



EB-2006-0341

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 Planet
Energy (Ontario) Corp. for an electricity retailer
licence.

By delegation, before: Jennifer Lea

DECISION AND ORDER

Planet Energy (Ontario) Corp. ("Planet") filed an application dated December 21, 2006 with the Ontario Energy Board under section 60 of the *Ontario Energy Board Act*, 1998 (the "Act") for an electricity retailer licence.

The Board's Notice of Application and Written Hearing for an electricity retailer licence was published on January 19, 2007.

On February 2, 2007, Ontario Energy Savings LP ("OESLP") objected to Planet's application stating that certain principals of Planet Energy Corporation are contractually bound not to compete with OESLP and its affiliates in the Ontario retail market, and that to grant Planet the licence requested would be prejudicial to OESLP.

Planet responded to OESLP's submission on February 8, 2007. Planet stated that it intends to market electricity to medium to large commercial and industrial consumers in Ontario, and that neither Planet nor any of its principals has any contractual obligation not to compete with OESLP in this market segment. Planet further clarified, in its letter dated March 20, 2007, that it intends to market to customers whose consumption exceeds 50,000 kWh/year.

Because Planet will be retailing electricity to consumers whose consumption is under 150,000 kWh/year, the Board must consider the licensing requirements for electricity

retailers set out in Ontario Regulation 90/99—*Electricity Retailers—Licence Requirements* (made under the Act) (the “Regulation”). Section 2(1) of the Regulation states that:

2. (1) An applicant for the issuance or renewal of a licence that allows for the retailing of electricity to residential or small business consumers must meet all of the following requirements:

...

2. The past conduct of the applicant affords reasonable grounds for belief that the applicant will carry on business in accordance with law and with integrity and honesty.

3. If the applicant is a corporation, the past conduct of its officers and directors affords reasonable grounds for belief that its business will be carried on in accordance with law and with integrity and honesty.

I have considered whether the allegation made by OESLP regarding a possible lack of compliance with a non-competition contract is sufficient to raise doubts as to the good conduct of Planet or Planet’s officers and directors. The allegation does not relate to “past conduct” but rather to a possible future action by Planet. Taking into account Planet’s response to the allegation and its clarifying letter of March 20, 2007, I am persuaded that Planet has satisfied the requirements of the Regulation as well as the other Board requirements for issuing a licence.

Furthermore, I agree with the submission of Planet, included in its response of February 8, 2007, that the denial of an electricity retailer licence is not the proper remedy for any future breach of contract that may result from Planet’s activity under its licence. It is not part of the Board’s licensing function to review and enforce non-competition agreements.

I therefore find it to be in the public interest to grant Planet’s application for an electricity retailer licence.

IT IS THEREFORE ORDERED THAT:

The application for an electricity retailer licence is granted, on such conditions as are contained in the attached licence.

DATED at Toronto, March 30, 2007.

ONTARIO ENERGY BOARD

Original signed by

Jennifer Lea
Special Advisor, Market Operations