



ONTARIO ENERGY BOARD

REDACTED BOARD STAFF SUBMISSION

**APPLICATION FOR RENEWAL OF AN
ELECTRICITY RETAILER LICENCE
BY
DIRECT ENERGY MARKETING LIMITED**

EB-2010-0045

August 4, 2010

BACKGROUND

Direct Energy Marketing Limited (“Direct Energy” or “DE”) filed an application dated March 1, 2010, with the Ontario Energy Board (the “Board”) under section 60 of the *Ontario Energy Board Act, 1998* (the “Act”) for a renewal of its electricity retailer licence. Direct Energy filed additional information to complete the application on March 30, 2010.

The Board issued a Notice of Application and Hearing on April 8, 2010. On April 23, 2010, the Board issued Procedural Order No. 1 providing for an interrogatory and submission process to provide the Board with additional information that is relevant for its consideration of the application.

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 staff’s submission until June 25, 2010 in order to further review the application and the interrogatory evidence that was filed on May 26, 2010.

Admissibility of Evidence Obtained by Board Staff Inspector

On June 24, Board staff informed the Board and Direct Energy that it had become aware of additional evidence that, in Board staff’s view, related to the issues before the Board in this proceeding. The evidence was obtained by a Board staff inspector under section 107 of the Act. The inspector provided the information to Board staff on a confidential basis in accordance with section 111 of the Act. Board staff requested approval of the Board to have the evidence admitted on the basis that it directly related to issues before the Board. A copy of the evidence was provided directly to Direct Energy and a copy was filed with the Board with the request that the Board not review it until Direct Energy had had an opportunity to respond to the question of admissibility of the evidence. Board staff requested that the evidence be filed on a confidential basis on the grounds that the evidence contained personal information of individual consumers.

By way of letter dated July 8, 2010 Direct Energy objected to the admissibility of the additional evidence and submitted that if the evidence were to be admitted that it be

kept confidential. Direct Energy noted that the additional evidence included two letters to the Board from Direct Energy dated December 5, 2008 and March 16, 2009. Direct Energy advised the Board, in its letter of July 8th, 2010, that the evidence also included 87 complaint files, 13 of which pertained to electricity.

On July 16, 2010, the Board issued a decision (the “Decision”) accepting the additional evidence proposed to be filed by staff and indicated that the evidence would be held in confidence. The Board noted that despite the fact that many of the complaints related to gas supply contracts rather than to the retailing of electricity, the complaints are nonetheless relevant to this proceeding. The Board stated: “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”. The Board went on to note that 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.

STAFF SUBMISSION

Direct Energy is licensed by the Board for electricity retailing and gas marketing activities. As a licensed entity, Direct Energy is required to comply with the Act, the *Electricity Act, 1998*, regulations under these Acts and with the Electricity Retailer Code of Conduct, the Retail Settlement Code, and the Code of Conduct for Gas Marketers.

In addition, Ontario Regulation 90/99 sets out several requirements that the Board must consider and that an applicant needs to meet in order to be issued a licence, or for the renewal of a licence, that allows for the retailing of electricity to residential or small business consumers. These include:

1. Having regard to the financial position of the applicant, the applicant can reasonably be expected to be financially responsible in the conduct of business.
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.

4. The applicant is not carrying on activities that are, or will be, if the applicant is licensed, in contravention of the Act or the regulations or the rules made under Part III of the Act.

Board staff's submission with respect to the above noted requirements is set out below.

1. Financial Position of Direct Energy

Board staff finds no issue with respect to the financial position of Direct Energy and submits that Direct Energy can reasonably be expected to be financially responsible in the conduct of its business.

2. Past Conduct of the Applicant

Board staff notes that in April 2009 the Ontario Energy Board ordered Direct Energy to pay an administrative penalty in the amount of \$15,000 for the conduct of one its door to door sales agents. DE contravened section 88.4(2) of the Act, in that it engaged in an unfair practice as defined in section 2 of Ontario Regulation 200/02. DE also contravened section 2.1 of the Code of Conduct for Gas Marketers as one of its sales agents made a false, misleading or deceptive statement to a consumer. Board staff submits that sales agent conduct and DE's ability to control that conduct is relevant in considering the renewal of Direct Energy's licence to retail electricity.

3. Past Conduct of Directors and Officers

Board staff submits that there is no issue with respect to the past conduct of Direct Energy's officers and directors and there are reasonable grounds for belief that its business will be carried on in accordance with law and with integrity and honesty.

4. Business Practices

Board staff submits that the Board has before it evidence of both the historical and ongoing nature of the problems experienced by Direct Energy in its contract management processes relating to the renewal and cancellation of contracts.

The evidence obtained by the Board inspector supports Board staff's position that historical contract management issues faced by Direct Energy are still occurring and

have not been resolved. In Board staff's view, these issues appear to be systemic in nature and have continued despite the implementation of various initiatives undertaken by Direct Energy to address them.

Confidential Submission

Board staff requests that this part of its submission remain confidential as it is based on evidence that was granted confidential status by the Board.

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Proposed conditions on licence renewal

Board staff submits that the proposed conditions set out below are warranted and necessary.

Board staff submits that the Board should, if inclined to grant a five year licence renewal, impose the following conditions on Direct Energy's electricity retailer licence:

1. Direct Energy shall provide and detail any improvements made to the processes, procedures and systems (“PPS”) put in place to remedy the systemic issues with contract renewals and cancellations since its letter to the Board dated December 5, 2008 and any further steps taken since that time;
2. Direct Energy shall conduct a rigorous analysis of the effectiveness of the PPS in place as of the date of the Decision in this proceeding. The analysis is to include a review of the following:
 - a. The processes and controls in place to evaluate the effectiveness of DE in ensuring compliance with its legal and regulatory obligations set out in the Act and in Regulation 200/02 with respect to renewals and cancellations and the quality of regulatory data maintained.
 - b. The processes and controls in place for DE to take remedial action when dealing with the issue of non-compliance with the Act and/or Regulation 200/02 with respect to renewals and cancellations. This will include a review of the accuracy with which complaints regarding renewals and cancellations are identified; the speed and reliability with which these complaints are passed on to the responsible person and the extent to which justified complaints are acted on, both in providing a remedy to the consumer and minimizing the risk of recurrence.
 - c. The processes and controls in place to ensure that any consumer is delivered a copy of their contract on request within a reasonable period of time from the date the request was made.
3. Direct Energy shall ensure that the analysis carried out in paragraph 3 above is set out in a Report which is then reviewed by senior management at Direct Energy. A copy of the Report is then to be filed with the Board within three months of the date of the Decision in this matter. Should the Report not be final at that time, Direct Energy shall file with the Board an Interim Report of any and all findings and recommendations made to date and will provide further reports to the Board when requested;
4. Direct Energy shall implement any recommendations made in the Report in order to minimize contract management complaints relating to renewals and cancellations and confirm such implementation to the Board;

5. Direct Energy is to file a report with the Board on a quarterly basis of all consumer complaints regarding electricity and gas contracts related to renewals and cancellations received in the preceding quarter. The report should itemize each complaint including the identity and contact details of the consumer making the complaint, the date the complaint was received, whether or not the complaint was resolved, and a summary of any advice given or action taken or agreed in relation to the consumer complaint.

All of which is respectfully submitted.