



EB-2010-0368
EB-2010-0369

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

AND IN THE MATTER OF applications by Summitt Energy Management Inc. on behalf of Summitt Energy LP to renew Electricity Retailer Licence ER-2005-0541 and Gas Marketer Licence GM-2005-0542.

By delegation, before: Jennifer Lea

DECISION

On June 9, 2011, I issued a Decision and Order (“the Decision”) with respect to applications filed by Summitt Energy Management Inc. on behalf of Summitt Energy LP (“Summitt”) to renew its electricity retailer and gas marketer licences. The Decision and Order included findings with respect to confidentiality of certain interrogatory responses and Summitt’s reply submission.

The Decision and Order was issued in two versions: one complete version, to be held in confidence, and one with confidential information redacted, to be placed on the public record.

On June 17, 2011, Summitt filed a letter with the Board in which it requested that I revisit my decision to redact the following portions of the Decision and Order:

- the last sentence of the first paragraph of section 3.1 “Contract Management”, and
- the second full sentence in the second paragraph on page 4 of the Decision and Order.

Summitt provided the following rationale for its request:

- the subject sentences “do not, in and of themselves, disclose statements/findings of fact

that amount to confidential information”;

- Summitt has never requested that these sentences be redacted; and
- the subject sentences are necessary to put into context the unredacted related statements in the corresponding paragraphs.

Five portions of the Decision were redacted. The two sentences that Summitt submits should not be redacted are the two redacted portions of the Decision that disclose or refer to information that could be interpreted as favourable to Summitt. The other three redacted portions disclose or refer to information that could be interpreted as unfavourable to the applicant. The first and third arguments put forward by Summitt for the removal of the redactions (the subject sentences do not disclose statements/findings of fact that amount to confidential information, and the subject sentences are necessary to put into context the unredacted related statements), if accepted, apply equally to all five redacted portions of the Decision. I find that all five redacted sections should be treated similarly.

I based my findings regarding confidentiality on the Board's *Practice Direction on Confidential Filings* and the Board's form of application for electricity retailer and gas marketer licences. Section 4.1.2 of the Board's Practice Direction reads:

4.1.2 Where a Board template or filing guideline indicates that information will be treated in confidence, the information will not be placed on the public record nor provided to any other party unless another party requests access to that information under section 4.1.4 and the Board rules in favour of that request.

The electricity retailer and gas marketer licence application forms are explicitly included as a “Board template or filing guideline” by section 4.1.4 of the Practice Direction. Those templates indicate that information provided in sections 10 to 15 of the application forms will be held in confidence. In this case, no request has been made by another party for access to that information.

Summitt requested that certain interrogatory responses, and the entirety of its submission, be held in confidence by the Board. I granted these requests (with a minor exception for information already on the public record) on the basis that the information in question was similar to that required under sections 12 and 14 of the application forms. If information is to be held in confidence on the application forms, it must be necessary that interrogatories respecting that information, and submissions referencing that information, also be held in confidence. On the same basis, I redacted from the Decision phrases and sentences that directly reference the portions of the interrogatories and submissions that were held in

confidence. All the redacted portions of the Decision summarize or refer to information that is similar to that required under section 14 of the application forms.

I do not accept as valid Summitt's second argument: that Summitt has never requested that these sentences in the Decision be redacted. Summitt itself requested that certain of its interrogatory answers and its submission be held in confidence. The information redacted in the Decision summarizes or refers to information contained in Summitt's confidential submission or in interrogatory answers for which Summitt itself requested confidentiality. The redactions in the Decision flow directly from the findings on confidentiality of interrogatory answers and submissions.

I therefore confirm the Decision and Order of June 9, 2011.

DATED at Toronto, June 22, 2011

ONTARIO ENERGY BOARD

Original signed by

Jennifer Lea
Counsel, Special Projects