



Ontario Energy Board Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2016-0380

Ensqr Corporation

Notice of Intention to Make an Order for Revocation of a Licence against Ensqr Corporation (Licence Number ES-2012-0461)

BEFORE: Ken Quesnelle
Vice-Chair and Presiding Member

July 19, 2018

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1 INTRODUCTION AND PROCESS

On February 1, 2017, the Ontario Energy Board (OEB), on its own motion under section 112.2 of the *Ontario Energy Board Act, 1998* (the Act), issued a Notice of Intention to make an Order under section 112.4 of the Act to revoke electricity Unit Sub-Metering Licence ES-2012-0461 issued to Ensqr Corporation (Ensqr).

1.1 Background

On June 28, 2016, the OEB, on its own motion under section 112.2 of the Act, issued a Notice of Intention to make an Order under section 112.3 and 112.5 of the Act against Ensqr for compliance, including requiring Ensqr to comply with its licence conditions and obligations under the Unit Sub-Metering Code and to pay an administrative penalty in the amount of \$10,000. Previous allegations of non-compliance are provided in Section 1.2 below.

On August 2, 2016, Ensqr provided the OEB with an Assurance of Voluntary Compliance (Assurance), in which Ensqr assured the OEB it would take certain steps to remedy its admitted non-compliance with sections 5 and 6 of the Licence in respect of ensuring that its eligible customers could enroll in the Ontario Electricity Support Program (OESP).

Ensqr admitted that it has failed to comply with section 6 of its licence by failing to file certain information with the OEB, in this case its Self-Certification Report, to demonstrate its readiness to implement the OESP. Ensqr further admitted that it has failed to comply with section 5 of its licence by failing to comply with section 5.3.1 of the Unit Sub-Metering Code which requires Ensqr to apply rate assistance to a consumer's bill when it receives notice that a consumer is eligible for rate assistance under the OESP.

The OEB accepted the Assurance on August 3, 2016. Details on the Assurance are provided in Section 1.3 below.

Pursuant to section 3 of the Act, an Assurance is an “enforceable provision”. Under section 112.4 of the Act, the OEB may suspend or revoke a licence if it is satisfied that the licensee has contravened an enforceable provision.

Ensqr has not complied with all conditions outlined in the Assurance provided to the OEB. As a result of Ensqr's non-compliance, the OEB has initiated this revocation proceeding.

1.2 The 2016 Notice of Intention¹

The 2016 Notice of Intention set out the following allegations of non-compliance:

1. Ensqr has failed to comply with section 6 of its licence by failing to file certain information with the OEB, in this case its Self-Certification Report, to demonstrate its readiness to implement the Ontario Electricity Support Program (OESP).
2. Ensqr has failed to comply with section 5 of its licence by failing to comply with section 5.3.1 of the Unit Sub-Metering Code which requires Ensqr to apply rate assistance to a consumer's bill when it receives notice that a consumer is eligible for rate assistance under the OESP.

The 2016 Notice of Intention also set out the following particulars in support of the allegations of non-compliance:

On August 10, 2015, the OEB issued a notice to all licensed electricity distributors and unit sub-meter providers (Utilities) outlining self-certification requirements to ensure Utilities were undertaking appropriate measures to prepare for the OESP. The OESP, which came into effect on January 1, 2016, requires licensed Utilities to deliver the OESP through the invoices to eligible low-income electricity consumers.

In order to implement the program as of January 1, 2016 the OEB required Ensqr to file a self-certification report on three milestone dates: August 26, 2015, October 9, 2015 and November 30, 2015. Ensqr failed to meet any of the required deadlines.

The impact of failing to self-certify has resulted in the failure to process any applications from consumers for OESP.

¹ EB-2016-0200

1.3 Assurance of Voluntary Compliance

On August 2, 2016, Ensqr provided an Assurance of Voluntary Compliance to the OEB in EB-2016-0200 to address Ensqr's failure to meet the requirements of its licence conditions related to the OESP. The OEB accepted the Assurance on August 3, 2016.

Ensqr complied with only one of the ten items set out in the Assurance of Voluntary Compliance: it paid an administrative monetary penalty of \$5,000.00 on August 19, 2016. Ensqr had not complied with the remaining nine items, namely:

- To submit Self-Certification Reports to demonstrate its readiness to implement the OESP
- To immediately apply rate assistance to a customer's bill when it receives notice that the customer is eligible for rate assistance under the OESP
- To complete the "Self-Validation Portal" demonstrating that it has completed all the technical milestones associated with OESP implementation
- To immediately process the applications for eligible customers waiting for OESP, including a one-time adjustment to account for the time they would have been deemed eligible
- To provide a report to the OEB that includes a list of those customers who are entitled to a credit along with their particulars
- To send a letter to all eligible customers waiting for rate assistance, in the form specified in the Assurance
- To process new applications in a timely manner according to the established and mandated OESP process, and provide OEB staff with a monthly report for August 2016 through to and including February 2017
- To ensure all necessary steps are taken to ensure its website is active with its conditions of service and a link to the OEB's OESP portal
- To take all necessary steps to ensure compliance with the OEB's complaint process

In order to address this matter, on February 1, 2017, the OEB, on its own motion, issued a 2017 Notice of Intention to make an Order to revoke the electricity Unit Sub-Metering Licence issued to Ensqr².

1.4 The Process

By way of a letter dated February 14, 2017, Ensqr requested that the OEB hold a hearing in this matter. The parties to the proceeding were Ensqr and the members of OEB staff assigned to bring these matters forward (the OEB Enforcement Team).

The OEB held an oral hearing on July 13, 2017.

On August 17, 2017, the OEB issued an Interim Decision and Order. The Interim Decision and Order stated that the OEB is reserving its final decision in this proceeding until it has more information on the contractual relationship between Ensqr and the building owner of the one location in which Ensqr provides unit sub-metering services.

The Interim Decision and Order ordered that Ensqr do the following:

1. File an update on contractual discussions with the building owner.
2. File an update on its technical ability to comply with sections 5 and 6 of its Unit Sub-Metering Licence³, and specifically with regard to its ability to ensure that eligible customers served by Ensqr can be enrolled in the OESP.
3. Provide the building owner with a copy of the Interim Decision and Order.

On September 15, 2017, Ensqr sent an email to the OEB, which provided certain information in response to the OEB's directions set-out in the Interim Decision and Order.

On September 29, 2017, the OEB issued Procedural Order No. 2, which ordered Ensqr to provide certain supporting documentation for its statements in the September 15, 2017 e-mail.

² The OEB assigned File No. EB-2016-0380 to this revocation proceeding.

³ (ES-2012-0461)

On October 16, 2017, Ensqr provided additional supporting documentation to its statements in the September 15, 2017 e-mail.

On October 27, 2017, the OEB issued Procedural Order No. 3, which ordered Ensqr to provide additional supporting documentation and updates for its statements and material delivered in its response to Procedural Order No. 2.

On December 4, 2017, Ensqr filed its response to Procedural Order No. 3, and on December 11, 2017, Ensqr filed an addendum to that response. In response to Ensqr's filing, Counsel to the OEB Enforcement Team filed a letter on December 15, 2017, to address certain aspects of the documentation filed by Ensqr.

On January 15, 2018, the OEB issued Procedural Order No. 4, which ordered Ensqr to respond to the OEB Enforcement Team's concerns. Procedural Order No. 4 also indicated that if complete and sufficient responses are not provided, the OEB may convene a further oral hearing as a next step.

On February 5, 2018, Ensqr requested an extension to February 10, 2018 of the OEB's deadline to produce all of the supporting documentation as required in Procedural Order No. 4. On February 5, 2018, the OEB granted the request.

On February 12, 2018, Ensqr delivered correspondence in response to Procedural Order No. 4.

On March 5, 2018, the OEB issued Procedural Order No. 5 that ordered an oral hearing due to the OEB not being satisfied with the responses of Ensqr to date on Ensqr's ability to process OESP credits.

The OEB held an oral hearing on May 14, 2018 to hear further evidence on the ability of Ensqr to process OESP credits, and to provide Ensqr with an opportunity to explain why its licence should not be revoked. The OEB Enforcement Team provided a witness from ICF Olson in order to provide an update on the ability of Ensqr to process OESP credits.

2 DECISION

The OEB has determined that it will not revoke Ensqr's licence.

The 2017 Notice of Intention to revoke the Ensqr licence was based on the OEB Enforcement Team's contention that Ensqr was unable to meet the requirements of its licence conditions related to the OESP. At the time the Notice of Intention was issued, Ensqr had only complied with one of the ten items set out in the Assurance of Voluntary Compliance it proved to the OEB on August 2, 2016.

At the oral hearing held on July 13, 2017, Ensqr provided an explanation as to why it had not complied with the Assurance of Voluntary Compliance. It was clear to the OEB from the evidence presented at the oral hearing that Ensqr was at that time not able to process the OESP credits as had been alleged by the OEB Enforcement Team.

