



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 AND ORDER

Background

Direct Energy Marketing Limited ("Direct Energy") filed an application dated March 1, 2010, with the Ontario Energy 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. Board staff filed interrogatories on May 7, 2010, and Direct Energy filed responses to those 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.

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. 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, but submitted that if the evidence were to be

admitted that it be kept confidential. On July 16, 2010, the Board issued a decision accepting the additional evidence proposed to be filed by staff and indicated that the evidence would be held in confidence.

Board staff filed a confidential submission on the application on August 4, 2010 and also provided a redacted version for the public record. Direct Energy filed its reply submission on August 18, 2010.

Issues in this Application

The Board considers a number of issues when deciding whether to license an electricity retailer. Key areas that are reviewed include the financial position, technical capability and the conduct of the applicant. In this application, no issues were raised regarding the finances or technical capability of Direct Energy. However, concerns were raised regarding the conduct of Direct Energy.

Gas marketers and electricity retailers in Ontario are required to comply with the Act, regulations under the Act, and the Board's Codes and Rules that apply to their business. Direct Energy, which holds both gas marketer and electricity retailer licences, was subject to an enforcement order by the Board issued on May 5, 2009. The order imposed an administrative penalty on Direct Energy for a contravention of an enforceable provision, as defined in the Act, which involved making a false, misleading or deceptive statement to a consumer.

In this proceeding, Board staff submitted evidence which staff argued revealed problems with Direct Energy's contract management practices relating to the renewal and cancellation of contracts. In its submission, Board staff proposed that five conditions relating to contract renewal and cancellation be imposed on Direct Energy's licence renewal. Direct Energy opposed the imposition of the conditions.

Board Findings

The electricity retailer licence of Direct Energy will be renewed for the standard term of five years. Three conditions will be included in the licence, for the reasons that follow.

I find that the evidence submitted by Board staff is sufficient to indicate that Direct Energy has experienced, and may still experience, problems with their contract renewal and cancellation processes that have caused the company difficulty in complying with its regulatory obligations.

I acknowledge Direct Energy's evidence that the number of customer complaints received by the Board about Direct Energy is a very small percentage of Direct Energy's entire customer base. However, there is no evidence as to the percentage of total renewals and cancellations that result in complaints to Direct Energy and/or the Board, which might be a more meaningful figure. I further agree with the company that some complaints from consumers are prompted by market issues outside the control of the retailer. Nevertheless, it is important to maintain consumer confidence in the gas and electricity markets, and the renewal of customers without the ability to provide a copy of the original contract, or in the face of a request for cancellation, is indicative of some failure in the processes or systems of Direct Energy. The evidence submitted by Board staff, which was a randomly selected subset of 80 complaints received by the Board about Direct Energy, revealed at least 45 instances where this occurred.

In several places in the evidence and submissions, Direct Energy lists the initiatives it has undertaken to reduce complaint volumes. However, with two exceptions, no quantitative information was provided as to the success of the initiatives. Twelve initiatives were listed in section 14 of the application. Interrogatory 10 from Board staff sought a description and implementation date for each initiative, as well as a description of how success is measured and the results of such measures. Five initiatives were described in response to the question, with results provided for two of the five initiatives. Direct Energy listed twelve initiatives in its submission of August 18, 2010, but the titles for seven of these initiatives were not the same as the initiatives listed in section 14 of the application, so it was not clear whether the two lists are the same. No quantitative evaluation of the success of the initiatives was included in the submission.

I agree with the company that the evidence on the record is not sufficient to conclude that Direct Energy's recent and ongoing efforts to improve customer service have had no effect. Indeed, the results of the two initiatives for which data was provided in Interrogatory 10 appeared to indicate improvement. It would be helpful to the Board, in monitoring the company's compliance with its licence and with legislative and regulatory requirements, to obtain further data regarding the success (or lack thereof) of Direct

Energy's customer service and process initiatives. I presume that a responsible market participant would collect such data for its own purposes, even in the absence of a licence condition.

Board staff recommended that five conditions be imposed on Direct Energy as part of the licence renewal as follows:

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.

I find that conditions that are narrower and more specific are more appropriate to elicit the information that will be helpful to the Board. The information the Board needs, is in essence:

- What has been done by Direct Energy to improve its processes and customer service around contract renewals and cancellations;
- How successful have these efforts been; and
- What remains to be done.

Direct Energy will be required to comply with the following reporting conditions. Each of the reports is to be filed and held in confidence, subject to any further order of the Board.

1. Report to the Board on the Success of Certain Initiatives

Direct Energy must prepare a report to be filed with the Board on or about November 19, 2010. If a complete report is not available at that time, Direct Energy shall file an

interim report on that date and a final report no later than January 15, 2011. The report must contain the following information:

- A list of all initiatives, with their implementation dates, undertaken by Direct Energy since December 5, 2008 that are targeted at or effective in reducing consumer complaints and/or improving systems and processes related to contract renewals and cancellations;
- A brief description of how each initiative is intended to reduce consumer complaints or improve processes related to contract renewals and cancellations;
- An identification of the initiatives targeted at or effective in ensuring contracts exist and can be produced for all customers supplied by Direct Energy (and a description and timelines for these initiatives if they are not included in the list required under the first bullet);
- An evaluation of the results of each initiative, supported by quantitative data. If no quantitative evaluation of an initiative is available, an explanation should be provided as to how Direct Energy has assessed the success of the initiative. The evaluation should cover the period beginning at the later of December 5, 2008 or the implementation date of the initiative, and ending at September 30, 2010; and
- A qualitative assessment by Direct Energy of the success of each initiative, including a statement as to what further improvements need to be made, how those improvements are to be achieved, and the dates that the further initiatives are to be implemented.

2. Report to the Board on Certain Customer Complaint Data

In paragraphs 2 b and c quoted above, Board staff recommended a review of certain stages in the complaint tracking and resolution process. I find that the following pieces of information should be useful in this regard, and anticipate that this data is already collected by the company, and should not be onerous to produce.

Direct Energy is required to file a report with the Board on or about November 19, 2010. If a complete report is not available at that time, Direct Energy shall file an interim report on that date and a final report no later than January 15, 2011. The report must contain the following information:

- For consumer complaints regarding contract renewals and cancellations for the period January 1, 2009 to September 30, 2010:
 - The total number of complaints in that category received by Direct Energy from consumers or the Board, and the number of complaints that were justified (i.e. required some remedial action by Direct Energy);
 - For justified complaints only, the specific nature of the complaint, a description of the remedial action taken, and the total time that elapsed between the date the complaint was received and the date of the final remedial action by the company. If Direct Energy so chooses, an explanation of each stage of processing the complaint may be included.
- For requests by customers for a copy of their contract, received by Direct Energy from consumers or the Board, within the period January 1, 2009 to September 30, 2010:
 - The total time elapsed between the date the request was received and the date the contract was mailed to the consumer
 - Where the contract was never mailed, an explanation of that failure.

I will not prescribe, as recommended by Board staff, by whom these reports must be reviewed. I presume the company will notify the appropriate management personnel of the requirements of the licence and the results of the reports.

3. Quarterly Report to the Board

Board staff recommended quarterly reporting by Direct Energy of consumer complaints regarding contract renewals and cancellations. I agree that some reporting should be required, but will limit the time period for reporting.

Direct Energy shall file with the Board on a quarterly basis, a report of all consumer complaints regarding contract renewals and cancellations received in that quarter by Direct Energy from consumers or the Board. The report shall include:

- The identity and contact details of the consumer making the complaint
- The date the complaint was received
- A brief description of the complaint
- A description of how the complaint was resolved, or whether it remained unresolved; and

- A description of any remedial action taken by Direct Energy in response to the complaint.

Direct Energy shall file the quarterly reports beginning with the quarter October to December 2010, and ending with the quarter October to December 2011. The quarterly reports should be filed with the Board approximately eight weeks following the end of the quarter.

IT IS THEREFORE ORDERED THAT:

1. The electricity retailer licence is granted for a period of five years.
2. The licensee shall abide by the following conditions:

Direct Energy must prepare a report to be filed with the Board on or about November 19, 2010. If a complete report is not available at that time, Direct Energy shall file an interim report on that date and a final report no later than January 15, 2011. The report must contain the following information:

- A list of all initiatives, with their implementation dates, undertaken by Direct Energy since December 5, 2008 that are targeted at or effective in reducing consumer complaints and/or improving systems and processes related to contract renewals and cancellations;
- A brief description of how each initiative is intended to reduce consumer complaints or improve processes related to contract renewals and cancellations;
- An identification of the initiatives targeted at or effective in ensuring contracts exist and can be produced for all customers supplied by Direct Energy (and a description and timelines for these initiatives if they are not included in the list required under the first bullet);
- An evaluation of the results of each initiative, supported by quantitative data. If no quantitative evaluation of an initiative is available, an explanation should be provided as to how Direct Energy has assessed the success of the initiative. The evaluation should cover the period beginning at the later of December 5, 2008 or the implementation date of the initiative, and ending at September 30, 2010; and

- A qualitative assessment by Direct Energy of the success of each initiative, including a statement as to what further improvements need to be made, how those improvements are to be achieved, and the dates that the further initiatives are to be implemented.

Direct Energy is required to file a report with the Board on or about November 19, 2010. If a complete report is not available at that time, Direct Energy shall file an interim report on that date and a final report no later than January 15, 2011. The report must contain the following information:

- For consumer complaints regarding contract renewals and cancellations for the period January 1, 2009 to September 30, 2010:
 - The total number of complaints in that category received by Direct Energy from consumers or the Board, and the number of complaints that were justified (i.e. required some remedial action by Direct Energy);
 - For justified complaints only, the specific nature of the complaint, a description of the remedial action taken, and the total time that elapsed between the date the complaint was received and the date of the final remedial action by the company. If Direct Energy so chooses, an explanation of each stage of processing the complaint may be included.
- For requests by customers for a copy of their contract, received by Direct Energy from consumers or the Board, within the period January 1, 2009 to September 30, 2010:
 - The total time elapsed between the date the request was received and the date the contract was mailed to the consumer
 - Where the contract was never mailed, an explanation of that failure.

Direct Energy shall file with the Board on a quarterly basis, a report of all consumer complaints regarding contract renewals and cancellations received in that quarter by Direct Energy from consumers or the Board. The report shall include:

- The identity and contact details of the consumer making the complaint
- The date the complaint was received
- A brief description of the complaint
- A description of how the complaint was resolved, or whether it remained unresolved; and
- A description of any remedial action taken by Direct Energy in response to the complaint.

Direct Energy shall file the quarterly reports beginning with the quarter October to December 2010, and ending with the quarter October to December 2011. The quarterly reports should be filed with the Board approximately eight weeks following the end of the quarter.

Each of the reports is to be filed and held in confidence, subject to any further order of the Board.

DATED at Toronto, September 22, 2010

ONTARIO ENERGY BOARD

Original signed by

Jennifer Lea
Counsel, Special Projects