



EB-2012-0044
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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 Active
Energy Corp. for a gas marketer licence.

AND IN THE MATTER OF an application by Active
Energy Inc. for an electricity retailer licence.

By delegation, before: Jennifer Lea

DECISION AND ORDER

September 20, 2012

Active Energy Corp. filed an application on February 1, 2012 with the Ontario Energy Board under section 50 of the *Ontario Energy Board Act, 1998* (the "Act") for a gas marketer licence renewal, and an application under section 60 of the Act for an electricity retailer licence renewal. The Board assigned the applications file numbers EB-2012-0044 and EB-2012-0045, respectively.

Active Energy Corp. and Active Energy Inc. (collectively "Active Energy") filed supplementary information and the applications were completed on March 5, 2012. The term of Active Energy's current licences was extended to allow Active Energy to continue its business while a final decision on the renewal applications was being made.

The Board issued a Notice of Application and Written Hearing on March 21, 2012. Only Board staff participated in the hearing. Board staff filed written interrogatories on April 11, 2012. Active Energy responded to Board staff interrogatories on April 25, 2012. Board staff filed a submission on May 9, 2012 and Active Energy filed its reply submission on May 23, 2012.

The Board notes that following the enactment of the *Energy Consumer Protection Act, 2010* on January 1, 2011, the Board commenced a series of compliance inspections of certain electricity retailers and gas marketers, including Active Energy. On August 25, 2011, the Board issued a Notice of Intention to Make an Order against Active Energy for contraventions of various provisions of consumer protection legislation and Board Codes. In response to the Notice, Active Energy provided a written Assurance of Voluntary Compliance which was accepted by the Board in an Order dated September 12, 2011, and Active Energy agreed to pay a \$20,000 administrative penalty.

Board Findings

In gas marketer and electricity retailer licence renewal applications, key areas for consideration by the Board include the financial position, technical capability and the conduct of the applicant. Board staff raised concerns with respect to the applicant's financial viability and conduct. Staff submitted that Active Energy's gas marketer and electricity retailer licences should be granted for a period of only one year rather than the standard five year term, and include special conditions.

Financial Viability

I find that Active Energy's answers to interrogatories demonstrate that the company has significantly improved its financial performance. In my view, the issues raised by staff with respect to the financial performance of the applicant have been answered, and these issues do not warrant a reduction in the term of the licence.

Conduct

The *Energy Consumer Protection Act, 2010* is designed to ensure that retailers and marketers follow fair business practices and provide consumers with essential information.

In the Assurance of Voluntary Compliance attached to the Order of the Board dated September 12, 2011, Active Energy admitted to certain deficiencies with regard to verification calls. In the Assurance, Active Energy undertook to ensure that it would comply with the requirements relating to such calls. In its response to Board staff interrogatory No. 3, Active Energy provided a detailed description of its processes

relating to verification calls and stated that it has made process changes to ensure compliance with the requirements. Board staff submitted that Active Energy has addressed all concerns regarding this compliance matter.

[REDACTED]

[REDACTED]

The Board can take into account compliance actions in other jurisdictions when considering the conduct of an applicant for a licence, and may reduce the term of a licence and impose special conditions if such restrictions are warranted. However, given the facts in this case, I find that the applicant has met the onus of demonstrating that the requested licences should be granted for the standard term of five years. In light of the details provided by the applicant (which were not available at the time of the staff submission), I do not accept staff's recommendation that special conditions should be imposed.

I find that it is in the public interest to grant Active Energy a gas marketer licence and an electricity retailer licence, under Parts IV and V of the Act.

IT IS THEREFORE ORDERED THAT:

1. The application for a gas marketer licence is granted, on such conditions as are contained in the attached licence.
2. The application for an electricity retailer licence is granted, on such conditions as are contained in the attached licence.

DATED at Toronto, September 20, 2012

ONTARIO ENERGY BOARD

Original signed by

Jennifer Lea
Counsel, Special Projects