



EB-2010-0045

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 Direct Energy Marketing Limited for an Electricity Retailer licence.

By delegation, before: Jennifer Lea

DECISION ON THE ADMISSIBILITY OF ADDITIONAL EVIDENCE

Background

Direct Energy Marketing Limited ("Direct Energy") filed an application for renewal of its electricity retailer licence on March 1, 2010. The procedural order in the application provided for an interrogatory and submission process.

Board staff filed interrogatories on May 7, 2010. Direct Energy filed responses to Board staff interrogatories on May 26, 2010. On June 4, 2010, Board staff requested an extension of time for the filing of Board's staff's submission. On June 24, Board staff informed the Board and Direct Energy that it had become aware of additional evidence related to the issues before the Board in this proceeding and requested the approval of the Board to have the evidence admitted. Board staff provided a copy of the evidence to Direct Energy and to the Board. Board staff requested that the Board not review the evidence until such time as Direct Energy had an opportunity to make representations as to its admissibility. Direct Energy made representations objecting to the admissibility of the additional evidence on July 8, 2010.

Board Findings

The Board will accept the evidence proposed to be filed by Board staff. However, Board staff is directed to review the proposed evidence carefully to ensure that only such evidence as is relevant to the licence of Direct Energy, or to conditions on that licence, is filed. As Direct Energy pointed out in its submission, the licence renewal process is not a suitable forum for the consideration of individual customer complaints, or the resolution of individual complaints. However, a consideration of the business practices of the applicant, as may be revealed by trends in the existence and resolution of customer complaints, is relevant to a licence renewal.

Direct Energy opposed the admissibility of the evidence on several grounds. First, it was pointed out that only about 15% of the complaints proposed to be submitted as evidence relate to electricity contracts. This application is for an electricity retailer licence. However, I find that the fact that many of the complaints may relate to gas supply contracts does not make the complaints irrelevant. As I understand the evidence, Direct Energy does not divide its customer service and customer complaint resolution practices into two separate gas and electricity businesses. The success Direct Energy demonstrates in preventing and resolving complaints regarding gas supply contracts may provide some evidence as to Direct Energy's business practices related to electricity supply contracts.

Secondly, Direct Energy questioned the relevance of introducing certain customer complaints and letters to the Board from Direct Energy, on the basis that the Board is not privy to the circumstances surrounding the complaints, and presumably therefore the Board would not be able to draw any conclusions from the evidence. Trends in customer complaints and correspondence regarding possible systemic problems are relevant to a consideration of the business practices of an applicant for a licence. The evidence proposed here is relevant and therefore admissible, but may be of little probative value if it does not actually demonstrate the existence of a problem in the business practices of Direct Energy. The Board will remain mindful to assess the value of this evidence in considering the application.

Lastly, Direct Energy points out that the complaints proposed to be filed have been resolved, and as Direct Energy received no further correspondence from the Board, presumed that the Board had no further concerns with respect to the complaints. If further concerns existed, Direct Energy would have expected them to be addressed

through the Board's compliance process. I find that this submission does not address the relevance of the evidence, and is therefore not persuasive as to admissibility. The fact that the complaints have been resolved does not mean that they are irrelevant to a consideration of the business practices of the applicant, and possible licence conditions that may be necessary to address any problems that may exist with those business practices.

Board staff submitted, and Direct Energy did not disagree, that the evidence be held confidential. Board staff's letter indicates that the evidence contains the personal information of consumers. I find that the evidence will be held in confidence. In addition, if either Board staff or Direct Energy includes confidential information in their submissions on this application, the party must provide a complete copy of the submission to be held in confidence and considered by the Board, and a copy from which the confidential information is redacted, to be placed on the public record of the application.

IT IS THEREFORE ORDERED THAT:

1. The Board will accept the filing of evidence from Board staff, and that evidence will be held in confidence in its entirety.
2. If Board staff wishes to make a submission, Board staff must file that submission with the Board, and deliver it to the applicant by August 4, 2010.
3. If Direct Energy wishes to file a response to a submission, the response must be filed with the Board by August 18, 2010.

DATED at Toronto, July 16, 2010

ONTARIO ENERGY BOARD

Original signed by

Jennifer Lea
Counsel, Special Projects