



EB-2017-0022  
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** two Notices of Intention to Make an Order for Compliance and Payment of an Administrative Penalty against Active Energy Inc. (Retailer Licence No. ER-2012-0045).

### **AGREED STATEMENT OF FACTS**

#### **The Investigation**

1. In January 2016 and on April 28, 2016 the Ontario Energy Board ("**OEB**") received inquiries from an Active Energy Inc. ("**Active**") customer, C.C. On May 18, 2016, the Ontario Energy Board ("**OEB**") logged a complaint from C.C. On June 10, 2016 the OEB responded to the complainant. True copies of the Complaint File Summary, the Consumer Complaint Response and the OEB's letter to the complainant are attached at **Tab 1**.
2. On August 30, 2016, Ontario Energy Board staff ("**OEB Staff**") provided Active with a Notice of Inspection under Part VII of the *Ontario Energy Board Act, 1998* ("**Act**"), advising of "an inspection into Active Energy's aggregation of multiple low-volume accounts into a single large volume retail contract." In subsequent emails, OEB Staff provided Active until September 9, 2016 to provide certain requested information. A true copy of the Notice and subsequent emails is attached at **Tab 2**.

3. On September 9, 2016, Active responded to OEB Staff's request for information. On September 21, 2016, OEB Staff made a further request for information. A true copy of Active's response and OEB Staff's further request is attached at **Tab 3**.

4. On October 11, Active responded to OEB Staff's latest request for information. A true copy of Active's response is attached at **Tab 4**. (Active's initial response included a narrative marked "draft" and responding to OEB Staff's questions. On October 12, 2016, Active provided another version of the narrative without the "draft" mark, and with no other changes, which is the version attached hereto.)

5. On October 18, OEB Staff made a further request for information and, on October 21, Active responded to this request. A true copy of this email exchange between OEB Staff and Active is attached at **Tab 5**. In that response Active noted that one of OEB Staff's October 18<sup>th</sup> requests – for a list of individual customer accounts – would take significant effort, and Active requested a due date of November 4<sup>th</sup> to provide this information.

6. On November 4, 2016, Active provided the further information requested in OEB Staff's October 18<sup>th</sup> request for information. A true copy of this email from Active to OEB Staff is attached at **Tab 6**.

7. On February 1, 2017, OEB Staff made a further request for information to be provided by February 3, 2017 and, on February 2, 2017, Active requested an extension to February 17, 2017 to respond to this request. An extension until February 10, 2017 was granted. A true copy of this email exchange between OEB and Active is attached at **Tab 7**.

8. On February 10, 2017, Active provided a response to OEB Staff's February 1<sup>st</sup> request. A true copy of this response is attached at **Tab 8**.

9. On February 15, 2017, OEB Staff made a further request for information and, on February 16, 2017, Active responded to OEB Staff's request. A true copy of this email exchange between Active and OEB is attached at **Tab 9**.

10. On February 21, 2017 OEB staff requested clarification during a phone conversation. On February 24, 2017, Active provided further information in response to OEB Staff's February 21, 2017 requests for clarification. A true copy of this email exchange between OEB and Active is attached at **Tab 10**.

11. On March 20, 2017, OEB Staff made a further request for information to be provided by Thursday March 23, 2017 (and later extended the deadline for delivery, at Active's request, to Monday March 27). On March 27, Active responded to OEB Staff's request for information. A true copy of this email exchange between OEB and Active (without attached contracts) is attached at **Tab 11**.

12. On April 4, 2017, OEB Staff made a further request for information including copies of contracts for each of the remaining customers listed under the "multiple locations" column on the list provided by Active on February 10, 2017 (i.e. those customers for which contracts were not previously provided on March 27<sup>th</sup>). OEB Staff requested a response by April 12, 2017. At Active's request this response date was extended to April 20, 2017. A true copy of this email exchange between Active and OEB Staff (without attached contracts) is attached at **Tab 12**.

13. On April 20, 2017, Active provided, through external legal counsel (Gowling WLG) and by way of a secure large user file transfer system (Titanfile), its response to OEB

Staff's April 4<sup>th</sup> request for information and documents. A true copy of Gowling WLG's email is attached at **Tab 13**.

14. On April 21, 2017, OEB Staff made a further request for one document, a letter from Gowling WLG, that was listed in Gowling WLG's April 20<sup>th</sup> Titanfile response on behalf of Active but that could not be opened by OEB Staff. On the same day Gowling WLG provided OEB Staff with a copy of that letter. A true copy of the email exchange between OEB and Active's counsel, with letter attachment, is attached at **Tab 14**.

### **The Notices**

15. On May 25, 2017, the OEB, on its own motion under s. 112.2 of the *Act*, issued a Notice of Intention to Active to make an Order for Compliance, Restitution and Payment of an Administrative Penalty and, on June 1, 2017, the OEB issued a second Notice of Intention (together, the "**Notices**"). True copies of the Notices are attached at **Tab 15**.

16. On June 6, 2017, through external counsel, Active requested an oral hearing. A true copy of counsel's correspondence is attached at **Tab 16**.

17. On July 12, 2017, the OEB issued a Notice of Hearing and Procedural Order No. 1, setting out that the allegations of non-compliance in the Notices would be heard together in a consolidated proceeding. A true copy of the Notice of Hearing is attached at **Tab 17**.

### **The Contracts**

18. In an e-mail to OEB Staff on February 10, 2017, Active provided a list of 141 customers. In emails to OEB Staff on March 27, 2017 and April 20, 2017, Active provided OEB Staff with copies of 112 of Active's contracts with customers which OEB



Staff had requested. A subset – 101 – of those contracts are listed in the Appendices to the Notices (the “**Contracts**”). True copies of the 101 Contracts are attached at **Tab 18** named EB-2017-0022 Contracts 1-86 and EB-2017-0223 Contracts 1-15.

19. The information reflected on the Contracts is accurate.

### **Active’s business practices**

20. In order to determine whether a customer is a “consumer” within the meaning of the *Energy Consumer Protection Act, 2010* (“**ECPA**”) and Ontario Regulation 389/10 (“**Regulation**”), or a “low volume consumer” within the meaning of the Electricity Retailer Code of Conduct (“**Code**”), Active aggregates the volumes consumed by a customer across multiple utility accounts, including utility accounts at multiple addresses.

21. Active does not consider any of the customers associated with the Contracts to be “consumers” within the meaning of the *ECPA* and the Regulation, or “low volume consumers” within the meaning of the Code.

22. At no point has Active applied provisions of the *ECPA* or the Regulation dealing with “consumers” to the customers associated with the Contracts, or the Contracts themselves.

23. At no point has Active applied provisions of the Code dealing with “low volume consumers” to the customers associated with the Contracts, or the Contracts themselves.

24. All of the customers purchasing electricity from Active under the Contracts had at least one location served under their Contract with reported consumption less than 150,000 kilowatt hours at the time the Contract was entered into.

## **The FAQ**

25. On January 17, 2011, the OEB posted on its website a page titled "ECPA Implementation – Frequently Asked Questions (FAQ)", which has remained online since that date. A true copy of the FAQ webpage is attached at **Tab 19**.

**Ontario Energy Board**  
**COMPLAINT FILE SUMMARY**

Page 1 of 5

Date Printed: September 01, 2017

Time Printed: 1:32:19PM

**File Number:** 2016-0004448

**Date Received:** 05/18/2016

**File Status:** Closed

**Consumer Information**

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**Name:** [REDACTED]

**Address 1:** [REDACTED]

**Address 2:**

**City:** [REDACTED]

**Province:** ON

**Postal Code:** [REDACTED]

**Telephone:** [REDACTED]

**Fax:**

**Email:** [REDACTED]

**Utility/LDC Information**

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**Account Number:** [REDACTED]

**Licence Type:** Electricity Distributor

**Utility Name:** Hydro One Networks Inc.

**Marketer/Retailer Information**

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**Licence Type:** Electricity Retailer

**Marketer/Retailer Name:** Active Energy Inc.

**Marketer/Retailer (or  
Licence) No.:** ER-2012-0045

**Agent Name:** Douglas

**Wearing ID:** Unknown

**Provided Business Card:** Yes

**Wearing Uniform:** Unknown

**Privacy Consent  
Confirmed:** Yes

**Ontario Energy Board**  
**COMPLAINT FILE SUMMARY**

Page 2 of 5

Date Printed: September 01, 2017

Time Printed: 1:32:23PM

**Complaint Information**

**Complaint Details:**

Consumer is coming back to the OEB as she has not had a response to her e-mail to Active energy.

Consumer's last contact with the OEB was on April 28, 2016(2016-0003938). At that time, consumer was advised of her rights under the ECPA. She was directed to send an e-mail to Active Energy with a copy to the OEB. If there was no response, consumer was to come back to the OEB.

Consumer is requesting cancellation of the electricity supply contract she signed with Douglas Bloomfield, Senior Commercial Energy Consultant on behalf of Active Energy.

Consumer stated the following:

1. The contract was signed on May 10, 2014.
2. Mr. Bloomfield looked at the electricity bills(3)) and informed consumer, Active Energy can save her thousands of dollars.
3. She asked about the cancellation cost. Mr. Bloomfield advised the cost is \$100 per account.
4. Based on that she signed the contract.
5. In 2015 the bills became increasingly high. She called Mr. Bloomfield and left messages. To-date he has not returned any of her calls.

\*\*\*\*\*

April 28, 2016

Consumer is coming back to the OEB indicating that her issue with Active Energy is unresolved. Consumer is requesting cancellation of the contract because of misrepresentation - she was told save money and nothing was said of the Global Adjustment.

Consumer first contacted the OEB in January, 2016(2016-0001016). At that time consumer was advised of the OEB's jurisdiction and directed to write to Active Energy.

Consumer confirmed she wrote to Active and received no response. PIO asked consumer for the details of the e-mail. Consumer advised she was pretty mad in the e-mail and may not have made her request clearly.

Consumer stated there is an appendix to the contract. Three accounts are included in the contract. She confirmed each account is less than 150,000 kwh per year.

PIO explained the requirements of the ECPA. Consumer confirmed she did not receive the disclosure and price comparison statements. Also, she did not receive the verification call.

PIO directed consumer to write to Active - let Active know, she spoke with the OEB, was advised of the requirements of the ECPA and request cancellation of the contract without penalty. Consumer was also directed to copy the OEB on her e-mail.

PIO advised Active has 15 days to respond. If no response or consumer is not satisfied, consumer is to contact the OEB.

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**Ontario Energy Board**  
**COMPLAINT FILE SUMMARY**

Page 3 of 5

Date Printed: September 01, 2017

Time Printed: 1:32:23PM

**Requested Action:** Cancel Contract Without Penalty

**OEB Action:** CCR Form sent to Licensee

**Resolution:**

**Resolution Details:**

<b>Classification</b>	<b>Topic</b>	<b>Sub Topic</b>
Contract management	Consumer cancellation	Not cancelled where there was an unfair practice
In person sales	Execution of contract	Did not receive disclosure statement / price comparison
Verification	Verification	Consumer does not recall verifying
In person sales	Unfair practices	Alluded to cost savings or financial advantage
Complaint handling	Expeditious investigation of complaint	Did not take all appropriate and necessary steps resolve

**Ontario Energy Board**  
**COMPLAINT FILE SUMMARY**

Page 4 of 5

Date Printed: September 01, 2017

Time Printed: 1:32:23PM

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**Complaint File Notes**

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**File Number:** 2016-0004448

<b>Activity Type</b>	<b>Date Create</b>	<b>Date Due</b>	<b>Date Completed</b>
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To-Do	2016/06/10	2016/06/10	2016/06/13
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**Notes**

CCR has come back, late, but complete.

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To-Do	2016/06/08	2016/06/08	
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**Notes**

CCR was Returned Incomplete again as Active Energy did not provide a response.

Cordale Blackett sent the following e-mail addressed to PIO. T

Hi,  
The CCR has been updated under Licensee Resolution with Customer.  
Thanks,

Cordale Blackett  
Manager, Compliance & Regulatory Affairs  
Active energy  
390 Brant Street, Suite 402  
Burlington, ON L7R 4J4  
Phone: 416-238-5540 ext 233  
Email: cordale.blackett@activeenergy.ca

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PIO responded by asking Active to confirm the three accounts on the Appendix A are all high volume accounts .  
- see documentation.

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To-Do	2016/06/08	2016/06/08	
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**Notes**

CCR Returned Incomplete - Active did not address consumer's complaint that the three accounts under the contract are low-volume accounts.

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Note	2016/06/07	2016/06/07	2016/06/07
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**Notes**

In response to consumer's e-mail, PIO advised Active's response is due by midnight tomorrow, June 8, 2016.

PIO informed consumer she will be out of the office Thursday and Friday and directed consumer to call on Monday, June 13, 2016 to review Active's response.

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Note	2016/06/07	2016/06/07	2016/06/07
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**Notes**

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**Ontario Energy Board**  
**COMPLAINT FILE SUMMARY**

Page 5 of 5

Date Printed: September 01, 2017  
Time Printed: 1:32:23PM

Consumer submitted the following e-mail:

Good Morning Velma,

Please see below, here is the response I've received from Active Energy in regards to the letter you sent on our behalf. I was mislead into this contract and was told I would save thousands and when I asked what it would cost to get out of the contract Mr. Bloomfield advised me that it would be around \$100 per account and that is the only reason why I signed. My husband was skeptical and did not want to sign, he left it up to me. I believed what Doug was telling me, he is quit convincing but after a year of comparison, I realized I had been had. Here is the difference between the 2 years, it is ridiculous and we feel like we've been robbed.

2014 Consumption total for all 3 accounts was 291,305 Kw h total cost \$59,875.50

2015 Consumption total for all 3 accounts was 293,196 Kw h total cost \$91,858.31

HOW DO YOU JUSTIFY THIS DIFFERENCE OF \$31,982.81 FOR AN EXTRA 1891 Kw h ????? THIS DOES NOT ADD UP !!

This is not justifiable and I want out without penalties. We are a seasonal business and operate from May to end of September. There is not one account that totals over 150,000/kw, they have bulked our accounts to try and justify commercial high consumption but that is misleading and I feel we are being robbed... Please advise me what can be done.

Regards,

[REDACTED]

[REDACTED]

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Note	2016/05/18	2016/06/08	2016/05/18
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**Notes**

Sent CCR

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Note	2016/05/18	2016/05/18	2016/05/18
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**Notes**

Consumer submitted an e-mail with the copy of the contract and the Schedule A.

In the e-mail she noted that her husband did not sign.

PIO contacted consumer (11:15am) to clarify if consumer is alleging forgery. Consumer stated the signature is hers. She was questioning if her husband signature is required for the contract to be valid. PIO advised no - it is the account holder or the spouse of the account holder.

The account holder is the name of the business - [REDACTED]





Date Printed : September 01, 2017

Time Printed : 1:33:39PM

## Consumer Complaint Response

2016-0004448

### Assignment

**Licensee Name**

Active Energy Inc.

**CCR Complaint Status**

Expired

**Date Received**

05/18/2016

**Sent to Licensee Date**

05/18/2016

**Licensee Date Due**

06/08/2016

**Licensee Response Date****Licensee Representative**

**Licensee E-mail:** oeb@activeenergy.ca

**Licensee Phone:** +1 (416) 238-5540

**Consumer****Provided****Agent Name:**

Douglas

**Consumer****Provided****Agent ID**

Bloomfield

**Licensee****Provided****Agent Name:****Licensee****Provided****Agent ID**

### Complaint Details

**Reference Number**

2016-0004448

**Consumer Name**

[REDACTED]

**Representative Name****Energy Type**

Electricity

**Consumer Address**

[REDACTED]

**Representative Address****Account Number**

[REDACTED]

**Consumer Phone**

[REDACTED]

**Representative Phone****Consumer Email**

[REDACTED]

**Representative E-mail****Classification**

Contract management

**Topic**

Consumer cancellation

**Sub-Topic**

Not cancelled where there was an unfair practice

## Synopsis

Consumer has come back to the OEB as Active Energy had not responded to her e-mail to them. The e-mail was sent on April 28, 2016.

Consumer's last contact with the OEB was on April 28, 2016(2016-0003836). At that time, consumer was advised of her rights under the ECPA. She was directed to send an e-mail to Active Energy with a copy to the OEB. If there was no response, consumer was to come back to the OEB to file a complaint.

Consumer requested cancellation of the electricity supply contract she signed with Douglas Bloomfield, Senior Commercial Energy Consultant on behalf of Active Energy.

Consumer stated the following:

1. The contract was signed on May 10, 2014.
2. Mr. Bloomfield looked at the electricity bills(3)) and informed consumer, Active Energy can save her thousands of dollars.
3. She asked about the cancellation cost. Mr. Bloomfield advised the cost is \$100 per account.
4. Based on that she signed the contract.
5. In 2015 the bills became increasingly high. She called Mr. Bloomfield and left messages. To-date he has

6. The service address is [REDACTED]

\*\*\*\*\*

April 28, 2016

Consumer is coming back to the OEB indicating that her issue with Active Energy is unresolved. Consumer is requesting cancellation of the contract because of misrepresentation - she was told save money and nothing was said of the Global Adjustment.

Consumer first contacted the OEB in January, 2016(2016-0001016). At that time consumer was advised of the OEB's jurisdiction and directed to write to Active Energy.

Consumer confirmed she wrote to Active and received no response. PIO asked consumer for the details of the e-mail. Consumer advised she was pretty mad in the e-mail and may not have made her request clearly.

Consumer stated there is an appendix to the contract. Three accounts are included in the contract. She confirmed each account is less than 150,000 kwh per year. PIO informed consumer retailers/marketers are not allowed to combine accounts to a large volume contract.

PIO explained the requirements of the ECPA. Consumer confirmed she did not receive the disclosure and price comparison statements. Also, she did not receive the verification call.

PIO directed consumer to write to Active - let Active know, she spoke with the OEB, was advised of the requirements of the ECPA and request cancellation of the contract without penalty. Consumer was also directed to copy the OEB on her e-mail.

PIO advised Active has 15 days to respond. If no response or consumer is not satisfied, consumer is

to contact the OEB.

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## **Consumer Resolution Requested**

Cancel Contract Without Penalty

## **Privacy Consent**

Approval to share info with OEB Yes

Approval to share info with stakeholder Yes

Approval to share info with 3rd party No

## Questions

## Answers

Licensee to review the complaint and related documents, including, but not limited to, contract, verification call, renewal call, other recordings, correspondence and account history and provide details below.

Contract Sign Date: May 9, 2014  
Flow Date: August 20, 2014

The customer signed a large volume contract and no affirmation call was required.

Licensee to call consumer within 2 business days of receipt of complaint from OEB to discuss complaint. Provide details.

Active left a message for the customer on May 19, 2016 advising that their complaint had been received and was being reviewed.

Provide an explanation of why the issue was not resolved at the initial contact from the consumer.

Active Energy completed a welcome call with the customer, Michelle Perrier, on May 12, 2014.

Active spoke with the customer on March 26, 2015 about their rate and contract. Customer understood and requested a quote on liquidated damages (?LD?) fees should they wish to end the contract early.

Active Energy emailed the customer on March 26, 2015 advising what the LD fees would be to end the contract early. Active also provided the customer with a reduced rate option for the remainder of the term as a customer service gesture.

The customer emailed Active Energy on March 26, 2015 accepting the reduced rate option.

Provide details of the licensee's resolution of the complaint, the anticipated timing for the resolution and the method of communication with the consumer.

As detailed in Schedule A, this consumer has 3 accounts with a combined flowing volume of 292,764 kWh and is accordingly not a low-volume consumer under the ECPA. Active Energy is of the opinion that the customer's contract is valid. The customer signed a large volume electricity contract with Active for the supply of its electricity. The customer's annual total flowing volume for this contract is 292,764 kWh. The customer further confirmed their understanding of the agreement on March 26, 2015 and consented to an amended rate. The customer would be subject to liquidated damages fees should they wish to end the contract early.

Detail action to be undertaken by licensee to address systemic issue or clarify position. Include actions such as salesperson retraining, salesperson discipline, call centre script changes, etc. and relevant timing to implement changes.

N/A

What is the timing for resolution to be implemented?

**Yes/No Values****Please Choose a Value****Notes**

Review Synopsis

Review Licensee CCR Response:

Regulated Activity:

Attachments Included:

Review BillingPayment History:

Review Metering Activity:

Review Disconnection Process:

Review Customer Service Rules:

Review Facility Related Activity:

Review (other) 1:

Review (other) 2:

Review (other) 3:

Closure Action: Follow-up required on consumer CCR Reviewed Yes

Active Energy Mail [REDACTED].pdf

T&amp;Cs 2014.pdf

[REDACTED].pdf

**Licensee Closure****Resolution**

Contract Valid

**Action**

No Further Action

**CCR Completed By**

cblackett

**Reimbursement Amount****Additional Comments**

Licensee to provide copies of material to consumer. Include all relevant information, including but not limited to, copy of contract, terms and conditions, verification and any other recorded calls, disclosure statement, price comparison and any other correspondence with the consumer. Provide OEB with details of what was sent to the consumer and when.

Active Energy emailed the customer their LD fees on June 6, 2016.

Licensee to provide copies of material to OEB. Include all relevant information, including but not limited to, copy of contract, terms and conditions, verification and any other recorded calls, disclosure statement, price comparison and any other correspondence with the consumer. List attachments in space below.

Please see attached for the following:

1. Contract with Schedule A
2. Terms and conditions
3. Email correspondence

### Agent Tracking

Agent Name from Licensee

Date of Initial Training

Agent Id from Licensee

Training Test score %

Date Agent Active

Date of Retraining

Number of Contracts signed

Test score following Retraining

Number of Contacts Reaffirmed

Agent Action Taken

Agent Status

Compliant against Agent

Date Agent Inactive

Agent Trained by

Third Party Agency

### Supporting Material

#### CCR Status

Status Expired

Owner Hubble,Brendan

Action Level Level 1

Interaction Status Closed

Due Date: 6/8/2016

Licensee Response Date:

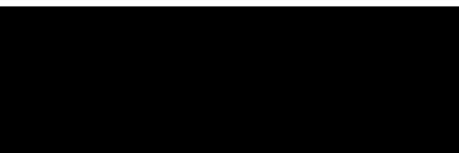
Review Complete Date: 6/13/2016

**Ontario Energy  
Board**  
Consumer Relations  
P.O. Box 2319  
2300 Yonge Street  
27th Floor  
Toronto ON M4P 1E4  
Telephone: 416-314-2455  
Toll free: 1-877-632-2727  
Facsimile: 416-440-7656

**Commission de l'énergie  
de l'Ontario**  
Relations avec les consommateurs  
C.P. 2319  
2300, rue Yonge  
27e étage  
Toronto ON M4P 1E4  
Téléphone: 416-314-2455  
Sans frais: 1-877-632-2727  
Télécopieur: 416-440-7656



June 10, 2016



**Your file number is 2016-0004448**

Dear [REDACTED]:

The Ontario Energy Board has received a response from Active Energy regarding the complaint you filed.

If you have not received the response from Active Energy or if you have questions or are not satisfied with their response, please call me. I can be reached between 8:30 a.m. and 5:00 p.m., Monday to Friday at:

- 1-877-632-2727 (toll-free in Ontario) or;
- 416-314-2455 (in the Greater Toronto Area or from outside Canada),

Yours truly,

Liam

Chris Marijan

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**From:** Gaetana Girardi <gaetana.girardi@activeenergy.ca>  
**Sent:** Thursday, September 01, 2016 11:24 AM  
**To:** Birgit Armstrong  
**Subject:** Re: FW: Request for Information [REDACTED]\_CO-2016-0031

Thank you, I have noted this.

On Thu, Sep 1, 2016 at 10:28 AM, Birgit Armstrong <[Birgit.Armstrong@ontarioenergyboard.ca](mailto:Birgit.Armstrong@ontarioenergyboard.ca)> wrote:

Hi Gaetana, Michael:

I just realized that I did not provide you with a response time for this information request. Kindly respond by September 9, 2016.

**Birgit Armstrong**

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Advisor, Investigations

Ontario Energy Board

416-544-5162

[birgit.armstrong@ontarioenergyboard.ca](mailto:birgit.armstrong@ontarioenergyboard.ca)

For general enquiries please contact the Industry Relations at: [IndustryRelations@ontarioenergyboard.ca](mailto:IndustryRelations@ontarioenergyboard.ca)

\* As a Board-appointed Inspector, I am collecting this information under the express authority of Section 107 of the *Ontario Energy Board Act, 1998*. Pursuant to Section 4.14 of the *Act*, the Board may collect personal information for the purposes of carrying out its duties and exercising its powers under this *Act* or any other Act.

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**From:** Birgit Armstrong  
**Sent:** August-30-16 1:49 PM  
**To:** 'gaetana.girardi@activeenergy.ca'  
**Subject:** FW: Request for Information [REDACTED]\_CO-2016-0031



Hi Gaetana,

Just for your information, below is an information request I sent to Michael earlier today.

**Birgit Armstrong**

---

Advisor, Investigations

Ontario Energy Board

416-544-5162

[birgit.armstrong@ontarioenergyboard.ca](mailto:birgit.armstrong@ontarioenergyboard.ca)

For general enquiries please contact the Industry Relations at: [IndustryRelations@ontarioenergyboard.ca](mailto:IndustryRelations@ontarioenergyboard.ca)

\* As a Board-appointed Inspector, I am collecting this information under the express authority of Section 107 of the *Ontario Energy Board Act, 1998*. Pursuant to Section 4.14 of the *Act*, the Board may collect personal information for the purposes of carrying out its duties and exercising its powers under this *Act* or any other *Act*.

**From:** Birgit Armstrong  
**Sent:** August-30-16 10:52 AM  
**To:** 'michael.stedman@activeenergyulc.com'  
**Cc:** Chris Marijan; Maureen Helt  
**Subject:** Request for Information [REDACTED]\_CO-2016-0031

Good morning Mr. Stedman,

I am conducting an inspection into Active Energy's aggregation of multiple low-volume accounts into a single large volume retail contract. As such I have commenced an inspection under Part VII of the *Ontario Energy Board Act, 1998* (the "Act"). As an inspector, appointed by the OEB under section 106 of the Act, OEB staff requires Active Energy to provide necessary documents, records and information for the purposes of this inspection.

This inspection has been initiated following a consumer's complaint alleging misrepresentation of the conditions of a retail contract to serve her commercial property. In her complaint, the consumer alleged that she did not receive a verification call following the signing of her retail contract, nor did she receive a price comparison statement. The [REDACTED] is served via three connection points and individual consumption data is provided by three separate meters. The retail contract between Active Energy and [REDACTED], the owner of [REDACTED], identifies the contract as an agreement serving multiple location, which are listed in Appendix A of the contract.

While I appreciate that some of the information may have already been provided to the OEB, I would like to ensure that your responses are documented as part of this inspection.

[REDACTED]

1. It is my understanding that the consumer did not receive a disclosure statement, price comparison and verification call as required for low-volume consumers under the Energy Consumer Protection Act, 2010 (ECPA). In an e-mail to the OEB, dated June 8, 2016 Cordale Blackett, Manager of Compliance and Regulatory Affairs, stated that "the three accounts all relate to a high volume consumer. The flow volumes for the individual accounts do not exceed the prescribed account of electricity under the ECPA". Please explain why Active Energy has not provided the prescribed consumer protection measures under the Energy Consumer Protection Act (ECPA) for each or any of these three accounts, given the above statement.
2. Please provide a log of all communications between [REDACTED] and Active Energy since May 12, 2014.
3. In its response to [REDACTED] complaint, Active Energy sent an e-mail to [REDACTED] on June 6, 2016, stating that "Active considers the contract enforceable and binding".
  - a. Please explain the aggregation of three low-volume accounts into one large volume account.
  - b. Please explain under what authority Active Energy considers this contract as a large volume retail account binding and enforceable.

Birgit Armstrong

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Advisor, Investigations

Ontario Energy Board

416-544-5162

[birgit.armstrong@ontarioenergyboard.ca](mailto:birgit.armstrong@ontarioenergyboard.ca)

For general enquiries please contact the Industry Relations at: [IndustryRelations@ontarioenergyboard.ca](mailto:IndustryRelations@ontarioenergyboard.ca)

\* As a Board-appointed Inspector, I am collecting this information under the express authority of Section 107 of the *Ontario Energy Board Act, 1998*. Pursuant to Section 4.14 of the *Act*, the Board may collect personal information for the purposes of carrying out its duties and exercising its powers under this *Act* or any other *Act*.

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--

Gaetana Girardi  
Director, Operations  
Cell 289-983-0162  
390 Brant Street, Suite 402  
Burlington, ON L7R4J4

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Chris Marijan

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**From:** Birgit Armstrong  
**Sent:** Wednesday, September 21, 2016 1:42 PM  
**To:** 'Gaetana Girardi'  
**Cc:** Michael Stedman; Cordale Blackett; Chris Marijan  
**Subject:** RE: TRIM: Re: FW: Request for Information, [REDACTED] CO-2016-0031

Hi Gaetana,

Thanks for your response to my questions.

After reviewing your answers, I have a few follow-up questions re. your contract with [REDACTED]

1. In response to question 2, Active Energy stated that on March 26, 2015 it advised the customer that a cancellation fee of \$28,655 would apply and offered a reduced rate of 5.5 c/kWh. In response to the Ontario Energy Board (OEB) complaint, Active Energy quoted a cancellation fee of \$31,703 on June 6, 2016.
  - a. Please explain the increase in cancellation fee in 2016 over 2015.
  - b. Please state if and how [REDACTED] was informed of the additional energy charges (i.e. Global Adjustment) when Active Energy discussed a reduced contract rate.
  - c. Please confirm that [REDACTED] was informed that these charges are included in the price charged by a electricity distributor at the time of signing the original contract as well as on March 26, 2015. If not, please explain.
2. Please provide recordings of all phone conversation between Active Energy and [REDACTED].
3. Please explain why Active Energy considers it appropriate to aggregate three separate low volume accounts into one large volume account.
4. Has Active Energy practised the aggregation of separate account on a single property as part of its retail business. If so, please elaborate and provide details on all accounts that have been aggregate and treated as a large volume consumer.
5. Please state if Active Energy has also aggregated a consumers' accounts if a business includes multiple locations.

Please provide a response by September 29, 2016.

Sincerely,

**Birgit Armstrong**

---

Advisor, Investigations  
Ontario Energy Board  
416-544-5162

[birgit.armstrong@ontarioenergyboard.ca](mailto:birgit.armstrong@ontarioenergyboard.ca)

For general enquiries please contact the Industry Relations at: [IndustryRelations@ontarioenergyboard.ca](mailto:IndustryRelations@ontarioenergyboard.ca)

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**From:** Gaetana Girardi [mailto:gaetana.girardi@activeenergy.ca]  
**Sent:** September-09-16 10:58 AM  
**To:** Birgit Armstrong  
**Cc:** Michael Stedman; Cordale Blackett  
**Subject:** TRIM: Re: FW: Request for Information [REDACTED] CO-2016-0031

Hi Birgit,  
Below are Active's responses to your questions.  
Please contact me if you have any questions.

[REDACTED]

1. It is my understanding that the consumer did not receive a disclosure statement, price comparison and verification call as required for low-volume consumers under the Energy Consumer Protection Act, 2010 (ECPA). In an e-mail to the OEB, dated June 8, 2016 Cordale Blackett, Manager of Compliance and Regulatory Affairs, stated that "the three accounts all relate to a high volume consumer. The flow volumes for the individual accounts do not exceed the prescribed account of electricity under the ECPA". Please explain why Active Energy has not provided the prescribed consumer protection measures under the Energy Consumer Protection Act (ECPA) for each or any of these three accounts, given the above statement.

**Response:** The consumer under the contract is [REDACTED], which operates a vacation destination close to [REDACTED] that offer RV/Tent Sites, Cottage/Cabin Rentals as well as Boat /Motor Rentals. Its website is [REDACTED]. The consumer's annual electricity usage at the time the contract was signed was 292,764 kWh. Due to the size and layout of its property, [REDACTED] has more than one meter on its property and as a result more than one utility account. The service address and account holder for all three accounts is the same. The consumer's annual volume under the contract exceeds a consumer's ECPA annual usage threshold of 150 000 kWh.

2. Please provide a log of all communications between [REDACTED] and Active Energy since May 12, 2014.

**Response:**

1. May 12, 2014 the contract was signed between Active and the owner of [REDACTED]
2. May 12, 2014, a welcome call was completed by Active with the customer.
3. October 23, 2014, [REDACTED] emails Active the August and October bills.

4. March 25, 2016, the customer spoke with Active stating she is concerned that because of the seasonality of the business she won't be able to afford Active's rates. Active explained the contract and program to the customer and the customer advised she understood. Active sent the consumer the ISEO website address of <http://www.ieso.ca/Pages/Power-Data/Price.aspx#GA> by email. The customer requested a quote on liquidated damages. Active advised it would provide the quote and look into whether a rate reduction could be provided.

5. March 25, 2016, Active called the customer to follow up on their discussion of earlier that day. Customer was not available and Active left a message.

6. March 26, 2015: Active spoke with the customer regarding their rate and contract. Active advised the customer of the liquidated damages amount of \$28,655.30 and offered a reduced rate of 5.5 c/kWh for the remainder of the term. Active advised it would email her the offer and asked for a response accepting the new rate.

7. March 26, 2015, Active emailed the LD fees to the customer and provided a reduced rate option for the remainder of the contract term.

8. March 26, 2015: Active received an email confirmation back from the customer accepting the reduced rate option.

9. March 27, 2015, Active sent an email to the customer confirming that their contract rate had been reduced by 0.05 cents/kWh.

10. March 27, 2015, the customer emailed Active thanking it for the price reduction.

11. April 28, 2016, Active receives an email from the customer advising of their OEB complaint.

12. May 19, 2016, Active called the customer advising they received and are reviewing their OEB complaint of May 18, 2016.

13. June 6, 2016, Active emailed the customer a copy of their contract, LD fees, and options to reduce the current contract price. Active advised that it considers the contract valid and binding.

3. In its response to [REDACTED] complaint, Active Energy sent an e-mail to [REDACTED] on June 6, 2016, stating that "Active considers the contract enforceable and binding".

- a. Please explain the aggregation of three low-volume accounts into one large volume account.

Response: See Response to Question 1. The consumer's volume is 292,764 kWh based on the three accounts below.

Account Number	Service Address	Annual Volume
[REDACTED]	[REDACTED]	93,983 kWh
[REDACTED]	[REDACTED]	133,066 kWh
[REDACTED]	[REDACTED]	65,715 kWh
Total Volume		292,764 kWh

- b. Please explain under what authority Active Energy considers this contract as a large volume retail account binding and enforceable.

Response: Under s. 2 of the ECPA, "consumer" is defined as follows:

"consumer" means,

(a) in respect of the retailing of electricity, a person who uses, for the person's own consumption, electricity that the person did not generate and who annually uses less than the prescribed amount of electricity . . .

Under s. 4 of O. Reg 389/10,

For the purposes of the definition of "consumer" in section 2 of the Act,

(a) the prescribed amount of electricity for the purpose of clause (a) of the definition is 150,000 kilowatt hours . . .

As the consumer, The Cache Campground, had an annual electricity usage at the time the contract was entered into of more than 150,000 kilowatt hours, it is not a consumer as defined in the ECPA.

On Tue, Aug 30, 2016 at 1:48 PM, Birgit Armstrong <[Birgit.Armstrong@ontarioenergyboard.ca](mailto:Birgit.Armstrong@ontarioenergyboard.ca)> wrote:

Hi Gaetana,

Just for your information, below is an information request I sent to Michael earlier today.

**Birgit Armstrong**

---

Advisor, Investigations

Ontario Energy Board

416-544-5162

[birgit.armstrong@ontarioenergyboard.ca](mailto:birgit.armstrong@ontarioenergyboard.ca)

For general enquiries please contact the Industry Relations at: [IndustryRelations@ontarioenergyboard.ca](mailto:IndustryRelations@ontarioenergyboard.ca)

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After reviewing your answers, I have a few follow-up questions re. your contract with [REDACTED]:

1. In response to question 2, Active Energy stated that on March 26, 2015 it advised the customer that a cancellation fee of \$28,655 would apply and offered a reduced rate of 5.5 c/kWh. In response to the Ontario Energy Board (OEB) complaint, Active Energy quoted a cancellation fee of \$31,703 on June 6, 2016.

a. Please explain the increase in cancellation fee in 2016 over 2015.

