



**EB-2010-0335**

**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 Blue  
Power Distributed Energy Corporation to renew its  
electricity retailer licence.

By delegation, before: Jennifer Lea

## **DECISION AND ORDER**

### **Background**

Blue Power Distributed Energy Corporation ("Blue Power") filed an application dated November 8, 2010 with the Ontario Energy Board under section 60 of the *Ontario Energy Board Act, 1998* to renew its electricity retailer licence. Blue Power filed supplementary information to complete the application on January 10, 2011.

The Board issued a Notice of Application and Written Hearing for the application on February 25, 2011. Bluewater Distribution Corporation ("Bluewater Distribution"), an electricity distributor, filed a submission dated March 17, 2011 raising issues regarding the similarity of the name and logos of the applicant and the distributor. Blue Power responded to the submission on March 28, 2011.

Before the application was determined, on August 25, 2011, the Board issued a Notice of Intention to make an order for compliance and impose an administrative penalty on Blue Power for contraventions of various provisions of consumer protection legislation and codes of the Board. Blue Power provided a written Assurance of Voluntary

Compliance, which was accepted by the Board on September 12, 2011, and paid an administrative penalty.

Board staff asked the Board to make provision for interrogatories and submissions with respect to the application on September 9, 2011. Board staff and Bluewater Distribution filed interrogatories, and Blue Power responded to the interrogatories. Board staff and Bluewater Distribution filed submissions on the application. During the time that the record was being completed and the application considered, the Board issued a series of decisions extending the term of Blue Power's electricity retailer licence.

### **Board Findings**

The Board's review of an electricity retailer licence application includes consideration of the technical capability, financial position and the conduct of the applicant. In this application, no issues were raised regarding the applicant's technical capability. The concerns raised by Board Staff in its interrogatories with respect to financial matters have been addressed by the applicant. However, the record discloses two sources of concern regarding the conduct of the applicant.

As stated above, Blue Power was the subject of a compliance proceeding before the Board. Some of the contraventions, admitted to by Blue Power in its Assurance of Voluntary Compliance, were serious, as they involved providing incomplete information to consumers, or information that could mislead consumers. However, with respect to all deficiencies identified in the compliance proceeding (except in two cases where the allegations were withdrawn), the Assurance indicates that Board staff were satisfied that the deficiencies had been remedied. I will therefore grant the application for an electricity retailer licence, with the standard term of five years.

I note that according to the Assurance, Blue Power admitted that at the time of the inspection that led to the compliance proceeding, no compliance monitoring and quality assurance program existed that satisfied the requirements of sections 7.4 and 7.5 of the Board's Electricity Retailer Code of Conduct. However, in the Assurance, Blue Power committed itself to ensuring that "effective as of the date of this Assurance [September 12, 2011] the compliance monitoring and quality assurance program to monitor compliance meets the requirements set out in section 7.4 and 7.5 of the Codes". In the Assurance it was noted that Board staff agreed that the deficiency had been remedied.

I find that it would be helpful to the Board in monitoring Blue Power's compliance with its licence and legislative and regulatory requirements to receive information regarding the results of Blue Power's compliance monitoring and quality assurance program.

Maintaining consumer confidence in the electricity market, and protecting consumers in that market, is an important part of the Board's mandate. The imposition of licence conditions on electricity retailers, where appropriate, can facilitate this mandate.

Blue Power will be required to file with the Board, no later than December 31, 2012, the following information:

- A description of Blue Power's compliance monitoring and quality assurance program, including a description of the specific protocols for testing the performance of all salespersons and verification representatives in relation to compliance with applicable statutes, regulations and regulatory requirements;
- A summary of the results of the program, indicating trends in compliance and quality assurance over the period September 12, 2011 to December 1, 2012; and
- A description of Blue Power's strategy for continuous improvement in legislative and regulatory compliance, demonstrating the link between the results of the program to date and measures to be implemented in the future.

As indicated earlier in the summary of the application above, Bluewater Distribution filed interrogatories and submissions raising issues regarding the similarity of the name and logos of the applicant and the distributor. Bluewater Distribution submitted that the similarity in names and logos creates an implicit assumption in the minds of consumers that the retailer is the distributor. In its final submission, Bluewater Distribution asked that Blue Power be restricted from marketing electricity in the whole of Lambton County through a licence condition that would prohibit Blue Power from marketing electricity in that county. Although Hydro One Networks Inc. is the licensed electricity distributor for some consumers in Lambton County, Bluewater Distribution submitted that residents of the county may have a difficult time distinguishing between the two distributors, and that therefore the confusion between distributor and retailer could occur throughout the county.

I will not impose a special condition regarding the marketing of electricity by Blue Power in Lambton County. If I were to consider such a condition, I accept Blue Power's argument that any such restriction should apply only to the service area of Bluewater Distribution, not to the service area of another distributor. Further, I note that the record indicates that Blue Power is not marketing electricity in Bluewater Distribution's service

area, as no Retail Service Agreement exists between the two entities. Should a Retail Service Agreement be signed between Blue Power and Bluewater Distribution, there exist both legislative and regulatory requirements that electricity retailer salespeople clearly identify themselves and specifically differentiate themselves from distribution companies. While noting Bluewater Distribution's concerns regarding the possibility of customer confusion due to the similarity of the names of the distributor and the retailer, I am not prepared to impose any special condition in this regard on the basis of the record before me at this time.

**IT IS THEREFORE ORDERED THAT:**

1. The electricity retailer licence is granted for a period of five years.
2. In addition to the terms and conditions of the standard electricity retailer licence, the licensee shall abide by the special conditions contained in Schedule 2 to the licence.

**DATED** at Toronto, March 30, 2012

**ONTARIO ENERGY BOARD**

*Original signed by*

Jennifer Lea  
Counsel, Special Projects