



EB-2017-0022

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

AND IN THE MATTER OF a Notice of Intention to Make an Order for Compliance and Payment of an Administrative Penalty against Active Energy Inc. (ER-2012-0045)

NOTICE OF INTENTION TO MAKE AN ORDER FOR COMPLIANCE, RESTITUTION AND PAYMENT OF AN ADMINISTRATIVE PENALTY

The Ontario Energy Board (OEB), on its own motion under section 112.2 of the *Ontario Energy Board Act, 1998* (OEB Act), intends to make an Order under sections 112.3 and 112.5 of the OEB Act against Active Energy Inc. for compliance with a number of enforceable provisions as defined in section 3 of the OEB Act, to refund monies to affected consumers, and to pay an administrative penalty in the amount of \$172,000 for breaches of enforceable provisions.

ALLEGATIONS OF NON-COMPLIANCE

It is alleged that Active Energy Inc. ("Active") has contravened sections of the *Energy Consumer Protection Act, 2010* ("ECPA") and Ontario Regulation 389/10 made under the ECPA ("Regulation"), and sections of the Electricity Retailer Code of Conduct.

PARTICULARS

The particulars in support of the allegations set out in this Notice are as follows:

1. Section 2(a) of the ECPA defines a "consumer" with respect to retailing electricity as a person who uses, for the person's own consumption, an annual prescribed amount of electricity. This amount is set out in section 4(a) of the Regulation as 150,000 kilowatt hours/annum. Active Energy does not regard customers of 86 retail contracts as consumers under the ECPA due to its business practice of

combining consumption levels of multiple accounts across multiple locations. The specific contracts referred to in this paragraph are listed in the attached Appendix A (the “Contracts”).

2. In breach of obligations under its licence (ER-2012-0045), with regard to the Contracts, Active has failed to comply with the ECPA, the Regulation, and the Electricity Retailer Code of Conduct (collectively, the “ECPA legislation”).
3. Active has advised the OEB that, as a business practice, Active does not apply the requirements under the ECPA legislation to low-volume consumers whose electricity consumption, when aggregated across multiple accounts at multiple locations, exceeds 150,000 kWh of electricity annually (the “low-volume threshold”).
4. Active’s business practice with respect to the aggregation of consumers’ consumption is contrary to the ECPA legislation. The determination as to whether or not the ECPA legislation applies to a retailer contract is based on a person’s consumption at each location (and not the aggregated consumption of a person’s multiple accounts at multiple locations). The OEB’s guidance on this issue has been available to Active and the rest of the electricity retailer sector since the ECPA took effect in 2011.
5. In failing to apply the ECPA legislation to the Contracts, Active has failed to meet its requirements under the ECPA legislation. Active’s breaches include, but are not limited to:
 - a. not providing disclosure statements and price comparisons to its customers at the time the Contracts were entered into or immediately thereafter, contrary to sections 11 and 12 of the ECPA, sections 5(7) and 10(1) of the Regulation, and sections 4.1 and 4.6 of the Electricity Retailer Code of Conduct; and,
 - b. not verifying the Contracts, contrary to section 15 of the ECPA and section 4.10 of the Electricity Retailer Code of Conduct.
6. For the reasons set out above, and pursuant to section 16(1) of the ECPA, the Contracts are deemed to be void and, pursuant to section 16(3) of the ECPA and section 14(2) of the Regulation, the monies paid under those contracts must be refunded to consumers.

THEREFORE TAKE NOTICE that Active may request, within fifteen days after receiving this Notice, that the OEB hold a hearing on these matters. If no request for a hearing is made within this time period, the OEB may proceed to make an Order for the payment of an administrative penalty in the amount of \$172,000, for the refund of amounts paid by consumers under the Contracts identified in Appendix A to this Notice, and make an Order remedying the contraventions that occurred and preventing any further contraventions from occurring.

FURTHER TAKE NOTICE that if a hearing is requested, the OEB is not bound by the above noted penalty and has discretion, upon finding one or more contraventions of the Act, to make any order it deems appropriate under sections 112.3 and/or 112.5 of the Act. Active is entitled to be present at the hearing with or without counsel and to adduce evidence and make submissions. Should Active fail to attend, the hearing may be conducted in its absence and Active will not be entitled to any further notice in the proceeding.