The lack of a unit sub-metering contract to provide services to the one building and the uncertainty of its business relationship with the new building owner were circumstances affecting Ensqr ability to process the required OESP applications.

There were situations where the applications were not processed within 180 days and had expired. The applications needed to be re-filed in order to be eligible to receive OESP credits⁴. The OEB noted in the Interim Decision and Order that no customers were being billed for consumption at that time.

The Interim Decision and Order ordered that Ensqr file a progress update on its business relationship with the owner of the building in question, a series of milestone requirements and supporting documentation. The OEB then issued subsequent Procedural Orders requiring Ensqr to provide additional supporting documentation as outlined in Section 1.4 to this Decision and Order.

In Procedural Order No. 5, the OEB stated that it was not satisfied with the responses of Ensqr to date on Ensqr's ability to process OESP credits. The OEB determined that it will convene an oral hearing which was held on May 14, 2018 to hear further evidence on the ability of Ensqr to process OESP credits.

⁴ Correspondence from Ensqr dated September 15, 2017

The OEB Enforcement Team's witness from ICF Olson verified at the oral hearing that applications for OESP credits are being processed in full⁵.

Ensqr indicated at the oral hearing that it had signed an interim contract with the building owner to the end of October 31, 2018⁶. Ensqr stated that the contract could be for 10 years pending the outcome of this proceeding⁷.

It is clear from the evidence presented at the oral hearing that Ensqr now has the capacity to perform the necessary functions and is doing things within its control to perform them on an improved basis.

Now that it is determined that Ensqr can process OESP applications, the OEB no longer feels it is necessary to revoke Ensqr's licence.

However, the OEB notes that while evidence of Ensqr's ability to perform the necessary OESP-related functions was provided at the oral hearing, concerns remain on the part of the Enforcement Team about the timeliness of Ensqr's performance of those functions. Counsel for the Enforcement Team stated in the closing argument that Ensqr is now processing applications but is doing so at an unacceptably slow pace⁸. In response, Mr. Gunde for Ensqr submitted that improvements had been made and that applications were being handled in a timely fashion⁹.

The OEB has determined that Ensqr's inability to complete the processing of required functions associated with the provision of OESP credits to eligible customers has been overcome and therefore decided not to revoke Ensqr's licence. The OEB does, however, consider Ensqr's past conduct with respect to responding to OEB requirements to provide information and its approach to conducting its business as a licensed Unit Sub-Metering Provider (USMP) to be lacking in terms of being forthright in communication with the OEB and general lack of preparedness in terms of technical capacity.

⁵ Hearing Transcript – May 14, 2018, page 14, lines 10-15

⁶ Hearing Transcript – May 14, 2018, page 14, lines 11-13

⁷ Hearing Transcript – May 14, 2018, page 14, lines 15-18

⁸ Hearing Transcript – May 14, 2018, page 57, lines 18-20

⁹ Hearing Transcript – May 14, 2018, page 62, lines 9-15

Ensqr's evidence suggests that it has taken steps to improve in these areas and that there are numerous social barriers to overcome in the delivery of its mandated functions. The OEB recognizes Ensqr's remedial activities to bring itself into compliance but the undesirable events of the last few years could have been avoided.

Ensqr has stated that it wishes to proceed and expand its business once it is fully compliant with the rules and regulations¹⁰.

The OEB takes Ensqr's statement to mean that it would not expand in advance of a favourable determination by the OEB in this proceeding.

The OEB urges Mr. Gunde to take all steps necessary to be prepared in advance of expanding its service offerings to avoid Ensqr's history of operating without sufficient technical capacity. It is intolerable to undertake engagements as a licensed USMP and then gain the capacity to perform. Performance capabilities are a prerequisite to undertaking licensed USMP functions.

As Ensqr is aware, this Decision is on the public record. These findings may be considered by enforcement teams and OEB panels in the course of any future compliance matters related to Ensqr's conduct.

Costs

Although Ensqr is the successful party, the OEB's *Rules of Practice and Procedure for Enforcement Proceedings* stipulate that "Costs may be awarded against the OEB Enforcement Team only in special or exceptional circumstances or where its actions have been frivolous or vexatious." This is not such a case. Accordingly, no costs are awarded.

¹⁰ Hearing Transcript – May 14, 2018, page 62, lines 16-19

3 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The allegations against Ensqr are dismissed.
2. No costs are awarded.

DATED at Toronto July 19, 2018

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary