



EB-2009-0257

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

AND IN THE MATTER OF an application pursuant
to sections 52 and 74 of the *Ontario Energy Board
Act, 1998* by Ontario Energy Savings L.P. to amend
gas marketer licence GM-2005-0316 and electricity
retailer licence ER-2005-0314.

By delegation, before: Theodore Antonopoulos

DECISION AND ORDER

Ontario Energy Savings L.P. ("OES" or the "applicant") filed an application on July 2, 2009 with the Ontario Energy Board (the "Board") pursuant to sections 52 and 74 of the *Ontario Energy Board Act, 1998* ("OEB Act") to amend gas marketer licence GM-2005-0316 and electricity retailer licence ER-2005-0314 respectively, for the purposes of i) changing the applicant's name on both licences and ii) adding a new trade name to both licences. The applicant's current gas marketer and electricity retailer licences expire on July 14, 2010.

On August 4, 2009 the Board issued a Notice of Application and Written Hearing. Two submissions were received from one interested party. The applicant responded to each submission.

The full record is available at the Board's offices. The Board has chosen to summarize the record to the extent necessary to provide context to its findings.

The Application

The current name on both the gas marketer and electricity retailer licences is "Ontario Energy Savings L.P." The applicant requested that the name that appears on the licences be changed from "Ontario Energy Savings L.P." to "Just Energy Ontario L.P."

to reflect a re-branding across corporate entities which occurred during the months of June and July of 2009. The applicant stated that the purpose for the name change is to move beyond 'savings' to focus on managing energy costs and simplified customer energy solutions, clarify value propositions of fairness, integrity and simplicity and to reflect the consolidation of various acquired local brands into a single consistent and distinctive brand identity across all markets.

In its application, the applicant noted that as of July 21, 2009, all new customer contracts will include the Just Energy logo along with the following wording:

"Just Energy Ontario L.P. formerly known as Ontario Energy Savings L.P. (OES) operates under the Gas Marketer licence GM-2005-0316 and Electricity Retailer Licence ER-2005-0314 (collectively the "Licenses") in the name of OES. OES has an application pending before the Board to change its name on the Licenses."

The applicant stated that the Board may wish to consider adding a notation to the Board's webpage listing of market participants or to the Board presentation of retailer-customer issues statistics referring to the applicant's previous business identity.

The applicant also requested to add the trade name "Commerce Energy" to its current gas marketer and electricity retailer licences. The applicant updated its contact information by including four new key individuals to be assigned to the contact information for both licences. All other corporate information remains the same.

Two submissions were received on August 18 and September 16, 2009 from Solmon Rothbart Goodman LLP ("SRG") representing a client in the process of preparing a complaint against the applicant. Reply submissions were received on August 24 and September 21, 2009 respectively from the applicant.

The first submission from SRG objected to the name change request on the grounds that the applicant was attempting to "bury its past" with respect to past convictions for fraud, complaints from consumers and fines levied by the Board. In its reply, OES denied that it has been convicted of fraud and noted that public records of the applicant's name change are available, that proper legal and regulatory requirements have been completed for the name change and that the applicant has sought to communicate and explain its rebranding to trade allies and the general public.

In its second submission, SRG submitted that in the event that the Board is predisposed to approve the name change request, OES should be required to include the phrase “Formerly carried on business as Ontario Energy Savings” whenever Just Energy Ontario L.P. or any abbreviation or short form thereof is referred to in its letterheads and communications of any form, including all contracts and agreements. The applicant replied that this condition is overbroad and would serve to increase the applicant’s costs without appreciably adding protection for Ontario consumers.

Board Findings

The Board grants the requested amendments to the applicant’s licences, with conditions set out further below.

Sections 52 (b) and 74 (b) of the OEB Act governing gas marketing and the regulation of electricity respectively, state that the Board may on the application of any person, amend a licence if it considers the amendment to be in the public interest, having regard to the objectives of the Board.

The Board expects that an applicant filing for a change to the name that appears on the licence or the addition of a trade name will provide the proper documentation describing and supporting the request, the reasons for the amendment and an explanation with regards to the impact it will have on its customers. The Board agrees with the submissions of the applicant that the subject application does not conflict with the public interest and notes that the applicant has filed the required information in support of both the name change request and the addition of the trade name, including demonstrating that it has met the general legal requirements for corporate and business name registrations in Ontario.

The Board has reviewed SRG’s request to deny the name change and the applicant’s reply and finds that the concerns raised by SRG do not warrant denial of the name change request. SRG has not demonstrated that it would not be in the public interest to grant the requested licence amendments pursuant to sections 52 (b) and 74 (b) of the OEB Act.

The Board notes that concerns raised with respect to an applicant’s past conduct would be considered more broadly in the context of a licence renewal application where an applicant

must demonstrate that its past conduct affords reasonable grounds for belief that the applicant will carry on business in accordance with law and with integrity and honesty¹.

The Board does not accept SRG's characterization of the applicant's motives for the name change. However, in the context of this proceeding, the Board finds merit in SRG's request for the applicant to continue to disclose its former name. The Board notes that the applicant is one of the largest gas marketers and electricity retailers in the province in terms of customer numbers, and has been operating under the OES name for a substantial period of time. The Board also notes that the applicant began identifying the name change to its customers in July 2009.

The Board finds that it is in the public interest to extend the transition period from the current name to the new name to align with the duration of the current licence terms. The applicant shall continue its practice (as amended by the Order below) of identifying the name change on its website and on all contracts of any new customers acquired as of the date of this Decision and for the duration of the current licence terms.

The Board will also require the applicant to identify the name of the licence holder (and its former name) on its Commerce Energy website, if available, and on all contracts of any new customers acquired under the Commerce Energy name as of the date of this Decision and for the duration of the current licence terms.

The Board will not require the applicant to identify its former name (or its licensed name for Commerce Energy related activities) on all other forms of communication.

IT IS THEREFORE ORDERED THAT:

1. The name on gas marketer licence GM-2005-0316 and electricity retailer licence ER-2005-0314 is amended to "Just Energy Ontario L.P (formerly Ontario Energy Savings L.P.)".
2. Gas marketer licence GM-2005-0316 and electricity retailer licence ER-2005-0314 are amended so as to add the trade name "Commerce Energy" on Schedule 1 of each licence.

The amended licences are attached to this Order.

¹ Ontario Regulation 90/99, Electricity Retailers – Licence Requirements

3. The applicant shall place the following statement prominently on the home page of the Just Energy website as of the date of this Decision and for the duration of the current term of the applicant's gas marketer and electricity retailer licences: "Just Energy Ontario L.P. was formerly known as Ontario Energy Savings L.P."
4. The applicant shall place the following statement prominently on the first page of all new Just Energy customer contracts entered into as of the date of this Decision and for the duration of the current term of the applicant's gas marketer and electricity retailer licences: "Just Energy Ontario L.P. was formerly known as Ontario Energy Savings L.P."
5. The applicant shall place the following statement prominently on the home page of the Commerce Energy website, if available as of the date of this Decision and for the duration of the current term of the applicant's gas marketer and electricity retailer licences: "Commerce Energy is a trade name of Just Energy Ontario L.P., licensed by the Ontario Energy Board and formerly known as Ontario Energy Savings L.P."
6. The applicant shall place the following statement prominently on the first page of all new Commerce Energy customer contracts entered into as of the date of this Decision and for the duration of the current term of the applicant's gas marketer and electricity retailer licences: "Commerce Energy is a trade name of Just Energy Ontario L.P., licensed by the Ontario Energy Board and formerly known as Ontario Energy Savings L.P."

DATED at Toronto, September 29, 2009

ONTARIO ENERGY BOARD

Original Signed By

Theodore Antonopoulos
Manager, Electricity Rate Applications



Electricity Retailer Licence

ER-2005-0314

**Just Energy Ontario L.P.
(Formerly Ontario Energy Savings L.P.)**

Valid Until

July 14, 2010

Theodore Antonopoulos
Manager, Electricity Rate Applications
Ontario Energy Board
Date of Issuance: July 15, 2005
Date of Amendment: September 29, 2009

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1 Definitions

In this Licence:

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

“**consumer**” means a person who uses, for the person’s own consumption, electricity that the person did not generate;

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

“**Licensee**” means Just Energy Ontario L.P. (Formerly Ontario Energy Savings L.P.);

“**Market Rules**” means the rules made under section 32 of the Electricity Act; and

“**regulation**” means a regulation made under the Act or the Electricity Act;

“**residential or small business consumer**” means a consumer who annually uses less than 150,000 kWh of electricity;

For the purpose of this Licence, the terms “retailer” and “retailing” do not apply to a Licensed Distribution Company fulfilling its obligations under section 29 of the Electricity Act.

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 this 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. 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:

- a) to sell or offer to sell electricity to a consumer;
- b) to act as the agent or broker for a retailer with respect to the sale or offering for sale of electricity; and
- c) to act or offer to act as the agent or broker for a consumer with respect to the sale or offering for sale of electricity.

- 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 regulations under these Acts, except where the Licensee has been exempted from such compliance by regulation.
- 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 following Codes (collectively the "Codes") approved by the Board, except where the Licensee has been specifically exempted from such compliance by the Board:
- a) the Electricity Retailer Code of Conduct;
 - b) the Retail Settlement Code; and
 - c) the Retail Metering Code.
- 5.2 The Licensee shall:
- a) make a copy of the Codes 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 Codes to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

6 Agent for Service

- 6.1 If the Licensee does not have an office or other place of business in Ontario, the Licensee shall ensure the continuing appointment at all times of an individual who is a resident of Ontario and is at least 18 years old, or a corporation that has its head office or registered office in Ontario, as the Licensee's agent for service in Ontario on whom service of process, notices or other documentation may be made.

7 Market Power Mitigation Rebates

- 7.1 The Licensee shall comply with the pass through of Ontario Power Generation rebate conditions set out in Appendix A of this Licence.

8 Provision of Information to the Board

- 8.1 The Licensee shall maintain records of and provide, in the manner and form determined by the Board, such information as the Board may require from time to time.
- 8.2 Without limiting the generality of paragraph 8.1, 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.

