

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, SO 1998,  
c 15, Sch B;

**AND IN THE MATTER OF** a Notice of Intention to Make an Order  
for Revocation of a Licence against Energhx Green Energy Corporation,  
Licence Numbers ER-2010-0236 and GM-2010-0237

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**DOCUMENTS INTENDED TO BE PRODUCED OR ENTERED INTO  
EVIDENCE BY THE ENFORCEMENT TEAM**

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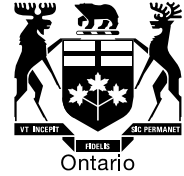
**TABLE OF CONTENTS AND CHRONOLOGY**  
**Failure to pay administrative penalty and to provide required information**

<b>Tab</b>	<b>Date</b>	<b>Document/event</b>
1	March 26, 2012	Decision and Order of the Ontario Energy Board  The Board orders Energhx to pay an administrative penalty of \$10,000 to the Ontario Energy Board by December 31, 2012.
2	April 30, 2012	Decision and Order of the Ontario Energy Board  The Board grants Energhx an electricity retailer licence and a gas marketer licence, including special conditions requiring Energhx to file certain information with the Board by June 28, 2013
3	December 20, 2012	Letter from Emmanuel Ogedengbe of Energhx to Kirsten Walli of the Ontario Energy Board  Energhx requests six months, until December 31, 2013, to pay the administrative penalty.
4	December 27, 2012	Letter from Kirsten Walli of the Ontario Energy Board to Emmanuel Ogedengbe of Energhx  The Board extends the date for payment of the administrative penalty to June 28, 2013.
5	July 2, 2013	Letter from Karim Karsan of Compliance Staff to Emmanuel Ogedengbe of Energhx  Compliance staff notifies Energhx that it has not received the administrative penalty and gives Energhx until July 5, 2013 to make payment
6	July 2, 2013	Letter from Emmanuel Ogedengbe of Energhx to Kirsten Walli of the Ontario Energy Board  Energhx requests until December 31, 2013 to pay the administrative penalty.
7	July 18, 2013	Decision and Order of the Ontario Energy Board  The Board grants a brief extension to Energhx, giving it until August 29, 2013 to pay the administrative penalty.

8	July 22, 2013	<p>Letter from Karim Karsan of Compliance Staff to Emmanuel Ogedengbe of Energhx</p> <p>Compliance staff notifies Energhx that it has not received the information required by the Board's Order of April 30, 2012 (see tab 2) and by the special conditions in Energhx's licences, and notifies Energhx that it is required to file the information immediately, or compliance staff will seek to suspend or revoke Energhx's licences.</p>
9	August 30, 2013	<p>Letter from Maureen Helt of Compliance Staff to Kirsten Walli of the Ontario Energy Board, copying Emmanuel Ogedengbe of Energhx</p> <p>Compliance staff opposes Energhx's request for a further extension of time to pay the administrative penalty, and announces that they intend to take steps to suspend or revoke Energhx's licences</p>
10	August 30, 2013	<p>Letter from Emmanuel Ogedengbe of Energhx to Kirsten Walli of the Ontario Energy Board</p> <p>Energhx acknowledges Board's decision to refuse Energhx's request to extend the deadline to pay the administrative penalty until December 31, 2013.</p>

**TABLE OF CONTENTS AND CHRONOLOGY**  
**Failure to pay licence fees**

<b>Tab</b>	<b>Date</b>	<b>Document/event</b>
11	April 30, 2012	<p>Energhx's electricity retailer licence</p> <p>Clause 11.1 of the licence provides that Energhx "shall pay all fees charged and amounts assessed by the Board".</p>
12	April 30, 2012	<p>Energhx's gas marketer licence</p> <p>Clause 10.1 of the licence provides that Energhx "shall pay all fees charged and amounts assessed by the Board".</p>
13	April 1, 2013	Invoice for 2013-2014 registration fee for Energhx's electricity retailer licence, payable within 30 days
14	April 1, 2013	Invoice for 2013-2014 registration fee for Energhx's gas marketer licence, payable within 30 days
15	August 12, 2013	<p>Email from Rudina Gjinali of the Ontario Energy Board to Theresa Ogedengbe of Energhx</p> <p>Board staff reminds Energhx that its licence fee invoices are overdue as of May 1, 2013</p>
16	September 9, 2013	<p>Letter from John Pickernell of the Ontario Energy Board to Theresa Ogedengbe of Energhx</p> <p>The Board notifies Energhx that it has not received payment of the 2013-2014 annual fee invoice for the electricity retailer licence, and notifies Energhx that if no payment is received by September 27, 2013, the Board may issue a notice of intention to revoke the licence.</p>
17	September 9, 2013	<p>Letter from John Pickernell of the Ontario Energy Board to Theresa Ogedengbe of Energhx</p> <p>The Board notifies Energhx that it has not received payment of the 2013-2014 annual fee invoice for the gas marketer licence, and notifies Energhx that if no payment is received by September 27, 2013, the Board may issue a notice of intention to revoke the licence.</p>



**EB-2011-0311**

**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 under sections 112.3, 112.4 and 112.5 of the  
Ontario Energy Board Act, 1998 for Compliance,  
Suspension and an Administrative Penalty against  
Energhx Green Energy Corporation.

**BEFORE:** Marika Hare  
Presiding Member

Paula Conboy  
Member

### **DECISION AND ORDER**

On August 25, 2011 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 (the “Notice”) against Energhx Green Energy Corporation (“Energhx”).

The Notice provides that the Board intends to make an Order: (i) under sections 112.3 and 112.5 of the Act, requiring Energhx to comply with certain enforceable provisions as defined in section 3 of the Act and to pay an administrative penalty in the amount of \$32,500 for breaches of those enforceable provisions; and, (ii) under section 112.4 of the Act, to suspend Energhx’s activities with respect to sales, renewals, extensions or amendments of contracts using the following channels: Door-to Door, Exhibitions, Trade Shows and Direct Mail. The Notice describes the allegations of non-compliance as follows:

*It is alleged that Energhx has contravened sections of Ontario Regulation 90/99, Ontario Regulation 389/10, section 12 of the Energy Consumer Protection Act, 2010... and the Electricity Retailer Code of Conduct and the Code of Conduct for Gas Marketers.<sup>1</sup>*

The particulars in support of the allegations are set out in the Notice, and are reproduced below.

On September 9, 2011, Energhx filed a letter with the Board requesting a hearing on the matter, as it was entitled to do under the Notice and the Act.

On November 11, 2011, the Board issued a Notice of Hearing and Procedural Order No. 1 setting January 23, 2012 and January 24, 2012 as dates for an oral hearing.

On January 18, 2012, Compliance counsel requested adjournment of this proceeding to a later date due to the unavailability of its main witness. The Board approved that request.

On January 20, 2012, the Board issued Procedural Order No. 2 setting February 7, 2012 as the date for the oral hearing.

## **I. BACKGROUND**

### **A. Energhx's Licences**

Energhx initially received a Gas Marketer Licence (GM-2009-0188) and an Electricity Retailer Licence (ER-2009-0189) (collectively, the "Licences") on October 22, 2009, which authorized it, among other things, "to sell or offer to sell" gas or electricity, respectively, to a consumer. The Licences require that Energhx comply with all

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<sup>1</sup> The statutory and other references noted in this excerpt from the Notice are as follows: Ontario Regulation 90/99 (Licence Requirements – Electricity Retailers and Gas Marketers) made under the Act, as most recently amended by Ontario Regulation 390/10 filed on October 13, 2010 and effective January 1, 2011; Ontario Regulation 389/10 (General) made under the *Energy Consumer Protection Act, 2010*, also filed on October 13, 2010 and effective January 1, 2011; the *Energy Consumer Protection Act, 2010*, S.O. 2010, c. 8, in force on January 1, 2011; Ontario Energy Board *Electricity Retailer Code of Conduct*, as restated November 17, 2010 and in force January 1, 2011; and Ontario Energy Board *Code of Conduct for Gas Marketers*, as restated November 17, 2010 and in force effective January 1, 2011.

applicable provisions of the Act and the regulations made under the Act. The Licences also require that Energhx comply with applicable rules (gas) or codes (electricity), for present purposes these being the Electricity Retailer Code of Conduct (in the case of the Electricity Retailer Licence) and the Code of Conduct for Gas Marketers (in the case of the Gas Marketer Licence) (collectively, the “Codes”). The Licences were issued for a one year period and were to expire on October 20, 2010.

By its terms, the Gas Marketer Licence applies only in relation to marketing activities pertaining to “low volume” consumers. Although the Electricity Retailer Licence applies to retailing activities in respect of all consumers, the allegations in the Notice relate only to retailing activities pertaining to “low volume” consumers.<sup>2</sup>

On June 8, 2010, Energhx filed applications to renew its Licences (the “Licence Applications”).<sup>3</sup> The Licences were extended to January 31, 2011.<sup>4</sup> On January 28, 2011 the Board re-opened the record of the Licence Applications proceeding to provide Energhx an opportunity to submit evidence of compliance with the legislative and regulatory requirements, and also extended the Licences until March 31, 2011.<sup>5</sup> Energhx filed the requested evidence on February 4, 2011 and, while the evidence was being considered, on March 24, 2011 the Board ordered that the Licences be extended until “the final determination of the [Licence Applications] or October 31, 2011, whichever is earlier.”<sup>6</sup> On October 31, 2011, the Board ordered that, while certain compliance inspections were underway, the Licences be extended until “the final determination of the [Licence Applications] or April 30, 2012, whichever is earlier”.<sup>7</sup> The current versions of the Licences state that they are “valid by extension until April 30, 2012.”

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<sup>2</sup> A “low volume” consumer is, in the case of gas, a consumer that annually uses less than 50,000 cubic meters of gas and, in the case of electricity, a consumer that annually uses less than 150,000 kilowatt hours of electricity. The Board’s Code of Conduct for Gas Marketers applies on in relation to low-volume consumers, while the Board’s Electricity Retailer Code of Conduct contains provisions that apply only in relation to low volume consumers and others that apply in relation to all consumers.

<sup>3</sup> EB-2010-0236 and EB-2010-0237.

<sup>4</sup> Decision and Procedural Order No. 1 issued in respect of the Licence Applications on October 1, 2010.

<sup>5</sup> Decision and Procedural Order No. 3 issued in respect of the Licence Applications on January 28, 2011.

<sup>6</sup> Decision and Order issued in respect of the Licence Applications on March 24, 2011.

<sup>7</sup> Decision and Order issued in respect of the Licence Applications on October 31, 2011.

## **B. Compliance Inspection**

The *Energy Consumer Protection Act, 2010* (the “ECPA”) came into effect on January 1, 2011. It is designed to protect energy consumers by ensuring that retailers and marketers follow fair business practices and that consumers are provided with essential information before they sign energy contracts. The Board’s compliance activities which resulted in issuance of the Notice against Energhx were initiated shortly after the ECPA and the restated Codes came into effect on January 1, 2011.

The record indicates that Energhx filed Certificates of Compliance dated December 15, 2010 with the Board in which Dr. Emmanuel Ogedengbe, on behalf of Energhx, certified that, as of January 1, 2011, Energhx will meet all applicable legal and regulatory requirements pertaining to the following in relation to all sales channels that Energhx identified in the Certificates of Compliance as being those that it intended to use: training and testing for salespersons and verification representatives; business cards; identification badges; text-based contracts; disclosure statements; price comparisons; use of verification scripts; and adequate processes and controls to ensure compliance for each of the foregoing, as well as for contract cancellations.

Starting in early 2011, the Board conducted compliance inspections of all retailers and marketers who had filed Certificates of Compliance. Staff from Ernst and Young LLP (“Ernst & Young”) were appointed to serve as “inspectors” pursuant to the power set out in section 106 of the Act. Ernst & Young conducted an inspection of Energhx between March 7 and April 13, 2011, covering the period from January 1, 2011 to February 28, 2011. In the process, Ernst & Young attended Energhx’s premises, made inquiries and observations, inspected documents, communicated with Energhx representatives and retained copies of certain documents. After the compliance inspection was complete, Ernst & Young provided to the Board its observations, as well as the documents related to those observations.

On August 25, 2011, following the completion of Board Compliance staff’s review and validation process regarding the compliance inspection, the Board issued the Notice.



At the commencement of the hearing on February 7, 2012, Compliance counsel indicated that an order to suspend Energhx activities with respect to sales, renewals, extensions or amendments of contracts using all its sales channels was no longer being sought.<sup>8</sup>

## **II. ALLEGATIONS AND PARTICULARS OF NON COMPLIANCE**

As noted above, in the Notice the Board alleges that Energhx has contravened sections of Ontario Regulation 90/99, Ontario Regulation 389/10, section 12 of the ECPA and the Codes.

The particulars set out in the Notice in support of the allegations are described below.

### **A. Training Materials - Salespersons**

Section 7 of Ontario Regulation 90/99 states that it is a condition of every electricity retailer and gas marketer licence that every person acting on behalf of the licensee has successfully completed such training as may be required by a code, rule or order of the Board before meeting in person with a low volume consumer. Section 5 of the Codes requires a retailer or marketer to ensure that salespersons acting on its behalf have successfully completed training (as demonstrated by a minimum 80% pass mark on the required training test), and also requires that the training materials used be adequate and accurate and cover certain specified subject matter.

The Notice indicates that the electricity and gas training material used by Energhx for prospective salespersons was reviewed during the inspection and that, at the time of the inspection, three prospective salespersons had completed the Energhx training. The Notice alleges that the training materials used by Energhx did not include adequate and accurate material in the following areas as they pertain to low volume consumers:

1. How to complete a contract application; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(ii) of the Codes.
2. Use of business cards; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(iv) of the Codes.

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<sup>8</sup> Transcript of the oral hearing, page 2, lines 17 to 23.

3. Use of Identification badges; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(v) of the Codes.
4. Disclosure statements; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(vi) of the Codes.
5. Price Comparisons; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(vii) of the Codes.
6. Consumer cancellation rights set out in section 21 of Ontario Regulation 389/10; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(ix) of the Codes.
7. Renewals and extensions; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(x) of the Codes.
8. Persons with whom Energhx may enter into, verify, renew or extend a contract; contrary to section 7 of Ontario Regulation 90/99 and sections 5.2(a) and 5.2(b)(xii) of the Codes.

**B. Training Materials - Verification Representatives**

The legal and regulatory regime regarding the training of verification representatives is largely the same as that for salespersons as described above (the subject matter to be covered by the training is different in some respects).

The Notice indicates that the electricity and gas training materials used by Energhx for prospective verification representatives were reviewed during the inspection and that, at the time of the inspection, one prospective verification representative had completed the Energhx training. The Notice alleges that the training materials used by Energhx did not include adequate and accurate material in the following areas as they pertain to low volume consumers:

9. Disclosure statements; contrary to section 7 of Ontario Regulation 90/99 and sections 5.3(a) and 5.3(b)(iii) of the Codes.

10. Price comparisons; contrary to section 7 of Ontario Regulation 90/99 and sections 5.3(a) and 5.3(b)(iv) of the Codes.
11. Consumer cancellation rights set out in section 21 of Ontario Regulation 389/10; contrary to section 7 of Ontario Regulation 90/99 and sections 5.3(a) and 5.3(b)(vi) of the Codes.
12. Persons with whom Energhx may enter into and verify a contract; contrary to section 7 of Ontario Regulation 90/99 and sections 5.3(a) and 5.3(b)(viii) of the Codes.

**C. Training test**

The Notice indicates that the electricity and gas training test questions used by Energhx which are designed to assess the state of the salesperson's or verification representative's knowledge of the required topic areas stated in the Codes were reviewed during the inspection. As noted above, the Codes require a minimum pass mark of 80% on the required training test. Section 5.6 of the Codes also states that a prospective salesperson or verification representative may re-take the training test once, but only after having re-taken the full training required by the Codes.

The Notice alleges as follows:

13. Energhx confirmed with the inspector that it requires a salesperson or verification representative to achieve a minimum 75% pass mark on the training test; contrary to section 5.6(c) of the Codes which requires a pass mark of 80%.
14. In one case reviewed the prospective salesperson (initials A. Z.) attempted the test twice but scored 70% each time however, the individual was considered to have passed the test; contrary to section 5.6(c) and (d) of the Codes.

#### **D. Record retention**

Section 5.10 of the Codes requires that complete records relating to training and testing be retained for a period of not less than two years from the date on which a salesperson or verification representative ceases to act on behalf of the retailer or marketer in relation to low volume consumers.

The Notice alleges that Energhx has contravened the following requirements in relation to record retention pertaining to salespersons and verification representatives for electricity and gas:

15. Energhx does not have its salespersons and verification representatives sign a statement that he or she will comply with all applicable legal and regulatory requirements in relation to the activities the person will conduct on behalf of Energhx in relation to low volume consumers. The required records are therefore not retained; contrary to section 5.10(g) of the Codes.
16. Energhx stated during the inspection that it plans on maintaining salesperson and verification representative records for a period of one year; contrary to section 5.10 of the Codes.

#### **E. Business cards**

Section 5 of Ontario Regulation 90/99 states that it is a condition of every electricity retailer and gas marketer licence that every person acting on behalf of the licensee offer a business card at every meeting in person with a low volume consumer. That business card must comply with the requirements set out in section 5 of Ontario Regulation 90/99 and with any other requirement as may be set out in a code, rule or order of the Board. Sections 2.1 and 2.2 of the Codes address requirements for business cards.

The Notice indicates that, during the inspection, Energhx confirmed that all business cards issued to salespersons who meet in person with low volume consumers are in the same format and contain the same content. The Notice alleges that Energhx has contravened the electricity and gas business card requirements as follows:

17. During the inspection it was observed that the business card does not state the electricity and gas licence numbers issued to Energhx under the Act nor does it

state Energhx's toll-free telephone number; contrary to section 5 of Ontario Regulation 90/99 and section 2.2(a) and (d) of the Codes.

18. As the content of the business cards provided by Energhx are in breach of section 2.2(a) and (d) of the Codes, it is likely that the use of such business cards by Energhx salespersons in their current form will result in a breach of section 5(6)(ii) of Ontario Regulation 389/10 and sections 1.1(b) and 2.1 of the Codes.

#### **F. Identification badges**

Section 6 of Ontario Regulation 90/99 states that it is a condition of every electricity retailer and gas marketer licence that the licensee issue a photo identification badge ("ID badge") to every person who meets in person with a low volume consumer while acting on behalf of the licensee, and that the person at all times prominently display that ID badge. That ID badge must comply with the requirements set out in section 6 of Ontario Regulation 90/99 and with any other requirement as may be set out in a code, rule or order of the Board. Sections 2.3 to 2.5 of the Codes address requirements for ID badges.

The Notice indicates that, during the inspection, Energhx confirmed that ID badges issued to salespersons who meet in person with low volume consumers are in the same format and contain the same content. The Notice alleges that Energhx has contravened the following in relation to the electricity and gas ID badge requirements:

19. During the inspection, it was noted that the ID badge does not state that the salesperson is (a) not associated with any electricity or gas distributor or government, contrary to section 6 of Ontario Regulation 90/99; and (b) not a representative of the consumer's electricity or gas distributor and is not associated with the Ontario Energy Board or the Government of Ontario. It was also observed that the ID badge does not state an expiry date. This is contrary to section 2.4(a) and (g) of the Codes.

20. As the content of the ID badges provided by Energhx are in breach of section 2.4(a) and (g) of the Codes, it is likely that the use of such ID badges by Energhx salespersons in their current form will result in a breach of section 5(6)(i) of Ontario Regulation 389/10 and sections 1.1(c) and 2.3 of the Codes.

**G. Contract content requirements for new contracts**

Section 12 of the ECPA states that a contract with a low volume consumer must, among other things, contain the information prescribed by regulation. The information required to be contained in a contract is listed in section 7 of Ontario Regulation 389/10.

The Notice indicates that one transaction for electricity and one transaction for gas were reviewed. In respect of both transactions, the Notice alleges that Energhx contravened the following content requirements in relation to electricity and gas contracts:

21. The contract fails to include a statement that if the consumer cancels the contract within the 10-day period, the consumer is entitled to a full refund of all amounts paid under the contract; contrary to section 12 of the ECPA and section 7(1)9 of Ontario Regulation 389/10.
22. The contract fails to include a description of any other circumstances in which the consumer or Energhx is entitled to cancel the contract with or without notice or cost or penalty, the length of any notice period, the manner in which notice can be given and the amount of any cost or penalty; contrary to section 12 of the ECPA and section 7(1)13 of Ontario Regulation 389/10.
23. The contract fails to include the applicable conditions/rights under section 21(a), (b) & (e) of Ontario Regulation 389/10 which provide that the consumer can cancel the contract without cost or penalty; contrary to section 12 of the ECPA and section 7(1)13 of Ontario Regulation 389/10.
24. The signature and printed name of the consumer, or the account holder's agent signing the contract on behalf of the consumer, and of the person signing the contract on behalf of Energhx, is contained below the acknowledgment to be signed and dated by the consumer or account holder's agent that he or she has received a text based copy of the contract. The signature of the person signing

on behalf of Energhx and the acknowledgement of the consumer are therefore in the reverse order to the specified requirements in Ontario Regulation 389/10; contrary to section 12 of the ECPA and section 7(1)17 & section 7(1)18 of Ontario Regulation 389/10.

#### **H. Completion of price comparisons for new contracts**

Section 12 of the ECPA states that a contract with a low volume consumer must, among other things, be accompanied by the information or documents prescribed by regulation or required by a code, rule or order of the Board. Under section 8(3) of Ontario Regulation 389/10, a price comparison that complies with the requirements of a code, rule or order of the Board must accompany the disclosure statement that itself is required to accompany a contract. Sections 4.6 to 4.9 of the Codes address requirements for price comparisons, including the requirement that a price comparison be completed using the template approved by the Board and in accordance with the instructions contained in that template.

The Notice alleges as follows:

25. Energhx advised that it has one five-year contract offer available to residential and non-residential electricity and gas consumers. Board staff observed that the price comparison had been completed accurately according to the template instructions with the exception of the document control number box which also includes a date which is not in accordance with instruction number 8; contrary to section 12 of the ECPA, section 8(3) of Ontario Regulation 389/10, and section 4.6(b) of the Codes.

#### **I. Verification call (use of the applicable Board-approved script)**

Subject to certain exceptions, under section 15 of the ECPA a contract with a low volume consumer must be verified within the time and in the manner required by the ECPA, Ontario Regulation 389/10 and any applicable code, rule or order of the Board. Sections 4.10 to 4.12 of the Codes address requirements for verification, notably the obligation to use a Board-approved script.

The Notice indicates that Energhx had only conducted one verification call during the period covered by the inspection (January 1 to February 28, 2011), and that this was a dual fuel verification call to verify both electricity and gas contracts. The Notice alleges that Energhx contravened the following requirements and deviated from the Board-approved script in the following areas:

- 26. The verification representative did not introduce her name to the consumer and did not identify herself as calling on behalf of Energhx; contrary to section 15 of the ECPA, section 13(2) of Ontario Regulation 389/10, and section 4.10 and section 4.11(a) of the Codes.
- 27. The verification representative did confirm the consumer's name but did not confirm if she was speaking to the account holder or the account holder's agent; contrary to section 15 of the ECPA, section 13(2) of Ontario Regulation 389/10, and section 4.10 and section 4.11(a) of the Codes.
- 28. The verification representative did not ask if the customer was comfortable to proceed with the call in English; contrary to section 15 of the ECPA, section 13(2) of Ontario Regulation 389/10, and section 4.10 and section 4.11(a) of the Codes.
- 29. The verification representative did not advise the consumer that the call was being recorded; contrary to section 15 of the ECPA, section 13(2) and section 13(3) of Ontario Regulation 389/10, and section 4.10 and section 4.11(a) of the Codes.

#### **J. Compliance monitoring and quality assurance program**

Sections 7.4 and 7.5 of the Codes require that a retailer maintain a compliance monitoring and quality assurance program that enables the retailer or marketer to monitor compliance with the Act, the ECPA, the regulations and all applicable regulatory requirements in relation to retailing or marketing to low volume consumers and to identify any need for remedial action. Such a program must meet the minimum requirements specified in the Code.



The Notice alleges that Energhx contravened the requirement as follows:

30. During the inspection, Energhx confirmed that it does not maintain a compliance monitoring and quality assurance program as required by section 7.4 and section 7.5 of the Codes.

### III. BOARD FINDINGS ON ISSUES BEFORE THE BOARD OTHER THAN THE SPECIFIC ALLEGATIONS

The following issues emerged during the oral hearing and in written submissions.

#### Certificates of Compliance

On December 15, 2010, Energhx filed Certificates of Compliance in the form required, certifying to a variety of matters regarding compliance with “all applicable legal and regulatory requirements” in respect of all sales channels that Energhx indicated it intended to use as of January 1, 2011.<sup>9</sup>

In its submissions, Energhx characterized its certification as follows:

*The Certificates of Compliance confirm Energhx’s obligation to comply with the stated retailing activities, relating to the retailing/marketing channels, recruitment, training and conduct of salespersons, contracts, verification, handling of cancellations, complaints and retractions. These are statements of **intentions** and not **actions**. For example, the certification confirms retailing/marketing activities as “...channels that the gas marketer/retailer intends to use..”<sup>10</sup>*

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<sup>9</sup> In the Certificates of Compliance, Energhx indicated that it did not intend to use certain sales channels (Energhx’s place of business, internet and telephone renewals). The Certificates of Compliance are available for viewing on the Board’s website at:

<http://www.ontarioenergyboard.ca/OEB/Consumers/Consumer+Protection/Retail+Energy+Contracts/List+of+Retailers+and+Marketers>

<sup>10</sup> Energhx written submissions dated February 16, 2012, at page 6.

The Board is of the view that the Certificates of Compliance, by their terms, attest to the state of compliance by the signing retailer or marketer, and do not represent “statements of intentions”. For example, the Certificates of Compliance refer to salespersons having undergone training and testing in accordance with all applicable legal and regulatory requirements, to contracts having been revised as required to comply with all applicable legal and regulatory requirements and to the company using only compliant contracts on and after the “Effective Certification Date” (being the later of the date of signature of the Certificate and January 1, 2011). Execution by Energhx of the Certificates of Compliance certified Energhx’s compliance with those requirements. The Board agrees with the submission of Compliance counsel that Ontario Regulation 90/99 and the Certificates of Compliance make it clear that Energhx was subject to all applicable legal and regulatory requirements.<sup>11</sup>

All retailers and marketers doing business in Ontario must understand and abide by the statutory and regulatory requirements regardless of whether they are new businesses or established sector participants. The Board notes that the legal and regulatory requirements should have been known and understood by all marketers and retailers in advance of the January 1, 2011 implementation date. The ECPA was tabled in Bill form on December 8, 2009 and received Royal Assent on May 18, 2010. Proposed drafts of Ontario Regulation 389/10 and of the amendments to Ontario Regulation 90/99 were posted for comment on July 2, 2010, and final versions were filed on October 13, 2010. The two Codes, as restated, were issued on November 17, 2010 following a notice and comment process that commenced in August of that year.

As will be discussed in detail later in this Decision, the evidence shows that Energhx was not in full compliance with the ECPA, the relevant regulations and the Codes during the period covered by the compliance inspection. While the evidence also indicates that Energhx later addressed these deficiencies,<sup>12</sup> which is reassuring to the Board, it does not mitigate the fact that at the time of the inspection a number of infractions of the ECPA, the relevant regulations and the Codes were noted.

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<sup>11</sup> Compliance counsel written submissions dated February 10, 2012, at pages 9-10.

<sup>12</sup> Letter dated September 9, 2011, Exhibit K, in which it was acknowledged that Energhx “provided Board staff with evidence to support that [Energhx has] remedied the issues of alleged non-compliance set out in the Notice”.

## Standard of proof

Compliance counsel acknowledges that it bears the burden of proving the allegations set out in the Notice and that this is a civil standard, often referred to as a “balance of probabilities”.<sup>13</sup> The Supreme Court of Canada has described the applicable test as “whether it is more likely than not that an alleged event occurred”.<sup>14</sup>

Energhx did not comment on who bears the burden of proving the allegations set out in the Notice or on the standard of proof.

There is no dispute, and the Board agrees, that the onus of proving the allegations rests with Compliance counsel, and that the standard is “whether it is more likely than not that an alleged event occurred”.

## Prescriptive nature of legal and regulatory requirements

Compliance counsel submits that the Act, the ECPA, the relevant regulations and the Codes are highly detailed and prescriptive and thus provide little room for discretion on the part of retailers and marketers.<sup>15</sup> Furthermore, Compliance counsel submits that it is incumbent on the Board to give full effect to the legal and regulatory scheme and to require full compliance with its requirements.<sup>16</sup>

Energhx did not comment on Compliance counsel’s submissions as to the prescriptive nature of the legal and regulatory scheme.

The Board agrees that the requirements of the ECPA, the relevant regulations and the Board’s Codes are highly prescriptive and detailed, leaving little room for discretion for retailers and marketers. Nonetheless, the Board must consider whether the burden of proof has been met in relation to each allegation, and must then also consider in each case the appropriate enforcement action to be taken.

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<sup>13</sup> Compliance counsel written submissions dated February 10, 2012, at page 11.

<sup>14</sup> *F.H. v. McDougall*, [2008] S.C.R. 41 at para. 49.

<sup>15</sup> Compliance counsel written submissions dated February 10, 2012, at page 11.

<sup>16</sup> *Ibid.*

### **Interim licence versus extension of existing licences**

During oral testimony, the Energhx witness spoke to the issue of licence extensions versus interim licences.<sup>17</sup> In its written submissions, Energhx submits that, without an “interim licence”, it could not commence its general public offering of its electricity retailing and gas marketing services during the period covered by the compliance inspection.<sup>18</sup>

Compliance counsel submits that, even if there is a distinction between an “interim licence” and an extension of an existing licence, it is irrelevant to the question of whether Energhx was bound to follow the various legislative and regulatory requirements set out in the Notice.<sup>19</sup>

The Board also notes that the record of the Licence Applications proceeding clearly shows that Energhx’s existing Licences were extended, which allowed it to continue with any marketing and retailing activities in accordance with those Licences. It is also clear that the Licences issued to Energhx do not themselves contain limitations on the nature of the retailing or marketing activities that can be carried out by Energhx, beyond those that apply by operation of law or that devolve from the Codes. Contrary to the position taken by Energhx, an “interim licence” issued under section 59 of the Act does not inherently confer any additional benefits on the licensee relative to licences issued in the normal course under section 57 of the Act as far as permitted activities go.

In any event, the Board agrees with Compliance counsel that the distinction between an interim licence and a licence extension, if any, is not in any way relevant to the issue of the obligation on Energhx to comply with applicable legal and regulatory requirements.

### **Whether Energhx engaged in retailing and marketing activities**

Compliance counsel submits that Energhx was engaged in “retailing” and “marketing” to “consumers”, as those terms are defined in the Codes and the ECPA.<sup>20</sup> In particular,

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<sup>17</sup> Transcript of the oral hearing, page 117, line 16 to page 120, line 8; and page 142, line 18 to page 144, line 14.

<sup>18</sup> Energhx written submissions dated February 16, 2012, at pages 2-3.

<sup>19</sup> Compliance counsel written submissions dated February 10, 2012, at page 10.

<sup>20</sup> *Ibid*, at page 12.

Compliance counsel relies on the following facts, all of which were admitted by Energhx in the course of the proceeding:

- (a) Energhx representatives interacted with “acquaintances” and “friends” in order to offer them the opportunity to become Energhx “associates” – which later was understood by the Board to be a synonym for consumer;
- (b) A single verification call was made by Energhx; and
- (c) At the time of the compliance inspection, Energhx had approximately 10 customers, three of whom were not affiliated with Energhx as employees or sales agents.<sup>21</sup>

During the oral hearing and in its submissions, Energhx submits that it has consistently set its focus on developing a unique supply service which would be marketed as the Green Energy Credit™. According to Energhx, the Green Energy Credit™ was submitted for patent protection in December 2010, and there was a lag in time to market caused by technical development and administrative setup procedures.<sup>22</sup> Energhx asserts that, in the absence of an interim licence, it could not commence its electricity retailing and gas marketing services during the period covered by the compliance inspection, and that it was constrained to “limit its activities to the training of associates, using their accounts for setup implementation procedures”.<sup>23</sup>

The Board finds the evidence of Energhx internally contradictory with respect to the degree of retailing and marketing that it carried out during the period covered by the compliance inspection.<sup>24</sup> On the one hand, the witness insisted that Energhx only dealt with “associates”, but on the other hand it was clear that a verification call was made and that at least three customers were signed up for the Energhx offer who were not affiliated with the company,<sup>25</sup> and it is not clear how those customers came to be enrolled with Energhx in the absence of some type of sales activity.

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<sup>21</sup> *Ibid*, at page 13, referring to various portions of the transcript of the oral hearing.

<sup>22</sup> Energhx written submissions dated February 16, 2012, at page 2.

<sup>23</sup> *Ibid.*, at page 3.

<sup>24</sup> Transcript of the oral hearing, page 120, line 15 to page 124, line 1.

<sup>25</sup> Transcript of the oral hearing, page 138, line 25 to page 139, line 10.

It was, however, evident that at the time of the compliance inspection the company was in a start-up phase and it appears that no marketing and retailing was undertaken beyond friends, family or company employees.<sup>26</sup> The testimony of Energhx's witness to that effect was not challenged by Compliance counsel. However, the Board is mindful that the statutory and regulatory requirements apply in relation to retailing and marketing to all low volume consumers, even those that are friends, family or company employees. There is nothing in the legal and regulatory framework governing the activities of retailers and marketers that diminishes or eliminates the entitlement of friends, family or company employees to the protections that form part of that framework. As a general proposition then, the legal and regulatory framework does not provide for greater tolerance simply because the consumer may be in some way affiliated or associated with the marketer or retailer.

### **Administrative penalties**

Energhx submits that the administrative penalty assessed against a person under section 112.5 of the Act "is designed to follow the Board's Cost Assessment Model".<sup>27</sup> The Board understands Energhx's argument in this regard to be that, in determining the amount of any administrative penalty, the Board should apply the principles of the Cost Assessment Model ("CAM") and consider Energhx as a start up business with no significant record of sales (few electricity customers and no gas customers enrolled during the period covered by the compliance inspection).

Energhx appears to misunderstand the applicability of the CAM. The CAM is the methodology that the Board uses to apportion its costs amongst the persons or classes of persons who pay cost assessments under section 26 of the Act. These persons and classes of persons are identified in Ontario Regulation 16/08 (Assessment of Expenses and Expenditures), and include licensed retailers and marketers. The CAM has nothing to do with the assessment of administrative penalties, in respect of which Ontario Regulation 331/03 (Administrative Penalties) applies.

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<sup>26</sup> Transcript of the oral hearing, page 145, line 20 to page 147, line 14.

<sup>27</sup> Energhx written submissions dated February 16, 2012, at page 6.

Energhx also submits that the Board has unjustly imposed a “high-handed barrier to fair competition in the deregulated energy market” and that the administrative penalty “represents an undue burden against new technology-driven competition”.<sup>28</sup> The Board does not agree with this characterization.

Compliance counsel submits that any purported benefit Energhx presents to the market in terms of advancing competition or green energy technology as a start up business is irrelevant for the purposes of setting an administrative penalty.<sup>29</sup> The Board agrees.

The Board notes that a number of the allegations set out in the Notice relate to the same underlying subject matter or transaction. For example, four allegations of non-compliance are associated with a single verification call, and 12 allegations are associated with the same training materials. Compliance counsel acknowledges that “the presentation of certain allegations as ‘distinct’ contraventions may be more a matter of style than substance”.<sup>30</sup> Although Compliance counsel submits that, once proven, it is appropriate to consider each allegation as a distinct contravention for the purposes of calculating the appropriate administrative penalty as long as the allegation cites a breach of a unique requirement, Compliance counsel also concedes that the Board may consider at least some of the allegations as a single contravention.<sup>31</sup> For the reasons discussed later in this Decision, the Board believes that this is an appropriate case in which to assess administrative penalties on a transaction-by-transaction basis rather than on the basis of each allegation individually.

The Board also notes that the imposition of an administrative penalty in respect of any given instance of non-compliance is a matter for the discretion of the Board. Specifically, section 112.5(1) of the Act states that, “if the Board is satisfied that a person has contravened an enforceable provision, the Board *may*, subject to the regulations under subsection (5), make an order requiring a person to pay an administrative penalty in the amount set out in the order...” (emphasis added). Where the Board considers it appropriate to impose an administrative penalty, the amount of that penalty must be determined in accordance with the rules set out in Ontario Regulation 331/03 (Administrative Penalties), which sets the minimum penalty at \$1,000.

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<sup>28</sup> *Ibid.*, at pages 1 and 4.

<sup>29</sup> Compliance counsel written submissions dated February 10, 2012, at page 40.

<sup>30</sup> *Ibid.*, at page 34.

<sup>31</sup> *Ibid.*, at page 35.

#### IV. BOARD FINDINGS ON SPECIFIC ALLEGATIONS

During the oral hearing and in its written submissions, Compliance counsel reviewed in detail each allegation in the Notice. The focus of the evidence and hearing was on the compliance inspection of Energhx during the two month period from the beginning of January to the end of February, 2011 and the allegations arising from that inspection. Of interest to the Board however was also to understand the compliance process following the inspection. The two witnesses who were presented were not able to provide evidence of that process or to address the assessment of the severity of the allegations<sup>32</sup>. In cases such as these, the Board expects witnesses who are familiar with the *entire* compliance process, not just the inspection phase, to be available to provide evidence to the Board.

In Energhx's written submissions, comments on the specific allegations were largely restricted to the alleged deficiencies of its training program.<sup>33</sup>

The Board's findings with respect to the specific allegations are set out below.

##### A. Training of Sales Representatives – Allegations 1 to 8

The Notice contains eight allegations of inadequate training of sales representatives. Deficiencies in the training materials identified by Compliance counsel were presented relative to the power point presentation provided by Energhx to its trainees.

Allegation 1 pertains to training regarding how to complete a contract application, allegation 5 pertains to training regarding price comparisons and allegation 7 pertains to training regarding renewals and extensions. The power point presentation did not contain any information in relation to these topics. The Board finds that Energhx's training materials were non-compliant with section 5.2 of the Codes in this respect, and that there has been a contravention of section 7 of Ontario Regulation 90/99 accordingly.

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<sup>32</sup> Transcript of the oral hearing, page 111, lines 12 to 20.

<sup>33</sup> Energhx written submissions dated February 16, 2012, at pages 4-5.



Allegations 2, 3, 4, 6 and 8 pertain to training regarding the use of business cards, the use of ID badges, disclosure statements, consumer cancellation rights and persons with whom a retailer or marketer may enter into, verify, renew or extend a contract. These topics are referred to in the power point presentation. In the opinion of Compliance counsel, however, they are not addressed in sufficient detail, and the training material is not adequate in terms of thoroughness.

In his testimony, Dr. Ogedengbe stated that the power point presentation was augmented by an “in-classroom” session for sales representatives.<sup>34</sup> However, in the Board’s view, the Code requirement for “adequate and accurate material” that covers certain topics is a requirement for written material. As such, while an oral component may usefully supplement written materials, it is not a substitute for them.

Gauging the adequacy of training materials is necessarily a subjective exercise. The references to the topics referred to in allegations 2, 3, 4, and 8 in the power point presentation are limited to identifying that it is an unfair practice for a retailer or marketer to be in non-compliance with requirements relating to those topics. The Board notes that the Codes require training material on “behavior that constitutes an unfair practice” separate and apart from material on the use of business cards, the use of ID badges, disclosure statements and the persons with whom a retailer or marketer may enter into, verify, renew or extend a contract. With respect to allegation 6, the reference in the power point presentation to consumer cancellation rights is limited to noting the 10-day cooling off period and the “reaffirmation option”. The ECPA and Ontario Regulation 389/10 include cancellation rights beyond the 10-day cooling off period, refer to verification and not “reaffirmation”, and make it clear that a contract that is not verified as and where required is void. The Board finds that Energhx’s training materials were non-compliant with section 5.2 of the Codes in respect of the topics referred to in allegations 2, 3, 4, 6 and 8, and that there has been a contravention of section 7 of Ontario Regulation 90/99 accordingly

## **B. Training of Verification Representatives – Allegations 9 to 12**

The training material used by Energhx for verification representatives consists of the same power point presentation as that used for sales representatives. The allegations

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<sup>34</sup> Transcript of the oral hearing, page 140, lines 7 to 10.

of inadequate training of verification representatives are therefore similarly based on Compliance counsel's assessment of that power point presentation.

Allegation 10 pertains to the absence of training material on the topic of price comparisons, and allegations 9, 11 and 12 pertain to the inadequacy of training material on the topics of disclosure statements, consumer cancellation rights and the persons with whom a marketer or retailer may enter into, verify, renew or extend a contract. For the reasons noted above, the Board finds that Energhx's training materials were non-compliant with section 5.2 of the Codes in respect of these topics and that there has been a contravention of section 7 of Ontario Regulation 90/99 accordingly.

### **C. Training test – Allegations 13 and 14**

Energhx admits that it initially required a passing score of 75% on the training test, contrary to the Code requirement.<sup>35</sup> Energhx also admits that a person was allowed to take the training test twice, scoring 70% on both attempts.<sup>36</sup> As noted by Compliance counsel, there was no evidence that the person re-took the training program.<sup>37</sup> The Board finds that Energhx contravened section 5.6(c) and section 5.6(d) of the Codes.

### **D. Record retention - Allegations 15 and 16**

The Board finds that Energhx has contravened section 5.10(g) of the Codes in relation to the records required to be maintained in relation to salespersons and verification representatives, as set out in allegation 15.

Energhx admits that it advised Ernst & Young that Energhx plans on maintaining records pertaining to salespersons and verification representatives.<sup>38</sup> It is understood that the Codes require that such records be maintained for a period of two years. The Board notes, however, that at the time of the compliance inspection the two-year period had not yet elapsed. As such, a finding of a contravention would necessarily be prospective (i.e., that Energhx is likely to contravene this requirement of the Code). Allegation 16 is not cast in such terms.

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<sup>35</sup> Admitted Fact #4, Document Binder, Exhibit K1 at Tab 6.

<sup>36</sup> Admitted Fact #5, Document Binder, Exhibit K1 at Tab 6.

<sup>37</sup> Compliance counsel written submissions dated February 10, 2012, at page 25.

<sup>38</sup> Admitted Fact #7, Document Binder, Exhibit K1, Tab 6.

The Board notes that it may, under section 112.3 of the Act, make an order requiring a person to comply with an enforceable provision and to take such action as the Board may specify to prevent a contravention in circumstances where the Board is satisfied that a contravention is likely. However, administrative penalties may only be levied where the Board is satisfied that a contravention has occurred.

As noted earlier in this Decision, the evidence indicates that Energhx has addressed this deficiency (as well as all others identified in the Notice).<sup>39</sup> The Board therefore does not believe that it is necessary to further consider the issuance of an order to comply under section 112.3 of the Act in relation to allegation 16.

#### **E. Business cards – Allegations 17 and 18**

At the time of the Board's compliance inspection, the business cards issued to Energhx salespersons who meet in person with low-volume consumers did not include the numbers of the Licences issued to Energhx, as required by section 5 of Ontario Regulation 90/99 and section 2.2 of the Codes. The business cards also did not include a toll-free number for Energhx, as required by section 2.2 of the Codes. While it is arguable that a toll-free number (i.e., a "1-800" number) should not be required for a company only doing business in one area code, it is a requirement of the Codes. Accordingly, the Board finds there have been breaches of the Codes and of Ontario Regulation 90/99, as set out in allegation 17.

Allegation 18 alleges that the business card deficiencies noted above will result in a breach of section 5(6)(ii) of Ontario Regulation 389/10 and sections 1.1(b) and 2.1 of the Codes. These sections pertain to the use of business cards that fail to meet the requirements of the Codes and Ontario Regulation 90/99. Compliance counsel argues that, given the deficiencies in the business cards, Energhx is likely to contravene these sections, and that the Board may take action accordingly under section 112.3 of the Act.<sup>40</sup>

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<sup>39</sup> Letter dated September 9, 2011, Exhibit K4, in which it was acknowledged that Energhx "provided Board staff with evidence to support that [Energhx has] remedied the issues of alleged non-compliance set out in the Notice".

<sup>40</sup> Compliance counsel written submissions dated February 10, 2012, at pages 27-28.

The evidence indicates that Energhx has addressed the deficiencies in its business cards,<sup>41</sup> and the Board therefore does not believe that it is necessary to further consider the issuance of an order to comply under section 112.3 of the Act in relation to allegation 18.

**F. Identification badges (ID badges) – Allegations 19 and 20**

As with the business cards, it was not disputed that the ID badges did not conform with section 6 of Ontario Regulation 90/99 and sections 2.4(a) and (g) of the Codes. The Board therefore finds that Energhx was in contravention of those sections, as set out in allegation 19.

With respect to allegation 20, for the same reason as noted in relation to business cards the Board does not believe that it is necessary to further consider the issuance of an order to comply under section 112.3 of the Act in relation to allegation 20.

**G. Contract content requirements for new contracts – Allegations 21 to 24**

Energhx did not refute the allegations regarding the format or content of the contracts at issue in the transactions reviewed during the compliance inspection. The Board finds that Energhx's contracts were non-compliant as set out in allegations 21 to 24, and that there have been contraventions of the legal and regulatory requirements set out in those allegations.

**H. Completion of price comparisons for new contracts – Allegation 25**

The Board notes that, with one exception, the price comparison document used by Energhx is fully compliant with the legal and regulatory requirements. The exception, which Energhx did not refute, is that a date has been included in the place that has been set aside for a document control number. As noted earlier in this Decision, the

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<sup>41</sup> Letter dated September 9, 2011, Exhibit K4, in which it was acknowledged that Energhx "provided Board staff with evidence to support that [Energhx has] remedied the issues of alleged non-compliance set out in the Notice".

legal and regulatory framework is highly prescriptive and leaves little room for discretion on the part of retailers and marketers. The Board finds that Energhx has failed to comply with the Board's instructions for completing the price comparison, and that there has been a violation of section 12 of the ECPA, section 8(3) of Ontario Regulation 389/10 and section 4.6(b) of the Codes accordingly.

**I. Verification call (use of the applicable Board-approved script) – Allegations 26 to 29**

Allegations 26 to 29 all pertain to the same verification call. Dr. Ogedengbe confirmed during oral testimony that this one verification call was to a family friend.<sup>42</sup> As noted previously, the Board is of the view that all low volume consumers, including persons that are friends with or the family of the retailer or marketer, are entitled to the same protections under the legal and regulatory framework that is currently in place. Although the verification script may not lend itself as well to circumstances where the consumer is a friend of or related to the retailer or marketer, the fact remains that strict adherence to the script is required. Allegations 26 to 29 are therefore upheld, and the Board finds that there were contraventions of the legal and regulatory requirements as set out in those allegations.

**J. Compliance monitoring and quality assurance program – Allegation 30**

The Board finds that Energhx contravened sections 7.4 and 7.5 of the Codes in failing to maintain a compliance monitoring program. This was not disputed.

**Administrative Penalties**

As also noted earlier in this Decision, the imposition of an administrative penalty in respect of any given instance of non-compliance is a matter for the discretion of the Board. The Board believes that it is appropriate in this case to refrain from imposing an administrative penalty in respect of the contraventions pertaining to the training test, record retention, business cards, ID badges, completion of price comparisons, verification call and compliance monitoring. The evidence is that Energhx has come

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<sup>42</sup> Transcript of the oral hearing, page 134, lines 7 to 8.

into compliance in respect of all of these items; that the company had a very limited number of customers at the relevant time and was not offering its product to the public on a widespread basis; that the one salesperson cited with a failing score of 70% did not engage in any sales activities until she achieved a pass score of 90%;<sup>43</sup> and that a sole verification call was made.

The Board emphasizes that its decision not to impose an administrative penalty in this case should not be misunderstood as indicative of a view that violations of these legal and regulatory requirements are unimportant or trivial. The Board also emphasizes that it expects Energhx to take whatever steps are necessary to ensure that it has a comprehensive and accurate understanding of all applicable legal and regulatory requirements and remains fully compliant with them if it intends to continue business operations as a retailer and/or marketer.

Where the Board intends to impose an administrative penalty, the Board must do so in accordance with Ontario Regulation 331/03 (Administrative Penalties). Ontario Regulation 331/03 requires that the Board first determine the following: (a) whether the contravention was a minor, moderate or major deviation from the requirements of the enforceable provision; and (b) whether the contravention had a minor, moderate or major potential to adversely affect consumers, other licensees or other persons. The determination on these two questions then establishes the range of administrative penalties that applies, as set out in the Schedule to Ontario Regulation 331/03. In selecting the appropriate amount from within that range, the analysis involves a consideration of the extent of mitigation by the person that committed the contravention; whether that person is a repeat offender; whether that person derived any economic benefit from the contravention; and any other criteria the Board considers relevant.

The range of administrative penalties for contraventions as per Ontario Regulation 331/03 are shown below.

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<sup>43</sup> *Ibid*, pages 141 to 142, lines 27 to 29 and 1 to 3.

	Deviation from the requirements of the enforceable provision that was contravened			
Potential to adversely affect consumers, persons licensed under the Act or other persons		Major	Moderate	Minor
	Major	\$15,000 - \$20,000	\$10,000 - \$15,000	\$5,000 - \$10,000
	Moderate	\$10,000 - \$15,000	\$5,000 - \$10,000	\$2,000 - \$5,000
	Minor	\$5,000 - \$10,000	\$2,000 - \$5,000	\$1,000 - \$2,000

Compliance counsel submits that, at least for certain of the allegations, the appropriate range is from “major” to “moderate” in terms of deviation from the requirement and/or potential adverse affect as set out in Ontario Regulation 331/03.<sup>44</sup>

The onus is on compliance staff to satisfy the Board of the contraventions and the factors leading to the level of administrative penalty proposed. In this case, the Board was not presented with any evidence upon which it could make a determination as to the potential of the contravention to adversely affect consumers. For this reason, the Board finds the potential to adversely affect consumers to be minor. This does not undermine the importance of these contraventions or their impact – the matter is simply one of lack of evidence.

In assessing the administrative penalties the Board also took into consideration that Energhx did not appear to derive any economic benefit from these contraventions and the very limited marketing and retailing that was undertaken beyond friends, family or company employees. It also reflects that Energhx has brought itself into subsequent compliance with all issues as indicated by the Board’s letter of September 2011.

The ECPA is designed to protect energy consumers by ensuring that retailers and marketers follow fair business practices, have been adequately trained and that consumers are provided with essential information before they sign energy contracts. Contraventions of the legal and regulatory framework that derogate from these requirements are, in the Board’s view, matters of particular concern.

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<sup>44</sup> Compliance counsel written submissions dated February 10, 2012, at pages 36 to 39.

As noted earlier in this Decision, the Board has discretion to consider multiple allegations associated with the same transaction or subject matter as one contravention for the purposes of determining the level of administrative penalties to be imposed. The Board believes that it is appropriate to do so in this case, including consolidating all 12 allegations pertaining to training 1 to 8 being in relation to salespersons and 9 to 12 being in relation to verification representatives. In the context of these 12 violations, the Board finds the deviations in training from the requirements of the enforceable provisions that were contravened to be major and because of the lack of evidence as to the potential adverse affect on consumers, a default of “minor adverse impact” is will be used. An administrative penalty of \$5,000 is therefore imposed.

The contraventions pertaining to the contract content are considered in this case to be major deviations from the requirements of the enforceable provisions that were contravened but with minor potential adverse effect on consumers, due to the lack of evidence supporting any other finding. It is also noted that there were only 3 customers unaffiliated with the company who had signed contracts during this period, and that marketing and retailing was not undertaken to the general public. The administrative penalty is therefore \$5,000.

The Board fixes the amount of the administrative penalties at \$10,000.

### **Costs**

Although Compliance counsel submits that this is an appropriate case in which to seek costs against Energhx, Compliance counsel has decided not to do so.<sup>45</sup> The Board makes no order as to costs in this proceeding.

### **THE BOARD ORDERS THAT:**

1. Energhx shall, by December 31, 2012, pay to the Ontario Energy Board an administrative penalty in the amount of \$10,000.

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<sup>45</sup> *Ibid*, at page 41.

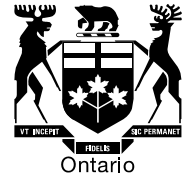


**ISSUED** at Toronto, March 26, 2012

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary



**EB-2010-0236**  
**EB-2010-0237**

**IN THE MATTER OF** the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, (Schedule B);

**AND IN THE MATTER OF** an application under section 60 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Schedule B to renew Energhx Green Energy Corporation's electricity retailer licence.

**AND IN THE MATTER OF** an application under section 50 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Schedule B to renew Energhx Green Energy Corporation's gas marketer licence.

By delegation, before: Jennifer Lea

### **DECISION AND ORDER**

Energhx Green Energy Corporation, carrying on business as Energhx Consulting ("Energhx") filed an application with the Ontario Energy Board, received on June 8, 2010, under section 60 of the *Ontario Energy Board Act*, 1998 (the "Act") to renew its electricity retailer licence. Energhx also filed an application under section 50 of the Act to renew its gas marketer licence. The Board assigned the applications file numbers EB-2010-0236 and EB-2010-0237, respectively.

Energhx filed supplementary information and the applications were completed on August 17, 2010.

The Board issued a Notice of Application and Written Hearing on September 7, 2010. Only Board staff participated in the hearing. Board staff filed written interrogatories on October 8, 2010. Energhx filed responses to Board staff interrogatories on October 27,

2010. Board staff filed a submission on November 10, 2010 and Energhx filed its reply submission on November 25, 2010.

On January 28, 2011, following the enactment of The *Energy Consumer Protection Act, 2010* ("ECPA") on January 1, 2011, the Board re-opened the record to provide Energhx with an opportunity to submit evidence of compliance with the current legislative and regulatory requirements. The terms of the licences were extended.

Starting in early 2011, the Board commenced a series of compliance inspections of those electricity retailers and gas marketers that filed a Certificate of Compliance with the Board. The inspection included Energhx. On August 25, 2011 the Board issued a Notice of Intention to Make an Order against Energhx for contraventions of various provisions of consumer protection legislation and Board Codes. In response to the Notice, in a letter dated September 9, 2011, Energhx requested an oral hearing. To accommodate the hearing process, the terms of the licences were further extended to April 30, 2012.

