

**IN THE MATTER OF  
THE FAIR TRADING ACT**

THIS UNDERTAKING is made pursuant to Section 152 of the *Fair Trading Act*.

BY:

**Direct Energy Marketing Limited  
111 5<sup>th</sup> Avenue SW #1000  
Calgary, Alberta T2P3Y6**

(hereinafter called the "Supplier")

TO:

The **DIRECTOR OF THE FAIR TRADING ACT**,

(hereinafter called the "Director")

**WHEREAS:**

- (A) The Supplier has and continues to carry on the business of marketing and selling energy contracts to consumers in various locations within the province of Alberta.
- (B) The Director has informed the Supplier that he has reason to believe that between April 7, 2007, and January 19, 2009, some of the Supplier's sales agents engaged in sales presentations that did not clearly distinguish between Direct Energy Marketing Limited as a competitive retailer and Direct Energy Regulated Services as its regulated business unit.
- (C) The Director asserts that he has reason to believe that the acts or practices described in recital (B) may constitute breaches of Section 6(4)(a) of the *Fair Trading Act* and Section 19(2)(d) of the Energy Marketing Regulation.
- (D) The Director acknowledges that the Supplier has informed the Director that it has or will be implementing an action plan to address the concerns set out in recital (B) and has provided or will provide specific instruction and education to its employees, representatives and independent third-party sales agents in Alberta to ensure future compliance with Section 6 of the *Fair Trading Act* and Section 19 of the Energy Marketing Regulation.
- (E) The Supplier wishes to address the Director's concerns set out in recital (B) by entering into this Undertaking.

**NOW THEREFORE THIS UNDERTAKING WITNESSES THAT:**

1. The Supplier undertakes to the Director that the Supplier will not, at any time hereafter, engage in acts or practices similar to those described in recital (B) in any manner that might reasonably mislead consumers.
2. The Supplier will use its reasonable best efforts to ensure that all of its officers, partners, employees, representatives and agents (including third-party sales agents) that are directly involved in the sale of Supplier's energy products in Alberta are forthwith acquainted or re-acquainted (as appropriate) with the requirements of the *Fair Trading Act* (especially as it pertains to Part 2 – Unfair and Negative Option Practices) and the Energy Marketing Regulation (especially as it pertains to Part 4 – Code of Conduct).
3. The Supplier will provide a copy of the action plan described in recital (D) to the Director within 10 days of the date of this Undertaking or within such longer time as the Director may agree. This action plan must include specific dates of training and must require complete implementation by September 30, 2009. The Supplier has informed the Director that the action plan will contain confidential business information and the Supplier will be providing the action plan on the understanding that the Director will not publish or disclose that action plan to any person or entity outside the Ministry unless required to do so by law.
4. The Supplier will pay the Director, for deposit with the Provincial Treasurer of Alberta, the sum of \$5,000; an amount that represents a portion of the costs associated with investigating this matter. Such payment is to be made within 10 days from the date of this Undertaking.
5. This Undertaking will be binding upon the Supplier and its successors and assigns unless:
  - a. terminated by the Director or varied with the consent of the Supplier;
  - b. varied by an Order of the Judge of the Court of Queen's Bench where the Judge is satisfied that the circumstances warrant varying the provisions of the Undertaking;
  - c. terminated by an Order of a Judge of the Court of Queen's Bench where the Judge is satisfied that the act or practice that the Supplier has undertaken to refrain from engaging in was no unfair practice;

However, in any such case, the termination or variance does not invalidate anything done under this Undertaking prior to termination or variance.

6. The Supplier acknowledges that the Director may, upon breach by the Supplier of any term of the Undertaking, institute such proceedings and take such action under the *Fair Trading Act* as the Director may consider necessary.
7. The Supplier acknowledges that it was advised by the Director, and is aware that it is entitled to seek independent professional advice regarding the signing of this Undertaking, and the Supplier acknowledges that it is entering into this Undertaking voluntarily.
8. It is understood that the terms of this Undertaking (but not the action plan referred to in paragraph 3 above) shall be maintained as a public record pursuant to Section 152(3) of the *Fair Trading Act*.

**IN WITNESS WHEREOF** the Supplier, has on the *23rd* day of *April*, 2009 executed this Undertaking as evidenced by the signature of a duly authorized officer.

**Direct Energy Marketing Limited**  
111 5<sup>th</sup> Avenue SW #1000  
Calgary, Alberta T2P3Y6

PER: *Clinton W. Roeder*  
Name: Clinton W. Roeder  
Title: Senior Vice President and  
General Manager, Canada

ACCEPTED by the Director of the *Fair Trading Act* this *23rd* day of *April*, 2009

*D. Scott Reed*  
DIRECTOR OF FAIR TRADING  
(as delegated)