



**EB-2013-0037**  
**EB-2013-0038**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O.1998, c.15, Schedule B;

**AND IN THE MATTER OF** applications by Summitt Energy Management Inc. on behalf of Summitt Energy LP to renew Electricity Retailer Licence ER-2010-0368 and Gas Marketer Licence GM-2010-0369.

By delegation, before: Jennifer Lea

**DECISION AND ORDER**  
**June 27, 2013**

Summitt Energy Management Inc. on behalf of Summitt Energy LP (“Summitt”) filed an application with the Ontario Energy Board dated February 1, 2013 under section 60 of the *Ontario Energy Board Act, 1998* (the “OEB Act”) to renew its electricity retailer licence ER-2010-0368. Summitt also filed an application with the Board dated February 1, 2013 under section 50 of the OEB Act to renew its gas marketer licence GM-2010-0369. The Board assigned the applications file numbers EB-2013-0037 and EB-2013-0038 respectively. On February 21, 2013, Summitt filed additional information to complete the applications.

The Board issued a Notice of Application and Hearing on March 12, 2013, inviting intervention in the hearing and comments on the applications. No parties responded to the notice within the time limit set for participation.

Board staff filed interrogatories on April 9, 2013 and Summitt filed responses to Board staff interrogatories on April 23, 2013. Board Staff filed its submission on May 10, 2013. Summitt filed its reply submission on May 24, 2013.

On May 24, 2013, one member of the public, Mr. Nicholas Ross, filed a submission objecting to the granting of the licences to Summitt. On May 29, 2013, Summitt responded to the submission filed by Mr. Ross stating that the deadline for submissions had passed and therefore this submission should not be given consideration in the hearing.

I have reviewed Mr. Ross's submission and acknowledge high quality of the submission and importance of the concerns raised. However, the facts included in the submission were known to the Board. I made no provision for a reply to the submission by Summitt, as the submission from Mr. Ross did not affect the decision made in this application.

While I have considered the full record of these proceedings, I have referred only to those portions of the record that I consider helpful to provide context to my findings.

## **FINDINGS**

In gas marketer and electricity retailer licence renewal applications, key areas for consideration by the Board include the financial position, technical capability and conduct of the applicant. In these applications, no concerns were raised with respect to the applicant's financial position or technical capability. Board staff, however, raised concerns with respect to the applicant's past conduct, and submitted that Summitt's electricity retailer and gas marketer licences should include special conditions. Concerns about the applicant's conduct were also raised by Mr. Ross in his submission.

Electricity retailer and gas marketers are required to comply with the OEB Act, the *Energy Consumer Protection Act, 2010* (the "ECPA"), regulations under those Acts, and the Board's regulatory instruments that apply to their licensed business activities.

Summitt has been subject to compliance actions from the Board in the past. In December of 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 valid reaffirmation calls and making false, misleading or deceptive statements to consumers. On January 20, 2009, Summitt, rather than requesting a hearing, entered into an Assurance of Voluntary Compliance and later made a voluntary payment to the Board.

Summitt was subject to an enforcement order by the Board in November of 2010. The order imposed administrative penalties on Summitt for contravention of a number of enforceable provisions, as defined in the OEB Act, in respect of 17 incidents of misconduct by five of its sales agents. The contraventions included making false, misleading or deceptive statements to consumers, and not providing consumers with a copy of the terms and conditions of the contract signed with Summitt.

Following the enactment of the EPCA on January 1, 2011, the Board commenced a series of compliance inspections of certain electricity retailers and gas marketers, including Summitt. 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. On June 14, 2012, the Board issued an order approving a settlement 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.

Due to the Board concerns related to Summitt's past conduct, in 2011 the Board, while it granted Summitt's electricity retailer and gas marketer licence requests, imposed a short term of two years. The Board expected Summitt to be able to demonstrate its success in complying with the legal and regulatory requirements over the two-year term. The Board has taken no further compliance action against Summitt during the two year term of the licences.

The evidence in this proceeding demonstrates that over the last two years Summitt has undertaken several initiatives to address the main concerns of the Board related to the conduct of its salespersons. Summitt has a compliance regime in place to ensure compliance with legislative and regulatory requirements. Summitt provided statistical information to demonstrate the effectiveness of the compliance program for all complaint types, especially those related to agent conduct. Summitt responded promptly to the Board's investigation of a report in the spring of 2013 of agent misrepresentation. The data provided by Summitt as well as the Board's own compliance records show a significant decline in complaints related to Summitt's agent conduct over the last two years.

However, based on Summitt's past conduct, Board staff in its submission sought a condition requiring Summitt to provide the Board with a report which will summarize the

results of Summitt's internal audit of its operations related to compliance and provide an annual summary of the results of its quality assurance program related to agent conduct, contract management and complaint handling.

I find that both the electricity retailer licence and the gas marketer licence should be granted for a term of five years. However, I also find that special conditions should be imposed. Despite the significant reduction in complaints related to Summitt in the last two years, the Board needs to have assurance that this improvement is sustained.

Summitt will be required, through a condition attached to its licences, to file within one year from the issuance date of the licences, and annually thereafter for the term of the licences:

1. a report summarizing the results for the past year of the internal audit of Summitt's operations, including:
  - marketing and sales materials;
  - customer service inbound and outbound calls;
  - contract enrolment processes;
  - contract billing; and
2. a summary of the results for the past year of Summitt's compliance monitoring and quality assurance program related to:
  - sales agent certification;
  - sales agent complaint tracking and remedial actions;
  - contract management reports;
  - sales agent complaint review process; and
  - sales agent point system program.

**IT IS THEREFORE ORDERED THAT:**

1. The electricity retailer licence is granted for a period of five years.
2. In addition to the terms and conditions of the standard electricity retailer licence, the licensee shall abide by the special condition contained in Schedule 2 to the licence.
3. The gas marketer licence is granted for a period of five years.

4. In addition to the terms and conditions of the standard gas marketer licence, the licensee shall abide by the special condition contained in Schedule 2 to the licence.

**DATED** at Toronto, June 27, 2013

**ONTARIO ENERGY BOARD**

*Original signed by*

Jennifer Lea  
Counsel, Special Projects