



EB-2012-0044
EB-2012-0045

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



Electricity Retailer Licence

ER-2012-0045

Active Energy Inc.

Valid Until

September 19, 2017

Original signed by

Jennifer Lea
Counsel, Special Projects
Ontario Energy Board
Date of Issuance: September 20, 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 Active Energy Inc.;

“**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 September 20, 2012 and expire on September 19, 2017. 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

None

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.