



**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



# Gas Marketer Licence

**GM-2010-0336**

**morEnergy Savings Corp.**

**Valid Until**

**March 29, 2017**

*Original signed by*

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**Jennifer Lea**  
**Counsel, Special Projects**  
**Ontario Energy Board**  
**Date of Issuance: March 30, 2012**

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## **1 Definitions**

In this Licence:

“**Act**” means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

“**low-volume consumer**” means a person who annually uses less than 50,000 cubic meters of gas;

“**Licensee**” means morEnergy Savings Corp.;

“**regulation**” means a regulation made under the Act.

## **2 Interpretation**

- 2.1 In this Licence, words and phrases shall have the meaning ascribed to them in the Act. Words or phrases importing the singular shall include the plural and vice versa. Headings are for convenience only and shall not affect the interpretation of this Licence. Any reference to a document or a provision of a document includes an amendment or supplement to, or a replacement of, that document or that provision of that document. In the computation of time under this Licence, where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens. Where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

## **3 Authorization**

- 3.1 The Licensee is authorized, under Part IV of the Act, and subject to the terms and conditions set out in this Licence:
- a) to sell or offer to sell gas to a low-volume consumer;
  - b) to act as the agent or broker for seller of gas to a low-volume consumer; and
  - c) to act or offer to act as the agent or broker of a low-volume consumer in the purchase of gas.
- 3.2 The Licensee is authorized to conduct business in the name under which this Licence is issued, or any trade name(s) listed in Schedule 1.

## **4 Obligation to Comply with Legislation and Regulations**

- 4.1 The Licensee shall comply with all applicable provisions of the Act and regulations under the Act except where the Licensee has been exempted from such compliance by regulation.

## **5 Obligation to Comply with Codes**

- 5.1 The Licensee shall at all times comply with all applicable provisions of the Code of Conduct for Gas Marketers, as issued and amended by the Board from time to time under Part III of the Act.
- 5.2 This Licensee shall:
- a) make a copy of the Code available for inspection by members of the public at its head office and regional offices during normal business hours; and
  - b) provide a copy of the Code to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

## **6 Agent for Service**

- 6.1 If the Licensee does not have an office or other place of business in Ontario, the Licensee shall ensure the continuing appointment at all times of an individual who is a resident of Ontario and is at least 18 years old, or a corporation that has its head office or registered office in Ontario, as the Licensee's agent for service in Ontario on whom service of process, notices or other documentation may be made.

## **7 Provision of Information to the Board**

- 7.1 The Licensee shall maintain records of and provide, in the manner and form determined by the Board, such information as the Board may require from time to time.
- 7.2 Without limiting the generality of paragraph 7.1, the Licensee shall notify the Board of any material change in circumstances that adversely affects or is likely to adversely affect the business, operations or assets of the Licensee as soon as practicable, but in any event no more than twenty (20) days past the date upon which such change occurs.

## **8 Customer Complaint and Dispute Resolution**

- 8.1 The Licensee shall participate in a consumer complaints resolution process selected by the Board.

## **9 Term of Licence**

- 9.1 This Licence shall take effect on March 30, 2012 and expire on March 29, 2017. The term of this Licence may be extended by the Board.

## **10 Fees and Assessments**

- 10.1 The Licensee shall pay all fees charged and amounts assessed by the Board.

## **11 Communication**

- 11.1 The Licensee shall designate a person that will act as a primary contact with the Board on matters related to this Licence. The Licensee shall notify the Board promptly should the contact details change.



- 11.2 All official communication relating to this Licence shall be in writing.
- 11.3 All written communication is to be regarded as having been given by the sender and received by the addressee:
- a) when delivered in person to the addressee by hand, by registered mail, or by courier;
  - b) ten (10) business days after the date of posting, if the communication is sent by regular mail; or
  - c) when received by facsimile transmission by the addressee, according to the sender's transmission report.

## **12 Copies of the Licence**

- 12.1 The Licensee shall:
- a) make a copy of this Licence available for inspection by members of the public at its head office and regional offices during normal business hours; and
  - b) provide a copy of this Licence to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

**SCHEDULE 1 AUTHORIZED TRADE NAMES**

None

## **SCHEDULE 2 SPECIAL CONDITIONS**

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

1. A description of morEnergy'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;
2. 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
3. A description of morEnergy'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.