



**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. 4**

The Ontario Energy Board (the "Board"), issued a Notice of Intention to 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 which stated that that the Board 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 (the "Motion") with the Board seeking an adjournment of the August 23 hearing to a later date and a Board order for a number of pre-hearing procedures. 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.

Procedural Order No. 3 was issued on August 13, 2010, in which among other things, the Board determined that it would hear the Motion on August 23, 2010 and would also hear submissions on the standing of CLS to intervene in this proceeding.

On August 23, 2010, after hearing oral submissions, the Board made a decision on the Motion and denied CLS's application for intervenor status. The Board also indicated that the oral hearing would proceed on August 30, 2010.

The Oral hearing commenced on August 30, 2010 and concluded on September 8, 2010.

The Board considers it necessary to make provisions for the following matters related to this proceeding. 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. Compliance Counsel shall file with the Board its written submissions by September 13, 2010.
2. Summitt Energy Management Inc. shall file with the Board its written submissions by September 20, 2010.
3. Compliance Counsel shall file with the Board any reply submissions by September 22, 2010.
4. The parties' submissions should address whether Summitt has contravened any enforceable provisions, the appropriate remedies for any contraventions, and if further evidence should be admitted in determining an appropriate remedy. The parties' submissions should also specifically address the following issues:
  - a. Do the enforceable provisions that Summitt is alleged to have contravened provide for absolute or strict liability?
  - b. Are potential deficiencies in Summitt's contractual documents relevant to the determination of the contraventions alleged in the Notice?
  - c. In the event that Summitt is found liable for some or all of the alleged contraventions, does the Board have the authority to issue a restitutionary remedy in those cases (i.e. render a specific contract void, order repayment of amounts paid by a consumer, etc.)?

- d. What consideration should the Board give to the new *Energy Consumer Protection Act, 2010* and the draft regulations under that legislation in determining an appropriate remedy for any contraventions?
5. 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](http://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](http://www.oeb.gov.on.ca). If the web portal is not available you may email your document to the Board Secretary at [BoardSec@oeb.gov.on.ca](mailto:BoardSec@oeb.gov.on.ca). Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.
6. 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, September 9, 2010.  
**ONTARIO ENERGY BOARD**

Original signed by

Kirsten Walli  
Board Secretary