



**EB-2017-0223**

**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 \$30,000 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.

### **BACKGROUND**

On May 25, 2017, the OEB issued a notice of intention to make an order for compliance, restitution and payment of administrative penalty, alleging that Active had contravened sections of the ECPA, the Regulation and the Electricity Retailer Code of Conduct with respect to 86 specific contracts. This notice raises similar allegations in respect of 15 additional contracts, as outlined in Appendix "A".

## 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, less than 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 does not regard customers of 15 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 \$30,000, 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, 27<sup>th</sup> Floor  
Toronto ON M4P 1E4  
Attention: Board Secretary  
Email: [Boardsec@oeb.ca](mailto: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, June 1, 2017

**ONTARIO ENERGY BOARD**

*Original signed by*

Rosemarie T. Leclair  
Chair and CEO

**APPENDIX A**  
**LIST OF CONTRACTS**  
**JUNE 1, 2017**

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<b>#</b>	<b>Initials</b>	<b>Contract Number</b>	<b>Date</b>
1	ASA	LV 01149	14-Feb-14
2	LSC	2147	03-Mar-11
3	BM	5608967	27-May-15
4	HAS	LVC 04387	08-May-15
5	JRF	LCV 01766	06-Feb-14
6	LMRF	LV 03401	24-Oct-14
7	MOD		01-Dec-15
8	LM	LCV 01734	02-Jul-14
9	MLM	LCV 01784	03-Dec-13
10	MRV	LVC 05040	21-Jul-15
11	STP	5607496	06-Nov-14
12	SNJL	LCV 01752	27-Mar-14
13	SPC	4007041	22-Mar-13
14	TMBL	5607500	11-Dec-14
15	TMI	LV 01527	08-Jan-14