



## **Direct Energy Marketing Limited**

**Amendments to Code of Conduct Regulation  
Compliance Plan and Inter-Affiliate Code of  
Conduct and Compliance Plan**

**August 19, 2021**

**Alberta Utilities Commission**

Decision 26370-D01-2021

Direct Energy Marketing Limited

Amendments to Code of Conduct Regulation

Compliance Plan and Inter-Affiliate Code of

Conduct and Compliance Plan

Proceeding 26370

Application 26370-A001

August 19, 2021

Published by the:

Alberta Utilities Commission

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## **1 Decision summary**

1. In this decision, the Alberta Utilities Commission has approved the application of Direct Energy Marketing Limited to amend the Direct Energy Regulated Services (DERS), Direct Energy Partnership (DEP) and XOOM Energy Canada, ULC (XOOM)<sup>1</sup> *Code of Conduct Regulation* Compliance Plan (*Code of Conduct Regulation* Compliance Plan) and the DERS Inter-Affiliate Code of Conduct and Compliance Plan (Inter-Affiliate Code of Conduct and Compliance Plan).

## **2 Background and procedural summary**

2. On November 12, 2020, the *Code of Conduct Regulation* was amended necessitating changes to the *Code of Conduct Regulation* Compliance Plan.

3. On January 5, 2021, the purchase of Direct Energy by NRG Energy Inc from Centrica plc closed. This change in ownership also necessitated amendments to the *Code of Conduct Regulation* Compliance Plan and the Inter-Affiliate Code of Conduct and Compliance Plan.

4. Direct Energy Marketing Limited filed an application with the Alberta Utilities Commission on March 5, 2021, requesting approval of amendments to the Inter-Affiliate Code of Conduct and Compliance Plan and, pursuant to Section 32 of the *Code of Conduct Regulation*, to the *Code of Conduct Regulation* Compliance Plan.

5. Subsection 32(2) of the *Code of Conduct Regulation* states:

A change to a compliance plan must be submitted to the Commission for approval

- (a) within 60 days following a change in circumstances or an amendment to this Regulation that requires a change to a compliance plan, or
- (b) as soon as practicable when a change to the plan is made for a reason other than a reason referred to in clause (a).

6. The Commission issued a notice of application on March 10, 2021, asking for statements of intent to participate by March 24, 2021. No submissions were received.

7. On March 31, 2021, the Commission issued Bulletin 2021-06: *Repeal of Rule 030: Compliance with the Code of Conduct Regulation*, repealing Rule 30 as of April 1, 2021. The

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<sup>1</sup> NRG Energy Inc. through its subsidiary, NRG Retail LLC acquired XOOM Energy Global Holdings LLC in 2018. (source S&P Global Market Intelligence June 2, 2018.) XOOM Energy Canada, ULC provides retail services in Alberta.

repeal of this rule reflected the November 2020 amendments to the *Code of Conduct Regulation* that removed or updated the following required sections from utilities' *Code of Conduct Regulation* compliance plans:

- (a) Section 8 (Meetings between distributors or regulated rate suppliers and retailers and customers);
- (b) Section 25 (Records and accounts);
- (c) Section 26 (Written financial transactions);
- (d) Section 27 (Records of transactions for goods and services);
- (e) Section 28 (Maintaining records); and
- (f) Section 33 (Quarterly and annual compliance reports) was also edited to remove quarterly reporting requirements.

8. Direct Energy Marketing Limited filed an update to its amended compliance plans on June 22, 2021.<sup>2</sup>

9. On July 12, 2021, the Commission issued a letter advising of its intention to introduce specific provisions within *Code of Conduct Regulation* compliance plans concerning the Commission's audit oversight and the obligations of parties to retain records for the purposes of that audit. In response, Direct Energy Marketing Limited submitted a further amendment to the *Code of Conduct Regulation* Compliance Plan on July 15, 2021. The Commission considers the record of this proceeding to have closed on July 15, 2021.

10. In reaching the determinations contained within this decision, the Commission has considered all relevant materials comprising the record of this proceeding. Accordingly, references in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to that matter.

### 3 Amendments

11. By its application of March 5, 2021 as amended on June 22, 2021 and July 15, 2021, Direct Energy Marketing Limited seeks approval of:

- (a) Changes to the *Code of Conduct Regulation* Compliance Plan to reflect the November 12, 2020 amendments to the *Code of Conduct Regulation*; to add XOOM Energy Canada, ULC as an affiliated provider, to incorporate other administrative changes to simplify the language of the *Code of Conduct Regulation* Compliance Plan and to update the information it provides.

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<sup>2</sup> Exhibits 26370-X0010 to 26370-X0014

- (b) Changes to the Inter-Affiliate Code of Conduct and Compliance Plan to reflect the change in ownership of Direct Energy from Centrica plc to NRG Energy Inc..

### 3.1 *Code of Conduction Regulation Compliance Plan*

12. As noted in paragraph 9 above, to provide for the creation and retention of records required for the Commission to carry out its future audits, as required under Section 40 of the *Code of Conduct Regulation*, the Commission required the addition of the following text in *Part 4 Compliance Requirements under Division 3 Compliance Audit*, of the *Code of Conduct Regulation Compliance Plan* after the policy statement in Section 40.0 “Audit:”

[DERS, DEP and XOOM] will retain all code of conduct compliance records listed under Appendix A to the Compliance Plan for at least three years. The Commission may amend Appendix A from time to time on notice and absent a registered objection, the proposed changes to the appendix will take effect within 10 business days from the date of the notice.

13. The records to be listed in Appendix A to the *Code of Conduct Regulation Compliance Plan* and retained by DERS, DEP and XOOM were also identified in the Commission’s July 12, 2021 letter, subject to any proposal the parties might make seeking to vary that list.

14. Direct Energy Marketing Limited’s response to the Commission’s letter proposed the following amendments to the *Code of Conduct Regulation Compliance Plan*:

- (a) Updates to mechanisms under Section 3.0 – Conduct, and Section 17.0 – Arrangements Creating Unfair Competitive Advantage Prohibited to align with the records retention period recommended by the Commission;
- (b) Amending the policy under Section 40.0 – Audit to align with the Commission’s requirement for the retention of compliance records listed under Appendix A to the *Code of Conduct Regulation Compliance Plan* for at least three years; and
- (c) Addition of Appendix A to the *Code of Conduct Regulation Compliance Plan* outlining the specific records to be retained.

15. Additionally, Direct Energy Marketing Limited proposed a separate amendment to certain mechanisms under Section 34 of the *Code of Conduct Regulation Compliance Plan* – Information About Complaints, to delete the requirement to provide information describing how to report an alleged contravention of the *Code of Conduct Regulation* on an annual bill to DERS, DEP and XOOM customers and to instead require that information be provided year-round on each of DERS, DEP and XOOM’s external websites. Direct Energy Marketing Limited submitted that this proposed change should reduce the number of misdirected customer-care calls to the Commission that are unrelated to the *Code of Conduct Regulation*.

16. Subsection 32(3) of the *Code of Conduct Regulation* authorizes the Commission to consider changes to a compliance plan and states:

On receipt of a proposed change to a compliance plan, the Commission may

- (a) approve the proposed change, with or without changes and with or without conditions,
- (b) direct other changes to be made to the compliance plan, or
- (c) refuse to approve the proposed change.

17. The Commission is satisfied that the removal of the affected sections and other amendments proposed to the *Code of Conduct Regulation* Compliance Plan filed by Direct Energy Marketing Limited on March 5, 2021 as amended on June 22, 2021, are consistent with continued compliance with, and sufficiently address the requirements of, the *Code of Conduct Regulation*.

18. The Commission is also satisfied that the further amendments to the *Code of Conduct Regulation* Compliance Plan including Appendix A, proposed by Direct Energy Marketing Limited on July 15, 2021 and summarized in paragraph 14 above, meet the requirements detailed in the Commission's July 12, 2021 letter and are reasonably required to conform with Direct Energy Marketing Limited's existing operations for the reasons expressed by Direct Energy Marketing Limited in its July 15, 2021 letter.

19. Concerning the proposed amendment to mechanisms under Section 34 of the *Code of Conduct Regulation* Compliance Plan, the Commission finds that providing information about how to report an alleged contravention of the *Code of Conduct Regulation* on the DERS, DEP and ZOOM external websites as opposed to through an annual notice on customer bills is a reasonable amendment and it is approved as proposed.

20. For the above reasons, the Commission approves the amended *Code of Conduct Regulation* Compliance Plan as submitted by Direct Energy Marketing Limited on July 15, 2021.

### **3.2 Inter-Affiliate Code of Conduct and Compliance Plan**

21. In Decision 21218-D01-2016, the Commission approved an updated inter-affiliate code of conduct for DERS, a business unit of Direct Energy Marketing Limited effective April 1, 2016. The approved inter-affiliate code of conduct was based on the purpose and objectives for the inter-affiliate code of conduct approved for the ATCO Group as set out in Decision 2003-040<sup>3</sup> and reflected the organizational structure of Direct Energy Marketing Limited and, in particular, DERS, at that time. This inter-affiliate code of conduct was further amended and approved by the Commission in Decision 22382-D01-2017. In that decision, the Commission approved an integrated inter-affiliate code of conduct and compliance plan. Additional minor amendments to DERS' inter-affiliate code of conduct and compliance plan were approved in Decision 22868-D01-2017.

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<sup>3</sup> Decision 2003-040: ATCO Group Affiliate Transactions and Code of Conduct Proceeding Part B: Code of Conduct, May 22, 2003.



22. In its proposed amended Inter-Affiliate Code of Conduct and Compliance Plan,<sup>4</sup> DERS amended its organizational chart to include XOOM along with the NRG-owned retail entities that operate in various states in the United States. DERS explained that this amendment was proposed in the event a future relationship developed between DERS and one of these entities. Additional edits included language adding XOOM to the reference to the *Code of Conduct Regulation Compliance Plan*, updating the referenced email for questions or comments and non-substantive grammatical edits.

23. The Commission is satisfied that the proposed substantive amendments to the Inter-Affiliate Code of Conduct and Compliance Plan appropriately reflect the change in ownership of Direct Energy from Centrica plc to NRG Energy Inc. The Commission further accepts the other non-substantive amendments proposed. The DERS Inter-Affiliate Code of Conduct and Compliance Plan is approved.

#### 4 Order

24. It is hereby ordered that:

- (1) The Direct Energy Regulated Services, Direct Energy Partnership and XOOM Energy Canada, ULC *Code of Conduct Regulation Compliance Plan* is approved as amended, effective August 19 2021; and
- (2) The Direct Energy Regulated Services Inter-Affiliate Code of Conduct and Compliance Plan is approved as amended, effective August 19, 2021.

Dated on August 19, 2021.

#### Alberta Utilities Commission

*(original signed by)*

Carolyn Hutniak  
Commission Member

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<sup>4</sup> Two versions of the DERS Inter-Affiliate Code of Conduct and Compliance Plan were filed. The first as Exhibit 26370-X0004 (X0005 Black-lined version) and the second as Exhibit 26370-X0013 (Exhibit 26370-X0014 Black-lined version). The Commission compared the amendments proposed in Exhibit 26370-X0004 to those in Exhibit 26370-X0013 and notes that most of the amendments in Exhibit 26370-X0004 have been incorporated into Exhibit 26370-X0013 but do not show up as blacklined changes in Exhibit 26370-X0014. Where the two versions differ, the Commission has evaluated Exhibit 26370-X0013 as the Inter-Affiliate Code of Conduct and Compliance Plan submitted for approval.