The hearing requested by Energhx was held on February 7, 2012. On March 26, 2012, the Board issued a decision and order in which Energhx was ordered to pay an administrative penalty in the amount of \$10,000.

### **Issues in the Applications**

The Board originally issued an electricity retailer licence and gas marketer licence to Energhx on October 22, 2009. The standard term for such licences is five years. However, the licences granted to Energhx were for a one year term, due to concerns with respect to the financial viability. The decision of October 22, 2009 invited the applicant, in applying for renewal of the licence, to "improve its financial situation and bring evidence of that improvement". In addition, the decision pointed out the necessity for licensees to familiarize themselves with Board Codes of Conduct that help protect consumers.

In these applications for renewal of the licences, key areas for consideration by the Board include the financial position, technical capability and the conduct of applicant. Board staff raised concerns with respect to the evidence filed in all three areas, and submitted that the Energhx applications for an electricity retailer licence and a gas marketer licence should be denied.

In its reply submission Energhx requested "... that the Board grant Energhx some leeway at this early stage of its business development by renewing its licences for another year. If the licences are not renewed, Energhx will be put out of business and will lose all of its investment to date".

### **Compliance Proceeding EB-2011-0311**

The ECPA, in effect since January 1, 2011, is designed to protect energy consumers by ensuring that retailers and marketers follow fair business practices and that consumers are provided with essential information before they sign energy contracts. In the compliance proceeding, it was alleged that Energhx contravened sections of Ontario Regulation 90/99, Ontario Regulation 389/10, the ECPA and the Board's Codes of Conduct.

Although the Board found that Energhx had breached the legislation and the Codes, the Board also found that:

- By the time of the hearing, Energhx had brought itself into compliance with all issues;
- Energhx did not appear to derive any economic benefit from these contraventions and had very limited marketing and retailing activities that were undertaken beyond friends, family or company employees; and
- The potential of the contraventions to adversely affect consumers was not proven to be more than minor, given the evidence presented in the hearing.

The Board emphasized in the compliance decision that it expects Energhx to take whatever steps are necessary to ensure that it has a comprehensive and accurate understanding of all applicable legal and regulatory requirements and remains fully compliant with them if it intends to continue business operations as a retailer and/or marketer.

### **Board Findings**

As noted above, Board staff submitted that these licence applications should be denied. However, since the time of that submission, the Board has found that Energhx has brought itself into compliance with legislative and regulatory requirements. I find that it is appropriate to grant the applications. However, the issues raised by staff with respect

to the financial performance of the applicant have not, in my view been fully answered, and the financial viability of the entity remains a concern.

I find that the licences will be granted for a two year term to enable Energhx to improve its financial position and demonstrate its continued compliance with legislative and regulatory requirements. I further find that the following reporting conditions should be imposed in the licence to allow the Board to monitor Energhx's financial progress and compliance with the licences.

Energhx will be required to file with the Board, no later than June 28, 2013, the following information:

1. Audited financial statements for the 2012 fiscal year;
2. A description of Energhx's compliance monitoring and quality assurance program, including a description of the specific protocols for testing the performance of all salespersons and verification representatives in relation to compliance with applicable statutes, regulations and regulatory requirements;
3. A summary of the results of the testing program conducted within the reporting period ending on April 30, 2013; and
4. A description of Energhx's strategy for any further improvement needed to achieve continuing legislative and regulatory compliance, demonstrating the link between the results of the program to date and measures to be implemented in the future.

**IT IS THEREFORE ORDERED THAT:**

1. The electricity retailer licence is granted for a period of two years.
2. In addition to the terms and conditions of the standard electricity retailer licence, the licensee shall abide by the special conditions contained in Schedule 2 to the licence.
3. The gas marketer licence is granted for a period of two years.

4. In addition to the terms and conditions of the standard gas marketer licence, the licensee shall abide by the special conditions contained in Schedule 2 to the licence.

**DATED** at Toronto, April 30, 2012

ONTARIO ENERGY BOARD

*Original signed by*

Jennifer Lea  
Counsel, Special Projects



# Electricity Retailer Licence

**ER-2010-0236**

**Energhx Green Energy Corporation**  
carrying on business as  
**Energhx Consulting**

Valid Until

April 29, 2014

*Original signed by*

---

**Jennifer Lea**  
**Counsel, Special Projects**  
**Ontario Energy Board**  
**Date of Issuance: April 30, 2012**

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

Commission de l'énergie de l'Ontario  
C.P. 2319  
2300, rue Yonge  
27e étage  
Toronto ON M4P 1E4

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## 1 Definitions

In this Licence:

**“Act”** means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

**“consumer”** means a person who uses, for the person’s own consumption, electricity that the person did not generate;

**“Electricity Act”** means the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A;

**“Licensee”** means Energhx Green Energy Corporation carrying on business as Energhx Consulting;

**“Market Rules”** means the rules made under section 32 of the Electricity Act; and

**“regulation”** means a regulation made under the Act or the Electricity Act;

**“residential or small business consumer”** means a consumer who annually uses less than 150,000 kWh of electricity;

For the purpose of this Licence, the terms “retailer” and “retailing” do not apply to a Licensed Distribution Company fulfilling its obligations under section 29 of the Electricity Act.

## 2 Interpretation

- 2.1 In this Licence, words and phrases shall have the meaning ascribed to them in the Act or the Electricity Act. Words or phrases importing the singular shall include the plural and vice versa. Headings are for convenience only and shall not affect the interpretation of this Licence. Any reference to a document or a provision of a document includes an amendment or supplement to, or a replacement of, that document or that provision of that document. In the computation of time under this Licence, where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens. Where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

## 3 Authorization

- 3.1 The Licensee is authorized, under Part V of the Act and subject to the terms and conditions set out in this Licence:
- a) to sell or offer to sell electricity to a consumer;
  - b) to act as the agent or broker for a retailer with respect to the sale or offering for sale of electricity; and
  - c) to act or offer to act as the agent or broker for a consumer with respect to the sale or offering for sale of electricity.

- 3.2 The Licensee is authorized to conduct business in the name under which this Licence is issued, or any trade name(s) listed in Schedule 1.

#### **4 Obligation to Comply with Legislation, Regulations and Market Rules**

- 4.1 The Licensee shall comply with all applicable provisions of the Act, the Electricity Act and regulations under these Acts, except where the Licensee has been exempted from such compliance by regulation.
- 4.2 The Licensee shall comply with all applicable Market Rules.

#### **5 Obligation to Comply with Codes**

- 5.1 The Licensee shall at all times comply with the following Codes (collectively the "Codes") approved by the Board, except where the Licensee has been specifically exempted from such compliance by the Board:
- a) the Electricity Retailer Code of Conduct;
  - b) the Retail Settlement Code; and
  - c) the Retail Metering Code.
- 5.2 The Licensee shall:
- a) make a copy of the Codes available for inspection by members of the public at its head office and regional offices during normal business hours; and
  - b) provide a copy of the Codes to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

#### **6 Agent for Service**

- 6.1 If the Licensee does not have an office or other place of business in Ontario, the Licensee shall ensure the continuing appointment at all times of an individual who is a resident of Ontario and is at least 18 years old, or a corporation that has its head office or registered office in Ontario, as the Licensee's agent for service in Ontario on whom service of process, notices or other documentation may be made.

#### **7 Market Power Mitigation Rebates**

- 7.1 The Licensee shall comply with the pass through of Ontario Power Generation rebate conditions set out in Appendix A of this Licence.

#### **8 Provision of Information to the Board**

- 8.1 The Licensee shall maintain records of and provide, in the manner and form determined by the Board, such information as the Board may require from time to time.
- 8.2 Without limiting the generality of paragraph 8.1, the Licensee shall notify the Board of any material change in circumstances that adversely affects or is likely to adversely affect the

business, operations or assets of the Licensee as soon as practicable, but in any event no more than twenty (20) days past the date upon which such change occurs.

## **9 Customer Complaint and Dispute Resolution**

- 9.1 The Licensee shall participate in a consumer complaints resolution process selected by the Board.

## **10 Term of Licence**

- 10.1 This Licence shall take effect on April 30, 2012 and expire on April 29, 2014. The term of this Licence may be extended by the Board.

## **11 Fees and Assessments**

- 11.1 The Licensee shall pay all fees charged and amounts assessed by the Board.

## **12 Communication**

- 12.1 The Licensee shall designate a person that will act as a primary contact with the Board on matters related to this Licence. The Licensee shall notify the Board promptly should the contact details change.
- 12.2 All official communication relating to this Licence shall be in writing.
- 12.3 All written communication is to be regarded as having been given by the sender and received by the addressee:
- a) when delivered in person to the addressee by hand, by registered mail, or by courier;
  - b) ten (10) business days after the date of posting if the communication is sent by regular mail; or
  - c) when received by facsimile transmission by the addressee, according to the sender's transmission report.

## **13 Copies of the Licence**

- 13.1 The Licensee shall:
- a) make a copy of this Licence available for inspection by members of the public at its head office and regional offices during normal business hours; and
  - b) provide a copy of this Licence to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

**SCHEDULE 1 AUTHORIZED TRADE NAMES**

1. Energhx Green
2. Energhx Energy
3. Energhx Power

## **SCHEDULE 2 SPECIAL CONDITIONS**

Energhx Green Energy Corporation will be required to file with the Board, no later than June 28, 2013, the following information:

1. Audited financial statements for the 2012 fiscal year;
2. A description of Energhx's compliance monitoring and quality assurance program, including a description of the specific protocols for testing the performance of all salespersons and verification representatives in relation to compliance with applicable statutes, regulations and regulatory requirements;
3. A summary of the results of the testing program conducted within the reporting period ending on April 30, 2013; and
4. A description of Energhx's strategy for any further improvement needed to achieve continuing legislative and regulatory compliance, demonstrating the link between the results of the program to date and measures to be implemented in the future.

## **APPENDIX A**

### **MARKET POWER MITIGATION REBATES**

“OPGI” means Ontario Power Generation Inc.

A retailer shall promptly pass through a portion of the rebate received from a distributor to those consumers who are not receiving the fixed price under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* and who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer.

If requested in writing by OPGI, the retailer shall ensure that all rebates paid to consumers are identified as coming from OPGI in the following form on or with each bill or cheque.

#### **“ONTARIO POWER GENERATION INC. rebate”**

A retailer shall promptly return to a distributor any portion of the rebate received from the distributor which relates to low-volume or designated consumers receiving the fixed commodity price for electricity under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998*, who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer or another party.

The amounts paid out to consumers or returned to the distributor shall be based on energy consumed and calculated in accordance with the rules set out in the Retail Settlement Code.

Amounts payable by the retailer may be made by way of set off at the discretion of the retailer.

### **ONTARIO POWER GENERATION INC. REBATES**

For the payments that relate to the period from May 1, 2006 to April 30, 2009, the rules set out below shall apply.

A retailer shall promptly pass through a portion of the rebate received from a distributor to those consumers who are not receiving the fixed price under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* and who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer.

If requested in writing by OPGI, the retailer shall ensure that all rebates paid to consumers are identified as coming from OPGI in the following form on or with each bill or cheque.

#### **“ONTARIO POWER GENERATION INC. rebate”**

The amounts paid out to consumers or returned to the distributor shall be based on energy consumed and calculated in accordance with the rules set out in the Retail Settlement Code.

Amounts payable by the retailer may be made by way of set off at the discretion of the retailer.



Thursday, December 20, 2012

By E-mail

[boardsec@ontarioenergyboard.ca](mailto:boardsec@ontarioenergyboard.ca)

EB-2011-0311

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

Dear Ms Kirsten Walli:

#### Notice of Appeal on Decision and Order

The Ontario Energy Board (the "Board") on March 26, 2012 issued the decision and order for Energhx Green Energy Corporation ("Energhx") to pay the administrative penalty of \$10,000 by December 31, 2012. This decision and order is based on the review of all submissions at the oral hearing held on February 7, 2012, following the Board's Notice of Intention to Make an Order (the "Notice") under section 112.2 of the *Ontario Energy Board Act, 1998* (the "Act") against Energhx on August 25, 2011.

Energhx appreciates the Board's decisions, including the considerations of the contravention against Energhx as minor in its potential to adversely affect consumers, and the significant reduction of the amount of the administrative penalty. However, it is important to bring to the notice of the Board the difficulty before Energhx to comply with the December 31, 2012 timing for payment.

#### Energhx's Constraints with the December 31, 2012 Payment Order

1. Prior to April 30, 2012, and precisely in September, 2011, Energhx have voluntarily suspended all its marketing activities, including the training of its sales associates in order to ensure full compliance with all the allegations issued by the Board in its notice of September 9, 2011<sup>1</sup>.
2. On March 26, 2012, Energhx have filed with the Board certificates of compliance (including the development of its online marketing strategies) and have obtained written acknowledgement of such certificates.

---

<sup>1</sup> Transcript, Energhx Green Energy Corp Oral Hearing Vol. 1, EB-2011-0311

3. Since the development and the review of all of its marketing channels have not been completed, Energhx has not entered into a new contract, renew, amend, or extend any contract since the commencement of the stated self-suspension.
4. Escalation of the proposed delivery date for the re-design of Energhx's website, in accordance with the Board's regulations for online marketing, by the service provider (Inveera Technologies) has prevented the resumption of all marketing activities, and the restraint of all procedure for sourcing financial injection into the business.
5. It is presently anticipated that the current online marketing development, the setup and training of management team for the business may not be completed before April 30, 2013.
6. Energhx promise not to resume all marketing activities and the use of its electricity retailing and gas marketing licences until these development activities are completed.

Therefore, Energhx appeal for more time to complete the development of its online marketing channels and administrative setup, in accordance with the regulatory requirements, in order to source for financial interests into the business. Approximately, it is about six (6) months after that time, possibly by December 31, 2013, that Energhx will be able to guaranteed the complete payment of the administrative order.

Sincerely,



---

*Emmanuel O.B Ogedengbe*  
Consultant & CEO



**Ontario Energy  
Board**  
P.O. Box 2319  
27th. Floor  
2300 Yonge Street  
Toronto ON M4P 1E4  
Telephone: 416- 481-1967  
Facsimile: 416- 440-7656  
Toll free: 1-888-632-6273

**Commission de l'énergie  
de l'Ontario**  
C.P. 2319  
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2300, rue Yonge  
Toronto ON M4P 1E4  
Téléphone: 416- 481-1967  
Télécopieur: 416- 440-7656  
Numéro sans frais: 1-888-632-6273



**BY EMAIL**

December 27, 2012

Emmanuel O.B Ogedengbe  
Energhx Green Energy Corporation  
73 Compata Way  
Ottawa, ON K1B 4X1

Dear Mr. Ogedengbe:

**Re: Request for additional time to pay the Administrative Penalty  
Board File No. EB-2011-0311**

On March 26, 2012 the Ontario Energy Board issued a Decision and Order for Energhx Green Energy Corporation ("Energhx") to pay an administrative penalty of \$10,000 by December 31, 2012 (EB-2011-0311).

On December 20, 2012 the Board received your letter of the same date requesting that Energhx be provided additional time to make the \$10,000 payment to the Board as it is unable to make payment at this time. Energhx requested that the date for payment be extended one year, to December 31, 2013. The Board has considered Energhx's request and notes that Energhx has already had nine months to make the payment. The Board will therefore extend the date to June 28, 2013 marking a one year period from the date of the issuance of the Board's Decision and Order.

Yours truly,

*Original Signed By*

Kirsten Walli  
Board Secretary

Ontario Energy  
Board  
P.O. Box 2319  
27th. Floor  
2300 Yonge Street  
Toronto ON M4P 1E4  
Telephone: 416- 481-1967  
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BY E-MAIL

[Emmanuel.Ogedengbe@energhx.com](mailto:Emmanuel.Ogedengbe@energhx.com)

July 2, 2013

Emmanuel Ogedengbe  
Energhx Green Energy Corporation  
73 Compata Way  
Ottawa, ON K1B 4X1

Dear Mr. Ogedengbe,

**Re: Board Decision and Order dated March 26, 2012  
EB-2011-0311**

On March 26, 2012, the Ontario Energy Board (the "Board") issued a Decision and Order (the "Order") for an Administrative Penalty against Energhx Green Energy Corporation ("Energhx").

The Order required Energhx to pay an administrative penalty in the amount of \$10,000 to the Board by December 31, 2012 pursuant to section 112.5 of the *Ontario Energy Board Act, 1998* (the "Act"). On December 27, 2012, the Board granted an extension of time to Energhx to June 28, 2013 to pay the administrative penalty.

The Board has not received payment of the administrative penalty as required by the Order and as such, in Board staff's opinion, has failed to comply with a provision of an order of the Board. A breach of an order of the Board is a contravention of an enforceable provision of the Act and an offence under section 126(1)(c) of the Act.

Energhx is required to immediately make payment of the administrative penalty in the amount of \$10,000 by certified cheque payable to the Ontario Energy Board and by no later than July 5, 2013.

Yours truly,

Karim Karsan  
Managing Director, Compliance & Consumer Protection



Tuesday, July 02, 2013

By E-mail

[boardsec@ontarioenergyboard.ca](mailto:boardsec@ontarioenergyboard.ca)

EB-2011-0311

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

Dear Ms Kirsten Walli:

**Re: Request for additional time to pay the Administrative Penalty**  
**Board File No. EB-2011-0311**

The Ontario Energy Board (the "Board") on December 27, 2012 reviewed Energhx Green Energy Corporation ("Energhx") request for additional time to pay the administrative penalty of \$10,000 by December 31, 2013. This decision of the Board granting Energhx an extension up to June 28, 2013 was received with gratitude.

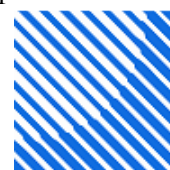
While tremendous efforts have been made to comply with this grace period, it is important to bring to the notice of the Board that our initial request for extension up to December 31, 2013 appears the only redemptive grace.

#### **Review of Previous Submission of Constraints with the Payment Order**

1. Prior to April 30, 2012, and precisely in September, 2011, Energhx have voluntarily suspended all its marketing activities, including the training of its sales associates in order to ensure full compliance with all the allegations issued by the Board in its notice of September 9, 2011<sup>1</sup>.
  - *The voluntary suspension is still in effect, since the development of the online marketing offering and other branding projects are on-going.*
2. On March 26, 2012, Energhx have filed with the Board certificates of compliance (including the development of its online marketing strategies) and have obtained written acknowledgement of such certificates.
  - *The development of the online marketing offering and other branding projects are on-going.*

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<sup>1</sup> Transcript, Energhx Green Energy Corp Oral Hearing Vol. 1, EB-2011-0311



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- *Although the sign-up procedure is presently visible online (<http://energhx.com/signupProductinfo.php>), the service is not available for sign-up yet because the monitoring of customer's data have not been developed.*
- 3. Since the development and the review of all of its marketing channels have not been completed, Energhx has not entered into a new contract, renew, amend, or extend any contract since the commencement of the stated self-suspension.
  - *Although significant developmental milestones have been covered, the project development is still on-going.*
- 4. Escalation of the proposed delivery date for the re-design of Energhx's website, in accordance with the Board's regulations for online marketing, by the service provider (Inveera Technologies) has prevented the resumption of all marketing activities, and the restraint of all procedure for sourcing financial injection into the business.
  - *Implementation of the project by Inveera Technology was terminated after the about 50% completion of the target job description due to unforeseeable project escalation and poor timeliness on execution.*
  - *Another marketing consultant had taken and completed the content management aspect of the project.*
  - *Quotes from consultants on the final milestone of the project is presently under review.*
- 5. It is presently anticipated that the current online marketing development, the setup and training of management team for the business may not be completed before April 30, 2013.
  - *Escalation and poor timeliness on implementation have made the April 30, 2013 completion date impossible.*
  - *A new date of September 30, 2013 completion time is presently being proposed.*
- 6. Energhx promise not to resume all marketing activities and the use of its electricity retailing and gas marketing licences until these development activities are completed.
  - *This voluntary resolution is still in effect.*

Application for investors' interest is presently under review. However, it is obvious that the ongoing project must be completed; and the marketing of services resumed before reasonable attention to our application can be considered.

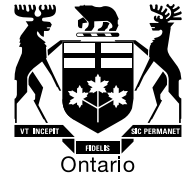
Therefore, Energhx appeal for Board's reconsideration of the initial extension request up till December 31, 2013 to pay the administrative penalty.

Sincerely,



---

Emmanuel O.B Ogedengbe  
Consultant & CEO



**EB-2011-0311**

**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 under sections 112.3, 112.4 and  
112.5 of the *Ontario Energy Board Act*, 1998 for  
Compliance, Suspension and an Administrative  
Penalty against Energhx Green Energy Corporation.

**BEFORE:** Marika Hare  
Presiding Member

Paula Conboy  
Member

### **DECISION AND ORDER**

**July 18, 2013**

On August 25, 2011 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 (the “Notice”) against Energhx Green Energy Corporation (“Energhx”).

The Notice indicated that the Board intended to make an Order: (i) under sections 112.3 and 112.5 of the Act, requiring Energhx to comply with certain enforceable provisions as defined in section 3 of the Act and to pay an administrative penalty in the amount of \$32,500 for breaches of those enforceable provisions; and, (ii) under section 112.4 of the Act, to suspend Energhx’s activities with respect to sales, renewals, extensions or amendments of contracts using the following channels: Door-to Door, Exhibitions, Trade Shows and Direct Mail. The Notice described the allegations of non-compliance as follows:

It is alleged that Energhx has contravened sections of Ontario Regulation 90/99, Ontario Regulation 389/10, section 12 of the *Energy Consumer Protection Act, 2010*... and the Electricity Retailer Code of Conduct and the Code of Conduct for Gas Marketers.<sup>1</sup>

The particulars in support of the allegations are set out in the Notice.

The complete record for this proceeding is available on the Board's website.

On March 26, 2012 the Board issued a Decision and Order for Energhx to pay an administrative penalty of \$10,000 by December 31, 2012.

On December 20, 2012 the Board received a letter requesting that Energhx be provided additional time to make the \$10,000 payment to the Board as it was unable to make payment by December 31, 2012. Energhx requested that the date for payment be extended one year, to December 31, 2013. The Board considered Energhx's request and extended the date for payment to June 28, 2013.

On July 2, 2013 the Board received a letter requesting that Energhx be provided additional time to make the \$10,000 payment to the Board, as it is unable to make payment by June 28, 2013. Energhx requested that the date for payment be extended to December 31, 2013. In the letter Energhx stated the following:

*Application for investors' interest is presently under review. However, it is obvious that the ongoing project must be completed; and the marketing of services resumed before reasonable attention to our application can be considered.*

*Therefore, Energhx appeal for Board's reconsideration of the initial extension request up till December 31, 2013 to pay the administrative penalty.*

---

<sup>1</sup> The statutory and other references noted in this excerpt from the Notice are as follows: Ontario Regulation 90/99 (Licence Requirements – Electricity Retailers and Gas Marketers) made under the Act, as most recently amended by Ontario Regulation 390/10 filed on October 13, 2010 and effective January 1, 2011; Ontario Regulation 389/10 (General) made under the *Energy Consumer Protection Act, 2010*, also filed on October 13, 2010 and effective January 1, 2011; the *Energy Consumer Protection Act, 2010*, S.O. 2010, c. 8, in force on January 1, 2011; Ontario Energy Board *Electricity Retailer Code of Conduct*, as restated November 17, 2010 and in force January 1, 2011; and Ontario Energy Board *Code of Conduct for Gas Marketers*, as restated November 17, 2010 and in force effective January 1, 2011.

## Submission

In response to Energhx's request for an extension of time to pay the administrative penalty, Compliance Counsel on behalf of Compliance staff filed a letter requesting an opportunity to file a submission. The Board granted the request and a submission was filed on July 11, 2013. The submission stated the following:

- 1. Having already received one six-month extension of time, Energhx Green Energy Corporation ("Energhx") now requests a further six-month extension to pay a \$10,000 administrative penalty that was imposed by the Ontario Energy Board (the "Board") more than 15 months ago. Compliance Counsel submits that Energhx's request should be denied, and that it should be ordered to pay the administrative penalty within 48 hours, failing which its electricity retailer and gas marketer licences (collectively, the "Licences") shall be revoked.*
- 2. Energhx has not provided any compelling reason why a further extension is necessary; at best, its submissions suggest that payment right now would be inconvenient from a business and/or financial perspective. If such a low threshold qualified for an extension, then the specific and general deterrence capacity of administrative penalties, along with their positive impact in promoting compliance and protecting consumers, would be seriously undermined. Moreover, Energhx's conduct in this case — waiting nine months until the eve of the first deadline to request an extension, and then breaching the Board-ordered deadline before asking for the current extension — provides compelling reasons not to grant the relief sought.*

## Board Decision on Extension Request

The Board has considered Energhx's request for an extension of time to pay the administrative penalty and will grant a brief extension until August 29, 2013.

The Board is very mindful that an extension in this proceeding has already been granted and Energhx has had 15 months to pay the administrative penalty.

The Board does not intend to grant any further extensions. If payment is not received by August 29, 2013, the Board intends to initiate steps to suspend or revoke Energhx's electricity retailer and gas marketer licences.

**THE BOARD ORDERS THAT:**

Energhx shall, by August 29, 2013 pay to the Ontario Energy Board an administrative penalty in the amount of \$10,000.

**ISSUED** at Toronto, July 18, 2013

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary



**Ontario Energy  
Board**  
P.O. Box 2319  
27th. Floor  
2300 Yonge Street  
Toronto ON M4P 1E4  
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de l'Ontario**  
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27e étage  
2300, rue Yonge  
Toronto ON M4P 1E4  
Téléphone: 416- 481-1967  
Télécopieur: 416- 440-7656  
Numéro sans frais: 1-888-632-6273



**BY E-MAIL**

**[Emmanuel.Ogedengbe@energhx.com](mailto:Emmanuel.Ogedengbe@energhx.com)**

July 22, 2013

Emmanuel Ogedengbe  
Energhx Green Energy Corporation  
73 Compata Way  
Ottawa, ON K1B 4X1

Dear Mr. Ogedengbe,

**Re: Board Decision and Order dated April 30, 2012  
EB-2010-0236 & EB-2010-0237**

On April 30, 2012, the Ontario Energy Board (the "Board") issued a Decision and Order (the "Order") that granted an electricity retailer licence and a gas marketer licence (collectively, the "Licences") to Energhx Green Energy Corporation ("Energhx") for a period of two years. The Licences contained special conditions.

The Licences required Energhx to file with the Board, no later than June 28, 2013, the following information:

1. Audited financial statements for the 2012 fiscal year;
2. A description of Energhx's compliance monitoring and quality assurance program, including a description of the specific protocols for testing the performance of all salespersons and verification representatives in relation to compliance with applicable statutes, regulations and regulatory requirements;
3. A summary of the results of the testing program conducted within the reporting period ending on April 30, 2013; and
4. A description of Energhx's strategy for any further improvement needed to achieve continuing legislative and regulatory compliance, demonstrating the link between the results of the program to date and measures to be implemented in the future.

The Board has not received the information as required by the Order and Licences and as such, in Board staff's opinion, Energhx has failed to comply with a provision of an order of the Board and a condition of a licence. A breach of an order of the Board and a

condition of a licence is a contravention of an enforceable provision of the *Ontario Energy Board Act, 1998* (the "Act") and an offence under section 126(1)(c) of the Act.

Energhx is required to immediately file with the Board the information required by the Order and the Licences. If the information is not filed by Energhx forthwith, compliance staff will take steps to seek a suspension or revocation of the Licences.

Yours truly,

A handwritten signature in black ink, appearing to read 'K. Karsan', with a stylized, flowing script.

Karim Karsan  
Managing Director, Compliance & Consumer Protection

Ontario Energy  
Board  
P.O. Box 2319  
27th. Floor  
2300 Yonge Street  
Toronto ON M4P 1E4  
Telephone: 416- 481-1967  
Facsimile: 416- 440-7656  
Toll free: 1-888-632-6273

Commission de l'énergie  
de l'Ontario  
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Télécopieur: 416- 440-7656  
Numéro sans frais: 1-888-632-6273



BY E-MAIL

[Boardsec@ontarioenergyboard.ca](mailto:Boardsec@ontarioenergyboard.ca)

August 30, 2013

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

Dear Ms. Walli:

**Re: Board Decision and Order dated March 26, 2012  
Energhx Green Energy Corporation  
EB-2011-0311**

I am writing on behalf of Compliance Staff regarding the above matter.

Compliance Counsel has forwarded to Compliance Staff the written submission of Energhx Green Energy Corporation ("Energhx") of today's date filed with the Board requesting a further extension of time to pay the administrative penalty of \$10,000.

For the reasons set out in the written submissions of Compliance Counsel dated July 11, 2013, Compliance Staff oppose the further, open-ended extension of the payment deadline sought by Energhx in this matter, and note that no new or compelling reasons have been provided that would justify such an extension. Accordingly, Compliance Staff intends to take steps to suspend or revoke Energhx's electricity retailer and gas marketer licences, as per the Board's July 18<sup>th</sup> decision.

Yours truly,

Maureen Helt  
Legal Counsel

c: Emmanuel Ogedengbe  
Energhx



Friday, August 30, 2013

By E-mail

[boardsec@ontarioenergyboard.ca](mailto:boardsec@ontarioenergyboard.ca)

EB-2011-0311

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

Dear Ms Kirsten Walli:

**Re: Request for additional time to pay the Administrative Penalty**  
**Board File No. EB-2011-0311**

The Decision and Order of the Ontario Energy Board (the "Board") on July 18, 2013 in response to Energhx Green Energy Corporation ("Energhx") request for additional time to pay the administrative penalty of \$10,000 by December 31, 2013 was received. Although this decision of the Board granted Energhx an extension up to August 29, 2013 instead of the requested December 31, 2013, the spirit of grace exhibited by the Board is exemplary and highly motivational.

However, it is now obvious that Energhx still have not been able to come out of the mould. Nevertheless, we would like to strongly state our interest to retain our licences without any violation to their regulatory requirements.

The following are the review of our previous submission to the Board and the possible update of our engagements and submissions:

#### **Review of Previous Submission of Constraints**

1. Prior to April 30, 2012, and precisely in September, 2011, Energhx have voluntarily suspended all its marketing activities, including the training of its sales associates in order to ensure full compliance with all the allegations issued by the Board in its notice of September 9, 2011<sup>1</sup>.
  - *The voluntary suspension is still in effect, since the development of the online marketing offering and other branding projects are on-going. The Board's*

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<sup>1</sup> Transcript, Energhx Green Energy Corp Oral Hearing Vol. 1, EB-2011-0311

*intention to initiate steps to suspend our licences is welcomed, only if additional constraints to our ongoing struggle to secure a financial bail-out is not hampered.*

2. On March 26, 2012, Energhx have filed with the Board certificates of compliance (including the development of its online marketing strategies) and have obtained written acknowledgement of such certificates.
  - *The development of the online marketing offering and other branding projects are on-going. Deployment of new look-and-feel is being released in phases.*
  - *Although the sign-up procedure is presently visible online (<http://energhx.com/signupProductinfo.php>), the service is not available for sign-up yet because the monitoring of customer's data have not been developed.*
3. Since the development and the review of all of its marketing channels have not been completed, Energhx has not entered into a new contract, renew, amend, or extend any contract since the commencement of the stated self-suspension.
  - *Although significant developmental milestones have been covered, the project development is still on-going.*

Energhx is sincerely grateful for the generous consideration of the Board and its commitment to the Energy Competition Act, 1998, while delivering its regulatory mandate in the Ontario's energy market in the public interest.

Therefore, Energhx pray that the Board will proceed with its proposed suspension intention with graceful opportunity for us to recover, and waive every tendency of increasing our financial burden. Invariably, we will like to: a) retain the supply privilege to the six (6) electricity accounts being served with the electricity licence; b) retain our service agreements with distributors who presently have agreement with us; and c) only be constrained from using the licences to negotiate new contracts.

We strongly hope to pay this administrative penalty before the expiration of our licences.

Sincerely,



---

Emmanuel O.B Ogedengbe  
Consultant & CEO



# Electricity Retailer Licence

**ER-2010-0236**

**Energhx Green Energy Corporation**  
carrying on business as  
**Energhx Consulting**

Valid Until

April 29, 2014

*Original signed by*

---

**Jennifer Lea**  
**Counsel, Special Projects**  
**Ontario Energy Board**  
**Date of Issuance: April 30, 2012**

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

Commission de l'énergie de l'Ontario  
C.P. 2319  
2300, rue Yonge  
27e étage  
Toronto ON M4P 1E4

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## 1 Definitions

In this Licence:

**“Act”** means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

**“consumer”** means a person who uses, for the person’s own consumption, electricity that the person did not generate;

**“Electricity Act”** means the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A;

**“Licensee”** means Energhx Green Energy Corporation carrying on business as Energhx Consulting;

**“Market Rules”** means the rules made under section 32 of the Electricity Act; and

**“regulation”** means a regulation made under the Act or the Electricity Act;

**“residential or small business consumer”** means a consumer who annually uses less than 150,000 kWh of electricity;

For the purpose of this Licence, the terms “retailer” and “retailing” do not apply to a Licensed Distribution Company fulfilling its obligations under section 29 of the Electricity Act.

## 2 Interpretation

- 2.1 In this Licence, words and phrases shall have the meaning ascribed to them in the Act or the Electricity Act. Words or phrases importing the singular shall include the plural and vice versa. Headings are for convenience only and shall not affect the interpretation of this Licence. Any reference to a document or a provision of a document includes an amendment or supplement to, or a replacement of, that document or that provision of that document. In the computation of time under this Licence, where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens. Where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

## 3 Authorization

- 3.1 The Licensee is authorized, under Part V of the Act and subject to the terms and conditions set out in this Licence:
- a) to sell or offer to sell electricity to a consumer;
  - b) to act as the agent or broker for a retailer with respect to the sale or offering for sale of electricity; and
  - c) to act or offer to act as the agent or broker for a consumer with respect to the sale or offering for sale of electricity.



- 3.2 The Licensee is authorized to conduct business in the name under which this Licence is issued, or any trade name(s) listed in Schedule 1.

#### **4 Obligation to Comply with Legislation, Regulations and Market Rules**

- 4.1 The Licensee shall comply with all applicable provisions of the Act, the Electricity Act and regulations under these Acts, except where the Licensee has been exempted from such compliance by regulation.
- 4.2 The Licensee shall comply with all applicable Market Rules.

#### **5 Obligation to Comply with Codes**

- 5.1 The Licensee shall at all times comply with the following Codes (collectively the "Codes") approved by the Board, except where the Licensee has been specifically exempted from such compliance by the Board:
- a) the Electricity Retailer Code of Conduct;
  - b) the Retail Settlement Code; and
  - c) the Retail Metering Code.
- 5.2 The Licensee shall:
- a) make a copy of the Codes available for inspection by members of the public at its head office and regional offices during normal business hours; and
  - b) provide a copy of the Codes to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

#### **6 Agent for Service**

- 6.1 If the Licensee does not have an office or other place of business in Ontario, the Licensee shall ensure the continuing appointment at all times of an individual who is a resident of Ontario and is at least 18 years old, or a corporation that has its head office or registered office in Ontario, as the Licensee's agent for service in Ontario on whom service of process, notices or other documentation may be made.

#### **7 Market Power Mitigation Rebates**

- 7.1 The Licensee shall comply with the pass through of Ontario Power Generation rebate conditions set out in Appendix A of this Licence.

#### **8 Provision of Information to the Board**

- 8.1 The Licensee shall maintain records of and provide, in the manner and form determined by the Board, such information as the Board may require from time to time.
- 8.2 Without limiting the generality of paragraph 8.1, the Licensee shall notify the Board of any material change in circumstances that adversely affects or is likely to adversely affect the

business, operations or assets of the Licensee as soon as practicable, but in any event no more than twenty (20) days past the date upon which such change occurs.

**9 Customer Complaint and Dispute Resolution**

- 9.1 The Licensee shall participate in a consumer complaints resolution process selected by the Board.

**10 Term of Licence**

- 10.1 This Licence shall take effect on April 30, 2012 and expire on April 29, 2014. The term of this Licence may be extended by the Board.

**11 Fees and Assessments**

- 11.1 The Licensee shall pay all fees charged and amounts assessed by the Board.

**12 Communication**

- 12.1 The Licensee shall designate a person that will act as a primary contact with the Board on matters related to this Licence. The Licensee shall notify the Board promptly should the contact details change.
- 12.2 All official communication relating to this Licence shall be in writing.
- 12.3 All written communication is to be regarded as having been given by the sender and received by the addressee:
- a) when delivered in person to the addressee by hand, by registered mail, or by courier;
  - b) ten (10) business days after the date of posting if the communication is sent by regular mail; or
  - c) when received by facsimile transmission by the addressee, according to the sender's transmission report.

**13 Copies of the Licence**

- 13.1 The Licensee shall:
- a) make a copy of this Licence available for inspection by members of the public at its head office and regional offices during normal business hours; and
  - b) provide a copy of this Licence to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

**SCHEDULE 1 AUTHORIZED TRADE NAMES**

1. Energhx Green
2. Energhx Energy
3. Energhx Power

## **SCHEDULE 2 SPECIAL CONDITIONS**

Energhx Green Energy Corporation will be required to file with the Board, no later than June 28, 2013, the following information:

1. Audited financial statements for the 2012 fiscal year;
2. A description of Energhx's compliance monitoring and quality assurance program, including a description of the specific protocols for testing the performance of all salespersons and verification representatives in relation to compliance with applicable statutes, regulations and regulatory requirements;
3. A summary of the results of the testing program conducted within the reporting period ending on April 30, 2013; and
4. A description of Energhx's strategy for any further improvement needed to achieve continuing legislative and regulatory compliance, demonstrating the link between the results of the program to date and measures to be implemented in the future.

## **APPENDIX A**

### **MARKET POWER MITIGATION REBATES**

“OPGI” means Ontario Power Generation Inc.

A retailer shall promptly pass through a portion of the rebate received from a distributor to those consumers who are not receiving the fixed price under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* and who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer.

If requested in writing by OPGI, the retailer shall ensure that all rebates paid to consumers are identified as coming from OPGI in the following form on or with each bill or cheque.

#### **“ONTARIO POWER GENERATION INC. rebate”**

A retailer shall promptly return to a distributor any portion of the rebate received from the distributor which relates to low-volume or designated consumers receiving the fixed commodity price for electricity under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998*, who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer or another party.

The amounts paid out to consumers or returned to the distributor shall be based on energy consumed and calculated in accordance with the rules set out in the Retail Settlement Code.

Amounts payable by the retailer may be made by way of set off at the discretion of the retailer.

### **ONTARIO POWER GENERATION INC. REBATES**

For the payments that relate to the period from May 1, 2006 to April 30, 2009, the rules set out below shall apply.

A retailer shall promptly pass through a portion of the rebate received from a distributor to those consumers who are not receiving the fixed price under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* and who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer.

If requested in writing by OPGI, the retailer shall ensure that all rebates paid to consumers are identified as coming from OPGI in the following form on or with each bill or cheque.

#### **“ONTARIO POWER GENERATION INC. rebate”**

The amounts paid out to consumers or returned to the distributor shall be based on energy consumed and calculated in accordance with the rules set out in the Retail Settlement Code.

Amounts payable by the retailer may be made by way of set off at the discretion of the retailer.



## Gas Marketer Licence

**GM-2010-0237**

**Energhx Green Energy Corporation**  
carrying on business as  
**Energhx Consulting**

Valid Until

April 29, 2014

*Original signed by*

---

**Jennifer Lea**  
**Counsel, Special Projects**  
**Ontario Energy Board**  
**Date of Issuance: April 30, 2012**

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

Commission de l'énergie de  
l'Ontario  
C.P. 2319  
2300, rue Yonge  
27e étage  
Toronto ON M4P 1E4

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## **1 Definitions**

In this Licence:

“**Act**” means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

“**low-volume consumer**” means a person who annually uses less than 50,000 cubic meters of gas;

“**Licensee**” means Energhx Green Energy Corporation carrying on business as Energhx Consulting;

“**regulation**” means a regulation made under the Act.

## **2 Interpretation**

- 2.1 In this Licence, words and phrases shall have the meaning ascribed to them in the Act. Words or phrases importing the singular shall include the plural and vice versa. Headings are for convenience only and shall not affect the interpretation of this Licence. Any reference to a document or a provision of a document includes an amendment or supplement to, or a replacement of, that document or that provision of that document. In the computation of time under this Licence, where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens. Where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

## **3 Authorization**

- 3.1 The Licensee is authorized, under Part IV of the Act, and subject to the terms and conditions set out in this Licence:
- a) to sell or offer to sell gas to a low-volume consumer;
  - b) to act as the agent or broker for seller of gas to a low-volume consumer; and
  - c) to act or offer to act as the agent or broker of a low-volume consumer in the purchase of gas.
- 3.2 The Licensee is authorized to conduct business in the name under which this Licence is issued, or any trade name(s) listed in Schedule 1.

## **4 Obligation to Comply with Legislation and Regulations**

- 4.1 The Licensee shall comply with all applicable provisions of the Act and regulations under the Act except where the Licensee has been exempted from such compliance by regulation.



## **5 Obligation to Comply with Codes**

- 5.1 The Licensee shall at all times comply with all applicable provisions of the Code of Conduct for Gas Marketers, as issued and amended by the Board from time to time under Part III of the Act.
- 5.2 This Licensee shall:
- a) make a copy of the Code available for inspection by members of the public at its head office and regional offices during normal business hours; and
  - b) provide a copy of the Code to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

## **6 Agent for Service**

- 6.1 If the Licensee does not have an office or other place of business in Ontario, the Licensee shall ensure the continuing appointment at all times of an individual who is a resident of Ontario and is at least 18 years old, or a corporation that has its head office or registered office in Ontario, as the Licensee's agent for service in Ontario on whom service of process, notices or other documentation may be made.

## **7 Provision of Information to the Board**

- 7.1 The Licensee shall maintain records of and provide, in the manner and form determined by the Board, such information as the Board may require from time to time.
- 7.2 Without limiting the generality of paragraph 7.1, the Licensee shall notify the Board of any material change in circumstances that adversely affects or is likely to adversely affect the business, operations or assets of the Licensee as soon as practicable, but in any event no more than twenty (20) days past the date upon which such change occurs.

## **8 Customer Complaint and Dispute Resolution**

- 8.1 The Licensee shall participate in a consumer complaints resolution process selected by the Board.

## **9 Term of Licence**

- 9.1 This Licence shall take effect on April 30, 2012 and expire on April 29, 2014. The term of this Licence may be extended by the Board.

## **10 Fees and Assessments**

- 10.1 The Licensee shall pay all fees charged and amounts assessed by the Board.

## **11 Communication**

- 11.1 The Licensee shall designate a person that will act as a primary contact with the Board on matters related to this Licence. The Licensee shall notify the Board promptly should the contact details change.

- 11.2 All official communication relating to this Licence shall be in writing.
- 11.3 All written communication is to be regarded as having been given by the sender and received by the addressee:
- a) when delivered in person to the addressee by hand, by registered mail, or by courier;
  - b) ten (10) business days after the date of posting, if the communication is sent by regular mail; or
  - c) when received by facsimile transmission by the addressee, according to the sender's transmission report.

## **12 Copies of the Licence**

- 12.1 The Licensee shall:
- a) make a copy of this Licence available for inspection by members of the public at its head office and regional offices during normal business hours; and
  - b) provide a copy of this Licence to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

**SCHEDULE 1 AUTHORIZED TRADE NAMES**

1. Energhx Green
2. Energhx Energy
3. Energhx Heat

## **SCHEDULE 2 SPECIAL CONDITIONS**

Energhx Green Energy Corporation will be required to file with the Board, no later than June 28, 2013, the following information:

1. Audited financial statements for the 2012 fiscal year;
2. A description of Energhx's compliance monitoring and quality assurance program, including a description of the specific protocols for testing the performance of all salespersons and verification representatives in relation to compliance with applicable statutes, regulations and regulatory requirements;
3. A summary of the results of the testing program conducted within the reporting period ending on April 30, 2013; and
4. A description of Energhx's strategy for any further improvement needed to achieve continuing legislative and regulatory compliance, demonstrating the link between the results of the program to date and measures to be implemented in the future.

**Ontario Energy Board**

P.O. Box 2319  
2300 Yonge Street  
27th Floor  
Toronto ON M4P 1E4  
Telephone: 416-481-1967

**Commission de l'Énergie  
de l'Ontario**

C.P. 2319  
27e étage  
2300, rue Yonge  
Toronto ON M4P 1E4  
Téléphone: 416-481-1967

# Invoice

Date	Invoice #
01/04/2013	1314ER015

**Bill To:**

Energhx Consulting  
73 Compata Way  
Ottawa ON K1B 4X1  
Attn: Theresa Ogedengbe

**Ship To:**

Energhx Consulting  
73 Compata Way  
Ottawa ON K1B 4X1  
Attn: Theresa Ogedengbe

			Terms
			Net 30 Days
Licence	Description	Annual Fee	Amount
1	Annual Registration Fee for 2013-14 Fiscal Year ER-2010-0236	800.00	800.00
Please make cheque payable to the Ontario Energy Board and mail to the above address.		<b>Total Invoice</b>	\$ 800.00

12.1 (2) The management committee may set and charge licence fees, application fees and other fees relating to an application or appeal to the Board. 2003, c. 3, s. 17.

**IMPORTANT:** It is a condition of your Ontario Energy Board licence that the amount(s) noted in this invoice be paid within the prescribed time. Your licence conditions are each an "enforceable provision" of the Ontario Energy Board Act, 1998, and sanctions for non-compliance may include financial penalties, licence suspension and revocation.

Inquiries: Please call Finance Dept. at 416-440-7662 or write to the above address referring to the invoice number.

12.1 (2) Le comité de gestion peut fixer et exiger des droits pour les permis, des droits pour les demandes et des droits pour les requêtes qui sont présentées à la Commission ou les appels qui sont interjetés devant elle. 2003, chap. 3, art. 17.

**IMPORTANT:** L'une des conditions du permis qui vous été délivré par la Commission de l'énergie de l'Ontario stipule que la ou les sommes indiquées sur la présente facture doivent être réglées au moment prescrit. Chacune des conditions de votre permis constitue une « disposition exécutoire » aux termes de la Loi de 1998 sur la Commission de l'énergie de l'Ontario. Parmi les sanctions prévues pour manquement à la conformité, mentionnons des pénalités financières, ainsi que la suspension ou révocation du permis.

Renseignements: Veuillez appeler Dep. des Fin. au 416-440-7662 ou écrire à l'adresse indiquée plus haut et préciser le numéro de facture.

**Ontario Energy Board**

P.O. Box 2319  
2300 Yonge Street  
27th Floor  
Toronto ON M4P 1E4  
Telephone: 416-481-1967

**Commission de l'Énergie  
de l'Ontario**

C.P. 2319  
27e étage  
2300, rue Yonge  
Toronto ON M4P 1E4  
Téléphone: 416-481-1967

# Invoice

Date	Invoice #
01/04/2013	1314GM011

**Bill To:**

Energix  
73 Compata Way  
Ottawa ON K1B 4X1  
Attn: Theresa Ogedengbe

**Ship To:**

Energix  
73 Compata Way  
Ottawa ON K1B 4X1  
Attn: Theresa Ogedengbe

			Terms
			Net 30 Days
Licence	Description	Annual Fee	Amount
1	Annual Registration Fee for 2013-14 Fiscal Year GM-2010-0237	800.00	800.00
Please make cheque payable to the Ontario Energy Board and mail to the above address.		<b>Total Invoice</b>	\$ 800.00

12.1 (2) The management committee may set and charge licence fees, application fees and other fees relating to an application or appeal to the Board. 2003, c. 3, s. 17.

**IMPORTANT:** It is a condition of your Ontario Energy Board licence that the amount(s) noted in this invoice be paid within the prescribed time. Your licence conditions are each an "enforceable provision" of the Ontario Energy Board Act, 1998, and sanctions for non-compliance may include financial penalties, licence suspension and revocation.

Inquiries: Please call Finance Dept. at 416-440-7662 or write to the above address referring to the invoice number.

12.1 (2) Le comité de gestion peut fixer et exiger des droits pour les permis, des droits pour les demandes et des droits pour les requêtes qui sont présentées à la Commission ou les appels qui sont interjetés devant elle. 2003, chap. 3, art. 17.

**IMPORTANT:** L'une des conditions du permis qui vous été délivré par la Commission de l'énergie de l'Ontario stipule que la ou les sommes indiquées sur la présente facture doivent être réglées au moment prescrit. Chacune des conditions de votre permis constitue une « disposition exécutoire » aux termes de la Loi de 1998 sur la Commission de l'énergie de l'Ontario. Parmi les sanctions prévues pour manquement à la conformité, mentionnons des pénalités financières, ainsi que la suspension ou révocation du permis.

Renseignements: Veuillez appeler Dep. des Fin. au 416-440-7662 ou écrire à l'adresse indiquée plus haut et préciser le numéro de facture.

**From:** [Rudina Gjinali](#)  
**To:** ["Theresa.Ogedengbe@energhx.com"](mailto:Theresa.Ogedengbe@energhx.com)  
**Subject:** INVOICE #1314ER015 &1314GM011 are OVERDUE FOR MORE THAN 90 DAYS  
**Date:** Monday, August 12, 2013 11:37:10 AM

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Hi Theresa,

This is a reminder that your account balance of \$1,600 was overdue as of May 1, 2013.

Energhx Consulting

ER-2010-  
0236

Energhx

GM-2010-  
0237

Please arrange payment of this account a.s.a.p. Your prompt attention to this matter would be greatly appreciated. If you have any queries regarding this account, please contact me at 416-440-7662.

If payment has recently been made, please accept our thanks and ignore this reminder.

Regards,

Rudina Gjinali, CGA  
Accountant  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 26th Floor  
Toronto ON M4P 1E4  
Tel: 416 440-7662 Toll free: 1-888-632-6273  
Fax: 416 440-7656  
Email: [rudina.gjinali@ontarioenergyboard.ca](mailto:rudina.gjinali@ontarioenergyboard.ca)

Ontario Energy  
Board  
P.O. Box 2319  
2300 Yonge Street  
27th Floor  
Toronto ON M4P 1E4  
Telephone: (416) 481-1967  
Facsimile: (416) 440-7656

Commission de l'énergie  
de l'Ontario  
C.P. 2319  
2300, rue Yonge  
27e étage  
Toronto ON M4P 1E4  
Téléphone: (416) 481-1967  
Télécopieur: (416) 440-7656



September 9, 2013

Energhx Consulting  
73 Compata Way  
Ottawa, ON, K1B 4X1

Theresa Ogedengbe

SENT BY REGISTERED MAIL

**Re: Final Notice - Non-payment of Annual Licence Fee  
Licence Number ER-2010-0236**

On April 1, 2013, the Ontario Energy Board issued an invoice to Energhx Consulting in the amount of \$800, representing Energhx Consulting annual licence registration fee for 2013-14. These invoices were sent to your attention, as you are the person designated by Energhx Consulting as the primary contact with the Board on matters related to the licence. The invoice was payable upon receipt and is now past due.

As a condition of its licence, Energhx Consulting is required to pay all fees charged and amounts assessed by the Board. This includes the annual licence fee of \$800. The Board reminds you that a licence condition is an "enforceable provision" of the *Ontario Energy Board Act, 1998*, for which non-compliance may lead to Board-imposed sanctions in accordance with the Act.

The Board has attempted to contact you numerous times over the past 5 months. In spite of the Board's repeated efforts to contact you, and in breach of your licence obligations, we have yet to receive payment for year 2013-2014 invoice in the outstanding total amount of \$800.00.



**YOUR IMMEDIATE ATTENTION TO THIS MATTER IS REQUIRED. IF ENERGHX CONSULTING FAILS TO RESPOND TO THIS FINAL NOTICE WITH FULL PAYMENT BY SEPTEMBER 27, 2013, THE BOARD MAY PROCEED TO ISSUE A NOTICE OF INTENTION TO REVOKE ER-2010-0236 LICENCE.**

Any questions you may have can be directed to Allan Fogwill, Managing Director,  
Planning & Business Services at (416) 440-7746 or  
[allan.fogwill@ontarioenergyboard.ca](mailto:allan.fogwill@ontarioenergyboard.ca)

Sincerely,

John Pickernell  
Assistant Board Secretary

**Ontario Energy  
Board**  
P.O. Box 2319  
2300 Yonge Street  
27th Floor  
Toronto ON M4P 1E4  
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September 9, 2013

Energhx  
73 Compata Way  
Ottawa, ON, K1B 4X1

Theresa Ogedengbe

SENT BY REGISTERED MAIL

**Re: Final Notice - Non-payment of Annual Licence Fee  
Licence Number GM-2010-0237**

On April 1, 2013, the Ontario Energy Board issued an invoice to Energhx in the amount of \$800, representing Energhx annual licence registration fee for 2013-14. These invoices were sent to your attention, as you are the person designated by Energhx as the primary contact with the Board on matters related to the licence. The invoice was payable upon receipt and is now past due.

As a condition of its licence, Energhx is required to pay all fees charged and amounts assessed by the Board. This includes the annual licence fee of \$800. The Board reminds you that a licence condition is an "enforceable provision" of the *Ontario Energy Board Act, 1998*, for which non-compliance may lead to Board-imposed sanctions in accordance with the Act.

The Board has attempted to contact you numerous times over the past 5 months. In spite of the Board's repeated efforts to contact you, and in breach of your licence obligations, we have yet to receive payment for year 2013-2014 invoice in the outstanding total amount of \$800.00.

**YOUR IMMEDIATE ATTENTION TO THIS MATTER IS REQUIRED. IF ENERGHX FAILS TO RESPOND TO THIS FINAL NOTICE WITH FULL PAYMENT BY SEPTEMBER 27, 2013, THE BOARD MAY PROCEED TO ISSUE A NOTICE OF INTENTION TO REVOKE GM-2010-0237 LICENCE.**

Any questions you may have can be directed to Allan Fogwill, Managing Director, Planning & Business Services at (416) 440-7746 or [allan.fogwill@ontarioenergyboard.ca](mailto:allan.fogwill@ontarioenergyboard.ca)

Sincerely,

John Pickernell  
Assistant Board Secretary