



EB-2009-0127

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

AND IN THE MATTER OF an application by Atop
Communications Inc. for a smart sub-metering
licence.

By delegation, before: Theodore Antonopoulos

DECISION AND ORDER

Atop Communications Inc. ("Atop" or the "Applicant") filed an application dated April 27, 2009 with the Ontario Energy Board under section 60 of the *Ontario Energy Board Act*, 1998 (the "Act") for a smart sub-metering licence.

The Board's Notice of Application and Written Hearing for a smart sub-metering licence was posted on the Board's website on May 15, 2009. No parties responded to the Notice of Application and Written Hearing.

After considering the application, it has been found to be in the public interest to issue the smart sub-metering licence under Part V of the Act. The standard term for a sub-metering licence is five years. However, I am issuing this smart sub-metering licence for a period of two years.

In the Decision and Order for proceeding EB-2007-0953, the Board approved Atop's licence application and issued the licence for a term of one year. The Board indicated that it had concerns with certain aspects of Atop's application and directed Atop to file a business and financial plan as part of its next licence application.

In support of the subject application, the Applicant filed a ten year business and

financial plan. I note that the plan appears to be detailed and comprehensive. However, certain aspects of the plan raise concerns over the Applicant's ability to remain a reliable participant in the electricity market for the mid to long term.

If the Applicant decides to renew its smart sub-metering licence, I expect that the Applicant will provide an update to its business and financial plan as part of its next application. I expect that the Applicant will take these next two years to demonstrate that it is a reliable participant in the electricity market.

IT IS THEREFORE ORDERED THAT:

1. The application for a smart sub-metering licence is granted, on such conditions as are contained in the attached licence.
2. The applicant shall file an updated business and financial plan with the Board as part of its next smart sub-metering licence application.

DATED at Toronto, August 21, 2009.

ONTARIO ENERGY BOARD

Original signed by

Theodore Antonopoulos
Manager, Electricity Rate Applications



Smart Sub-Metering Licence

ES-2009-0127

Atop Communications Inc.

Valid Until

August 20, 2011

Original signed by

Theodore Antonopoulos
Manager, Electricity Rate Applications
Ontario Energy Board

Date of Issuance: August 21, 2009

Ontario Energy Board
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27th Floor
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Commission de l'énergie de l'Ontario
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1 Definitions

In this Licence:

"**Act**" means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

"**Board**" means the Ontario Energy Board;

"**Code**" means the Smart Sub-Metering Code issued by the Board;

"**consumer**" means a person who uses, for the person's own consumption, electricity that the person did not generate;

"**distributor**" means a person who owns or operates a distribution system;

"**Electricity Act**" means the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A;

"**Licensee**" means Atop Communications Inc.;

"**Market Rules**" means the rules made under section 32 of the Electricity Act;

"**prescribed class of property**" means a building on land for which a declaration and description have been registered pursuant to section 2 of the *Condominium Act, 1998*; a building on land for which a declaration and description have been registered creating a condominium corporation that was continued pursuant to section 178 of the *Condominium Act, 1998*; or a building, in any stage of construction, on land for which a declaration and description is proposed or intended to be registered pursuant to section 2 of the *Condominium Act, 1998*;

"**Regulation**" means regulations made under the Act or the Electricity Act; and

"**retailer**" means a person who retails electricity.

2 Interpretation

- 2.1 In this Licence, words and phrases shall have the meaning ascribed to them in the Act or the Electricity Act. Words or phrases importing the singular shall include the plural and vice versa. Headings are for convenience only and shall not affect the interpretation of the Licence. Any reference to a document or a provision of a document includes an amendment or supplement to, or a replacement of, that document or that provision of that document. In the computation of time under this Licence, where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens and where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

3 Authorization

- 3.1 The Licensee is authorized, under Part V of the Act and subject to the terms and conditions set out in this Licence, to engage in the commercial offering or the commercial provision of smart sub-metering systems, equipment and technology and any associated equipment, systems and technologies and any associated services for the prescribed class of property.
- 3.2 The Licensee is authorized to conduct business in the name under which this Licence is issued, or any trade name(s) listed in Schedule 1.

4 Obligation to Comply with Legislation, Regulations and Market Rules

- 4.1 The Licensee shall comply with all applicable provisions of the Act, the Electricity Act, and the Regulations.
- 4.2 The Licensee shall comply with all applicable Market Rules.

5 Obligation to Comply with Codes

- 5.1 The Licensee shall at all times comply with the Code issued by the Board.
- 5.2 The Licensee shall:
 - a) make a copy of the Code available for inspection by members of the public at its head office and regional offices during normal business hours; and
 - b) provide a copy of the Code to any person who requests it.
- 5.3 The Licensee may impose a fair and reasonable charge for the cost of providing the copies referred to in section 5.2(b).

6 Provision of Information to the Board

- 6.1 The Licensee shall maintain and provide, in the manner and form determined by the Board, such information as the Board may require from time to time.
- 6.2 Without limiting the generality of paragraph 6.1, the Licensee shall notify the Board of any material change in circumstances that adversely affects or is likely to adversely affect the business, operations or assets of the Licensee as soon as practicable, but in any event no more than twenty (20) days past the date upon which such change occurs.

7 Restrictions on Provision of Information

- 7.1 The Licensee shall not use information regarding a consumer, retailer or distributor obtained for one purpose for any other purpose without the written consent of the consumer, retailer or distributor.
- 7.2 The Licensee shall not disclose information regarding a consumer, retailer or distributor to any other party without the written consent of the consumer, retailer or distributor, except where such information is required to be disclosed:
 - a) to comply with any legislative or regulatory requirements, including the conditions of this Licence;
 - b) for billing or settlement purposes;
 - c) for law enforcement purposes; or
 - d) to a debt collection agency for the processing of past due accounts of the consumer, retailer or distributor.
- 7.3 The Licensee may disclose information regarding consumers, retailers or distributors where the information has been sufficiently aggregated such that their particular information cannot reasonably be identified.

- 7.4 The Licensee shall inform consumers, retailers and distributors of the conditions under which their information may be released to a third party without their consent.
- 7.5 If the Licensee discloses information under this section, the Licensee shall ensure that the information provided will not be used for any other purpose except the purpose for which it was disclosed.

8 Term of Licence

- 8.1 This Licence shall take effect on August 21, 2009 and expire on August 20, 2011. The term of this Licence may be extended by the Board.

9 Fees and Assessments

- 9.1 The Licensee shall pay all fees charged to it by the Board and all amounts assessed to it by the Board.

10 Communication

- 10.1 The Licensee shall designate a person that will act as a primary contact with the Board on matters related to this Licence. The Licensee shall notify the Board promptly should the contact details change.
- 10.2 All official communication relating to this Licence shall be in writing.
- 10.3 All written communication is to be regarded as having been given by the sender and received by the addressee:
- a) when delivered in person to the addressee by hand, by registered mail or by courier;
 - b) ten (10) business days after the date of posting if the communication is sent by regular mail; and
 - c) when received by facsimile transmission by the addressee, according to the sender's transmission report.

11 Copies of the Licence

- 11.1 The Licensee shall:
- a) make a copy of this Licence available for inspection by members of the public at its head office and regional offices during normal business hours; and
 - b) provide a copy of this Licence to any person who requests it.
- 11.2 The Licensee may impose a fair and reasonable charge for the cost of providing the copies referred to in section 11.1(b).

Schedule 1 Authorized Trade Names

1. Evergreen Metering Corp.