**Response:**

As per section 12 of the Agreement, this customer's exit fee is calculated using the sum of the following, plus HST: (1) electricity supply: the customer's future supply under the contract multiplied by the difference in the contract price and the price that would have been received to sell the equivalent future supply in the market place; and (2) Green offset: the product of \$0.004/kWh, the 20% offset option selected by the customer on the Agreement, and the future supply under the contract. Please note that the exit fee for the Green offset program was not included in the June 2016 liquidated damages quote because the contract price was reduced for the customer in March 2016. The reason that the liquidated damage charges increased from March 2015 to June 2016 was due to the significant decrease in the price of electricity over this time frame (i.e., the price of electricity that would have been received to sell the future supply in the market place). In March of 2015 when the first liquidated damage charges were given to the customer the price of 1 Mega Watt was \$34.08. In June 2016 when the second liquidated damage charges were given to the customer the price of 1 Mega Watt decreased to \$22.00, a decrease of over 35%. This means that for every Mega Watt the customer still owed on their contract June 2016-August 2019 had to be sold back into the market at \$12.08/Mega Watt cheaper the second time around.

b. Please state if and how [REDACTED] was informed of the additional energy charges (i.e. Global Adjustment) when Active Energy discussed a reduced contract rate.

**Response:** On March 25<sup>th</sup>, 2015, Active's representative spoke with the customer and educated the customer on the Global Adjustment ("GA"), Active's product, and the RPP. Active advised that the GA is a government charge that is billed as a separate line item on the customer's bill when a customer signs with a supplier. It was explained to the customer that the GA would have been previously included in their RPP rate. The representative further provided the customer with the following link to the IESO website ( <http://www.ieso.ca/Pages/Power-Data/Price.aspx#GA>) via email so that the customer could verify all the information that had been explained. Active would also like to advise that the first page of the customer's contract and the terms and conditions outline that the customer is responsible for additional charges on their utility bill. The front page of the contract indicates in points a) and c) respectively: "In addition to the Prices above, as always, you will remain responsible for... electricity delivery, debt retirement, regulatory and other charges billed by your Utility"; and "If you sign up for the electricity program, you will have to settle your Regulated Price Plan (RPP) variance with your Utility, and will be entitled to /bound by the Global Adjustment". Section 8, of the terms and conditions, under the heading "Charges under this Agreement" states: "...Customer shall pay the related charges plus applicable taxes, and other amounts levied by the Utility, including, without limitation, charges relating to transmission, delivery, debt recovery, uplift, congestion and service charges." Lastly, Active also explains the Global Adjustment under sections 1 (Key Defined Terms heading) of the customer's terms and conditions. Attached is a copy of the customer's contract.

c. Please confirm that [REDACTED] was informed that these charges are included in the price charged by a electricity distributor at the time of signing the original contract as well as on March 26, 2015. If not, please explain.

**Response:** Active's sales representatives are trained to explain all features of the program to the customer. As indicated in response 1. b above, Active's contract outlines all charges that the customer is required to pay under the contract (attached). All contracts are provided to the customer at the time of sale. In addition, Active's representative explained the GA to the customer on the March 26, 2015 call and sent the customer an email providing the information.

2. Please provide recordings of all phone conversation between Active Energy and [REDACTED]

**Response:** Please see attached welcome call that was completed with the customer on May 12, 2014.

3. Please explain why Active Energy considers it appropriate to aggregate three separate low volume accounts into one large volume account.

**Response:** Active Energy retails energy to customers, not to accounts. A customer may have more than one account or meter to which the supply provided by Active is delivered by the customer's utility. Attached please find a legal opinion from external counsel on this topic. The legal advice provided agrees with and supports provision by Active Energy of service to [REDACTED] through the customer's 3 separate meters/utility accounts.

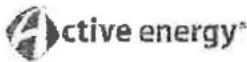
4. Has Active Energy practised the aggregation of separate account on a single property as part of its retail business. If so, please elaborate and provide details on all accounts that have been aggregate and treated as a large volume consumer.

**Response:** Active Energy retails to customers, not to accounts. A customer may have more than one meter, and thus more than one utility account, servicing an individual property. Active Energy supplies energy to any customer meter or account requested by the customer.

Providing "details on all accounts that have been aggregate[d] and treated as a large volume consumer" would take significant effort. Accordingly we ask that the Board review the balance of the responses provided and consider whether the detailed information requested continues to be required. Should the Board require such detail following review of the balance of the responses provided, please contact me so that we can determine precisely what information is required and then agree on a reasonable schedule for providing such information.

5. Please state if Active Energy has also aggregated a consumers' accounts if a business includes multiple locations.

**Response:** Active Energy does service large volume customers taking energy service at multiple locations. As the question suggests, in these instances Active Energy's customer is the "consumer", whose volume is delivered by the consumer's distributor(s) to different locations.



LV 01244

**NATURAL GAS AND ELECTRICITY PROGRAMS  
(Customer Agreement)**

390 Brant Street, Suite 402, Burlington, ON, Canada L7R 4J4

416-238-5540 905-333-0982 activeenergy.ca commercial@activeenergy.ca

This Customer Agreement forms part of the Agreement entered into by and between Active Energy Inc. ("Active Energy") and the Customer identified in the Customer Information section below. This Customer Agreement shall only become binding and enforceable when it is executed by both Customer and Active Energy. Nothing herein shall be deemed to require Active Energy to execute the Agreement. The Date on which Active Energy executes this Customer Agreement shall be deemed the "Effective Date" of the Agreement.

**Customer Information**

The Customer is responsible for ensuring the accuracy of the information set out below.

Account Holder (Customer as written on Utility bill. Provide full legal business name.)

First [redacted] Last [redacted] Title (if a business) **OWNER OP**

Signatory (Name & Title)

Billing Address [redacted] Street Number [redacted] Street Name [redacted] Unit Number [redacted]

City [redacted] Province [redacted] Country [redacted] Postal Code [redacted]

Preferred Phone (with ext.) [redacted] Alternative Phone [redacted] Fax [redacted] E-Mail [redacted]

This Agreement is for: ☐ Single Location (complete attached Schedule "A") ☒ Multiple Locations (complete attached Schedule "A")

**Natural Gas, Electricity & Green Offsets Price**

Commodity	Term	Estimated Start Date	Select One			Green Natural Gas Offset %	<input checked="" type="checkbox"/>	Green Natural Gas Offset Price	Authorization
Natural Gas Price	Year (s)	DD/MM/YYYY	<input type="checkbox"/> Fixed Price of \$/m <sup>3</sup>	<input type="checkbox"/> Market Price + \$/m <sup>3</sup>	100%	<input type="checkbox"/>	\$/m <sup>3</sup>	Customer Initial	
					80%	<input type="checkbox"/>			
					60%	<input type="checkbox"/>			
					40%	<input type="checkbox"/>			
					20%	<input type="checkbox"/>			
Electricity Price	Year (s)	DD/MM/YYYY	<input checked="" type="checkbox"/> Fixed Price of \$/kWh	<input type="checkbox"/> Market Price + \$/kWh	<input type="checkbox"/> Block Price of \$/kWh	Green Electricity Offset %	<input checked="" type="checkbox"/>	Green Electricity Offset Price	Customer Initial
						100%	<input type="checkbox"/>	\$/kWh	
						80%	<input type="checkbox"/>		
						60%	<input type="checkbox"/>		
						40%	<input type="checkbox"/>		
20%	<input type="checkbox"/>								

\* Active Energy will bill a Transportation Charge in addition to the Natural Gas Price listed above. See section 7.A of the General Terms and Conditions.

**Agreement Information**

Customer appoints Active Energy as its supplier of natural gas and/or electricity commodity ("Energy") and Green Offsets to each Location enrolled under this Agreement for the selected Term. You, the Customer, understand and agree:

- This Agreement is with Active Energy, a licensed Energy marketer/retailer and not your local Utility. You will continue to be supplied with Energy whether or not you sign this Agreement. In addition to the Prices above, as always, you will remain responsible for natural gas regulated delivery, transportation, storage and other charges billed by your Utility, and/or electricity delivery, debt retirement, regulatory and other charges billed by your Utility.
- If you sign up for the electricity program, you will have to settle your Regulated Price Plan (RPP) variance with your Utility, and will be entitled to/bound by the Global Adjustment.
- This Agreement does not guarantee financial savings. At any time, Customer's Utility commodity rates may be lower or higher than Active Energy's prices for Energy.
- This Agreement can be automatically renewed (see Section 6). You may also request the Blend & Extend Option (see Section 10). Customer will owe Exit Fees to Active Energy if Customer causes this Agreement to end early (see Section 12).
- By signing this Agreement, Customer agrees to initiate Energy (along with Green Natural Gas and/or Green Electricity Offsets, if selected) service and begin enrollment with Active Energy. Active Energy, following its execution of this Agreement, will supply Energy (along with Green Natural Gas and/or Green Electricity Offsets, if selected) at the Price Customer agrees to on the Customer Agreement. Customer will pay any related charges, plus applicable taxes.

Customer has read and accepts the above, has received a signed copy of this Agreement (including the attached Schedule "A" and Terms and Conditions) and agrees to be bound by it.

Customer Initial

**Authorization**

By signing this Agreement, each party agrees to be bound by the terms of this Customer Agreement and the General Terms and Conditions, and Customer acknowledges having read, understood and accepts the contents of this Agreement, including without limitation, the Price and Term as indicated and agrees to be bound by same. The undersigned acknowledges having full authority to sign this Agreement and enter a binding contract for the Location(s) and Utility accounts listed in Schedule "A".

Customer [redacted] Active Energy

Authorized Signature [redacted]

Authorized Signature [redacted]

Print Name [redacted]

Print Name [redacted]

Print Title

**OWNER OP**

Print Title

**Michael Stedman**  
President

Date

**MAY 10 2014**

Date

**MAY 12, 2014**

I have the authority to bind Customer

I have the authority to bind Active Energy

**DOUGLAS BLOOMFIELD**  
CONSULTANT #

CONSULTANT NAME

CONSULTANT SIGNATURE

THIS AGREEMENT IS ONLY VALID FOR NEW COMMERCIAL CUSTOMERS. NO CHANGES TO THE PRE-PRINTED TERMS APPLY.  
PLEASE PROVIDE A COPY OF YOUR BILL TO ASSIST IN PROCESSING YOUR ENROLLMENT.

LV09302013000001

SCHEDULE "A"

Account Number	Account Name	Utility	Unit Number	Street Number	Street Name	City	Postal Code
JP [REDACTED]	[REDACTED]	HYDRO ONE	2 -	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
JP [REDACTED]	[REDACTED]	HYDRO ONE	1 -	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	HYDRO ONE	3 -	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Full Legal Name of Customer: [REDACTED]

Signature: [REDACTED]

Print Name: [REDACTED]

Print Title: OWNER OP.

Date: MAY 10 2014

"I have the authority to sign on behalf of the Customer."

**General Terms and Conditions  
(and Notice of Appointment of Agent)  
For Commercial Customers**

1. **Key Defined Terms. AECO CGPR 5A:** The daily AECO index price which shall be the price for the day in the "Avg." column for such day in the table "NGX AB-NIT same day index #" in the Canadian Gas Price Reporter Issue for the month following such day. **Agreement:** Collectively, the Customer Agreement, these General Terms and Conditions and the attached Schedule "A". **Customer:** The account holder named on the Customer Agreement (and the attached Schedule "A"). **Electricity Price:** The rate (\$/kWh) Customer pays for electricity under this Agreement. **Energy:** Natural gas and/or electricity. **Future Use:** Customer's anticipated Energy consumption under this Agreement (in m<sup>3</sup> or kWh, as applicable) for the remainder of the Term, to be calculated by Active Energy in accordance with Active Energy's standard and reasonable practices in effect at the time of calculation. **Global Adjustment:** It can be a credit or a charge, and reflects the difference between regulated and contract prices for electricity paid to certain generators (as well as Conservation & Demand Management initiatives) and the market prices they would have received had they not been subject to government regulation or contracts. **HOEP:** The IESO published actual hourly Ontario electricity price, which represents the hourly price that is charged to utilities. **IESO:** Independent Electricity System Operator. **Location(s):** Each natural gas and/or electricity account listed on Schedule "A", relating to Customer's premise(s) for service, or replacement thereof, is a separate "Location(s)" bound by this Agreement. **Market Price:** For electricity the weighted average HOEP, calculated in each billing cycle, as further described in subsection 8.1. For natural gas, the AECO CGPR 5A. **Natural Gas Price:** The rate (\$/m<sup>3</sup>) Customer pays for natural gas under this Agreement. **NERC Holidays:** Shall mean those days posted as additional Off-Peak days by the North American Electricity Reliability Council on its website at [www.nerc.com](http://www.nerc.com). **OEB:** Ontario Energy Board. **Green Offsets:** An amount of verified greenhouse gas ("GHG") emission reduction credits created by projects located in North America which equal all/specified portion of the CO<sub>2</sub> emissions produced by the specified Energy consumption. **Green Electricity Offset Price:** The rate (\$/kWh) Customer pays for Green Offset(s) under this Agreement. **Green Natural Gas Offset Price:** The rate (\$/m<sup>3</sup>) Customer pays for Green Offset(s) under this Agreement. **Off-Peak Hours:** Means any hour that is not a Peak Hour. **Peak Hours:** Each hour from and including the hour ending 08 Eastern Standard Time (EST) to and including the hour ending 23 EST from Monday to Friday inclusive during the Term of the Agreement, excluding NERC Holidays. **Price:** As set out on the Customer Agreement, each of the Natural Gas Price, Electricity Price, Green Natural Gas Offset Price and Green Electricity Offset Price, as applicable. **RPP:** The Regulated Price Plan price is set by the OEB, may change every six months and is inclusive of any Global Adjustment. **Utility:** Customer's local distribution utility.
2. **Notice and Details of Appointment of Agent.** Customer gives Active Energy the sole and exclusive right to act as agent on Customer's behalf in making all supply and delivery arrangements with its Utility and others in order to provide Customer's full Energy requirements to the Location(s). This may include, but is not limited to, coordinating with the Utility for transmission, transportation, distribution, and delivery of Energy, and negotiating, entering, performing, amending, and terminating agreements and/or obligations relating to the supply of Energy. The Customer agrees that the General Terms and Conditions of this Agreement and any agreement duly entered into by Active Energy on behalf of the Customer shall be binding on the Customer. The Customer agrees this Agreement supersedes and replaces any prior agency agreements pertaining to Energy. Customer further agrees, now and throughout the Term (as defined herein), that it: (a) is not, and will not be, bound by any other agreement for its Location(s) with an Energy supplier other than Active Energy; and (b) will not cancel or modify Active Energy's appointment as Customer's exclusive agent.
3. **Acceptance, Verification.** This Agreement is conditional upon acceptance by Active Energy. Active Energy's acceptance is at its sole discretion and depends, in part, on whether: (a) the Utility accepts and implements Active Energy's request to enroll Customer; (b) Active Energy can verify the accuracy of Customer's information by recorded telephone call (or other means acceptable to Active Energy); and (c) Active Energy approves Customer's creditworthiness. If all conditions are met, or otherwise waived by Active Energy, Active Energy will supply Energy to Customer's Location(s) for the Term. Customer consents to the recording of phone calls relating to this Agreement and consents to any and/or all communications with Active Energy.
4. **Term.** The "Term", as selected on the Customer Agreement, begins on the "Start Date" and expires on the "End Date". If no selection is made, the Term is deemed to be 5 years.  
**Start Date:** Active Energy's first day of Energy supply to the Location(s) under this Agreement. If the Location(s) is not currently enrolled with Active Energy or one of its affiliates, the Start Date will be reasonably close to the Estimated Start Date listed on the Customer Agreement. If the Location(s) is currently enrolled under an existing agreement with Active Energy or one of its affiliates, and Active Energy chooses to accept this Agreement, the Start Date may be delayed (for reasons such as the Agreement being improperly completed, not submitted to Active Energy, not implemented by the Utility, etc.) at Active Energy's sole discretion. **End Date:** Active Energy's last day of Energy supply to the Location(s) under this Agreement. It will be 1-5 years from the Start Date, in accordance with the Term selected on the Customer Agreement, plus any time needed to obtain a final actual or estimated meter read. A new Term will begin if Customer chooses the Blend & Extend Option or if this Agreement is renewed. Otherwise, at the end of the Term, it may take up to 30 days or more to complete Customer's switch back to the Utility or other supplier, during which time Customer remains responsible for all Active Energy charges.
5. **Transition Term.** If Active Energy is enrolled by the Utility as electricity supplier for the Location(s) prior to the Start Date or remains the Utility enrolled supplier following the End Date (any such period being a "Transitional Term"), then Active Energy may, at its option, supply the Location(s) during such Transitional Term and invoice the Customer in an amount equal to HOEP plus \$0.005 per kilowatt-hour multiplied by the actual amount of electricity consumed in each hour by Customer for the Location(s). The other General Terms and Conditions of this Agreement will continue, unaffected, during any Transitional Term.



