

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 79 of the *Competition Act*;

AND IN THE MATTER OF certain policies and procedures of Direct Energy Limited.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

DIRECT ENERGY MARKETING LIMITED

Respondent

**RESPONSE OF THE COMMISSIONER OF COMPETITION TO THE REQUEST OF
NATIONAL ENERGY CORPORATION FOR LEAVE TO INTERVENE**

**DEPARTMENT OF JUSTICE CANADA
COMPETITION BUREAU LEGAL SERVICES**
Place du Portage, Phase I
50 Victoria Street, 22nd Floor
Gatineau QC K1A 0C9

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Counsel to the Commissioner of Competition

1. The Commissioner does not oppose an order granting National¹ leave to intervene in this proceeding. The Commissioner submits, however, that certain of the National Proposed Topics and the intervention terms are not appropriate.
2. There are two issues on this motion:
 - a. Whether National should be granted leave to intervene; and
 - b. If so, the terms on which such intervention should be granted.

Position of the Commissioner on the Motion to Intervene

3. As stated above, the Commissioner does not oppose National's application for intervenor status in this proceeding.

Scope of any National Intervention

4. In the event National is granted intervenor status, the Commissioner submits that there should be limits on such intervention, including modifications to the National Proposed Topics and to the scope of National's participation.
5. With respect to the National Proposed Topics, the Commissioner submits that:
 - a. National Proposed Topics (e) - (g), (i) and (j) should be modified to read:
 - (e) National's perspective as a participant in the industry on the product and geographic markets;
 - (f) the issue of Direct Energy's dominant position as it affects National;

¹ Unless otherwise indicated, defined terms in this Response have the meaning ascribed to them in the Commissioner's Notice of Application and Statement of Grounds and Material Facts and in the Request for Leave to Intervene on Behalf of National Energy Corporation.

- (g) the issue of the substantial lessening or prevention of competition as it relates to National;
 - (i) the statements made and conclusions drawn by Direct Energy concerning the conduct of National in the Response of Direct Energy filed in this proceeding; and
 - (j) the impact of the Commissioner's proposed remedies on National.
6. National has drafted these five National Proposed Topics broader than required for National to provide its unique and distinct perspective. The five modifications limit National to providing its unique and distinct perspective as these five topics relate to National.
7. With respect to the scope of National's participation, the Commissioner submits that terms (e) and (g) on which National participates in the proceeding should be modified to read:
- (e) to file expert evidence relating to the topics for which National has been granted leave to intervene within the procedures set out in the the *Competition Tribunal Rules*;
 - (g) to make non-repetitive written and oral argument relating to the topics for which National has been granted leave to intervene, including submissions on the proposed remedy.

Dated at Gatineau this 19th day of September 2013

**David R. Wingfield
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