

Board Staff Submission

**Summitt Energy Management Inc. on behalf of
Summitt Energy LP**

**Electricity Retailer & Gas Marketer Licence
Applications**

EB-2013-0037/EB-2013-0038

May 10, 2013

BACKGROUND

On February 4, 2013 Summitt Energy Management Inc. on behalf of Summitt Energy LP (“Summitt”) filed applications with the Ontario Energy Board under section 60 and section 50 of the *Ontario Energy Board Act, 1998* (the “Act”) to renew its electricity retailer and gas marketer licences.

Summitt filed supplementary information and applications were completed on February 21, 2013.

On March 12, 2013, the Board issued a Notice of Application and Written Hearing (the “Notice”) which included dates for filing of interrogatories and submissions. No parties responded to the Notice. In accordance with the timelines set out in the Notice, on April 9, 2013 Board staff filed interrogatories on the application in order to gather additional information required for the Board’s final determination of the renewal applications. On April 23, 2012, Summitt filed responses to Board staff interrogatories.

STAFF SUBMISSION

In assessing electricity retailer and gas marketer licence applications the Board considers the entire applications and in particular financial viability, technical capability and past conduct of the applicant considering the Licence Requirements for electricity retailers and gas marketers set out in Ontario Regulation 90/99 . These requirements include:

1. Having regard to the financial position of the applicant, the applicant can reasonably be expected to be financially responsible in the conduct of business.
2. The past conduct of the applicant affords reasonable grounds for belief that the applicant will carry on business in accordance with law and with integrity and honesty.
3. If the applicant is a corporation, the past conduct of its officers and directors affords reasonable grounds for belief that its business will be carried on in accordance with law and with integrity and honesty.
4. The applicant is not carrying on activities that are, or will be, if the applicant is licensed, in contravention of the Act or the regulations or the codes, orders or rules issued or made by the Board.

Board staff's submission with respect to the above listed requirements is set out below.

Financial Position of Summitt

Board staff submits that Summitt can reasonably be expected to be financially responsible in the conduct of its business.

Technical capability

Board staff submits that according to the applications Summitt employs technical personnel with adequate experience and qualifications to provide responsive and quality support for systems and processes in the gas and electricity markets where Summitt does business. All key individuals identified in these applications have extensive experience in the energy sector.

Conduct

Electricity retailer and gas marketers are required to comply with the Act, the *Energy Consumer Protection Act, 2010* (the "ECPA"), regulations under the acts, and the Board's regulatory instruments that apply to their licensed business activities. Further, consistent with the requirements of Ontario Regulation 90/99, the applicant's past conduct must be considered in assessing electricity retailer and gas marketer licence applications. Board staff notes the following enforcement actions that have been taken by the Board against Summitt.

On December 22, 2008, the Board issued a Notice of Intention to make an Order for an Administrative Penalty against Summitt for contravening certain legal and regulatory requirements, including supplying consumers without first making valid reaffirmation calls and making false, misleading or deceptive statements to consumers (Board File Number EB-2009-0006). On January 20, 2009, Summitt provided the Board with an Assurance of Voluntary Compliance and agreed to pay an administrative penalty in the amount of \$70,000.

On June 17, 2010, the Board issued a Notice of Intention to make an Order for Compliance, Suspension and an Administrative Penalty against Summitt for contraventions of a number of enforceable provisions with respect to unfair market practices by its salespersons (Board File Number EB-2010-0221). The contraventions

included making false, misleading or deceptive statements to consumers and not providing consumers with a copy of the contract signed with Summitt. On November 18, 2010, following a hearing, the Board ordered Summitt to, among other things, remedy individual contraventions, take necessary steps to ensure compliance and pay an administrative penalty of \$234,000. Summitt appealed certain elements of the Board's Decision and Order to the Divisional Court. On April 9, 2013, the Divisional Court dismissed Summitt's appeal and upheld the Board's Decision and Order on all issues.

On August 25, 2011, the Board issued a Notice of Intention to make an Order for Compliance and an Administrative Penalty against Summitt for contravening requirements of the ECPA related to contract requirements and price comparisons (Board File Number EB-2011-0316). June 14, 2012, the Board issued an order approving a settlement agreement in which Summitt admitted to the breaches, committed to ensure compliance with respect to the issues and agreed to pay an administrative penalty of \$10,000.

Summitt was issued an electricity retailer and a gas marketer licence in 2011 for a reduced term of two years due to the Board's concerns related to past conduct of the applicant. The Board expected Summitt to demonstrate its success in complying with the legal and regulatory requirements over the period of the reduced term of its licence.

Board staff developed interrogatories to help complete the Board's record with respect to the past issues concerning salesperson conduct and the changes made by Summitt to its controls and procedures regarding compliance with consumer protection requirements.

Board staff reviewed Summitt's interrogatory responses. Staff submits that Summitt appears to have made some changes to its internal processes and protocols related to all activities conducted by Summitt's salespersons. Summitt provided statistical information that serves to demonstrate the effectiveness of the enhancements made to its protocols and processes related to all complaint types and most notably as they relate to agent conduct issues. The data provided shows a significant decline in complaints related to agent conduct in the last two years which agrees with data gathered by Board staff for the same period of time.

Summitt also provided a detailed description of its compliance monitoring and quality assurance program. The program provides detailed information on the following areas:

- sales agent certification;
- sales agent complaint tracking and remedial action;
- contract management reports;
- sales agent complaint review process; and
- sales agent point system program.

These five areas appear to provide a better opportunity for Summitt to monitor and take action on any salesperson conduct issues in a timely and effective manner. Summitt also described its plans to implement and report on an internal auditing process of its operations to ensure compliance with legislative and regulatory requirements.

Summitt's responses to the interrogatories reasonably addressed Board staff's concerns. Board staff acknowledges that over the last two years Summitt has undertaken several initiatives to address the main concerns of the Board related to the salesperson conduct issue and has a compliance regime in place to ensure consumer protection and compliance with legislative and regulatory requirements.

However, staff submit that Summitt's past conduct, as itemized in the Board's enforcement proceedings described above, demonstrate that Summitt has experienced and may continue to experience issues concerning compliance with legal and regulatory requirements. In an effort to ensure greater protection to consumers, Board staff submits that the renewal of Summitt's gas and electricity licence applications, if approved, should be granted with a condition requiring Summitt to provide the Board with a report within one year from the date the licences are issued, and annually thereafter for the term of the licence. This report should summarize the results of the internal auditing process of its operations and provide the Board with an updated summary of the results of its quality assurance program related to agent conduct, contract management and complaint handling for the year.

All of which is respectfully submitted.