



EB-2010-0221

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, Suspension and an Administrative Penalty against Summitt Energy Management Inc.

ORDER RESPECTING REVIEW AND AUDIT

The Ontario Energy Board (the "Board"), issued a Notice of Intention to Make an Order for Compliance against Summitt Energy Management Inc. ("Summitt") under section 112.2 of the *Ontario Energy Board Act, 1998* (the "Act") on June 17, 2010. By way of letter dated July 8, 2010, Summitt gave notice to the Board requiring the Board to hold a hearing on this matter. The Board assigned the proceeding file No. EB-2010-0221.

The Oral hearing commenced on August 30, 2010 and concluded on September 8, 2010. The parties filed final submissions in accordance with Procedural Order No. 4.

On November 18, 2010, the Board issued its Decision and Order (the "Order") which ordered, among other things, that Summitt procure a review and audit of the sales practices of its retail salespersons by engaging an independent third-party entity recognized as an expert in conducting such activities to review 20 transactions entered into between September 1 and September 30, 2010 chosen at random in order to assess compliance by Summitt and its agents in the conduct of these transactions, in light of Summitt's 14 Point Program. The Board indicated that if the conclusion of the review and audit is that Summitt and its agents have substantially complied with the 14 Point Program, the Board will take no further action with respect to that aspect of the Order. On the other hand, if the conclusion of the third-party review and audit is that Summitt was not in substantial compliance with the 14 Point Program, the Board will

then reconvene to receive submissions from Summitt and Compliance Staff respecting next steps.

In the Order, the Board indicated that the panel will remain seized of this case for the purposes of the audit process, and to provide the parties with guidance with respect to the implementation of any aspect of this Decision.

On November 23, 2010, Summitt filed a letter with the Board seeking clarification and direction with respect to two aspects of the Order as well as related amendments to the Order.

One of the issues raised by Summitt relates to the timing of the audit and review ordered by the Board. Specifically, Summitt states that “the full 14 Point Program was not operational in September 2010, and an audit focusing on that month would not be probative or relevant”. Summitt suggested that the Order be amended to replace the audit window from September 2010 to January 2011 and the reporting date from January 15, 2011 to March 15, 2011.

The other issue raised in Summitt’s letter pertains to the reference to a draft form of Ontario Regulation 389/10 (the “Regulation”), the Electricity Retailers Code of Conduct and the Code of Conduct for Gas Marketers (the “Codes”) in the Order. Summitt requests that the Order be amended on pages 21 and 22 to refer to the final Regulation and Codes.

On November 25, 2010, the Board issued Procedural Order No. 5 in which, the Board indicated that it was not clear as to which parts of the 14 Point Program were not operational in September 2010. Therefore, the Board decided to reconvene on December 13, 2010 to consider the requests made by Summitt in its letter of November 23, 2010.

On December 13, 2010, the Board heard evidence from Summitt’s witness with respect to the 14 Point Program and heard submissions from the parties with respect to the timing and the scope of the review and audit. The Board later made an oral decision and order respecting the review and audit.

The full decision and order is available in the transcript of the proceeding which is available on the Board’s website.

THE BOARD ORDERS THAT:

1. Summitt shall procure a review and audit of the sales practices of its retail salespersons in accordance with all of the following terms and conditions:
 - a. The review and audit shall involve a review of 20 transactions entered into between September 7, 2010 and October 31, 2010, chosen at random.
 - b. The entity undertaking the review and audit shall be an independent third party, recognized as an expert in conducting such activities.
 - c. The review and audit will assess compliance by Summitt and its agents in the conduct of these transactions with respect to following items:
 - i. the new Summitt sales verification process as described in Exhibit K7.1, which includes the audit by Summitt of 20 percent of the quality assurance calls;
 - ii. the solicitation procedures and performance as described in Exhibit K7.1, which relate specifically to the form of agreement, the content of the disclosure form as described in Exhibit K7.1, and the quality assurance calls and the audit of 20 percent of those calls referenced in item (i) above;
 - iii. automation of the consumer complaint reporting function as described in Exhibit K7.1, including the point system innovation;
 - iv. tracking agent complaints as described in Exhibit K7.1, including the weekly management meetings as described in Exhibit K7.2; and
 - v. the code of conduct training as described in Exhibit 7.1.
 - d. The product of that review and audit will be a report, which will be filed with the Board and compliance staff on or about February 15, 2011.
 - e. The review and audit will contain a conclusion respecting the extent to which Summitt and its sales agents have substantially complied with the items listed under (c) above as well as any notorious non-compliance situations disclosed in the course of completing the audit as described.

ISSUED at Toronto, December 14, 2010

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary