



BOARD FILE NO.: EB-2010-0245

NOTICE OF REVISED PROPOSAL TO REVOKE AND RE-ISSUE A CODE

**REVISED PROPOSED REVOCATION AND RE-ISSUANCE OF THE
ELECTRICITY
AND**

**NOTICE OF REVISED PROPOSAL TO REVOKE AND RE-ISSUE A RULE
AND TO AMEND A RULE**

**REVISED PROPOSED REVOCATION AND RE-ISSUANCE OF THE GAS
MARKETER CODE OF CONDUCT AND PROPOSED AMENDMENTS TO THE
GAS DISTRIBUTION ACCESS RULE**

SUBMITTED BY:
Active Energy Corp.
Direct Energy Marketing Ltd.
Just Energy Ontario L.P.
Summitt Energy Management Inc.
Superior Energy Management

DATED: October 29, 2010

The Ontario Energy Board issued a Notice dated October 15, 2010 of its revised proposal to i) Revoke and re-issue the Electricity Retailer Code of Conduct; ii) revoke and re-issue the Code of Conduct for Gas Marketers; and iii) amend the Gas Distribution Access Rule.

The Board invited comments to the revised proposal in this Notice, specifically to Attachments A and C (Revised Proposed Reinstated Code of Conduct for Electricity Retailers and the Revised Proposed Reinstated Code of Conduct for Gas Marketer respectfully) and on the revised proposed disclosure statements, proposed price comparisons, revised proposed verification scripts and revised proposed renewal/extension scripts.

Active Energy Corp., Direct Energy Marketing Limited, Just Energy Ontario L.P., Summitt Energy Management Inc and Superior Energy Management (jointly the “Suppliers”) submit the following:

1. Disclosure Statements

It is unclear to the Suppliers why there are disclosure forms for “Direct Mail” and “In Person” as they appear to be identical. Unless a distinction has been overlooked, the Suppliers recommend that these forms be combined.

Where a disclosure statement is included as part of an internet offer, it will only be possible for the click icon to be incorporated on the screen and not embedded in the document. Therefore, the Suppliers request that the proposed Code be revised to include electronic acceptance of the disclosure statement in place of a wet signature.

2. Price Comparison Forms

The Board has identified 17 versions of the price comparison forms representing scenarios that include residential and non-residential natural gas commodity/transportation/storage combinations for regulated and non-regulated utilities and residential and non-residential electricity consumers. The Suppliers respectfully requests that the Board consolidate the natural gas price comparisons for Gas Supply, Transportation and Storage and allow the marketer to indicate the combination applicable to a specific offer.

The price comparison forms require that Suppliers provide price comparisons as an accurate reflection of the price “over the term of the contract”. The Suppliers respectfully request that the Board revise the Code to accept introductory pricing if all pricing components are reflected in the price comparison form for the duration of the contract.

Step 1 of the instructions for the completion of the price comparison form state “The contract price must be expressed as a total monthly number”. The form also states that “this table is based on a residential consumer who uses x,xxx m³ per year. It assumes that usage is the same every month.” Suppliers request that the price comparison form be revised to reflect the provincial average annual consumption divided by 12 months multiplied by the then current monthly utility rate.

The Suppliers recommend that each of the titles of the forms be changed to include the phrase “at the time of signing the contract”. This will capture the concept that the comparison is not for the term of the Supplier’s energy supply contract, but at the utility’s current rates.

In each Comparison Table, there is reference to “Monthly Electricity/Gas Supply Cost”. The Suppliers are of the opinion that consumers should be aware that this is an approximate/estimated cost based on the profile provided and recommend that the phrase read “Estimated Monthly Electricity/Gas Supply Cost”.

Step 3 of the same instructions state, “If the commodity component of the contract price is or is based on a market price, the commodity price shown by the Marketer must be based on a reasonable forecast of the market price covering a period of at least 6 months. The

Marketer must also include a narrative description of the market price and identify that the market price is based on a forecast and will change over the term of the contract.”