6. **Renewal.** Unless either party notifies the other party of its intent not to renew this Agreement in writing at least sixty (60) days prior to the end of the Term (or if such notice of intent not to renew is expressed but the Customer has not arranged for the transfer of its Energy service to Customer's Utility or to another third party energy provider by the end of the Term), and if no other renewal agreement has yet been reached, this Agreement will automatically be renewed for the same initial Term selected on the Customer Agreement. Any automatic renewal will use a rate that is the greater of (a) Price, or (b) an index price. For electricity, the index price will be the Market Price + 1.0¢/kWh, as described in section 8.1, plus the Global Adjustment, plus all other applicable taxes, costs, charges or fees. For natural gas, the index price will be one-hundred twenty percent (120%) of the AECO CGPR 5A price, plus all other applicable taxes, costs, charges or fees. If there is no single AECO CGPR 5A price published for a given day, but there is published a range of prices, then Active Energy will use the average of the high and low prices. Should NGX stop publishing AECO CGPR 5A, or if there is a material change in the method of its calculation, Active Energy may in its sole discretion either terminate this Agreement or determine a reasonable replacement price by using the price most recently published by NGX or by using another published source.
7. **Green Offsets.** **Green Natural Gas Offset.** Active Energy will purchase and retire an amount of third-party verified emissions reductions, allowances or instruments ("carbon credit") to offset 5.5 tonnes of CO<sub>2</sub> for every 3,000m<sup>3</sup> consumed at the Location(s), multiplied by the Green Natural Gas Offset % selected on the Customer Agreement. **Green Electricity Offset.** Active Energy will purchase and retire an amount of third-party verified emissions reductions, allowances or instruments ("carbon credit") to offset 2.2 tonnes of CO<sub>2</sub> for every 10,000kWh consumed at the Location(s), multiplied by the Green Electricity Offset % selected on the Customer Agreement. Active Energy can suspend or discontinue Green Natural Gas Offset and/or Green Electricity Offset at any time (Customer will cease paying for Green Offset but the rest of this Agreement will remain in effect). Carbon credits that Active Energy purchases and retires on Customer's behalf will: (a) on a best effort basis, be from Ontario based projects; however, Active Energy may but them from other sources at its discretion; and (c) remain Active Energy's legal property. Green Natural Gas Offset and/or Green Electricity Offset related charges will be included with the Energy charge on Customer's bill.
8. **Charges under this Agreement.** Active Energy will supply Customer with Energy, Green Natural Gas Offset, and Green Electricity Offset, as applicable, for the Location(s), and each billing cycle Customer shall pay the related charges plus applicable taxes, and other amounts levied by the Utility, including, without limitation, charges relating to transmission, delivery, debt recovery, uplift, congestion and service charges.
- 8.1 Electricity Charge.** Customer's electricity consumption multiplied by the Electricity Price. **Market Price:** The Market Price for electricity will be calculated in each billing cycle using a weighted average HOEP for that billing cycle, the weighting of which is based on: (a) Customer's actual hourly consumption if Customer's Location(s) uses an interval meter, and Utility provides Active Energy with meter data at the interval level; or (b) the aggregate

load shape of all electricity users in Customer's Utility service area that do not have interval meters (or for which Utility provides Active Energy only with aggregated meter data), represented by Customer's Utility's net system load shape. In any given billing cycle, Active Energy may estimate the Market Price using Active Energy's reasonable method of calculation and reconcile it in a subsequent billing cycle, using actual data. HOEP is published by the IESO at [www.ieso.ca](http://www.ieso.ca). Should the IESO stop publishing HOEP, or if there is a material change in the method of its calculation, Active Energy may in its sole discretion either terminate this Agreement or determine the applicable weighted average HOEP by using the price most recently published by the IESO or by using another published source. **Load Following Price:** The Customer's Fixed Price set forth in the Customer Agreement. For each billing period, the Electricity Charge will be adjusted for over consumption or under consumption (the "Imbalance Adjustment"), at Active Energy's sole discretion, should Customer's consumption in the applicable billing period during Peak Hours and/or Off-Peak Hours, as the case maybe, exceed or fall-short the consumption variance (the "Variance") fixed at 10% of Customer's expected consumption for the same period during corresponding Peak Hours and/or Off-Peak Hours. Customer's expected consumption is based on Customer's actual historical consumption provided to Active Energy by the Utility, or Active Energy's good faith estimate when historical information is not available. **Block Price.** The hourly Electricity Charge for each hour at each Location(s) is the hourly block volume multiplied by the hourly block price per kilowatt-hour plus/minus the difference between the actual consumption at the Location(s), as measured by the Utility, and the hourly block volume multiplied by HOEP. For greater clarity, consumption below the hourly block volume purchased results in a negative Imbalance Adjustment and a credit to Customer, and consumption above the hourly block volume purchased results in a positive Imbalance Adjustment and an additional charge to Customer. **Green Electricity Offset Charge.** Customer's electricity consumption multiplied by the Customer's Green Electricity Offset Price (as set out on the Customer Agreement). This charge is only applicable if the Customer chooses to purchase Green Electricity Offsets. **8.2 Pass-through Charges.** Amounts charged to Active Energy that Active Energy passes through to its customers that may relate to transmission, transportation, delivery, distribution, debt recovery, uplift, congestion, service charges, implementation of locational based marginal pricing, etc. Active Energy also passes through a service charge charged by the Utility for billing in the amount of \$1.00 per month per Location(s), which is subject to change. **8.3 Natural Gas Charge.** Customer's natural gas consumption multiplied by the Natural Gas Price. **Market Price:** A fluctuating variable price to be paid by the Customer determined by the natural gas marketplace. Active Energy will reasonably set a fixed price on the Customer's Utility bill(s), which may be changed by Active Energy at any time during the Term of the Agreement. At the end of every 12 month period, Active Energy will reconcile and debit or credit the Customer based on the price differential between the fixed price set on the Customer's Utility bill(s) for the preceding 12 months and the actual Market Price multiplied by the natural gas volumes delivered to the Utility by Active Energy on behalf of the Customer's Location(s). Invoiced amounts are due together with

any applicable taxes no later than the 20<sup>th</sup> day of the month after the statement is received. However, if the applicable due date is not a business day, the amounts are due on the next business day following the due date. **Fixed Price:** The Customer's Fixed Price set forth in the Customer Agreement. **Green Natural Gas Offset Charge:** Customer's natural gas consumption multiplied by Customer's Green Natural Gas Offset Price (as set out on the Customer Agreement). This charge is only applicable if the Customer chooses to purchase Green Natural Gas Offsets. **8.4 Transportation Charge.** The cost to transport natural gas from areas of production into the local gas distribution system in Ontario. The rate Active Energy charges its Customers for this service is based on a forecasted price for natural gas, pipeline transportation rates and compressor fuel. Active Energy reserves the right to periodically update the Transportation Charge to reflect any changes in market price. Any such costs charged by the Utility, or any third party, to Active Energy will be passed on by Active Energy to the Customer and Customer agrees to pay such charges. The transportation charge will always match TransCanada Pipeline Ltd.'s current tolls to transport gas from Empress to the Location(s) delivery area at the time of delivery. **8.5 Natural Gas Imbalances.** At any time during the Term, the Customer's actual or forecasted natural gas consumption may exceed or fall short of the forecasted annual volume provided by the Utility. The Utility maintains an account which records the difference between the forecasted amount and the quantities of gas actually consumed (the "**Balancing Gas Account**"). The Utility may require Active Energy or the Customer to bring its Balancing Gas Account into balance. The Customer shall reimburse Active Energy for any and all costs incurred by Active Energy (including charges imposed by the Utility and any other costs incurred by Active Energy) that are reasonably attributable to balancing the Customer's Balancing Gas Account. Customer authorizes the Utility to include this amount in the Customer's Utility bill as an amount payable to Active Energy.

9. **Billing, Payment, Measurement.** Customer will be billed by the Utility in accordance with the Utility's usual requirements and schedules for billings, deposits, payments, late payments and other charges (but Active Energy reserves the right to bill Customer directly). Active Energy's charges will appear on the bill together with the amounts charged by the Utility. Customer shall pay all invoiced sums when due, including late payments on uncontested past due amounts. A history of late payments may be reason for cancellation of this Agreement by Active Energy, together with Exit Fees, and possible referral to a collection agent. Customer shall pay Active Energy's reasonable collection costs and legal fees associated with the collection of amounts owed by Customer to Active Energy. The Utility will measure (or otherwise determine) the amount of Energy supplied to the Location(s). Active Energy assumes no liability for errors in measurement and shall be entitled to revise any bill, if necessary, to account for any errors or reassessment made by the Utility, the IESO or Active Energy and Customer agrees to be bound by any such revisions.

10. **Blend & Extend Option.** Customer may request this option if, during the Term, Customer's Price for electricity or natural gas differs from the Active Energy posted price being offered to new customers for similar agreements of similar duration to this Agreement. To qualify, the Term of this Agreement

must be at least 3 years and Customer's request must be made at least 6 months prior to the End Date. Under the Blend & Extend Option: (a) the Price will be amended to a new blended Price, using a weighted average of the Price which the Customer currently pays and Active Energy's future posted price; (b) the current Term will be deemed expired and a new Term of similar duration to this Agreement will take effect; (c) the blended Price and new Term will take effect as of Customer's next billing period, or as soon thereafter as may reasonably be effected by Active Energy; and (d) all terms of this Agreement except for Price and Term will remain unchanged. Customer may exercise the Blend & Extend Option once per Location(s) in any 3 year period.

11. **Early Termination of this Agreement, Default.** If this Agreement is terminated early, for any reason, Customer shall be responsible for and pay all amounts charged up to the early termination date. If Customer annually uses less than 50,000 m<sup>3</sup> of natural gas or 150,000 kWh of electricity, as applicable, Customer can end this Agreement, at no cost to Customer, within 10 days of having signed it. In order for a cancellation request to be processed it must be submitted using the contact information listed on the Customer Agreement. Active Energy may terminate this Agreement early, at no cost to Active Energy, if: (a) required/allowed by law; (b) the Utility is unable to service one or more of the Location(s); (c) a legislative or regulatory change materially alters Active Energy's ability to profitably perform this Agreement; (d) Customer moves; (e) if the Utility enacts credit requirements on Active Energy that are prohibitive with respect to Active Energy fulfilling its delivery obligations or (f) Customer falls into "Default". The Customer will be given 15 days prior notice by Active Energy of any termination. Customer shall be in Default if, at any time during the Term, it: (i) changes its supplier, including to the Utility or other marketer/retailer; (ii) withdraws Active Energy's authority to obtain and use information necessary to perform this Agreement; (iii) fails to make timely payment of amounts due hereunder; (iv) breaches any term or fails to meet any other obligation under this Agreement; (v) otherwise fails to comply with the General Terms and Conditions of, or the Utility's rules in relation to this Agreement; (vi) fails to satisfy at any time the credit bureau standard required by Active Energy; or (vii) Customer makes an assignment or any general arrangement for the benefit of creditors, or commence or acquiesce in the commencement of a proceeding under any bankruptcy or similar law for the protection of creditors or have such a proceeding commenced against Customer or otherwise become bankrupt, insolvent or shall become unable to pay your debts when due. Where this Agreement is terminated early due to Customer's Default, Customer shall be liable for certain Exit Fees as set out in section 12 herein. This Agreement shall be deemed terminated at no cost and without liability to either party if Active Energy does not commence supply of Energy within 12 months of the Estimated Start Date, for whatever reason, and Customer has not contacted Active Energy to implement same; or if this Agreement is unable to be implemented for reasons beyond Active Energy's control.
12. **Exit Fees.** If this Agreement ends prior to the End Date due to Customer's Default, Customer shall pay liquidated damages to Active Energy. These liquidated damages will be calculated as the sum of: (a) (i) for electricity or natural gas Customers with a Market Price, the Market Price adder under this Agreement

multiplied by Customer's Future Use, as applicable, (ii) for fixed price natural gas Customers, the Customer's Future Use multiplied by the difference per m<sup>3</sup> obtained by subtracting the price received by Active Energy, using commercially reasonable efforts, to sell the equivalent of such Future Use from the Natural Gas Price, provided that if this amount is negative, liquidated damages shall be deemed to be zero, or (iii) for fixed price and block price electricity Customers, the Customer's Future Use multiplied by the difference obtained by subtracting the price received using commercially reasonable efforts, to sell the equivalent of such Future Use from the Electricity Price (provided that if this amount is negative, liquidated damages shall be deemed to be zero); plus (b) all transmission, delivery costs, penalties and any other charges incurred by Active Energy as a result of the termination; plus (c) all applicable taxes; plus (d) Active Energy's associated costs and reasonable legal expenses related to determining the liquidated damages and the enforcement of Active Energy's rights and remedies (the "Exit Fee"). If Customer signed for Green Offsets, Customer shall also pay liquidated damages in the amount of, as applicable, \$0.02 per m<sup>3</sup> multiplied by the Green Natural Gas Offset % selected on the Customer Agreement and \$0.004 per kWh multiplied by the Green Electricity Offset % selected on the Customer Agreement, multiplied by Customer's Future Use (the "Green Offset Exit Fee", together with the Exit Fee, the "Exit Fees"). The parties agree that the liquidated damages calculation is a genuine pre-estimate of the damages that would be suffered by Active Energy and shall be conclusively deemed to be liquidated damages designed to reimburse Active Energy for its losses and not a late payment charge, penalty, fine, interest, or other charge of any kind.

13. **Suspension of Utility Service.** In the event of non-payment when due of all invoiced sums authorized in this Agreement, Energy supply and/or delivery service may be disconnected by the Utility and/or Active Energy. If this happens and the Utility subsequently reconnects Customer, Active Energy may, at its option, re-enroll Customer under this Agreement effective as of the date that the Energy supply and/or delivery service is reconnected by the Utility and/or Active Energy. Where reconnection is made by the Utility, Customer must notify Active Energy within 30 days of the date of re-connection.
14. **Customer Information, Credit Review.** Customer: (a) consents to Active Energy collecting, retaining, using and disclosing Customer's information; and (b) requests, authorizes and directs the Utility and/or IESO to release to Active Energy and/or its affiliates, Customer's contact information, current and historical energy billing and usage data, and other account information so as to enable Active Energy to perform its obligations under this Agreement (including to establish, and collect money for Customer's account, supply Customer with Energy, meet Active Energy's contractual obligations with others, for law enforcement purposes and for processing past due accounts of Customer which have passed to a debt collection agency). Customer further authorizes Active Energy to review Customer's credit history and information, whether in the possession of the Utility or third party credit reporting agencies (and Active Energy may disclose such Customer information to its creditors, suppliers and service providers). Active Energy is not obligated to accept, or continue performing, this Agreement if Customer does not meet Active Energy's credit requirements. Any action by

Customer that deprives Active Energy of information considered by Active Energy to be material to its performance of its obligations under this Agreement shall constitute a Default by Customer, in which case Exit Fees will apply. Customer will promptly notify Active Energy in advance of any changes to Customer's information relevant to this Agreement. Active Energy and its affiliates and partners may use Customer's information to communicate with Customer about other products and services offered by Active Energy and its affiliates and partners. We will disclose any of your information where required by law. If you have any questions about our policies and practices regarding the collection or use of your information, please refer to our privacy policy at [activeenergy.ca](http://activeenergy.ca) or contact us directly.

15. **Representations, Warranties and Covenants.** Each party represents and warrants that it has the power and the authority to enter into, and perform its obligations under this Agreement; and, each party accepts this Agreement to be a legal, valid and binding obligation of such party enforceable against it in accordance with its terms. Customer also covenants that it: (a) shall provide Active Energy with all necessary physical access and information required to implement this Agreement; (b) shall abide by the Utility's rules; (c) has made its own independent decisions to enter into this Agreement based solely upon its own judgment and upon advice from such advisers as it has deemed necessary; and (d) agrees no communication (written or oral) received from Active Energy or its affiliates (or their respective representatives) will be deemed an assurance or guarantee as to the expected results of this Agreement.
16. **Indemnification.** Active Energy will arrange for the Utility to deliver Energy to the facility/meter(s) associated with the Location(s) (the "Delivery Point"). From and after delivery of Energy to the Delivery Point, Customer agrees to defend, indemnify and hold harmless Active Energy, its affiliates and related entities, and their respective shareholders, directors, officers, employees, agents, successors and their permitted assigns, (collectively the "Representatives") in full for any and all losses, damages, injuries, liabilities or costs of any kind related to Active Energy's duties and obligations hereunder that any of Active Energy or its Representatives suffer or incurs in connection with, or relating to Active Energy acting as your agent, or any act or omission by you relating to the supply or delivery of Energy and/or Green Offsets to the Location(s) including, without limitation, any and all claims relating to any default or breach by you, or any failure by you to perform any obligation relating to the Agreement or any obligation to any third party, including, but not limited to, under any agreement with the Utility. Active Energy shall not be liable for matters within the control of the Utility or the IESO or any damages claimed to have been incurred due to any act or omission of Active Energy, where such act or omission is due in whole or in part to any event or circumstance beyond its reasonable control or its inability to perform. Each party shall use commercially reasonable efforts to mitigate damages. You acknowledge that Active Energy relies on this Agreement as security to obtain a supply of Energy and/or Green Offsets for you.
17. **Limitation of Liability.** Notwithstanding any other provision in this Agreement, in no event will Active Energy be liable for any indirect, consequential, exemplary, special, incidental or punitive damages, including, without limitation, lost opportunities, lost



- profits, loss of goodwill, work stoppage, data loss, computer failure or malfunction or any other commercial damages or loss, even if Active Energy has been advised of the possibility of such damages. Active Energy's liability related to this Agreement, whether arising under breach of contract, tort, strict liability or otherwise, is limited to direct actual damages as the sole remedy and all other remedies or damages are expressly waived. Under no circumstances is Active Energy liable for any act or omission of your Utility.
- 18. Dispute Resolution, Binding Arbitration.** Customer may contact Active Energy with regard to a concern or dispute under this Agreement by mail, fax or telephone using Active Energy's contact information as set out at the top of the Customer Agreement. Both parties will, in good faith, use commercially reasonable efforts to resolve a dispute. If the parties are unable to resolve the dispute amongst themselves, the parties agree to have the matter resolved by binding arbitration pursuant to the Governing Law, before a single arbitrator, without the right of appeal to law and/or facts, at an arbitration services organization to be chosen exclusively by Active Energy. The arbitration costs will be shared evenly between the parties. Any dispute resolution proceedings, regardless of venue, shall be conducted only on an individual basis and not in a class or representative action or as a named or unnamed member in a class, consolidated, representative or private attorney general action. In addition to, but not in lieu of, binding arbitration, Customer may contact the OEB's Customer Service Centre at 1.877.632.2727 for details about its dispute resolution process. Customer shall remit all undisputed amounts during the pendency of any dispute.
- 19. Amendments.** Active Energy may amend this Agreement by sending Customer notice of any amendment. Unless otherwise required under Governing Law (including, for example, a Utility tariff change or OEB order), Customer will have 30 days to affirmatively reject the amendment. If Customer does not provide Active Energy of its notice of rejection within 30 days from the date of the notice delivered by Active Energy, the amendment shall be deemed to be accepted by Customer. Active Energy shall not amend the Term or Price without Customer's prior consent; however, if any law, order or regulation is passed, modified, implemented or interpreted by judicial or regulatory order or legislative enactment under Governing Law, which creates additional cost (or credit) not currently included in the Price, then Active Energy shall be entitled to pass through such incremental charge (or credit) to Customer.
- 20. Assignment.** Active Energy may sell, assign, pledge, or grant a security interest in, or otherwise transfer all or any part of its rights or interest in this Agreement, including to another energy retailer without notice or Customer's consent. This Agreement ensures to the benefit of and binds the parties and their respective successors and assigns, and any party that acquires all or substantially all of the properties of either party, whether by purchase or merger, shall assume the rights and obligations created by this Agreement. Customer shall not assign or otherwise transfer its rights or obligations under this Agreement without Active Energy's prior written consent, which shall not be unreasonably withheld.
- 21. Moves.** Customer shall provide Active Energy with 45 days prior notice before moving or changing its Location(s) (each, a "Move"). Upon a Customer Move, Active Energy may, in its sole discretion: (a) end this Agreement; or (b) apply this Agreement to Customer's new Location(s) if it is within a territory served by Active Energy. If the latter, then: (i) Customer's new Location(s) will be a Location(s) bound by this Agreement; (ii) Active Energy is authorized to deal with the Utility in this regard; and (iii) if Governing Law requires Customer to provide Active Energy with additional written authorization at the time of the move, Customer shall have the option of providing said authorization to Active Energy or paying the Exit Fees.
- 22. Inability to Perform.** Customer accepts that certain events beyond the control of Active Energy, including force majeure events declared by Active Energy's direct or indirect suppliers, may affect Active Energy's ability to supply Energy and/or Green Offsets at the Price. In this event, Active Energy may at its sole discretion, without liability:
- (a) temporarily supply Energy and/or Green Offsets at a Price then available to Active Energy; or (b) suspend this Agreement until Active Energy is reasonably able to resume performance. This Agreement will otherwise remain in full effect. "Force majeure" means those events not reasonably anticipated when this Agreement was signed, and beyond the control of Active Energy, including events associated with the Utility, the commodity supplier or others used to deliver Energy and/or Green Offsets to the Location(s), curtailment or disruption by the Utility, the commodity supplier or the Utility's appropriation of Energy.
- 23. Notice, Correspondence.** Active Energy will send notices and correspondence to the billing address and/or email address listed on the Customer Agreement (as may be amended from time to time upon receiving updated information from the Utility or Customer). At Active Energy's discretion (if, for example, there is a fault with regard to the billing address), Active Energy may instead send it to Customer's service, corporate address (as may be amended from time to time) or email address. When providing Active Energy with notice, Customer shall send it to Active Energy's address as listed on the Customer Agreement, to the attention of *Customer Service, Commercial Contracts*, in a manner by which Customer may give proof of delivery upon request. Either party can change its address for receiving notices by notifying the other party pursuant to this paragraph. If a change in Governing Law necessitates that a group of customers be provided with a general notice, Active Energy reserves the discretion to provide it by posting it on its website at [activeenergy.ca](http://activeenergy.ca). Customer also consents to Active Energy contacting you using an automatic dialling device or similar device which delivers automated messages at the telephone numbers provided by Customer to us on this Agreement.
- 24. Governing Law.** The laws of Ontario shall govern this Agreement. If any provision or any part of this Agreement is held to be invalid, illegal or unenforceable for any reason by a court or regulatory body of competent jurisdiction, then such provision shall be deemed severed from this Agreement to the minimal extent possible with the meaning of the rest of this Agreement and the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired and shall continue in full force and effect.
- 25. Miscellaneous.** This Agreement contains the entire agreement between Customer and Active Energy concerning the supply of Energy and Green Offsets to the Location(s), as applicable. This Agreement supersedes all prior understandings, representations,

negotiations and correspondences, written or oral, between you and Active Energy and constitutes the entire Agreement between the parties with respect to the matters described herein. It may not be contradicted by any prior or contemporaneous oral or written document and can only be amended if agreed to by Active Energy's head office in a written notice to, or recorded telephone call with, Customer. Electronic, e-mail and fax signatures are for legal purposes equivalent to original signatures. Any document generated by the parties with respect to this Agreement may be imaged and stored electronically (and used as if it were an original business record). This Agreement does not create any partnership, duty, joint venture or other special relationship between the parties other than the minimum necessary to carry out the obligations in this Agreement. No delay by Active Energy to exercise its rights under this Agreement will constitute a waiver of such rights. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provision. The Applicable provisions of this Agreement will continue in effect after termination or expiration of this Agreement to the extent necessary, including those for billing and payments, limitation of liability, and dispute resolution. Unless specified otherwise, all statements of or references to dollar amounts in this Agreement are to lawful money of Canada. Except as otherwise required by Governing Law or as set out herein, Active Energy does not offer refunds. Customer agrees to review the system-wide electricity supply mix information on Active Energy's website at least annually in order to obtain required disclosure of such information. See: [activeenergy.ca](http://activeenergy.ca). The contents of Active Energy's marketing materials do not form part of the Agreement and were not relied on by Customer.

26. **Emergency.** In an emergency, contact the appropriate emergency personnel or the Utility if appropriate, and not Active Energy.

**Active Energy operates under OEB license  
#GM-2012-0044 (natural gas) and #ER-2012-0045  
(electricity).**

October 7, 2016

Michael Stedman  
President and Chief Operations Officer  
**ACTIVE BUSINESS SERVICES**  
390 Brant Street, Suite 402  
Burlington, Ontario  
L7R 4J4

Dear Michael:

**Re: Classification of Multiple Location Retail Energy Supply Customers**

We write to provide our opinion regarding the proper approach to classification of multiple location retail energy customers in Ontario as "high volume" or "low volume" for the purposes of determining applicable consumer protection requirements.

**Summary**

***As detailed below, it is our opinion that metered volumes of all locations/meters of a multiple location/meter customer may be aggregated in order to determine whether the subject customer is a "high volume" or "low volume" customer, and thus what energy consumer protection compliance requirements apply to interactions with such customer. In our view, the appropriate focus on classifying customers for the purposes of determining applicable consumer protection requirements is on the sophistication of the customer and its representative(s), rather than on how the customer's consumed volumes may be split across metering points.***

**Analysis**

**Legislative Scheme**

The Ontario *Energy Consumer Protection Act (ECPA)* addresses electricity retailing and gas marketing consumer protection requirements in Part II. These protections extend to "consumers" [section 3]. "Consumer" is defined by reference to the *ECPA* regulation

prescribing the amount of gas or electricity consumed by the customer [section 2]. The *ECPA* regulation prescribes 150,000 kilowatt hours and 50,000 cubic meters as the consumption thresholds for electricity and gas, respectively. Customers who consume below these thresholds are to be treated as low volume consumers and subject to the *ECPA* protections [regulation section 4].

The section 2 *ECPA* definition of "consumer" is with reference to a "person". Section 1(1) of the *ECPA* defines "person" to include "*an individual, proprietorship, partnership, ....trust or body corporate ....*".

There is no provision anywhere in the statutory scheme for energy consumer protection that refers to customers at the distribution account or meter level.

The foregoing legislative facts mean that a business that enters into a retail energy supply contract for annual energy volumes that exceed the prescribed low volume thresholds is a non-low volume consumer, regardless of whether the energy consumed is delivered to one location, to multiple locations, through multiple meters (and thus multiple utility accounts), or under multiple contracts. A consumer is classified under the *ECPA* as low volume or non-low volume based on the aggregate of that consumer's consumption. That is, the legislative definition of "consumer" focuses on the "person" with whom the retailer contracts, and that "person's" consumption, and not the consumption at any particular location owned by, or through any particular meter servicing, that "person".

As the legislative focus is on the consumer, rather than the account or the meter, the foregoing applies across energy distribution territories as well as within a single energy distribution territory.

### **Consumer Protection Policy**

The policy underlying Ontario's energy consumer protection scheme is consistent with the reading of the scheme as outlined above.

From a policy perspective, the proper and purposive approach to determining whether the "person" signing a retail energy supply contract is in need of consumer protection is to focus on the individual making the contracting decision. The presumption in the legislative distinction between a low volume consumer and a non-low volume consumer is that the person with whom the retailer contracts in the non-low volume situation is sophisticated and knowledgeable enough to not require the protection of low volume energy consumer regulations.

Where an energy retailer contracts with an individual to supply a single location non-low volume consumer, *ECPA* consumer protections clearly do not apply. There is no policy basis upon which the fact that the same individual contracts for the same (non-low volume) amount of supply but for delivery to two or more separate locations/meters should dictate

any greater need for consumer protection than is the case where the supply is to be delivered to a single location/meter. The contracting party is represented in the transaction by the same level of presumed sophistication.

### Contrasting Ontario Legislative Model

Illustrative of the foregoing intentions, contemporaneous Ontario legislation expressly and specifically distinguishes between consumers and accounts, and where application of a scheme at the account level rather than the customer level is intended the legislation so purposefully directs.

The *Ontario Clean Energy Benefit Act, 2010* (CEBA) provides electricity cost relief in the form of the Clean Energy Benefit (CEB) to certain classes of customers. The CEB is provided to “a consumer” who has “an eligible account” [section 4(1)]. The legislation itself embeds a distinction between “consumers” and “accounts” and expressly contemplates application at the account level:

- “A consumer....is entitled to receive financial assistance in respect of the cost of a maximum of 3,000 kilowatt hours of electricity per eligible account per month...” [section 4(1.1)1.]
- “‘consumer’ means a person,
  - (a) to whom an invoice is issued in respect of an eligible account” [section 2(1)]
- “‘eligible account’ means, in respect of a consumer, an account with an electricity vendor, or with a person prescribed by the regulations, for the provision of electricity in Ontario if,
  - (a) the consumer has a demand for electricity of 50 kilowatts or less,
  - (b) the consumer annually uses not more than 250,000 kilowatt hours of electricity [...], or
  - (e) the consumer or the account satisfies such conditions as may be prescribed by the regulations” [section 2(1).]

We note that Bill 13 (*An Act in respect of the cost of electricity*) which is currently before the Ontario legislature intends to replace the CEB with an alternative electricity consumer rebate. Bill 13 adopts the same applicability model as the CEBA in expressly embedding a distinction between “consumers” and “accounts” and expressly contemplating application at the account level rather than the consumer level.

Both of these legislative schemes are contemporaneous with the *ECPA* scheme, and indicate an express intention to apply at the account level, which is not the case on a plain reading of the *ECPA*.

### Conclusion

Both a plain and a purposive approach to application of the *ECPA* dictate that energy consumption across multiple locations/meters/individual contracts for which the same customer, represented by the same individual, is the counterparty, is properly aggregated for the purposes of determining the applicability of low volume Ontario consumer protection provisions to that customer. Comparison of the *ECPA* model with contemporaneous electricity consumer benefit legislation underscores a legislative distinction between customers and accounts which further highlights the express legislative intention that the *ECPA* apply at the customer level.

Yours truly,



TOR\_LAW\9035966\1

Chris Marijan

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**From:** Gaetana Girardi <gaetana.girardi@activeenergy.ca>  
**Sent:** Friday, October 21, 2016 4:12 PM  
**To:** Birgit Armstrong  
**Subject:** TRIM: Re: TRIM: Fwd: TRIM: Re: FW: Request for Information, [REDACTED]

[REDACTED] CO-2016-0031  
**Attachments:** In response of October 18 OEB.pdf

**HP TRIM Record Number:** CD17-240

Hi Birgit,  
Attached is Active's response to your latest questions.

Regards,

On Tue, Oct 18, 2016 at 3:55 PM, Birgit Armstrong <[Birgit.Armstrong@ontarioenergyboard.ca](mailto:Birgit.Armstrong@ontarioenergyboard.ca)> wrote:

Hi Gaetana,

Thanks for your response. As discussed during our phone conversation today, I would like to confirm the following by October 21, 2016:

1. In response of October 12, 2016 to question #5 Active Energy stated that it does service large volume customers taking energy service at multiple locations and that Active Energy considers these customer as a "consumer", whose volume is delivered by the consumer's distributor(s) to different locations.
  - a. Please confirm that Active Energy has aggregated multiple low-volume (less than 150,000kWh/year) accounts into a single large volume account for the purpose of enrolling into an energy contract with Active Energy if the account is held by the same account holder.
  - b. If so, how many large volume consumers are a result of aggregated low-volume accounts. Please provide a list of each account, and list the number of low-volume accounts involved.
  - c. Please state if Active Energy is applying consumer protection measures under the ECPA to those consumers/account holders?

Thanks,

**Birgit Armstrong**

---

Advisor, Investigations

Ontario Energy Board

416-544-5162

[birgit.armstrong@ontarioenergyboard.ca](mailto:birgit.armstrong@ontarioenergyboard.ca)

For general enquiries please contact the Industry Relations at: [IndustryRelations@ontarioenergyboard.ca](mailto:IndustryRelations@ontarioenergyboard.ca)

\* As a Board-appointed Inspector, I am collecting this information under the express authority of Section 107 of the *Ontario Energy Board Act, 1998*. Pursuant to Section 4.14 of the *Act*, the Board may collect personal information for the purposes of carrying out its duties and exercising its powers under this *Act* or any other *Act*.

**From:** Gaetana Girardi [mailto:[gaetana.girardi@activeenergy.ca](mailto:gaetana.girardi@activeenergy.ca)]  
**Sent:** October-12-16 8:44 AM  
**To:** Birgit Armstrong; Chris Marijan  
**Subject:** TRIM: Fwd: TRIM: Re: FW: Request for Information [REDACTED] CO-2016-0031

Hi Birgit and Chris,

The response document I sent yesterday had a "Draft" watermark. Attached is the same document with the watermark removed.

----- Forwarded message -----

**From:** Gaetana Girardi <[gaetana.girardi@activeenergy.ca](mailto:gaetana.girardi@activeenergy.ca)>  
**Date:** Tue, Oct 11, 2016 at 4:56 PM  
**Subject:** Re: TRIM: Re: FW: Request for Information [REDACTED] CO-2016-0031  
**To:** Birgit Armstrong <[birgit.armstrong@ontarioenergyboard.ca](mailto:birgit.armstrong@ontarioenergyboard.ca)>  
**Cc:** Cordale Blackett <[cordale.blackett@activeenergy.ca](mailto:cordale.blackett@activeenergy.ca)>, Chris Marijan <[Chris.Marijan@ontarioenergyboard.ca](mailto:Chris.Marijan@ontarioenergyboard.ca)>

Dear Birgit,  
Attached please find Active's responses to your latest questions.

Regards,

----- Forwarded message -----

**From:** Birgit Armstrong <[birgit.armstrong@ontarioenergyboard.ca](mailto:birgit.armstrong@ontarioenergyboard.ca)>  
**Date:** Wed, Oct 5, 2016 at 9:12 AM  
**Subject:** RE: TRIM: Re: FW: Request for Information [REDACTED] CO-2016-0031  
**To:** Cordale Blackett <[cordale.blackett@activeenergy.ca](mailto:cordale.blackett@activeenergy.ca)>  
**Cc:** Gaetana Girardi <[gaetana.girardi@activeenergy.ca](mailto:gaetana.girardi@activeenergy.ca)>, Chris Marijan <[Chris.Marijan@ontarioenergyboard.ca](mailto:Chris.Marijan@ontarioenergyboard.ca)>

Hi Cordale,

We can give you another extension until Tuesday, October 11, 2016.

**Birgit Armstrong**

---

Advisor, Investigations

Ontario Energy Board

416-544-5162

[birgit.armstrong@ontarioenergyboard.ca](mailto:birgit.armstrong@ontarioenergyboard.ca)



1. In response of October 12, 2016 to question #5 Active Energy stated that it does service large volume customers taking energy service at multiple locations and that Active Energy considers these customer as a "consumer", whose volume is delivered by the consumer's distributor(s) to different locations.

- a. Please confirm that Active Energy has aggregated multiple low-volume (less than 150,000kWh/year) accounts into a single large volume account for the purpose of enrolling into an energy contract with Active Energy if the account is held by the same account holder.

**Response:** We are not familiar with the concept of a "low-volume account". Our understanding is that the term "low-volume" as used in the ECPA and associated regulation applies to consumers, not to "accounts" (i.e. utility accounts, corresponding with a single utility meter). Active Energy has aggregated the volumes consumed by a single customer across multiple utility accounts in determining whether that customer is a low-volume or non-low-volume consumer, for the purposes of the ECPA.

- b. If so, how many large volume consumers are a result of aggregated low-volume accounts. Please provide a list of each account, and list the number of low-volume accounts involved.

**Response:** Providing this information would take significant effort. Active requests a due date of November 4th to provide this information.

- c. Please state if Active Energy is applying consumer protection measures under the ECPA to those consumers/account holders?

**Response:** Active Energy does not apply ECPA requirements to customers whose consumption (across applicable meters/utility accounts) exceeds the ECPA thresholds for "low-volume consumers". Please refer to the legal opinion previously provided, and supporting Active Energy's interpretation and approach in respect of multiple utility account customers.

As illustrated by the four examples provided below, applying ECPA protocols to each of the multiple utility account customers' utility meters/accounts would entail executing hundreds of separate but essentially identical agreements, and then proceeding with full ECPA low-volume compliance protocols in respect of each such agreement, thus subjecting the same individual (all being senior and authorized representatives of the customer) to literally hundreds of discrete and fully duplicative low-volume compliance routines. This would be a completely unnecessary and undue administrative burden not only for Active Energy, but also for our customer, and would discourage some of Active Energy's most important customers and prospective customers from doing business with us.

**Example 1:** [REDACTED], the contract is signed by the President and consists of 413 individual utility account numbers (some showing annual consumption below 150,000 kWh and some showing annual consumption above 150,000 kWh) representing meters at different locations;

**Example 2:** [REDACTED] the contract is signed by the VP of Finance for [REDACTED] which is the managing company for [REDACTED] and consists of 151 utility account numbers all of which show annual consumption below 150,000 kWh and all of which are associated with one municipal location with multiple meters;

**Example 3:** [REDACTED] the contract is signed by the VP Controller, and covers 244 utility accounts each of which shows annual consumption below 150,000 kWh and which are all associated with different municipal locations; and

**Example 4:** [REDACTED] the contract is signed by the CFO and covers 90 utility accounts which show annual consumption below 150,000 kWh and one utility account which shows consumption above 150,000 kWh, and all of which utility accounts are associated with different locations.

Chris Marijan

---

**From:** Gaetana Girardi <gaetana.girardi@activeenergy.ca>  
**Sent:** Friday, November 04, 2016 4:48 PM  
**To:** Birgit Armstrong; Chris Marijan  
**Subject:** Fwd: TRIM: Fwd: TRIM: Re: FW: Request for Information [REDACTED]  
[REDACTED]\_CO-2016-0031  
**Attachments:** In response of October 18 OEB.pdf; Response 1b.xlsx  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Birgit,  
Below and attached is Active's response to your question 1b.

b. If so, how many large volume consumers are a result of aggregated low-volume accounts. Please provide a list of each account, and list the number of low-volume accounts involved.

**Response: Active Energy currently has 141 large volume electricity consumers that are a result of aggregating two or more low-volume utility accounts. The attached excel file lists the consumers and the number of low volume utility accounts under each such contract.**

Regards,  
Gaetana

----- Forwarded message -----

**From:** Gaetana Girardi <gaetana.girardi@activeenergy.ca>  
**Date:** Fri, Oct 21, 2016 at 4:12 PM  
**Subject:** Re: TRIM: Fwd: TRIM: Re: FW: Request for Information [REDACTED] [REDACTED]\_CO-2016-0031  
**To:** Birgit Armstrong <Birgit.Armstrong@ontarioenergyboard.ca>

Hi Birgit,  
Attached is Active's response to your latest questions.

Regards,

On Tue, Oct 18, 2016 at 3:55 PM, Birgit Armstrong <Birgit.Armstrong@ontarioenergyboard.ca> wrote:

Hi Gaetana,

Thanks for your response. As discussed during our phone conversation today, I would like to confirm the following by October 21, 2016:

1. In response of October 12, 2016 to question #5 Active Energy stated that it does service large volume customers taking energy service at multiple locations and that Active Energy considers these customer as a "consumer", whose volume is delivered by the consumer's distributor(s) to different locations.
  - a. Please confirm that Active Energy has aggregated multiple low-volume (less than 150,000kWh/year) accounts into a single large volume account for the purpose of enrolling into an energy contract with Active Energy if the account is held by the same account holder.
  - b. If so, how many large volume consumers are a result of aggregated low-volume accounts. Please provide a list of each account, and list the number of low-volume accounts involved.
  - c. Please state if Active Energy is applying consumer protection measures under the ECPA to those consumers/account holders?

Thanks,

**Birgit Armstrong**

---

Advisor, Investigations

Ontario Energy Board

416-544-5162

[birgit.armstrong@ontarioenergyboard.ca](mailto:birgit.armstrong@ontarioenergyboard.ca)

For general enquiries please contact the Industry Relations at: [IndustryRelations@ontarioenergyboard.ca](mailto:IndustryRelations@ontarioenergyboard.ca)

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**From:** Gaetana Girardi [<mailto:gaetana.girardi@activeenergy.ca>]

**Sent:** October-12-16 8:44 AM

**To:** Birgit Armstrong; Chris Marijan

**Subject:** TRIM: Fwd: TRIM: Re: FW: Request for Information [REDACTED] [REDACTED] CO-2016-0031

## Customer Name

## No. of Low Vol Accunts

[REDACTED]	2
[REDACTED]	3
[REDACTED]	2
[REDACTED]	7
[REDACTED]	4
[REDACTED]	2
[REDACTED]	8
[REDACTED]	3
[REDACTED]	7
[REDACTED]	3
[REDACTED]	22
[REDACTED]	4
[REDACTED]	3
[REDACTED]	3
[REDACTED]	2
[REDACTED]	4
[REDACTED]	2
[REDACTED]	6
[REDACTED]	9
[REDACTED]	5
[REDACTED]	4
[REDACTED]	7
[REDACTED]	3
[REDACTED]	6
[REDACTED]	3
[REDACTED]	3
[REDACTED]	3
[REDACTED]	3
[REDACTED]	6
[REDACTED]	4
[REDACTED]	3
[REDACTED]	2
[REDACTED]	3
[REDACTED]	10
[REDACTED]	8
[REDACTED]	3
[REDACTED]	5
[REDACTED]	49
[REDACTED]	2
[REDACTED]	2
[REDACTED]	7
[REDACTED]	5
[REDACTED]	3
[REDACTED]	4
[REDACTED]	3
[REDACTED]	2
[REDACTED]	2
[REDACTED]	3
[REDACTED]	4

[REDACTED]

94  
7  
6  
9  
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3  
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47  
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2  
2  
4  
8  
3  
11  
2  
2  
4  
2  
2  
244  
5  
3  
4  
3  
23  
3

[REDACTED]	39
[REDACTED] [REDACTED] [REDACTED] [REDACTED]	51
[REDACTED]	2
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	13
[REDACTED]	3
[REDACTED]	151
[REDACTED]	4
[REDACTED]	6
[REDACTED]	5
[REDACTED]	12
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	8
[REDACTED]	3
[REDACTED]	4
[REDACTED]	13
[REDACTED]	5
[REDACTED]	7
[REDACTED]	3
[REDACTED]	5
[REDACTED] [REDACTED]	7
[REDACTED]	2
[REDACTED]	4
[REDACTED]	10
[REDACTED]	3
[REDACTED]	2
[REDACTED]	34
[REDACTED]	2
[REDACTED]	41
[REDACTED]	3
[REDACTED]	2
[REDACTED]	3
[REDACTED]	4
[REDACTED]	59
[REDACTED]	20
[REDACTED]	10
[REDACTED]	3
[REDACTED]	6
[REDACTED]	2
[REDACTED]	3
[REDACTED]	2
[REDACTED]	7
[REDACTED]	4
[REDACTED]	13

Chris Marijan

---

**From:** Birgit Armstrong  
**Sent:** Friday, February 03, 2017 9:03 AM  
**To:** 'Gaetana Girardi'  
**Cc:** Chris Marijan  
**Subject:** RE: TRIM: Fwd: TRIM: Re: FW: Request for Information\_ [REDACTED]  
[REDACTED] CO-2016-0031

Hi Gaetana,

I understand that you require some additional time and we can extend the deadline by one week. Could you please provide the information by **February 10, 2017**.

**Birgit Armstrong**

Advisor, Investigations  
Ontario Energy Board  
416-544-5162

[birgit.armstrong@ontarioenergyboard.ca](mailto:birgit.armstrong@ontarioenergyboard.ca)

For general enquiries please contact the Industry Relations at: [IndustryRelations@ontarioenergyboard.ca](mailto:IndustryRelations@ontarioenergyboard.ca)

\* As a Board-appointed Inspector, I am collecting this information under the express authority of Section 107 of the *Ontario Energy Board Act, 1998*. Pursuant to Section 4.14 of the *Act*, the Board may collect personal information for the purposes of carrying out its duties and exercising its powers under this *Act* or any other Act.

**From:** Gaetana Girardi [<mailto:gaetana.girardi@activeenergy.ca>]  
**Sent:** February-02-17 5:09 PM  
**To:** Birgit Armstrong  
**Cc:** Chris Marijan  
**Subject:** Re: TRIM: Fwd: TRIM: Re: FW: Request for Information\_ [REDACTED] [REDACTED] CO-2016-0031

Hi Birgit,

Further to your e-mail request of February 1<sup>st</sup>;

- In November, 2016, in response to an earlier request from the Board, Active advised that (as of that time) it had contracts with 141 large volume electricity consumers each of whom had multiple utility accounts (i.e. meters) with annual consumption under each such account below 150,000 kwh/year. At that time Active also provided a file listing each such contract and the number of utility accounts included under that contract.
- On February 1<sup>st</sup> the Board requested that Active provide further information in respect of the contracts listed in the file provided in November 2016. As we understand it, the Board has now

requested that for each contract included in the file previously provided, Active indicate whether the consumer is being served at multiple municipal locations, or at multiple meters all located at one municipal location. Your e-mail requests a response no later than February 3<sup>rd</sup>.

- In order to pull the data for each of the 141 contracts, cross check its accuracy and ensure that our response is accurately populated, we will require a some additional time. We should be able to respond by Friday February 17<sup>th</sup>. Please let me know if this causes any concern.

Thank you

On Wed, Feb 1, 2017 at 10:32 AM, Birgit Armstrong <[Birgit.Armstrong@ontarioenergyboard.ca](mailto:Birgit.Armstrong@ontarioenergyboard.ca)> wrote:

Hi Gaetana,

Thanks for your responses to my question last fall. You also provided me with the attached spreadsheet of accounts that resulted from the aggregation of several low-volume accounts. I reviewing this information I have the following request:

- Could you please identify which of these customer have multiple location and which customers are served on to single location via multiple meters.

Please provide the information no later than Friday, February 3, 2017.

Thank you,

**Birgit Armstrong**

---

Advisor, Investigations

Ontario Energy Board

416-544-5162



Chris Marijan

---

**From:** Gaetana Girardi <gaetana.girardi@activeenergy.ca>  
**Sent:** Friday, February 10, 2017 11:49 AM  
**To:** Birgit Armstrong  
**Cc:** Chris Marijan  
**Subject:** Re: TRIM: Fwd: TRIM: Re: FW: Request for Information [REDACTED]  
[REDACTED]\_CO-2016-0031  
**Attachments:** OEB - Response 1b -Updated Feb 10 2017.xlsx  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Birgit,

In response to your email request of February 1st, attached is an updated table with 2 additional columns (Single Address (Multiple Meters) and Multiple Addresses). The 141 customers are broken down as follows:

1. Customers with a single address are 34 (583 utility accounts/meters);
2. Customers with multiple/different addresses are 64 (573 utility accounts/meters); and
3. Customers with both single and multiple addresses are 43 (325 utility accounts/meters).

On Fri, Feb 3, 2017 at 9:03 AM, Birgit Armstrong <[Birgit.Armstrong@ontarioenergyboard.ca](mailto:Birgit.Armstrong@ontarioenergyboard.ca)> wrote:

Hi Gaetana,

I understand that you require some additional time and we can extend the deadline by one week. Could you please provide the information by **February 10, 2017**.

**Birgit Armstrong**

---

Advisor, Investigations

Ontario Energy Board

416-544-5162

[birgit.armstrong@ontarioenergyboard.ca](mailto:birgit.armstrong@ontarioenergyboard.ca)

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**From:** Gaetana Girardi [mailto:[gaetana.girardi@activeenergy.ca](mailto:gaetana.girardi@activeenergy.ca)]

**Sent:** February-02-17 5:09 PM

**To:** Birgit Armstrong

**Cc:** Chris Marijan

**Subject:** Re: TRIM: Fwd: TRIM: Re: FW: Request for Information [REDACTED] CO-2016-0031

Hi Birgit,

Further to your e-mail request of February 1<sup>st</sup>,

- In November, 2016, in response to an earlier request from the Board, Active advised that (as of that time) it had contracts with 141 large volume electricity consumers each of whom had multiple utility accounts (i.e. meters) with annual consumption under each such account below 150,000 kwh/year. At that time Active also provided a file listing each such contract and the number of utility accounts included under that contract.
- On February 1<sup>st</sup> the Board requested that Active provide further information in respect of the contracts listed in the file provided in November 2016. As we understand it, the Board has now requested that for each contract included in the file previously provided, Active indicate whether the consumer is being served at multiple municipal locations, or at multiple meters all located at one municipal location. Your e-mail requests a response no later than February 3<sup>rd</sup>.
- In order to pull the data for each of the 141 contracts, cross check its accuracy and ensure that our response is accurately populated, we will require a some additional time. We should be able to respond by Friday February 17<sup>th</sup>. Please let me know if this causes any concern.

Thank you

Customer Name

No. of Low Vol Accounts

Single Address (Multiple Meters)

Multiple Addresses

2		X
3	X	
2		X
7		X
4		X
2	X	
8		X
3		X
7	X	X
3		X
22	X	X
4	X	X
3		X
3	X	X
2	X	
4		X
2		X
6	X	X
9	X	X
5	X	X
4	X	X
7		X
3	X	X
6		X
3		X
3		X
3		X
3		X
6		X
4	X	X
3		X
2	X	
3	X	X
10	X	
8	X	
3		X
5		X
49	X	
2	X	
2	X	
7		X
5	X	X
3	X	
4	X	
3	X	
2		X
2	X	X
3	X	
4	X	
94	X	
7		X
6	X	X
9		X
7	X	X
3		X
2		X
47	X	X
2	X	
4		X
10		X
3		X
20		X
4	X	
3	X	X
11	X	X
7		X
2		X
12		X
2		X
3	X	X
26	X	X
2		X
3	X	X
4	X	X
4	X	
2	X	
3		X
2	X	
2		X
3	X	
2		X
2		X
2		X
4		X
8	X	X
3	X	X
11		X
2		X
2	X	
4	X	X
2		X
2		X
244		X
5		X
3	X	X
4	X	X
3		X
23	X	

100

	X	
		X X
	X X X X X X X X X	
	X X X	
	X X	
		X X
	X X	
		X X X X X X X X X

Chris Marijan

---

**From:** Gaetana Girardi <gaetana.girardi@activeenergy.ca>  
**Sent:** Thursday, February 16, 2017 11:31 AM  
**To:** Birgit Armstrong  
**Cc:** Chris Marijan  
**Subject:** Re: Call

Hi Birgit,

A customer that is part of the hybrid model means they have two or more utility accounts at one location and one or more utility accounts at a different location. In regards to [REDACTED] all the 151 individual utility accounts for this customer are located at one municipal address. You can contact me if you have further questions.

On Wed, Feb 15, 2017 at 9:47 AM, Birgit Armstrong <[Birgit.Armstrong@ontarioenergyboard.ca](mailto:Birgit.Armstrong@ontarioenergyboard.ca)> wrote:

Hi Gaetana,

I just wanted to go over the spreadsheet you sent me to understand a couple of accounts and your classifications (i.e. single property-[REDACTED]). I also wanted to clarify your classification of the hybrid model, meaning the accounts that are classified as both single and multiple locations.

Please let me know when would be a good time to call you.

Thanks,

Birgit

**From:** Gaetana Girardi [<mailto:gaetana.girardi@activeenergy.ca>]  
**Sent:** Wednesday, February 15, 2017 9:34 AM  
**To:** Birgit Armstrong  
**Subject:** Call

Hi Birgit,

I received your voice mail message. Would you be able to send me an email regarding your question?

Thank you.

--

Gaetana Girardi

Director, Operations

Cell 289-983-0162

390 Brant Street, Suite 402

Burlington, ON L7R4J4

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Gaetana Girardi  
Director, Operations  
Cell 289-983-0162  
390 Brant Street, Suite 402  
Burlington, ON L7R4J4

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Chris Marijan

---

**From:** Gaetana Girardi <gaetana.girardi@activeenergy.ca>  
**Sent:** Friday, February 24, 2017 1:10 PM  
**To:** Birgit Armstrong  
**Cc:** Chris Marijan; Chris Waddick; Mondrow, Ian  
**Subject:** Re: Call

Hi Birgit and Chris,

As a follow-up to our conversation of Tuesday, below are responses to you questions.

Going forward, can you please correspond with Chris Waddick ([chris.waddick@activeenergy.ca](mailto:chris.waddick@activeenergy.ca)) on this matter, copying our external legal counsel, Ian Mondrow at Gowling WLG ([ian.mondrow@gowlingwlg.com](mailto:ian.mondrow@gowlingwlg.com)).

Thank you.

1. Explain the duplicate customers on lines 23 & 24 and 54& 55 of the table.

Response: The customers in the groupings below are the same customer. They are listed twice in the table provided to the OEB since they entered into separate contracts with Active for different accounts.

Group A

[REDACTED]

Group B

[REDACTED]

2. Provide a description of the business for the following customers.

Response: Below in red text is a description of the business, to the best of our knowledge (though we have not confirmed this independently and proceed only based on what the customer has told us and/or our observations based on review of the IBRs related to the customer's various utility accounts).



██████████ - Apartment building operator

██████████ - Apartment building operator.

██████████ Apartment building operator

██████████ A condominium corporation.

██████████ - Apartment building operator

██████████ Management service  
company

██████████ - Retirement Homes & Communities

3. Confirm that all the information provided relate to electricity and no gas included.

Response: All information provided relates to electricity.

On Wed, Feb 15, 2017 at 9:47 AM, Birgit Armstrong <[Birgit.Armstrong@ontarioenergyboard.ca](mailto:Birgit.Armstrong@ontarioenergyboard.ca)> wrote:

Hi Gaetana,

I just wanted to go over the spreadsheet you sent me to understand a couple of accounts and your classifications (i.e. single property-██████████). I also wanted to clarify your classification of the hybrid model, meaning the accounts that are classified as both single and multiple locations.

Please let me know when would be a good time to call you.

Thanks,

Birgit

**From:** Gaetana Girardi [mailto:[gaetana.girardi@activeenergy.ca](mailto:gaetana.girardi@activeenergy.ca)]

**Sent:** Wednesday, February 15, 2017 9:34 AM

**To:** Birgit Armstrong

**Subject:** Call

Hi Birgit,

I received your voice mail message. Would you be able to send me an email regarding your question?

Thank you.

--

Gaetana Girardi

Director, Operations

Cell 289-983-0162

390 Brant Street, Suite 402

Burlington, ON L7R4J4

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—  
Gaetana Girardi  
Director, Operations  
Cell 289-983-0162  
390 Brant Street, Suite 402  
Burlington, ON L7R4J4

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Chris Marijan

---

**From:** Aneta Pytel <aneta.pytel@activebusinessservices.com>  
**Sent:** Monday, March 27, 2017 11:53 AM  
**To:** Birgit Armstrong  
**Cc:** Chris Waddick  
**Subject:** Fwd: FW: Request for Information\_CO-2016-0031  
**Attachments:** 


**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Good Morning Birgit,

Please see Active's responses below.

1. Please provide the individual contract(s) for each of the highlighted customer.

Please see attached requested contract PDFs.

Please note, upon further investigation we discovered an error in the previously reported number of aggregated accounts for  There should have been 47 accounts reported, not 49.

2. Please state if each account holder is billed individually based on the consumption identified at each meter. If not, please explain why and describe the billing process.

The utility bills each meter/utility account separately.

3. Active Energy identified [REDACTED] as condominium operators, corporation or retirement home.

a. Please confirm that each account under the contract with these customers has its own, individual address (i.e. unit number)?

Each utility account has its own address (i.e. unit/apartment number).

b. If not, please explain.

N/A

c. If yes, please explain why Active Energy considers these contracts as a single location contract vs. multiple locations.

In our response February 10<sup>th</sup>, [REDACTED] was identified as both a single and multiple address customer, with each location having multiple meters/utility accounts.

As for the other customers in question, each utility account is for a meter located at the single municipal address of Active's customer. Active considers these as "single location" contracts since all of the customer's meters/accounts served under these contracts are physically located at the same municipal address.

*Cheers,*

**Aneta Pytel**

Manager, Mid-Office & IT

Active Business Services | 390 Brant St, Suite 402, Burlington ON L7R 4J4

----- Forwarded message -----

From: **Birgit Armstrong** <[Birgit.Armstrong@ontarioenergyboard.ca](mailto:Birgit.Armstrong@ontarioenergyboard.ca)>

Date: Mon, Mar 20, 2017 at 3:40 PM

Subject: Re: FW: Request for Information\_CO-2016-0031

To: "chris.waddick@activeenergy.ca" <chris.waddick@activeenergy.ca>

Cc: "ian.mondrow@gowlingwlg.com" <ian.mondrow@gowlingwlg.com>, Chris Marijan  
<Chris.Marijan@ontarioenergyboard.ca>

Hi Chris,

From Gaetana's last e-mail on February 24, 2017, I understand that you are now the contact person for Active Energy regarding this inspection. I look forward to working with you.

On February 10, 2017, Active Energy provided the attached list of aggregated accounts, broken down into customers that are served at a single location vs. multiple location. Active Energy also provided us with a hybrid option.

I have some follow-up questions regarding a number of the customers on this list. Please provide the following information no later than **Thursday, March 23, 2017?**

1. Please provide the individual contract(s) for each of the highlighted customer.
2. Please state if each account holder is billed individually based on the consumption identified at each meter. If not, please explain why and describe the billing process.
3. Active Energy identified [REDACTED] [REDACTED]  
[REDACTED] as condominium operators, corporation or retirement home.

a. Please confirm that each account under the contract with these customers has its own, individual address (i.e. unit number)?

b. If not, please explain.

c. If yes, please explain why Active Energy considers these contracts as a single location contract vs. multiple locations.

If you have any questions please feel free to contact me at 416.544.5162.

Thanks,

**Birgit Armstrong**

---

Advisor, Investigations

Ontario Energy Board

416-544-5162

birgit.armstrong@ontarioenergyboard.ca

For general enquiries please contact the Industry Relations at: [IndustryRelations@ontarioenergyboard.ca](mailto:IndustryRelations@ontarioenergyboard.ca)

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**From:** Gaetana Girardi [mailto:[gaetana.girardi@activeenergy.ca](mailto:gaetana.girardi@activeenergy.ca)]

**Sent:** February-10-17 11:49 AM

**To:** Birgit Armstrong

**Cc:** Chris Marijan

**Subject:** TRIM: Re: TRIM: Fwd: TRIM: Re: FW: Request for Information [REDACTED] CO-2016-0031

Hi Birgit,

In response to your email request of February 1st, attached is an updated table with 2 additional columns (Single Address (Multiple Meters) and Multiple Addresses). The 141 customers are broken down as follows:

1. Customers with a single address are 34 (583 utility accounts/meters);
2. Customers with multiple/different addresses are 64 (573 utility accounts/meters); and
3. Customers with both single and multiple addresses are 43 (325 utility accounts/meters).

On Fri, Feb 3, 2017 at 9:03 AM, Birgit Armstrong <[Birgit.Armstrong@ontarioenergyboard.ca](mailto:Birgit.Armstrong@ontarioenergyboard.ca)> wrote:

Hi Gaetana,

I understand that you require some additional time and we can extend the deadline by one week. Could you please provide the information by **February 10, 2017**.

**Birgit Armstrong**

---

Advisor, Investigations

Ontario Energy Board

416-544-5162

[birgit.armstrong@ontarioenergyboard.ca](mailto:birgit.armstrong@ontarioenergyboard.ca)

For general enquiries please contact the Industry Relations at: [IndustryRelations@ontarioenergyboard.ca](mailto:IndustryRelations@ontarioenergyboard.ca)

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**From:** Gaetana Girardi [mailto:[gaetana.girardi@activeenergy.ca](mailto:gaetana.girardi@activeenergy.ca)]

**Sent:** February-02-17 5:09 PM

Chris Marijan

---

**From:** Birgit Armstrong  
**Sent:** Thursday, April 06, 2017 10:11 AM  
**To:** 'Aneta Pytel'  
**Cc:** ian.mondrow@gowlingwlg.com; Chris Marijan; Chris Waddick  
**Subject:** RE: FW: TRIM: Fwd: FW: Request for Information\_CO-2016-0031

Hi Aneta,

We considered your request and grant a one week extension. Active Energy's responses will be due on Thursday, April 20, 2017.

Have a nice Easter weekend.

**Birgit Armstrong**

---

Advisor, Investigations  
Ontario Energy Board  
416-544-5162

[birgit.armstrong@oeb.ca](mailto:birgit.armstrong@oeb.ca)

For general enquiries please contact the Industry Relations at: [IndustryRelations@oeb.ca](mailto:IndustryRelations@oeb.ca)

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**Please note my email address has changed to [birgit.armstrong@oeb.ca](mailto:birgit.armstrong@oeb.ca).**

**From:** Aneta Pytel [<mailto:aneta.pytel@activebusinessservices.com>]  
**Sent:** April-06-17 10:06 AM  
**To:** Birgit Armstrong  
**Cc:** ian.mondrow@gowlingwlg.com; Chris Marijan; Chris Waddick  
**Subject:** Re: FW: TRIM: Fwd: FW: Request for Information\_CO-2016-0031

Hi Birgit,

We are currently working to have the requested information ready for next week, Wednesday, April 12th, but given that there are approx. 130 documents to gather and that it took us a few days to gather approx. 15 last month, it is unlikely we will complete the task within the next 4 days.

Realistically, we will need at least a one week extension, given upcoming Holidays, workloads, etc...

Please advise and in the meantime we will do our best.

Thank you for your assistance Birgit.

On Wed, Apr 5, 2017 at 3:05 PM, Birgit Armstrong <[Birgit.Armstrong@oeb.ca](mailto:birgit.armstrong@oeb.ca)> wrote:

Hi Aneta,



I just received a voice message regarding the information request from April 4, 2017. I would like to confirm that you are required to provide the information requested below by April 12, 2017. If that is no possible, feel free to request a formal extension from the OEB.

**Birgit Armstrong**

---

Advisor, Investigations

Ontario Energy Board

416-544-5162

[birgit.armstrong@oeb.ca](mailto:birgit.armstrong@oeb.ca)

For general enquiries please contact the Industry Relations at: [IndustryRelations@oeb.ca](mailto:IndustryRelations@oeb.ca)

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***Please note my email address has changed to [birgit.armstrong@oeb.ca](mailto:birgit.armstrong@oeb.ca).***

**From:** Birgit Armstrong  
**Sent:** April-04-17 12:38 PM  
**To:** 'Aneta Pytel'  
**Cc:** Chris Marijan  
**Subject:** RE: TRIM: Fwd: FW: Request for Information\_CO-2016-0031

Hi Aneta,

Thank you for your response. In addition to the contracts you already provided, please provide contracts for each of the remaining customers listed under multiple locations on the list provided on February 10, 2017. I have attached the list for your convenience. Please provide this information no later than Wednesday, **April 12, 2017**.

Thanks,

**Birgit Armstrong**

---

Advisor, Investigations

Ontario Energy Board

416-544-5162

[birgit.armstrong@oeb.ca](mailto:birgit.armstrong@oeb.ca)

For general enquiries please contact the Industry Relations at: [IndustryRelations@oeb.ca](mailto:IndustryRelations@oeb.ca)

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***Please note my email address has changed to [birgit.armstrong@oeb.ca](mailto:birgit.armstrong@oeb.ca).***

**From:** Aneta Pytel [<mailto:aneta.pytel@activebusinessservices.com>]

**Sent:** March-27-17 11:53 AM

**To:** Birgit Armstrong

**Cc:** Chris Waddick

**Subject:** TRIM: Fwd: FW: Request for Information\_CO-2016-0031

Good Morning Birgit,

Please see Active's responses below.

1. Please provide the individual contract(s) for each of the highlighted customer.

f

**From:** Cathy Galler via TitanFile <notifications@mail186-19.suw21.mandrillapp.com> on behalf of Cathy Galler via TitanFile <notifications@gowlingwlg.titanfile.com>  
**Sent:** Thursday, April 20, 2017 4:51 PM  
**To:** Birgit Armstrong  
**Subject:** TRIM: CO-2016-0031: Inspection into Active Energy's aggregation of multiple low-volume accounts into a single large volume retail contract.



**Cathy Galler**  
**shared 9 files with you**

Cathy sent you the following files:

- Active Energy, CO-2016-0031, Letter to Birgit Armstrong, Chronology of OEB Communications .pdf
- Active Energy, Terms & Conditions.zip
- Active Energy, Customer Contracts (1 of 6).zip
- Active Energy, Customer Contracts (2 of 6).zip
- Active Energy, Customer Contracts (3 of 6).zip
- Active Energy, Customer Contracts (4 of 6).zip
- Active Energy, Customer Contracts (5 of 6).zip
- Active Energy, Customer Contracts (6 of 6).zip
- KNOWLEDGEDOCS-#36398-v1-\_TITANFILE\_\_\_QRC\_\_\_Client\_User\_Guide.pdf

with the following message:

Please see attached submitted on behalf of Active Energy. Due to its size, this e-mail and its contents is being sent through our Firm's secure large user file transfer system (TitanFile). The Client User Guide is attached for your reference. Please do not hesitate to call should you have any questions or concerns.

Cathy Galler

*Legal Administrative Assistant (Energy Regulation/Technology)*

T +1 416 369 4570

[cathy.galler@gowlingwlg.com](mailto:cathy.galler@gowlingwlg.com)

Assistant To: Ian Mondrow T +1 416 369 4670 [ian.mondrow@gowlingwlg.com](mailto:ian.mondrow@gowlingwlg.com)

Assistant To: Alan James T +1 416 369 6186 [alan.james@gowlingwlg.com](mailto:alan.james@gowlingwlg.com)

Gowling WLG (Canada) LLP  
Suite 1600, 1 First Canadian Place  
100 King Street West

Toronto ON M5X 1G5  
Canada

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Chris Marijan

---

**From:** Galler, Cathy <Cathy.Galler@gowlingwlg.com>  
**Sent:** Friday, April 21, 2017 9:08 AM  
**To:** Birgit Armstrong  
**Subject:** TRIM: RE: CO-2016-0031: Inspection into Active Energy's aggregation of multiple low-volume accounts into a single large volume retail contract.  
**Attachments:** Active Energy, CO-2016-0031, Letter to Birgit Armstrong, Chronology.pdf

I believe it was this attachment. I've shorted the name somewhat. Let me know if you have any problems.

Cathy Galler  
*Legal Administrative Assistant (Energy Regulation/Technology)*  
T +1 416 369 4570  
cathy.galler@gowlingwlg.com

Assistant To: Ian Mondrow T +1 416 369 4670 ian.mondrow@gowlingwlg.com  
Assistant To: Alan James T +1 416 369 6186 alan.james@gowlingwlg.com



**From:** Birgit Armstrong [mailto:Birgit.Armstrong@oeb.ca]  
**Sent:** April-21-17 9:06 AM  
**To:** Galler, Cathy  
**Subject:** RE: CO-2016-0031: Inspection into Active Energy's aggregation of multiple low-volume accounts into a single large volume retail contract.

I believe so. It was a pdf document, but I could not open it.

**Birgit Armstrong**

---

Advisor, Investigations  
Ontario Energy Board  
416-544-5162

[birgit.armstrong@oeb.ca](mailto:birgit.armstrong@oeb.ca)

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*Please note my email address has changed to [birgit.armstrong@oeb.ca](mailto:birgit.armstrong@oeb.ca).*

---

**From:** Galler, Cathy [mailto:Cathy.Galler@gowlingwlg.com]  
**Sent:** April-21-17 9:06 AM  
**To:** Birgit Armstrong

**Subject:** RE: CO-2016-0031: Inspection into Active Energy's aggregation of multiple low-volume accounts into a single large volume retail contract.

Good Morning Birgit, are you referring to the letter and chronology?

Cathy Galler

*Legal Administrative Assistant (Energy Regulation/Technology)*

T +1 416 369 4570

[cathy.galler@gowlingwlg.com](mailto:cathy.galler@gowlingwlg.com)

Assistant To: Ian Mondrow T +1 416 369 4670 [ian.mondrow@gowlingwlg.com](mailto:ian.mondrow@gowlingwlg.com)

Assistant To: Alan James T +1 416 369 6186 [alan.james@gowlingwlg.com](mailto:alan.james@gowlingwlg.com)



**From:** Birgit Armstrong [<mailto:birgit.armstrong@oeb.ca>]

**Sent:** April-21-17 9:04 AM

**To:** Galler, Cathy <[Cathy.Galler@gowlingwlg.com](mailto:Cathy.Galler@gowlingwlg.com)>

**Subject:** RE: CO-2016-0031: Inspection into Active Energy's aggregation of multiple low-volume accounts into a single large volume retail contract.

Thanks you Cathy.

I was able to open the attachments and the instruction. I was not able to open the other document you attached since the file name was too long. Could you please resend that.

**Birgit Armstrong**

---

Advisor, Investigations  
Ontario Energy Board  
416-544-5162

[birgit.armstrong@oeb.ca](mailto:birgit.armstrong@oeb.ca)

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**From:** Galler, Cathy [<mailto:Cathy.Galler@gowlingwlg.com>]

**Sent:** April-20-17 5:16 PM

**To:** Birgit Armstrong

**Cc:** [Michael.Stedman@ActiveBusinessServices.com](mailto:Michael.Stedman@ActiveBusinessServices.com); [Chris.Waddick@activeenergy.ca](mailto:Chris.Waddick@activeenergy.ca); Mary Anne Aldred; Mondrow, Ian.

**Subject:** CO-2016-0031: Inspection into Active Energy's aggregation of multiple low-volume accounts into a single large volume retail contract.

You will have received a TitanFile notification e-mail with respect to this matter. Due to its size, the e-mail and its contents were sent through our Firm's secure large user file transfer system (TitanFile). The Client User Guide is attached for your reference. Please do not hesitate to call should you have any questions or concerns.

Cathy Galler

*Legal Administrative Assistant (Energy Regulation/Technology)*

T +1 416 369 4570

[cathy.galler@gowlingwlg.com](mailto:cathy.galler@gowlingwlg.com)

Assistant To: Ian Mondrow T +1 416 369 4670 [ian.mondrow@gowlingwlg.com](mailto:ian.mondrow@gowlingwlg.com)

Assistant To: Alan James T +1 416 369 6186 [alan.james@gowlingwlg.com](mailto:alan.james@gowlingwlg.com)



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April 20, 2017

**Ian A Mondrow**  
Direct 416-369-4670  
ian.mondrow@gowlingwlg.com

**E-MAIL**

Birgit Armstrong  
Advisor, Investigations  
**ONTARIO ENERGY BOARD**  
2300 Yonge Street, 27th Floor  
Toronto, Ontario  
M4P 1E4

Dear Ms. Armstrong:

**Re: CO-2016-0031: Inspection into Active Energy's aggregation of multiple low-volume accounts into a single large volume retail contract.**

---

We write as legal counsel to Active Energy (Active) in respect of the captioned matter.

**Response to April 4<sup>th</sup> Request for Further Information**

Transmitted with this letter is Active's response to your April 4<sup>th</sup>, 2017 request for information. The attached file provides copies of 98 electricity customer contracts, being the balance of the contracts for Active's electricity customers listed in the table provided to you by Active on February 10<sup>th</sup>, 2017, served at more than one premises, and not already provided to you in response to earlier requests for information.

You will see in examining the attached revised Excel table of multi-meter/account customers that:

1. Active has provided copies of executed contract forms for each customer, and cross-referenced in the table which generic terms and conditions are associated with each such contract form (together the contract form and the applicable terms and conditions having formed the contract entered into with the customer).
2. Active has also indicated some corrections to the data (i.e. the number of separate utility accounts/meters under each contract) previously provided to the Board. In a few instances Active has now identified more meters/accounts associated with the customer, and in a few other instances Active has now identified that there are fewer meters/accounts associated with the customer, compared to the previously reported number of meters/accounts.

In respect of point 2., above, it is not clear to Active precisely why some erroneous data was earlier reported. The person who was responsible for the compilation and finalization of that earlier reporting is no longer with Active. However, in subsequent review in order to ensure the integrity of the current

response, these previous errors have been identified and corrected in the current submission. A note is provided in the attached table in respect of each such correction. In general, Active notes that in the several months since this "inspection" began, it has continued a migration of customer accounts from one data management system to another. Active suspects that in a few cases either the migration of data was not yet validated and thus gave rise to a reporting error, or that data had to be pulled from two systems (pending completion of the migration) and this gave rise to a reporting error. The "dual fuel" nature of some of Active's larger customers (i.e. the provision of both gas and electricity) might have also contributed to electricity account/meter counts being made in error. In any event, Active has revalidated all of the data provided in this response and indicates that it is confident in the integrity of the updated information. Active further confirms that in no instance has the data correction altered the status of the subject electricity customer as non-low volume.

### **General Process Comments**

The current response is being provided more formally, under cover of this letter, in light of the protracted history of this investigation, the several rounds of information requests and responses, and, notwithstanding the foregoing, a continued lack of indication from the Board of the substantive basis for its concern with Active's approach to contracting with customers requesting energy supply to multiple meters/utility accounts.

As you know, Ontario's distribution utilities (gas and electricity) require that each utility meter be designated with a distinct utility account. In the result, a number of Active's customers request gas and/or electricity supply to two or more utility meters/accounts, sometimes physically located on one premises, sometimes located on 2 or more premises. As has been previously explained in the course of this investigation, several times, Active contracts with customers as specified in applicable legislation, and not with meters or utility accounts. Where such customers consume gas or electricity in excess of statutory low-volume thresholds, Active treats those customers as non-low volume customers, regardless of how many individual meters/utility accounts those customers request service for.

We gather that this approach has given rise to concerns on the part of the Board, prompting the instant investigation. Begun on or before August 30<sup>th</sup>, 2016, this "inspection" has:

1. Been ongoing for more than 7 months;
2. Entailed 7 separate requests for information, at first in respect of a particular customer who had a complaint (which complaint was resolved by Active directly with its customer) and subsequently much more broadly in respect of Active's entire Ontario retail energy customer base;
3. Required 7 responses by Active, entailing several person weeks of work and including provision of detailed numeric and substantive information on Active's approach to contracting with multi-meter/utility account customers; and
4. Included, early in the process (on October 11<sup>th</sup>, 2016), provision to you of a copy of our formal legal opinion on the matter as provided to Active, which opinion sets out in detail the legislative basis for Active's approach to contracting with multi-meter/utility account customers.

Given this protracted investigative process, without communication of the substantive basis for OEB Staff's concerns, upon receipt of your most recent request for copies of 98 customer contracts, the writer called your office (and left a voice mail) on April 5<sup>th</sup>. As related in the voice mail, the purpose of that call was to suggest a direct discussion to ascertain the substantive basis for the Board's continuing concerns, and to explore how Active could most efficiently and effectively (and with some measure of finality) respond to those concerns. Our suggestion was (politely) rebuffed.

As already noted, during the protracted course of this investigation, Active has spent several person weeks of time digging through records and assembling electronic files in response to repeated requests for information from Board Staff. As noted above, the instant response includes copies of 98 contracts. In total, Active has provided documentation for 141 customers across 1481 utility meters/accounts (as summarized on the table provided to you on November 4<sup>th</sup>, 2016).

Attached to this letter is a full chronology of the exchanges had to date in this investigation.

### **Conclusion**

In consideration of all of the foregoing, we formally renew our suggestion that if OEB Staff still has substantive concern regarding Active's approach to multi-meter/utility account customers, despite the provision by Active of extensive information, including a copy of our comprehensive legal opinion on the matter and Active's position in support of its contracting approach, then a meeting be convened. The purpose of such a meeting would be to discuss and understand Staff's remaining concern(s), and then determine how Active can most efficiently and effectively provide you with relevant and reasonably required information, or otherwise address/respond to those concerns, and thereby move this matter to conclusion.

Yours truly,



Ian A. Mondrow

Attach.

- c. Michael Stedman, President & Chief Operating Officers, ACTIVE ENERGY INC.  
Chris Waddick, ACTIVE ENERGY INC.  
Mary Anne Aldred, General Counsel & Vice President, Legal Services & Strategic Policy,  
ONTARIO ENERGY BOARD

**CO-2016-0031: Inspection into Active Energy's aggregation of multiple low-volume accounts into a single large volume retail contract.**

**Chronology of Information Exchanges**

DATE	COMMUNICATOR	PARTICULARS
August 30, 2017	OEB Staff	Notification of initiation of OEB Act Part VII Inspection regarding a single large volume retail contract (3 meter, single premises customer).
September 9, 2016	Active	Response to information request.
September 21, 2016	OEB Staff	Follow up questions, including questions re Active multi-meter/account contracting practices in general.
October 11, 2016	Active	Response, including provision of copy of October 7, 2016 Gowling WLG Opinion re <i>Classification of Multi-Location Retail Energy Supply Customers</i> .
October 18, 2016	OEB Staff	Further questions on Active's broader contracting practices.
October 21, 2016	Active	Response (partial), indicating further time to November 4th to compile data requested.
November 4, 2016	Active	Completion of previous response with detailed table listing 141 customers covering 1481 utility meters/accounts.
February 1, 2017	OEB Staff	Request for further breakdown of data (between single location and multi-location customers) from November 4 <sup>th</sup> response, <b>response directed within 48 hours.</b>

DATE	COMMUNICATOR	PARTICULARS
February 2, 2017	Active	Request extension for response until February 17 <sup>th</sup> .
February 3, 2017	OEB Staff	Extension granted to February 10 <sup>th</sup> .
February 10, 2017	Active	Response with additional data breakdown.
February 15, 2017	OEB Staff	Call to Active for clarification of previous response(s).
February 16, 2017	Active	E-mail response to OEB Staff on request for clarification of previous response(s).
February 21, 2017	OEB Staff	Call with more (generally customer specific) questions.
February 24, 2017	Active	Response to further questions.
March 20, 2017	OEB Staff	Additional customer specific questions, <b>response directed within 72 hours.</b>
March 21, 2017	Active	Request for extension to respond to March 27 <sup>th</sup> .
March 21, 2017	OEB Staff	Extension to response to March 27 <sup>th</sup> granted.
March 27, 2017	Active	Response to further customer specific questions.
April 4, 2017	OEB Staff	Request for balance of contracts (127) listed on detailed table provided to Staff on February 10, 2017.
April 5, 2017	Active (through Gowling WLG)	Call (voice message) to OEB Staff (Brigit Armstrong) suggesting direct discussion of basis for concern/efficient approach to response.

DATE	COMMUNICATOR	PARTICULARS
April 5, 2017	OEB Staff	Call (voice message) and e-mail response indicating written response required as previously requested.
April 6, 2017	Active	Extension for response requested.
April 6, 2017	OEB Staff	Extension granted.
April 20, 2017	Active (through Gowling WLG)	Response provided with balance of contracts requested.

TOR\_LAW\ 9159275\2



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, 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, 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



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**

#	Initials	Contract Number	Date
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

June 6, 2017

**VIA E-MAIL AND DELIVERED**

Ms. Kirsten Walli  
**ONTARIO ENERGY BOARD**  
P.O. Box 2319, 27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, Ontario  
M4P 1E4

Ian A. Mondrow  
Direct: 416-369-4670  
ian.mondrow@gowlingwlg.com

Assistant: Cathy Galler  
Direct: 416-369-4570  
cathy.galler@gowlingwlg.com

Dear Ms. Walli:

**Re: EB-2017-0022: Notice of Intention to Make an Order for Compliance, Restitution and Payment of an Administrative Penalty; and**

**EB-2017-0223: Notice of Intention to Make an Order for Compliance, Restitution and Payment of an Administrative Penalty.**

**(collectively, the Notices).**

**Active Energy Inc. (Active Energy)**

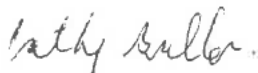
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We have been retained in respect of the captioned matters by Active Energy.

Please accept this letter as Notice from Active Energy pursuant to section 112.2 of the *Ontario Energy Board Act, 1998* that Active Energy requires that the Board hold a hearing in respect of the allegations set out in the Notices.

We await further procedural direction from the Board.

Yours truly,



for: Ian A. Mondrow

c. Michael Stedman, Active Energy

TOR\_LAW 919035211



**EB-2017-0022**  
**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** two Notices of Intention to  
Make an Order for Compliance and Payment of an  
Administrative Penalty against Active Energy Inc.  
(Retailer Licence No. ER-2012-0045).

**NOTICE OF HEARING**  
**AND**  
**PROCEDURAL ORDER NO. 1**

**July 12, 2017**

On May 25, 2017, the Ontario Energy Board (OEB), on its own motion under section 112.2 of the *Ontario Energy Board Act, 1998* (the Act), issued a Notice of Intention to Active Energy Inc. (Active Energy) to make an Order for Compliance, Restitution and Payment of an Administrative Penalty (EB-2017-0022). The OEB issued a second Notice of Intention on June 1, 2017 (EB-2017-0223).

The Notices indicate that the OEB intends to make an Order under sections 112.3 and 112.5 of the Act against Active Energy for compliance with a number of enforceable provisions as defined in section 3 of the Act, to refund monies to affected consumers, and to pay an administrative penalty in the amount of \$172,000 (May 25<sup>th</sup> Notice) and \$30,000 (June 1<sup>st</sup> Notice) for breaches of enforceable provisions.

Allegations of Non-Compliance are set out in the Notices.

By way of letter dated June 6, 2017, Active Energy gave notice under section 112.2(4) of the Act requiring the OEB to hold a hearing.

## **Consolidation of Proceedings**

Because the allegations in the two Notices are similar in nature, the OEB has determined pursuant to section 21(5) of the Act that it will combine proceedings EB-2017-0022 and EB-2017-0223.

## **Oral Hearing**

The OEB will proceed by way of an oral hearing. As noted in the Notices, should Active Energy fail to attend, the hearing may be conducted in its absence and Active Energy will not be entitled to any further notice in this proceeding.

## **Parties to this Combined Proceeding**

The parties to the combined proceeding are Active Energy and the members of OEB staff assigned to bring these matters forward (the Enforcement Team).

## **Disclosure**

To the extent they have not already made disclosure to one another in accordance with Rule 16 of the OEB's *Rules of Practice and Procedure for Enforcement Proceedings*, the parties must do so.

The OEB considers it necessary to make provision for the following procedural matters related to this proceeding. The OEB may issue further procedural orders from time to time.

## **THE ONTARIO ENERGY BOARD ORDERS THAT:**

1. Proceedings EB-2017-0022 and EB-2017-0223 are combined.
2. The parties shall comply with their disclosure obligations under Rule 16 of the OEB's *Rules of Practice and Procedure for Enforcement Proceedings*.
3. An oral hearing will take place in the OEB's North Hearing room beginning at **9:30 a.m. on September 25, 2017** at 2300 Yonge Street on the 25<sup>th</sup> Floor. If necessary, the oral hearing will continue on **September 26, 2017**.



All filings to the OEB must quote file number EB-2017-0022/EB-2017-0223 and be made electronically through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/> in searchable/unrestricted PDF format. Two paper copies must also be filed. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <https://www.oeb.ca/industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Michael Bell at [Michael.Bell@oeb.ca](mailto:Michael.Bell@oeb.ca) and OEB Counsel, Ian Richler at [Ian.Richler@oeb.ca](mailto:Ian.Richler@oeb.ca).

### **ADDRESS**

Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto ON M4P1E4  
Attention: Board Secretary  
Tel: 1-888-632-6273 (toll free)  
Fax: 416-440-7656  
E-mail: [Boardsec@oeb.ca](mailto:Boardsec@oeb.ca)

**ISSUED** at Toronto, July 12, 2017  
**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary



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monitoring](#)

# ECPA Implementation - Frequently Asked Questions (FAQ)

**Case number:** EB-2010-0245

**Launched:** January 17, 2011

**Sector:** Electricity, Natural Gas

**Status:** Complete

## Details:

Below you will find general responses to enquiries that relate to the [implementation of the Energy Consumer Protection Act, 2010](#) and associated Ontario Energy Board regulatory requirements. The FAQ have been prepared by Board staff for general information purposes only and may not cover all individual circumstances.

The initial set of FAQ as posted on January 17, 2011 relate to issues discussed during a December 14, 2010 meeting with licensed electricity retailers and licensed gas marketers, and in some instances provide responses that were not available during the meeting.

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## Disclosure Statements / Price Comparisons

**1. In cases where there is no carbon capture, is it acceptable to have only one copy of the disclosure statement and price comparison signed by the consumer and kept with the supplier, and an unsigned version left with the consumer?**

Yes. Suppliers are reminded that the Board encourages them to avail themselves of the carbon capture functionality, and that in the event of a dispute, the Board will look to the supplier to demonstrate to the Board's satisfaction that all legal and regulatory requirements relating to the contracting process have been met, including as to the receipt and signature of disclosure statements and price comparisons.

**2. Will the OEB post a schedule identifying when price comparison templates will be available?**

A schedule for the release of price comparison templates cannot be accommodated. Electricity price comparison templates will be posted approximately 15 days before the effective date of a change in RPP prices (the effective dates being November 1 and May 1). Board staff ensures the gas price comparison templates are issued within 24 hours of the issuance of the Board-approved QRAM.

**3. When must suppliers start using price comparisons based on templates that reflect the QRAM adjustments that become effective January 1, 2011?**

All price comparisons provided to low-volume consumers on and after January 1, 2011 must be prepared using the price comparison templates that reflect the January 1, 2011 QRAM adjustments.

**4. Going forward, are suppliers expected to use the price comparisons commencing on the date they are posted, or on the effective date of a rate or price change?**

Each price comparison template identifies, at the top of the page, the date on which the price comparison commences and ceases to be valid (in the case of price comparisons for non rate-regulated utilities, only a commencement date is provided). Suppliers must use a price comparison with content that reflects the pricing that is in effect on the date the price comparison is provided to a low-volume consumer. For example, the electricity price comparison to be provided to a consumer on October 25th of a given year must be prepared using the price comparison that is valid on that date (showing RPP prices that apply until October 31st), even if a new price comparison template has been posted with the RPP prices that will become effective on November 1st.

**5. Will suppliers be able to include version control/tracking numbers on the documents?**

Suppliers may enter a document control number in the form field that appears in the lower right corner of the front page. The document control number must be in a font size no larger than Arial 8, and may be numeric, alphabetic, or alpha-numeric but may not include the suppliers name or a date.

**6. Where is it mandated that the disclosure statements or price comparisons must be printed in legal size?**

The restated Codes of Conduct provide that a disclosure statement is to be in the applicable form approved by the Board, and a price comparison is to be in the form and with the content that is made available by the Board. Where the document available on the website is legal size, then legal size must be used.

**7. Can source references for the gas prices on the price comparison templates be provided to the suppliers?**

These will be made available in association with future releases of the gas price comparison templates.

**8. If marketing to a low-volume commercial consumer, what price comparison templates need to be used, residential or non-residential?**

Non-residential price comparison templates should be used for commercial consumers.

**9. For internet agreements, is a PDF format considered to be text-based?**

The *Energy Consumer Protection Act, 2010* defines text-based as capable of being read by an individual... A document in PDF format is capable of being read by an individual and is therefore considered to be text-based unless and until a regulation is made prescribing a different form, format or medium that must be adhered to. Suppliers are reminded that Ontario Regulation 389/10 sets out requirements for contracts entered into over the internet, including the following: (a) the website must provide the terms and conditions of available contracts (among other things) without requiring the consumer to commence a transaction; (b) the consumer must have the option to download or print each form of available contract (among other things); and (c) the supplier must deliver a text-based copy of the contract (among other things) to the e-mail address provided by the consumer.

**10. If the price comparison is carried over to the second page, which page should the customer signature and date be on, and can page numbering be added?**

The customer's signature and date must remain on page 1. The issue of pagination has been addressed in the instructions contained in the price comparison templates as follows: ...If additional pages are used, the following text must appear in the text box in Part B: Offer continues on page(s) x.

**11. How should suppliers disclose transportation costs on the gas price comparison template when in some cases the supplier may not know whether the consumer's transportation service is from a Western or Ontario point?**

Price comparisons using the Board-approved templates are intended to enable a consumer to compare his or her current utility price with the contract price offered by the supplier over the entire term of the contract. In accordance with the instructions for completing Part B of the gas price comparison templates, the gas marketer must break down the contract price to separately show each element of the contract price, which in the case of some templates charges for transportation would need to be shown separately. Where transportation is included in the contract price, the

transportation charges must be identified as [Name of Marketer] Price. Where transportation is not included in the contract price, the transportation charges must be identified as Utility Price. Where transportation is included in the contract price and is variable, the marketer must also identify that the price will change over the term of the contract and include a narrative description of the price that includes how the price is derived and when and the basis on which changes to the price will be determined over the term of the contract.

**12. Would the Board consider using the as filed numbers from the gas QRAM applications to populate the price comparison templates which would give marketers additional lead time to print?**

The price comparison has no official standing unless and until the rates are approved by the Board. While the as filed rates may be approved by the Board without changes, until those rates are, in fact, approved they will not be included in Part A of the price comparison template.

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## Verification and Renewal Scripts

**1. The CRTC requires telemarketers to identify both the name of the telemarketer and the name of the client, if any, on whose behalf it is communicating. Can the scripts be revised to include this change?**

On December 24, 2010, revised Board-approved scripts were posted to make this option available to suppliers.

**2. When will the revised electricity scripts that have been updated to include a reference to the Ontario Clean Energy Benefit be available?**

The revised Board-approved electricity scripts for verification and renewal were posted on December 24, 2010.

**3. When a contract includes multiple site locations, can all locations be included in one verification call?**

At the December 14, 2010 stakeholder meeting, Board staff indicated that it would bring forward to the Board the potential to accommodate this request, on the understanding that the multiple location script would apply only: (a) to non-residential consumers; (b) where all of the locations are covered by the same contract; and (c) where all of the terms and conditions (including price and term) are the same for all locations. Update on this issue is pending.

**4. Can a consumer with multiple locations which are each separate accounts that may individually consume not more than 150,000 kWh of electricity annually or 50,000 cubic metres of gas annually, but in the aggregate consume 150,000 kWh or more annually or 50,000 cubic metres or more annually be considered a single high-volume consumer?**

No. Each account is considered to be a separate consumer for the purposes of determining whether the low-volume consumption threshold is exceeded.

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## Certification

**1. Will the Board provide an acknowledgement letter based on the electronic filing of the Certificate of Compliance or only when the signed hard copy is filed?**

Acknowledgements of Certificates of Compliance will not be issued until the Board is in receipt of an original signed hard (i.e., paper) copy of the Certificate of Compliance.

**2. How many signed hard copies of the Certificate of Compliance need to be filed?**

One.

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## Compliance Inspections

**1. Will suppliers receive notification prior to the commencement of an inspection?**

Yes.

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## Cost Assessment Model

**1. Does the cost assessment apply to licensed electricity retailers that retail only to high-volume consumers?**

No.

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## Other

**1. Will there be a dedicated contact person or person(s) to respond to questions related to the implementation of the *Energy Consumer Protection Act, 2010* and associated Board regulatory requirements?**

Questions can be submitted to OEB Industry Relations. [Contact us here](#).

**2. Under the restated Codes of Conduct, refresher training and testing is required for each salesperson and verification representative once every 12 months. Must a supplier provide that refresher training and testing according to the exact 12-month timeline from the initial date of testing for each individual salesperson and verification representative, or may the supplier schedule all salespersons and verification representatives for refresher training and testing on a group basis?**

It would be reasonable for a supplier to provide refresher training and testing within a 9 - 12 month period after initial training, provided that for any individual salesperson or verification agent the refresher training and testing is completed no later than 12 months after the date of completion of the initial training.

**3. What charges or costs are required to be refunded under section 25(2) of Ontario Regulation 389/10? Is it only the charges or costs collected by a distributor on the suppliers behalf, in which case it is assumed that this would not include the Global Adjustment?**

Section 23(1) of the *Energy Consumer Protection Act, 2010* requires a supplier to refund to a consumer any amount paid by the consumer under the contract in certain cases. Similarly, under section 25 of Ontario Regulation 389/10, the prescribed amount to be refunded to a consumer in another case is the total of all amounts, if any, paid by the consumer under the contract. Under both sections, the amount of the refund is any amount that the contract required or committed the consumer to pay and that were paid. To be clear, the amount of the refund is not a lesser amount represented by the difference between the contract price and the wholesale market price. The Global Adjustment and Final RPP Variance Settlement Amount are amounts that are payable by a consumer in accordance with regulations or the Boards regulatory requirements, respectively. As such, they are not amounts paid under the contract and are therefore not amounts that need to be refunded to a consumer by the retailer under the above-noted sections.