9 Customer Complaint and Dispute Resolution

- 9.1 The Licensee shall participate in a consumer complaints resolution process selected by the Board.

10 Term of Licence

- 10.1 This Licence shall take effect on July 15, 2005 and expire on July 14, 2010. The term of this Licence may be extended by the Board.

11 Fees and Assessments

- 11.1 The Licensee shall pay all fees charged and amounts assessed by the Board.

12 Communication

- 12.1 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.
- 12.2 All official communication relating to this Licence shall be in writing.
- 12.3 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; or
 - c) when received by facsimile transmission by the addressee, according to the sender's transmission report.

13 Copies of the Licence

- 13.1 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. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

SCHEDULE 1 AUTHORIZED TRADE NAMES

1. Commerce Energy

APPENDIX A

MARKET POWER MITIGATION REBATES

“OPGI” means Ontario Power Generation Inc.

A retailer shall promptly pass through a portion of the rebate received from a distributor to those consumers who are not receiving the fixed price under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* and who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer.

If requested in writing by OPGI, the retailer shall ensure that all rebates paid to consumers are identified as coming from OPGI in the following form on or with each bill or cheque.

“ONTARIO POWER GENERATION INC. rebate”

A retailer shall promptly return to a distributor any portion of the rebate received from the distributor which relates to low-volume or designated consumers receiving the fixed commodity price for electricity under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998*, who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer or another party.

The amounts paid out to consumers or returned to the distributor shall be based on energy consumed and calculated in accordance with the rules set out in the Retail Settlement Code.

Amounts payable by the retailer may be made by way of set off at the discretion of the retailer.

ONTARIO POWER GENERATION INC. REBATES

For the payments that relate to the period from May 1, 2006 to April 30, 2009, the rules set out below shall apply.

A retailer shall promptly pass through a portion of the rebate received from a distributor to those consumers who are not receiving the fixed price under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* and who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer.

If requested in writing by OPGI, the retailer shall ensure that all rebates paid to consumers are identified as coming from OPGI in the following form on or with each bill or cheque.

“ONTARIO POWER GENERATION INC. rebate”

The amounts paid out to consumers or returned to the distributor shall be based on energy consumed and calculated in accordance with the rules set out in the Retail Settlement Code.

Amounts payable by the retailer may be made by way of set off at the discretion of the retailer.



Gas Marketer Licence

GM-2005-0316

**Just Energy Ontario L.P.
(Formerly Ontario Energy Savings L.P.)**

Valid Until

July 14, 2010

Theodore Antonopoulos
Manager, Electricity Rate Applications
Ontario Energy Board
Date of Issuance: July 15, 2005
Date of Amendment: September 29, 2009

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1 Definitions

In this Licence:

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

“**low-volume consumer**” means a person who annually uses less than 50,000 cubic meters of gas;

“**Licensee**” means Just Energy Ontario L.P (Formerly Ontario Energy Savings L.P.).

“**regulation**” means a regulation made under the Act.

2 Interpretation

- 2.1 In this Licence, words and phrases shall have the meaning ascribed to them in the 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 this 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. 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 IV of the Act, and subject to the terms and conditions set out in this Licence:
- a) to sell or offer to sell gas to a low-volume consumer;
 - b) to act as the agent or broker for seller of gas to a low-volume consumer; and
 - c) to act or offer to act as the agent or broker of a low-volume consumer in the purchase of gas.
- 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 and Regulations

- 4.1 The Licensee shall comply with all applicable provisions of the Act and regulations under the Act except where the Licensee has been exempted from such compliance by regulation.

5 Obligation to Comply with Codes

- 5.1 The Licensee shall at all times comply with all applicable provisions of the Code of Conduct for Gas Marketers, as issued and amended by the Board from time to time under Part III of the Act.
- 5.2 This 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. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

6 Agent for Service

- 6.1 If the Licensee does not have an office or other place of business in Ontario, the Licensee shall ensure the continuing appointment at all times of an individual who is a resident of Ontario and is at least 18 years old, or a corporation that has its head office or registered office in Ontario, as the Licensee's agent for service in Ontario on whom service of process, notices or other documentation may be made.

7 Provision of Information to the Board

- 7.1 The Licensee shall maintain records of and provide, in the manner and form determined by the Board, such information as the Board may require from time to time.
- 7.2 Without limiting the generality of paragraph 7.1, 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.

8 Customer Complaint and Dispute Resolution

- 8.1 The Licensee shall participate in a consumer complaints resolution process selected by the Board.

9 Term of Licence

- 9.1 This Licence shall take effect on July 15, 2005 and expire on July 14, 2010. The term of this Licence may be extended by the Board.

10 Fees and Assessments

- 10.1 The Licensee shall pay all fees charged and amounts assessed by the Board.

11 Communication

- 11.1 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.

- 11.2 All official communication relating to this Licence shall be in writing.
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- 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; or
 - c) when received by facsimile transmission by the addressee, according to the sender's transmission report.

12 Copies of the Licence

- 12.1 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. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

SCHEDULE 1 AUTHORIZED TRADE NAMES

1. Commerce Energy