Suppliers respectfully submit that a comparison based on a 6 month forecast of a variable rate is impractical and misleading and should not be necessary with the inclusion of the qualifying description of the market price in the price comparison form. Therefore, the Suppliers request that the price comparison be limited to the initial variable rate.

Step 5 requires that each price comparison form be limited to one product offer. The Suppliers submits that a single view of offers presented is beneficial to the consumer and request that this limitation be removed.

With respect to the natural gas price comparisons, the Suppliers request that the phrase “You may also have to pay customer charges and charges for delivery every month...” be extended with the qualifier “... to your utility as well as any taxes payable on your total monthly bill.”

With respect to the electricity price comparisons, the Suppliers request that the phrase “You may also have to pay delivery charges, regulatory charges and the debt retirement charge every month...” be extended with the qualifier “...to your utility, as well as any taxes payable on your total monthly bill.”

Suppliers request that the price comparison forms be revised so that utility and supplier price comparison information can be provided to consumers on one page. Having the Price Comparison forms exceed one page may result in consumer confusion and the possibility that the two sheets could get separated.

As renewal notifications are required to be provided no less than 60 days from date of expiry, the Suppliers request that the price comparison form reflect the utility rates in affect as of the current date. If updated RPP and regulated natural gas rates are made public within the renewal notification window it will not be possible to reflect future rate changes.

Electricity and Natural Gas Price Comparison for Non-residential Consumers: The non-residential natural gas and electricity price comparison forms illustrate three different levels of monthly usage. Suppliers are of the opinion that the provision of three arbitrary levels of consumption are not illustrative of how non-residential customers consume. Suppliers recommend that the rate comparison be made on a per cubic meter basis only.

Price Comparison for Residential and Non- residential Natural Gas Consumers Where Transportation (and/or Storage) is Included in the Contract Price: These forms require a price comparison for storage and transportation. The suppliers will be unable to provide a cost comparison for the life of the contract as storage and transportation cannot be hedged and the transportation rate may fluctuate as TCPL tolls change. Further, the Supplier and

the consumer will not be aware of the consumer's utility transportation profile at the time of sale. The Suppliers respectfully submit that the transportation and storage charges be compared against utility costs on a per cubic meter basis only.

3. Forms – General

The Suppliers request amendment of the Codes to allow the option to reproduce the price comparison and disclosure forms in a black and white version.

In addition, the Suppliers request amendment of the Codes to allow the option to produce the price comparison and disclosure forms in a carbon format for the purposes of acquiring consumer acknowledged receipt as required in the Codes.

4. Verification

The Suppliers request revision of the Codes to accept reaffirmation of multiple locations for a consumer with one verification call.

Revised script recommendations for Board consideration are attached to this submission.

5. Implementation

For ease of access the Suppliers request that the Board provide a separate destination on its website for the purpose of housing Code of Conduct-required materials.

To ensure that February, 2011 renewal notices include price comparison forms and disclosure statements, the Suppliers request immediate receipt of the proposed forms populated as necessary.

Interrupted operations as a result of a delay in receiving Certificates of Compliance beyond the effective date of the ECPA could significantly impact the financial health of the Supplier organizations represented in this submission. Therefore, the Suppliers request that the Board acknowledge receipt of Certificates of Compliance received prior to 12:00 pm Noon, December 31st, 2010 no later than 12:01 am on January 1, 2011.

6. Definitions

The definition of salesperson for the Certificate of Compliance has the meaning given to it by the Board's Codes of Conduct, which in turn references section 2 of the ECPA, and goes on to indicate that it includes "any person that offers or negotiates the renewal or extension of a contract...". For the purposes of the Certificate of Compliance with respect to section 1 (B) and (C), the Suppliers request that the Board revise the Certificate of Compliance to state that the requirement for business cards and identification badges in these sections only pertain to "in person" salespersons.