

Assurance of Voluntary Compliance

**Pursuant to s. 112.7 of the
*Ontario Energy Board Act, 1998***

ACTIVE ENERGY INC. and ACTIVE ENERGY CORP.

ER-2012-0045 and GM-2012-0044

EB-2014-0309

October 22, 2014

I. Background

Board staff conducted an inspection of Active Energy Inc. and Active Energy Corp. (together, "Active Energy") during the period October to December 2013. The inspection was conducted under the authority of Part VII of the *Ontario Energy Board Act, 1998* (the "Act").

The purpose of the inspection was to review the marketing and promotional materials used by Active Energy when marketing to low-volume consumers, in order to ensure their compliance with various enforceable provisions of the Act; namely, certain applicable requirements under the *Energy Consumer Protection Act, 2010* (the "ECPA"), Ontario Regulation 389/10 made under the ECPA (the "Regulation") and the Electricity Retailer Code of Conduct and Code of Conduct for Gas Marketers (together, the "Codes").

During the inspection, Board staff requested and reviewed the following categories of marketing and promotional materials utilized by Active Energy during the period April 1 to June 30, 2013: sales brochures; product information and data sheets; visual aids used in sales demonstrations (e.g. newspaper clippings, product comparisons, statistics, visual material, etc.); sales scripts (all sales channels); and web content, including content displayed on hand held tablets ("iPad promotional materials") when selling contracts door-to-door.

Representatives of Active Energy and Board staff met to discuss Board staff's Inspection Report, to arrive at a mutual understanding of the nature of the findings, and to establish the terms of this Assurance of Voluntary Compliance (the "Assurance").

II. Findings

1. Misleading Advertising

A number of pages in Active Energy's iPad promotional materials contain statements that can be characterized as being false or misleading to consumers. The iPad promotional materials state that, upon entering into Active Energy's "\$99 Whole Home Energy Bundle" contract, the consumer will have "peace of mind", "price protection", and have "no need to worry about...prices fluctuating, or how much energy you use from one month to the next". These statements are not accompanied by a disclaimer (or any other indication) advising the consumer that the contract's terms and conditions contain limitations or exceptions to the contrary, including the fact that: (i) there is an annual usage threshold that, if exceeded, could result in a unilateral price adjustment by Active Energy for the remainder of the contract; and (ii) Active Energy may unilaterally cancel the contract for a variety of reasons.

Active Energy admits that the iPad promotional materials contain false or misleading statements contrary to section 10 of the ECPA, section 5 1 viii of the Regulation and section 1.1(h) of Part B of the Codes.

2. Non-Disclosure of Additional Energy Charges

The iPad promotional materials utilized by Active Energy when selling contracts in person fail to disclose the global adjustment (for electricity) and transportation charge (for gas). As well, the iPad promotional materials which explain the internet enrollment process to the consumer also do not disclose the global adjustment.

Active Energy admits that its iPad promotional materials, including those which explain the internet enrollment process, fail to disclose that additional energy charges are not included in the contract price and would be payable by the consumer upon entering into the contract, in breach of section 10 of the ECPA, sections 5 1 vi and 5 5 i of the Regulation and section 1.1(h) of the Codes.

3. Incorrect Version of the price comparison

During the inspection, Active Energy provided Board staff with copies of the price comparison document given by Active Energy to consumers during the period November 1, 2012 to April 30, 2013. Active Energy's price comparison was inconsistent with the Board-approved price comparison template for that period; namely, the global adjustment amount in Part A of the price comparison was incorrect. Electricity retailers and gas marketers are not permitted to alter or redact any portion of Part A of the Board-approved price comparison template.

Active Energy admits it provided price comparisons to consumers during the period November 1, 2012 to April 30, 2013 that were inconsistent with the Board-approved price comparison template for that period. Active Energy further admits that the price comparisons provided consumers with inaccurate pricing information although the monthly estimated cost of electricity was correct. Active Energy admits that it therefore failed to comply with section 12(1)(b) of the ECPA, section 8(3) of the Regulation and section 4.6(a) of the Electricity Retailer Code of Conduct.

III. Assurances

Active Energy hereby assures the Board that, effective as of the date of this Assurance, it has voluntarily taken and will continue to take the following steps with respect to each of the findings noted above:

1. Active Energy will remove from its promotional and marketing materials the terms "peace of mind" and "price protection" and all statements that suggest to consumers that they do not have to worry about how much energy they use from one month to the next. In the alternative, Active Energy will revise all of its promotional and marketing materials to include a prominent disclaimer, in plain language, alongside any of its product offerings that state such terms as "peace of mind" and "price

protection” or that indicate the consumer does not have to worry about how much energy the consumer uses from one month to the next when, in fact, the terms and conditions of such product offering contain limitations or exceptions that provide otherwise (i.e. where there is an annual usage threshold that, if exceeded, could result in a unilateral price adjustment by Active Energy for the remainder of the contract; where Active Energy may unilaterally cancel the contract, etc.).

2. Active Energy will make clear in all of its marketing and promotional materials the fact that additional energy charges are not included in Active Energy’s contract price and are payable by the consumer upon entering into the contract.

3. Active Energy will provide price comparisons consistent with the Board-approved template, with accurate pricing information, to consumers when marketing gas and retailing electricity. Active Energy will refrain from altering or redacting any pre-populated portion of a Board-approved price comparison template.

IV. Consumer Rights

Nothing in this Assurance affects any rights a consumer may have under his or her contract, or under any applicable laws.

V. Failure to Comply

This Assurance has the same force and effect as an order of the Board pursuant to section 112.7(2) of the Act and any failure to comply with its terms shall be deemed to be a breach of an order of the Board.

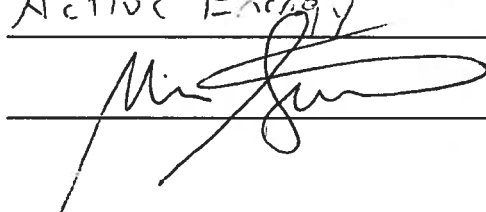
VI. Execution of Assurance

I have the authority to bind Active Energy to the terms set out in this Assurance of Voluntary Compliance.

Name: Michael Stedman

Title: President

Company: Active Energy

Signature: 

Dated this 22 day of October 2014