In order to respond to this Notice and request a hearing, Active must file 3 copies of this request with the office of the Board Secretary at the following address:

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

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

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

DATED at Toronto, May 25, 2017

ONTARIO ENERGY BOARD

Original signed by

Rosemarie T. Leclair
Chair and CEO

APPENDIX A
LIST OF CONTRACTS
MAY 17, 2017

#	Initials	Contract Number	Date
1	1OL	LV 07468	17-Aug-16
2	BBFM	LV 03001	26-Sep-14
3	LC	LVC 04093	03-Jul-15
4	2OI	LCV 01750	26-Mar-14
5	TJR	LV 01528	28-Jan-14
6	AGC/SGC		13-Jun-16
7	ASLS	LVC 04422	16-Jul-15
8	AMLHI	LV 01246	08-May-14
9	AEMI		16-Jul-15
10	ASL		30-Sep-16
11	BST	5607485	01-Sep-14
12	BCV	LVC 04375	11-Sep-15
13	BNI		07-Nov-15
14	BSSI		03-Jun-15
15	BF	LV 06333	28-Jan-16
16	BBPI	LV 02633	04-Sep-14
17	CUAW	4006932	22-Dec-11
18	CAWI	4006955	16-Jul-17
19	CSDC	4006922	19-Oct-11
20	CSC	LVC 04023	01-Jun-15
21	CT	5608706	01-Apr-15
22	CCI	LV 02565	30-Sep-14
23	DFL	LVC 04390	15-May-15
24	DAL	5606603	09-Apr-14
25	EY	LV 06028	13-Apr-16

26	ETCS	5607477	04-Jul-14
27	FMTSI	LV 06340	24-Jul-16
28	FGKL	LV 07344	23-Mar-16
29	GW	5608698	16-Feb-15
30	GTD	LV 03050	10-Mar-15
31	HFL	LV 03040	20-Jan-15
32	HM	LV 01524	20-Jan-15
33	HCM	LVC 04053	27-Jul-15
34	KIL		
35	KGC	LV 03004	10-Oct-14
36	KCMI	4007021	14-Nov-12
37	LMFM	LV 01749	19-Nov-13
38	LI	LV 01483	23-Jun-14
39	LHC	LVC 04086	09-Jun-15
40	LM	LV 07346	11-Apr-16
41	LS	5608708	14-Apr-15
42	MRC	LV 01889	01-May-14
43	MA	LV 03047	02-Mar-15
44	MIB	LV 06328	08-Feb-16
45	MH	LV 03423	12-Feb-16
46	MSL	LV 03665	20-Apr-15
47	MF	LV 06005	29-Apr-16
48	MMN		20-Jun-16
49	MBI	5606250	25-Oct-13
50	GSH	LVC 04405	30-Jun-15
51	JAS	LVC 04380	18-Jun-15
52	MS	LCV 01788	19-Nov-13

53	PFWCFL	LV 03662	27-Mar-15
54	RCW	LV 05550	02-Dec-15
55	RW	LV 05572	02-Dec-15
56	DP		02-Dec-15
57	NAI	4006969	23-Mar-12
58	NMMC	5607507	14-Jan-15
59	NFL	LCV 01153	25-Aug-14
60	NTL	LV 03664	01-Apr-15
61	OG	LV 06330	19-Jan-16
62	OPML	5606586	16-Feb-14
63	PSMRL		09-Apr-15
64	RJDF	LV 03711	24-Apr-15
65	RLR	LV 03241	01-Oct-14
66	RHH	LV 05014	10-Nov-15
67	ROTI	LV 05016	30-Jun-15
68	RGBRL		16-Aug-16
69	RRSML	LV07356	27-Apr-16
70	SMI	LCV 01745	17-Apr-14
71	SGKR	LV 01786	12-Sep-14
72	SGI		03-Aug-16
73	SJCSI	LV 02642	25-Sep-14
74	SHL	LV 02683	21-Oct-15
75	SBI	LV 03319	26-Feb-15
76	SPL	LV 07341	09-Mar-16
77	TRRCI		23-Aug-16
78	TTGL		23-Sep-15

79	VPP		26-Aug-15
80	KCI		26-Mar-15
81	VH	LVC 04046	11-Jun-16
82	VM	LV 02721	10-Jul-15
83	WWTDC	LV 01941	06-Jul-14
84	WFL	LV 05224	06-Nov-15
85	YNCU		09-Mar-16
86	VCFL	LV 05221	10-Nov-15