



EB-2013-0037
EB-2013-0038

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

AND IN THE MATTER OF applications by Summitt Energy Management Inc. on behalf of Summitt Energy LP to renew Electricity Retailer Licence ER-2010-0368 and Gas Marketer Licence GM-2010-0369.

By delegation, before: Jennifer Lea

DECISION AND ORDER
June 27, 2013

Summitt Energy Management Inc. on behalf of Summitt Energy LP (“Summitt”) filed an application with the Ontario Energy Board dated February 1, 2013 under section 60 of the of the *Ontario Energy Board Act, 1998* (the “OEB Act”) to renew its electricity retailer licence ER-2010-0368. Summitt also filed an application with the Board dated February 1, 2013 under section 50 of the OEB Act to renew its gas marketer licence GM-2010-0369. The Board assigned the applications file numbers EB-2013-0037 and EB-2013-0038 respectively. On February 21, 2013, Summitt filed additional information to complete the applications.

The Board issued a Notice of Application and Hearing on March 12, 2013, inviting intervention in the hearing and comments on the applications. No parties responded to the notice within the time limit set for participation.

Board staff filed interrogatories on April 9, 2013 and Summitt filed responses to Board staff interrogatories on April 23, 2013. Board Staff filed its submission on May 10, 2013. Summitt filed its reply submission on May 24, 2013.

On May 24, 2013, one member of the public, Mr. Nicholas Ross, filed a submission objecting to the granting of the licences to Summitt. On May 29, 2013, Summitt responded to the submission filed by Mr. Ross stating that the deadline for submissions had passed and therefore this submission should not be given consideration in the hearing.

I have reviewed Mr. Ross's submission and acknowledge high quality of the submission and importance of the concerns raised. However, the facts included in the submission were known to the Board. I made no provision for a reply to the submission by Summitt, as the submission from Mr. Ross did not affect the decision made in this application.

While I have considered the full record of these proceedings, I have referred only to those portions of the record that I consider helpful to provide context to my findings.

FINDINGS

In gas marketer and electricity retailer licence renewal applications, key areas for consideration by the Board include the financial position, technical capability and conduct of the applicant. In these applications, no concerns were raised with respect to the applicant's financial position or technical capability. Board staff, however, raised concerns with respect to the applicant's past conduct, and submitted that Summitt's electricity retailer and gas marketer licences should include special conditions. Concerns about the applicant's conduct were also raised by Mr. Ross in his submission.

Electricity retailer and gas marketers are required to comply with the OEB Act, the *Energy Consumer Protection Act, 2010* (the "ECPA"), regulations under those Acts, and the Board's regulatory instruments that apply to their licensed business activities.

Summitt has been subject to compliance actions from the Board in the past. In December of 2008, the Board issued a Notice of Intention to make an Order for an Administrative Penalty against Summitt for contravening certain legal and regulatory requirements, including supplying consumers without valid reaffirmation calls and making false, misleading or deceptive statements to consumers. On January 20, 2009, Summitt, rather than requesting a hearing, entered into an Assurance of Voluntary Compliance and later made a voluntary payment to the Board.

Summitt was subject to an enforcement order by the Board in November of 2010. The order imposed administrative penalties on Summitt for contravention of a number of enforceable provisions, as defined in the OEB Act, in respect of 17 incidents of misconduct by five of its sales agents. The contraventions included making false, misleading or deceptive statements to consumers, and not providing consumers with a copy of the terms and conditions of the contract signed with Summitt.

Following the enactment of the EPCA on January 1, 2011, the Board commenced a series of compliance inspections of certain electricity retailers and gas marketers, including Summitt. On August 25, 2011, the Board issued a Notice of Intention to make an Order for Compliance and an Administrative Penalty against Summitt for contravening requirements of the ECPA related to contract requirements and price comparisons. On June 14, 2012, the Board issued an order approving a settlement in which Summitt admitted to the breaches, committed to ensure compliance with respect to the issues and agreed to pay an administrative penalty of \$10,000.

Due to the Board concerns related to Summitt's past conduct, in 2011 the Board, while it granted Summitt's electricity retailer and gas marketer licence requests, imposed a short term of two years. The Board expected Summitt to be able to demonstrate its success in complying with the legal and regulatory requirements over the two-year term. The Board has taken no further compliance action against Summitt during the two year term of the licences.

The evidence in this proceeding demonstrates that over the last two years Summitt has undertaken several initiatives to address the main concerns of the Board related to the conduct of its salespersons. Summitt has a compliance regime in place to ensure compliance with legislative and regulatory requirements. Summitt provided statistical information to demonstrate the effectiveness of the compliance program for all complaint types, especially those related to agent conduct. Summitt responded promptly to the Board's investigation of a report in the spring of 2013 of agent misrepresentation. The data provided by Summitt as well as the Board's own compliance records show a significant decline in complaints related to Summitt's agent conduct over the last two years.

However, based on Summitt's past conduct, Board staff in its submission sought a condition requiring Summitt to provide the Board with a report which will summarize the

results of Summitt's internal audit of its operations related to compliance and provide an annual summary of the results of its quality assurance program related to agent conduct, contract management and complaint handling.

I find that both the electricity retailer licence and the gas marketer licence should be granted for a term of five years. However, I also find that special conditions should be imposed. Despite the significant reduction in complaints related to Summitt in the last two years, the Board needs to have assurance that this improvement is sustained.

Summitt will be required, through a condition attached to its licences, to file within one year from the issuance date of the licences, and annually thereafter for the term of the licences:

1. a report summarizing the results for the past year of the internal audit of Summitt's operations, including:
 - marketing and sales materials;
 - customer service inbound and outbound calls;
 - contract enrolment processes;
 - contract billing; and
2. a summary of the results for the past year of Summitt's compliance monitoring and quality assurance program related to:
 - sales agent certification;
 - sales agent complaint tracking and remedial actions;
 - contract management reports;
 - sales agent complaint review process; and
 - sales agent point system program.

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 condition contained in Schedule 2 to the licence.
3. The gas marketer licence is granted for a period of five years.

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

DATED at Toronto, June 27, 2013

ONTARIO ENERGY BOARD

Original signed by

Jennifer Lea
Counsel, Special Projects



Electricity Retailer Licence

ER-2013-0037

**Summitt Energy Management Inc. on
behalf of Summitt Energy LP**

Valid Until

June 26, 2018

Original signed by

Jennifer Lea
Counsel, Special Projects
Ontario Energy Board
Date of Issuance: June 27, 2013

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	Table of Contents	Page No.
1	Definitions	1
2	Interpretation	1
3	Authorization	1
4	Obligation to Comply with Legislation, Regulations and Market Rules	2
5	Obligation to Comply with Codes	2
6	Agent for Service.....	2
7	Market Power Mitigation Rebates	2
8	Provision of Information to the Board.....	2
9	Customer Complaint and Dispute Resolution	3
10	Term of Licence	3
11	Fees and Assessments.....	3
12	Communication	3
13	Copies of the Licence.....	3
SCHEDULE 1	AUTHORIZED TRADE NAMES.....	4
SCHEDULE 2	SPECIAL CONDITIONS	5
APPENDIX A	MARKET POWER MITIGATION REBATES.....	6

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;

"ECPA" means the *Energy Consumer Protection Act, 2010*, S.O. 2010, c. 8;

"Licensee" means Summitt Energy Management Inc. on behalf of Summitt Energy LP;

"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 or the ECPA;

"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, the Electricity Act or the ECPA. 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, and;
 - b) the Retail Settlement 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 June 27, 2013 and expire on June 26, 2018. 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. My Rate Energy

SCHEDULE 2 SPECIAL CONDITIONS

Summitt is required to file no later than June 26, 2014, and annually thereafter for the term of the licence:

1. a report summarizing the results for the past year of the internal audit of Summitt's operations, including:
 - marketing and sales materials;
 - customer service inbound and outbound calls;
 - contract enrolment processes;
 - contract billing; and
2. a summary of the results for the past year of Summitt's compliance monitoring and quality assurance program related to:
 - sales agent certification;
 - sales agent complaint tracking and remedial actions;
 - contract management reports;
 - sales agent complaint review process; and
 - sales agent point system program.

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.