has to meet on the date of the disciplinary Hearing. Moreover, my client is not in a position to properly marshal and prepare its own evidence (including expert evidence) unless and until the OEB Compliance Staff evidence supporting the allegations against Summitt Energy is disclosed in full to our client. Procedural fairness dictates full disclosure and that the evidence supporting the allegations be locked sufficiently in advance of the Hearing so that my client can properly prepare. This is even more the case in a disciplinary proceeding such as the one at hand.

I also want to mention, as I have advised Maureen on previous occasions, that I am concerned with the political overtones that have been raised earlier and again in your E Mail, and the institutional bias they may demonstrate. The June 17th, 2010 Notice of Intention to Make an Order is limited to 28 specific alleged incidents committed by a total of 5 separate alleged agents. There is no stated allegation in the June 17th, 2010 Notice of Intention to Make an Order that Summitt Energy directed the activity alleged, promoted or engaged in a course of conduct resulting in this alleged activity, or that Summitt Energy ought reasonably to have known that this alleged conduct was being engaged in and thereby tacitly approved and condoned the same. I will ask you once, and would ask you to relay to OEB Compliance Staff, that there be no mention or allusion in this case by OEB Compliance Staff or the OEB itself to alleged other complaints or any

7/30/2010

suggestion that the alleged incidents the subject of the June 17, 2010 Notice of Intention to make an Order are but the tip of the alleged iceberg.

I see no point in getting into a paper war with you on the other points addressed in your letter. Suffice it to say that we do not acquiesce in your position on any of them.

We will proceed with the appropriate Motions and provide you with the appropriate notice under the OEB Rules of Procedure, although I would have thought that some measure of cooperation in dealing with procedural matters would have allowed the parties to focus on the substance of the allegations.

## Stephen Selznick

Cassels Brock & Blackwell LLP  
2100 Scotia Plaza  
40 King Street West  
Toronto Canada M5H 3C2

tel 416 860 6883  
fax 416 642 7147  
sselznick@casselsbrock.com

[www.casselsbrock.com](http://www.casselsbrock.com)



Please consider the environment before printing this email.

---

**From:** Phil Tunley [mailto:PhilT@stockwoods.ca]  
**Sent:** Thursday, July 22, 2010 4:11 PM  
**To:** Selznick, Stephen  
**Cc:** Maureen.Helt@oeb.gov.on.ca  
**Subject:** OEB EB-2010-0221 - Summitt Energy Management Inc. - Your File No.: 37347-053

Stephen:

I have been retained by the Ontario Energy Board as compliance counsel in respect of the hearing in this matter, scheduled for the week of August 23, 2010. Maureen Helt remains involved as co-counsel, and we ask that you copy both of us on future correspondence.

Maureen has provided me with a copy of your e-mail and enclosure of July 21, 2010 regarding the procedure and timetable for the matter. In that regard, I can advise as follows:

1. The hearing dates have been set by the Board and, in accordance with its practice, can only be changed by the hearing Panel. As compliance counsel, we cannot agree to any unnecessary delay in the hearing dates, especially as the Board has been made aware of further, similar complaints about the conduct of Summitt sales agents since the Board's Interim Compliance Order was made.
2. As a result, any delay in the hearing dates which you may seek is not on consent, and should proceed by formal motion to the hearing Panel.
3. It is not the Board's normal practice to hold a technical conference in compliance proceedings of this nature, nor do we view any of the issues raised concerning the allegations of false, misleading and deceptive conduct by Summitt's sales agents to be technical in nature. As such, we do not believe a technical conference is either necessary or appropriate, and we will not join in any request you may make in that regard.

7/30/2010

4. More generally, the Act entitles Summitt to require the Board to hold a hearing in this matter, but it does not entitle Summitt to any further procedures as set out in your e-mail and enclosure. The Board's Procedural Order, setting a hearing date without more, is fully in accordance with best practices and procedural fairness in such matters.

5. As compliance counsel, we intend to call as witnesses at the hearing all of the complainants who are available. In those cases, we do not intend to file Affidavits. As such, any cross-examination should occur at the hearing, not before.

6. However, if any of the complainants are unable to attend the hearing, and we decide to file their evidence in Affidavit form, then in those particular cases we would agree to arrange for a pre-hearing cross-examination as requested.

Maureen will be responding separately to your points with respect to the audit, likely early next week.

Either Maureen or I can be available to discuss these matters further. Although I am not in the office tomorrow or Monday morning, I can be reached by e-mail or mobile, and will return any messages as quickly as I can.

I trust this is satisfactory,

**M. Philip Tunley**

**STOCKWOODS LLP**

**Barristers**

*Stockwoods LLP has moved!*

Royal Trust Tower • 77 King Street West

Suite 4130, P.O. Box 140 • Toronto-Dominion Centre

Toronto, Ontario, Canada M5K 1H1

**Direct:** (416) 593-3495 | **Fax:** (416) 593-9345

**Mobile:** (647) 500-3495

[www.stockwoods.ca](http://www.stockwoods.ca) | [philt@stockwoods.ca](mailto:philt@stockwoods.ca)

*This message is intended only for the persons to whom it is addressed. It should not be read by, or delivered to any other person, as it may contain privileged or confidential information. If you have received this message in error, please notify us immediately by returning it to [philt@stockwoods.ca](mailto:philt@stockwoods.ca).*

\*\*\*\*\*

This message, including any attachments, is privileged and may contain confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited.

Communication by email is not a secure medium and, as part of the transmission process, this message may be copied to servers operated by third parties while in transit. Unless you advise us to the contrary, by accepting communications that may contain your personal information from us via email, you are deemed to provide your consent to our transmission of the contents of this message in this manner. If you are not the intended recipient or have received this message in error, please notify us immediately by reply email and permanently delete the original transmission from us, including any attachments, without making a copy.

\*\*\*\*\*

**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 and Order for Compliance,  
Suspension and an Administrative Penalty against Summitt Energy Management Inc.,  
dated June 17<sup>th</sup>, 2010

**ONTARIO ENERGY BOARD**

Proceeding commenced at Toronto

**AFFIDAVIT OF DANIEL LESTER  
(sworn August 4, 2010)**

**Cassels Brock & Blackwell LLP**

2100 Scotia Plaza  
40 King Street West  
Toronto, Ontario M5H 3C2

Stephen I. Selznick LSUC#: 18593C  
Tel: 416.860.6883  
Fax: 416.642.7147  
Email: sselznick@casselsbrock.com

Jason Beitchman LSUC#: 564770  
Tel: 416.860.2988  
Fax: 647.259.7993  
Email: jbeitchman@casselsbrock.com

Lawyers for:  
Summitt Energy Management Inc.