



EB-2010-0221

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

AND IN THE MATTER OF a Notice of Intention to Make an Order for Compliance, Suspension and an Administrative Penalty against Summitt Energy Management Inc.

PROCEDURAL ORDER NO. 3

The Ontario Energy Board (the "Board"), issued a Notice of Intention of Make an Order for Compliance against Summitt Energy Management Inc. ("Summitt") under section 112.2 of the *Ontario Energy Board Act, 1998* (the "Act") on June 17, 2010. By way of letter dated July 8, 2010, Summitt gave notice to the Board requiring the Board to hold a hearing on this matter. The Board assigned the proceeding File No. EB-2010-0221.

On July 9, 2010, the Board issued a Notice of Hearing and Procedural Order No. 2 ("P.O. No. 2"). In P.O. No. 2, the Board determined that it would proceed with the matter by way of an oral hearing on August 23, 2010.

On August 4, 2010, Summitt filed a Notice of Motion with the Board seeking an adjournment of the August 23 hearing to a later date, and a Board order for the following pre-hearing procedures:

1. A copy of all documents Compliance Staff intends to rely on as evidence;
2. A signed witness statement or a summary for every witness whose oral evidence Compliance Staff intends to rely on;
3. The names and current contact information for each witness;
4. A pre-hearing examination of the individual customers identified in the Board's June 17 Notice;

5. The names and current contact information for each of the 28 customers;
6. A list of expert witnesses Compliance Staff intends to call, their curriculum vitas and a summary of their anticipated oral evidence;
7. A written interrogatory phase; and
8. A technical conference, issues conference, facilitated mediation or alternative dispute resolution, in addition to a pre-hearing conference.

The Motion also requested an order to establish deadlines for the proposed pre-hearing procedures.

Furthermore, on August 11, 2010, Summitt filed a letter with the Board requesting that the Board provide certain customer data for all Ontario electricity retailers and gas marketers, as filed pursuant to the Board's reporting and record keeping requirements. Summitt requested the information on an aggregated basis.

On August 11, 2010, Compliance Counsel filed written submissions responding to Summitt's Motion.

On August 12, 2010, the University of Western Ontario's Community Legal Services ("CLS") filed a written submission in support of its request to intervene in this proceeding.

On August 12, 2010, Summitt filed a letter with the Board, requesting additional time to prepare written submissions in support of its motion. Summitt also stated its preference for the Board to hear the Motion on August 23, 2010.

In response to Summitt's letter, on August 12, 2010, Compliance Counsel filed a letter with the Board stating that it was prepared to proceed with the hearing of the Motion during the week of August 16, 2010. However, the letter did not object to Summitt's request to hear the motion on August 23, 2010. Compliance Counsel indicated that there are 31 witnesses that are prepared to give evidence at the hearing scheduled for August 23, 2010 and that if the hearing is to be adjourned those witnesses need to be notified as soon as possible.

The Board has determined that it will hear the Motion by way of an oral hearing on August 23, 2010. The hearing of the Compliance matter itself will not proceed as

originally scheduled in P.O. No. 1. While the date for the commencement of the Compliance matter is dependent on the Board's decision on the Motion, the Board considers it prudent to advise the Parties that it has made arrangements for court reporters and a hearing room for the week of August 30, 2010. This step should not be construed as predictive in any manner whatsoever of the outcome of the Motion. It has been taken merely to ensure that, depending on the outcome of the Motion, those dates could be available. If provision for these logistics is not made now, the necessary facilities might not be available, no matter what the outcome of the Motion might be.

The Board has further determined that it will consider Summitt's request for certain customer data, alluded to above, at the hearing of the Motion on August 23, 2010. In addition, the Board will hear submissions on the standing of CLS to intervene in this proceeding at that time.

Please be aware that this Procedural Order may be amended, and further procedural orders may be issued from time to time.

THE BOARD THEREFORE ORDERS THAT:

1. Parties shall file by August 18, 2010 a book of authorities in support of their positions on the Motion as well as Summitt's request in its letter of August 11, 2010 for certain customer data and CLS' request for intervenor status. Additionally, any party wishing to file a factum in support of its position on the Motion shall do so by August 18, 2010.
2. The hearing of the Motion will be held at 2300 Yonge Street, 25th Floor, Toronto, Ontario in the Board's West Hearing Room on August 23, 2010. The hearing will commence at 9:30am.
3. All filings to the Board must quote file number EB-2010-0221, be made through the Board's web portal at www.errr.oeb.gov.on.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and email address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available you may email your document to the address below. Those who do not have internet access are

required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

4. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required dated.

ISSUED at Toronto, August 13, 2010
ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary