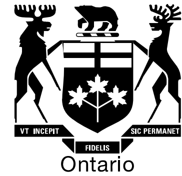
Ontario Energy Board | Commission de l’énergie de l’Ontario



EB-2009-0329

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

AND IN THE MATTER OF an order or orders authorizing certain distributors to conduct specific discretionary metering activities under section 53.18 of the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A;

AND IN THE MATTER OF Rules 42, 44 and 45 of the Board’s Rules of Practice and Procedure.

BEFORE: Pamela Nowina
Vice Chair, Presiding Member

Paul Sommerville
Member

Cathy Spoel
Member

DECISION AND ORDER

October 6, 2009

The Federation of Rental-Housing Providers of Ontario ("FRPO") filed a Notice of Motion requesting a review of the Board's Decision and Order in proceeding EB-2009-0111 (the "Motion"). The Decision and Order that is the subject of the Motion was made on August 13, 2009 and concerned the Board's authorization of certain discretionary metering activities under section 53.18 of the *Electricity Act, 1998* (the "Decision").

The Motion was filed pursuant to Rule 42.01of the Board's Rules of Practice and Procedure (the "Rules"). Rule 44.01 of the Rules sets out the grounds needed to support a motion to review, and Rule 45.01 authorizes the Board to consider, as a preliminary matter, whether the motion as filed meets a threshold justifying a consideration of the motion on its merits. Pursuant to Rule 45.01, the Board's determination of a threshold question can be made with or without a hearing.

In this case, after carefully considering the Motion, the Board has determined, without a hearing, that the Motion has not met the threshold needed to support a review of the Decision on its merits.

The Board's reason for making this finding is simply that it appears from the materials filed that the Motion is predicated on a fundamental misunderstanding of the Decision.

The Motion contends that the Board erred in its Decision to the extent that it found that the relationship between the smart sub-metering providers (the "SSMs") and the Exempt Distributors (the "EDs") was an agency relationship.

The Board made no such finding.

In its Decision, the Board made no finding with respect to the relationship between the SSMs and the EDs, other than to require that there must be a contractual relationship of some nature. In the Decision, in every instance where the Board references this contractual relationship, it characterizes the SSM as an agent <u>or</u> subcontractor of the ED. A plain English reading of the Decision establishes that the Board specifically did not characterize the relationship between the SSM and the ED as necessarily an agency relationship. An agency relationship is but one of the possible varieties of relationship arising from contract. To paraphrase the Motion materials themselves, the contractual architecture governing the respective relationships between the SSMs and the EDs could reflect a wide spectrum of business models. The Board's use of the

disjunctive word “or” was purposeful and intended to communicate that agency and subcontractor status were alternative outcomes of the contractual relationship.

In its materials, FRPO makes many references to the Board staff submission of May 12, 2009. Board staff’s submissions have no special weight and in this case the Board did not adopt Board staff’s point of view with respect to the characterization of the relationship between the SSM and the ED as necessarily being one of agency.

In its request for relief, FRPO sought confirmation from the Board that the Decision was not intended to serve as binding direction to other adjudicative administrative tribunals, most pointedly the Landlord and Tenant Board. The Board confirms that the Decision was not intended to serve as binding direction to other adjudicative administrative tribunals, including the Landlord and Tenant Board. In the Board’s view, the Decision speaks for itself and other tribunals will apply it or not apply it according to their own authority and practice.

Finally, FRPO expressed concern respecting what it regards as a misinterpretation of the Decision by certain tenants’ advocacy organizations. Again, in the Board’s view, the Decision speaks for itself, and the Board should have no role in trying to influence its interpretation by others.

THE BOARD THEREFORE ORDERS THAT:

1. The Motion to Review is hereby dismissed.

Dated at Toronto, October 6, 2009

ONTARIO ENERGY BOARD

Original Signed By

John Pickernell
Assistant Board Secretary