

Ontario Energy Board
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Commission de l'énergie de l'Ontario
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For immediate release

January 21, 2009

OEB Issues Order for Administrative Penalty to Summitt Energy Management for Contraventions of the *Ontario Energy Board Act*

Toronto – Today the Ontario Energy Board issued an [order](#) pursuant to section 112.5 of the *Ontario Energy Board Act, 1998* (the “Act”) that Summitt Energy Management pay an administrative penalty in the amount of \$70,000.00. Contracts with consumers who were subject to non-compliant practices have been cancelled and those consumers have been reimbursed.

Summitt has provided the Board with an assurance of voluntary compliance, under Section 112.7 of the Act. The actions that Summitt have agreed to in the voluntary assurance are now mandatory and a failure to comply with these requirements would be a breach of their licence obligations. Summitt has agreed to the following:

- Any low-volume consumer who was supplied electricity or natural gas during the period from September 2007 to April 2008 may request a review of their contract. If they are now found to have been subject to similar contraventions, they may request cancellation of their contract without penalty and be provided reimbursement.
- Summitt has agreed to conduct quality assurance audits of its reaffirmation calls and to provide a report to the Board’s Compliance Office with the results of those audits.
- Summitt will implement a program to ensure reaffirmation agents meet the legal requirements for reaffirmation. The program will include a discipline process.
- Summitt will provide the Board’s Compliance Office with a copy of their reaffirmation scripts and all other materials used by reaffirmation agents for a period of 18 months.

The funds received by the Board will be used to support activities that are in the public interest.

The Board’s order is available at www.oeb.gov.on.ca.

A Notice of Intention to make an Order for an Administrative Penalty was issued against Summitt on January 5, 2009. Summitt was notified that the Ontario Energy Board, on its own motion, intended to make an Order under subsection 112.5 of the Act requiring

Summitt to pay an administrative penalty for contravening certain enforceable provisions of the Act.

The Ontario Energy Board regulates the province's electricity and natural gas sectors in the public interest. It envisions a viable and efficient energy sector with informed consumers served by responsive regulation that is effective, fair and transparent.

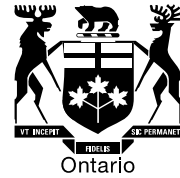
For more information on the Board, please visit our Web site at www.oeb.gov.on.ca or contact the Consumer Relations Centre at 416-314-2455 or toll-free at 1-877-632-2727.

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For more information please contact:

Eric Pelletier
Ontario Energy Board
(416) 440-7685

Ce document est aussi disponible en français.



EB-2009-0006

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 an Administrative Penalty against Summitt Energy
Management Inc.

ORDER

Whereas, pursuant to section 112.5 of the *Ontario Energy Board Act, 1998* (the "Act"), the Board issued a Notice of Intention to Make an Order for the payment of an Administrative Penalty against Summitt Energy Management Inc. ("Summitt") on January 5, 2009.

And whereas, Summitt has provided the Board with an Assurance of Voluntary Compliance, a copy of which is attached as Appendix A (the "Assurance") and has voluntarily agreed to pay the amount of \$70,000.00 to the Board on or before February 20, 2009.

And whereas, the Board has determined that the Assurance and the terms set out therein along with the payment of \$70,000 settles this matter.

THEREFORE THE BOARD ORDERS THAT , pursuant to section 112.5 of the Act, Summitt pay an administrative penalty in the amount of \$70,000 by cheque payable to the Ontario Energy Board on or before February 20, 2009.

DATED at Toronto, January 21, 2009.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Summitt Energy Management Inc.
EB-2009- 0006
Assurance of Voluntary Compliance
Filed: January 20, 2009

**Assurance of Voluntary Compliance
Pursuant to s. 112.7 of the
Ontario Energy Board Act, 1998
Summitt Energy Management Inc.**

EB-2009-0006
January 20, 2009

Table of Contents	Page
I. Introduction	3
II. Assurance of Voluntary Compliance	3

I. INTRODUCTION

By Notice of Intention to Make an Order under section 112.5 of the *Ontario Energy Board Act, 1998*, (the "Act") for an administrative penalty, issued January 5, 2009 (the "Notice") the Board announced that it intended to make an order against Summitt Energy Management ("Summitt") to pay an administrative penalty in the amount of \$100,000. Pursuant to s. 112.2(4) Summitt was advised that it may, within 15 days after receiving the notice, give notice to the Board requiring the Board to hold a hearing. Summitt has elected not to request a hearing and in order to fully and finally resolve this matter Summitt is prepared, without any admission of fault or non-compliance or any inference of admission of fault or non-compliance, to pay an administrative penalty in the amount of \$70,000 and enter into this Assurance of Voluntary Compliance.

II. ASSURANCE OF VOLUNTARY COMPLIANCE

While Summitt has addressed many of the issues identified in the Notice and does not necessarily agree with all of the allegations contained in the Notice, Summitt has agreed to pay a reduced amount of \$70,000 and the Board has accepted payment of this reduced amount on, inter alia, the following grounds:

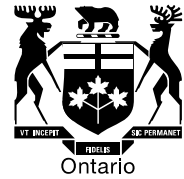
1. If Summitt receives a complaint from a consumer and Summitt is satisfied that the record confirms that the consumer has been supplied energy as a result of a reaffirmation call completed during the period covered by the Formal Review (September 2007 to April 2008) and the Retail Compliance

Review (March 28, 2008 to June 13, 2008), and the consumer was offered a 10 day rescission of the reaffirmation on that reaffirmation call, Summitt will agree with the consumer that the consumer's contract will be terminated, the consumer's supply will be returned to the applicable utility's regulated supply and the consumer reimbursed for 100% of the difference between the contract price and the applicable regulated energy price for the period that Summitt had supplied the consumer.

2. For a period of eighteen months, Summitt commits to conducting quality assurance audits of at least 20% of its reaffirmation calls commencing no later than February 1, 2009. For contracts entered into after that date, the reviews will be conducted in the manner described in the filings with the Board in response to the Information Request dated August 19, 2008 (Retail Compliance Review), except that Summitt will perform them on a weekly basis with respect to the previous week's calls. For a period of eighteen months, Summitt commits to file a quarterly report to the Compliance Office that identifies the volume of positive reaffirmations conducted in the quarter and the results of the quality assurance program, including remedial steps taken.
3. Summitt commits to establishing a reaffirmation agent discipline program (similar to its existing door-to-door agent program), that sets out the discipline and remedial steps taken to correct the issue (i.e. retraining, suspension, termination etc) by no later than February 1, 2009.

4. For a period of eighteen months, Summitt commits to provide to the Board on a confidential basis a copy of its reaffirmation scripts and all prepared materials for reaffirmation agents (e.g. Q&As and rebuttal scripts), within three business days of such reaffirmation scripts and materials being implemented by Summitt.

Dated: January 20, 2009



**NOTICE OF INTENTION TO MAKE AN ORDER FOR AN ADMINISTRATIVE
PENALTY UNDER s. 112.5
SUMMITT ENERGY MANAGEMENT
CO 2007 - 0093**

The Ontario Energy Board (the “Board”), on its own motion, intends to make an Order under subsection 112.5 of the *Ontario Energy Board Act, 1998* (the “Act”) requiring Summitt Energy Management (“Summitt”) to pay an administrative penalty in the amount of \$100,000 for contravening certain enforceable provisions of the Act.

The Board intends to make this Order based on evidence obtained through both: a formal review of selected Summitt recorded reaffirmation calls made in the Spring of 2008 as well as a further review of recorded calls made in June 2008 as part of the Board’s Retail Compliance Review. The particulars of non-compliance are as follows:

1. As part of a formal review initiated in the Spring of 2008 and the Board’s Retail Compliance Review the Board has determined that Summitt has contravened Section 2.3 of the Electricity Retailer Code of Conduct and the Gas Marketer Code of Conduct (the “Codes”) by supplying seven (7) consumers without a valid reaffirmation. A list of the identified non-compliant recorded calls is attached as Appendix A to this Notice.
2. Further, as part of the Retail Compliance Plan review of Summitt’s reaffirmation practices, the Board has identified three transactions where Summitt contravened Section 88.4 of the Act by engaging in an unfair practice as defined in section 2 of Ontario Regulation 200/02, by making false, misleading or deceptive statements to consumers as follows:
 - a. Summitt representatives state that the electricity market had been deregulated about a year ago, which is not accurate because the market deregulated in May 2002 (Contract D160508). The representative further states that the government is making people pay for the true cost of

electricity, which during blackouts can be as high as .50 cents / kWh. Consumers on the Regulated Price Plan ("RPP") would not be subject to these fluctuating charges and therefore this statement would be misleading in the context of this discussion.

- b. Summitt representatives state that rates are artificially low and the government has been subsidizing the rates (Contract C507469) and that the government will now charge the true cost of electricity.
- c. Summitt representatives make reference to the RPP being subsidized by the government (C507461).

Summitt may request the Board hold a hearing on these matters within 15 days after receiving the Notice.

If no hearing is requested within the time permitted the Board may make an order that Summitt shall pay an administrative penalty in the amount of \$100,000 pursuant to s. 112.5 of the Act.

If a hearing is requested, the Board is not bound by the above noted penalty and has discretion to award, upon finding a contravention of the Act, to make any order it deems appropriate under s. 112.3, 112.4 or 112.5 of the Act.

In order to respond to this Notice and request a hearing, Summitt must file 6 copies of this request with the office of the Board Secretary.

If a hearing is requested, Summitt is entitled to be present at the hearing with or without counsel and to adduce evidence and make submissions. Should Summitt fail to attend, the hearing may be conducted in its absence and Summitt will not be entitled to any further notice in the proceeding.

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

Dated at Toronto, December 22, 2008

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX A

Summitt Energy Management Low-Volume Electricity Consumers Supplied without Valid Reaffirmation

Ontario Energy Board Complaint Number

1. 2008-0001386
2. 2008-0002085
3. 2008-0002520
4. 2008-0002553
5. 2008-0003246

Contract Numbers

6. D149676
7. C477957