



**EB-2010-0236**  
**EB-2010-0237**

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

**AND IN THE MATTER OF** an application under section 60 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Schedule B to renew Energhx Green Energy Corporation's electricity retailer licence.

**AND IN THE MATTER OF** an application under section 50 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Schedule B to renew Energhx Green Energy Corporation's gas marketer licence.

By delegation, before: Jennifer Lea

### **DECISION AND ORDER**

Energhx Green Energy Corporation, carrying on business as Energhx Consulting ("Energhx") filed an application with the Ontario Energy Board, received on June 8, 2010, under section 60 of the *Ontario Energy Board Act*, 1998 (the "Act") to renew its electricity retailer licence. Energhx also filed an application under section 50 of the Act to renew its gas marketer licence. The Board assigned the applications file numbers EB-2010-0236 and EB-2010-0237, respectively.

Energhx filed supplementary information and the applications were completed on August 17, 2010.

The Board issued a Notice of Application and Written Hearing on September 7, 2010. Only Board staff participated in the hearing. Board staff filed written interrogatories on October 8, 2010. Energhx filed responses to Board staff interrogatories on October 27,

2010. Board staff filed a submission on November 10, 2010 and Energhx filed its reply submission on November 25, 2010.

On January 28, 2011, following the enactment of The *Energy Consumer Protection Act, 2010* ("ECPA") on January 1, 2011, the Board re-opened the record to provide Energhx with an opportunity to submit evidence of compliance with the current legislative and regulatory requirements. The terms of the licences were extended.

Starting in early 2011, the Board commenced a series of compliance inspections of those electricity retailers and gas marketers that filed a Certificate of Compliance with the Board. The inspection included Energhx. On August 25, 2011 the Board issued a Notice of Intention to Make an Order against Energhx for contraventions of various provisions of consumer protection legislation and Board Codes. In response to the Notice, in a letter dated September 9, 2011, Energhx requested an oral hearing. To accommodate the hearing process, the terms of the licences were further extended to April 30, 2012.

The hearing requested by Energhx was held on February 7, 2012. On March 26, 2012, the Board issued a decision and order in which Energhx was ordered to pay an administrative penalty in the amount of \$10,000.

### **Issues in the Applications**

The Board originally issued an electricity retailer licence and gas marketer licence to Energhx on October 22, 2009. The standard term for such licences is five years. However, the licences granted to Energhx were for a one year term, due to concerns with respect to the financial viability. The decision of October 22, 2009 invited the applicant, in applying for renewal of the licence, to "improve its financial situation and bring evidence of that improvement". In addition, the decision pointed out the necessity for licensees to familiarize themselves with Board Codes of Conduct that help protect consumers.

In these applications for renewal of the licences, key areas for consideration by the Board include the financial position, technical capability and the conduct of applicant. Board staff raised concerns with respect to the evidence filed in all three areas, and submitted that the Energhx applications for an electricity retailer licence and a gas marketer licence should be denied.

In its reply submission Energhx requested "... that the Board grant Energhx some leeway at this early stage of its business development by renewing its licences for another year. If the licences are not renewed, Energhx will be put out of business and will lose all of its investment to date".

### **Compliance Proceeding EB-2011-0311**

The ECPA, in effect since January 1, 2011, is designed to protect energy consumers by ensuring that retailers and marketers follow fair business practices and that consumers are provided with essential information before they sign energy contracts. In the compliance proceeding, it was alleged that Energhx contravened sections of Ontario Regulation 90/99, Ontario Regulation 389/10, the ECPA and the Board's Codes of Conduct.

Although the Board found that Energhx had breached the legislation and the Codes, the Board also found that:

- By the time of the hearing, Energhx had brought itself into compliance with all issues;
- Energhx did not appear to derive any economic benefit from these contraventions and had very limited marketing and retailing activities that were undertaken beyond friends, family or company employees; and
- The potential of the contraventions to adversely affect consumers was not proven to be more than minor, given the evidence presented in the hearing.

The Board emphasized in the compliance decision that it expects Energhx to take whatever steps are necessary to ensure that it has a comprehensive and accurate understanding of all applicable legal and regulatory requirements and remains fully compliant with them if it intends to continue business operations as a retailer and/or marketer.

### **Board Findings**

As noted above, Board staff submitted that these licence applications should be denied. However, since the time of that submission, the Board has found that Energhx has brought itself into compliance with legislative and regulatory requirements. I find that it is appropriate to grant the applications. However, the issues raised by staff with respect

to the financial performance of the applicant have not, in my view been fully answered, and the financial viability of the entity remains a concern.

I find that the licences will be granted for a two year term to enable Energhx to improve its financial position and demonstrate its continued compliance with legislative and regulatory requirements. I further find that the following reporting conditions should be imposed in the licence to allow the Board to monitor Energhx's financial progress and compliance with the licences.

Energhx will be required to file with the Board, no later than June 28, 2013, the following information:

1. Audited financial statements for the 2012 fiscal year;
2. A description of Energhx'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;
3. A summary of the results of the testing program conducted within the reporting period ending on April 30, 2013; and
4. A description of Energhx's strategy for any further improvement needed to achieve continuing legislative and regulatory compliance, demonstrating the link between the results of the program to date and measures to be implemented in the future.

**IT IS THEREFORE ORDERED THAT:**

1. The electricity retailer licence is granted for a period of two 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.
3. The gas marketer licence is granted for a period of two years.

4. In addition to the terms and conditions of the standard gas marketer licence, the licensee shall abide by the special conditions contained in Schedule 2 to the licence.

**DATED** at Toronto, April 30, 2012

ONTARIO ENERGY BOARD

*Original signed by*

Jennifer Lea  
Counsel, Special Projects



# Electricity Retailer Licence

**ER-2010-0236**

**Energhx Green Energy Corporation**  
carrying on business as  
**Energhx Consulting**

Valid Until

April 29, 2014

*Original signed by*

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**Jennifer Lea**  
**Counsel, Special Projects**  
**Ontario Energy Board**  
**Date of Issuance: April 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;

“**consumer**” means a person who uses, for the person’s own consumption, electricity that the person did not generate;

“**Electricity Act**” means the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A;

“**Licensee**” means Energhx Green Energy Corporation carrying on business as Energhx Consulting;

“**Market Rules**” means the rules made under section 32 of the Electricity Act; and

“**regulation**” means a regulation made under the Act or the Electricity Act;

“**residential or small business consumer**” means a consumer who annually uses less than 150,000 kWh of electricity;

For the purpose of this Licence, the terms “retailer” and “retailing” do not apply to a Licensed Distribution Company fulfilling its obligations under section 29 of the Electricity Act.

## 2 Interpretation

- 2.1 In this Licence, words and phrases shall have the meaning ascribed to them in the Act or the Electricity 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 V of the Act and subject to the terms and conditions set out in this Licence:
- a) to sell or offer to sell electricity to a consumer;
  - b) to act as the agent or broker for a retailer with respect to the sale or offering for sale of electricity; and
  - c) to act or offer to act as the agent or broker for a consumer with respect to the sale or offering for sale of electricity.



- 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, Regulations and Market Rules**

- 4.1 The Licensee shall comply with all applicable provisions of the Act, the Electricity Act and regulations under these Acts, except where the Licensee has been exempted from such compliance by regulation.
- 4.2 The Licensee shall comply with all applicable Market Rules.

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

- 5.1 The Licensee shall at all times comply with the following Codes (collectively the "Codes") approved by the Board, except where the Licensee has been specifically exempted from such compliance by the Board:
- a) the Electricity Retailer Code of Conduct;
  - b) the Retail Settlement Code; and
  - c) the Retail Metering Code.
- 5.2 The Licensee shall:
- a) make a copy of the Codes 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 Codes 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 Market Power Mitigation Rebates**

- 7.1 The Licensee shall comply with the pass through of Ontario Power Generation rebate conditions set out in Appendix A of this Licence.

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

- 8.1 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.
- 8.2 Without limiting the generality of paragraph 8.1, 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.

## **9 Customer Complaint and Dispute Resolution**

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

## **10 Term of Licence**

- 10.1 This Licence shall take effect on April 30, 2012 and expire on April 29, 2014. The term of this Licence may be extended by the Board.

## **11 Fees and Assessments**

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

## **12 Communication**

- 12.1 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.
- 12.2 All official communication relating to this Licence shall be in writing.
- 12.3 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.

## **13 Copies of the Licence**

- 13.1 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**

1. Energhx Green
2. Energhx Energy
3. Energhx Power

## **SCHEDULE 2 SPECIAL CONDITIONS**

Energhx Green Energy Corporation will be required to file with the Board, no later than June 28, 2013, the following information:

1. Audited financial statements for the 2012 fiscal year;
2. A description of Energhx'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;
3. A summary of the results of the testing program conducted within the reporting period ending on April 30, 2013; and
4. A description of Energhx's strategy for any further improvement needed to achieve continuing legislative and regulatory compliance, demonstrating the link between the results of the program to date and measures to be implemented in the future.

## **APPENDIX A**

### **MARKET POWER MITIGATION REBATES**

“OPGI” means Ontario Power Generation Inc.

A retailer shall promptly pass through a portion of the rebate received from a distributor to those consumers who are not receiving the fixed price under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* and who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer.

If requested in writing by OPGI, the retailer shall ensure that all rebates paid to consumers are identified as coming from OPGI in the following form on or with each bill or cheque.

#### **“ONTARIO POWER GENERATION INC. rebate”**

A retailer shall promptly return to a distributor any portion of the rebate received from the distributor which relates to low-volume or designated consumers receiving the fixed commodity price for electricity under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998*, who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer or another party.

The amounts paid out to consumers or returned to the distributor shall be based on energy consumed and calculated in accordance with the rules set out in the Retail Settlement Code.

Amounts payable by the retailer may be made by way of set off at the discretion of the retailer.

### **ONTARIO POWER GENERATION INC. REBATES**

For the payments that relate to the period from May 1, 2006 to April 30, 2009, the rules set out below shall apply.

A retailer shall promptly pass through a portion of the rebate received from a distributor to those consumers who are not receiving the fixed price under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* and who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer.

If requested in writing by OPGI, the retailer shall ensure that all rebates paid to consumers are identified as coming from OPGI in the following form on or with each bill or cheque.

#### **“ONTARIO POWER GENERATION INC. rebate”**

The amounts paid out to consumers or returned to the distributor shall be based on energy consumed and calculated in accordance with the rules set out in the Retail Settlement Code.

Amounts payable by the retailer may be made by way of set off at the discretion of the retailer.