



EB-2011-0311

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

AND IN THE MATTER OF a Notice of Intention to
Make an Order under sections 112.3, 112.4 and
112.5 of the *Ontario Energy Board Act*, 1998 for
Compliance, Suspension and an Administrative
Penalty against Energhx Green Energy Corporation.

BEFORE: Marika Hare
Presiding Member

Paula Conboy
Member

DECISION AND ORDER

July 18, 2013

On August 25, 2011 the Ontario Energy Board (the "Board"), on its own motion under section 112.2 of the *Ontario Energy Board Act*, 1998 (the "Act") issued a Notice of Intention to Make an Order (the "Notice") against Energhx Green Energy Corporation ("Energhx").

The Notice indicated that the Board intended to make an Order: (i) under sections 112.3 and 112.5 of the Act, requiring Energhx to comply with certain enforceable provisions as defined in section 3 of the Act and to pay an administrative penalty in the amount of \$32,500 for breaches of those enforceable provisions; and, (ii) under section 112.4 of the Act, to suspend Energhx's activities with respect to sales, renewals, extensions or amendments of contracts using the following channels: Door-to Door, Exhibitions, Trade Shows and Direct Mail. The Notice described the allegations of non-compliance as follows:

It is alleged that Energhx has contravened sections of Ontario Regulation 90/99, Ontario Regulation 389/10, section 12 of the *Energy Consumer Protection Act, 2010*... and the Electricity Retailer Code of Conduct and the Code of Conduct for Gas Marketers.¹

The particulars in support of the allegations are set out in the Notice.

The complete record for this proceeding is available on the Board's website.

On March 26, 2012 the Board issued a Decision and Order for Energhx to pay an administrative penalty of \$10,000 by December 31, 2012.

On December 20, 2012 the Board received a letter requesting that Energhx be provided additional time to make the \$10,000 payment to the Board as it was unable to make payment by December 31, 2012. Energhx requested that the date for payment be extended one year, to December 31, 2013. The Board considered Energhx's request and extended the date for payment to June 28, 2013.

On July 2, 2013 the Board received a letter requesting that Energhx be provided additional time to make the \$10,000 payment to the Board, as it is unable to make payment by June 28, 2013. Energhx requested that the date for payment be extended to December 31, 2013. In the letter Energhx stated the following:

Application for investors' interest is presently under review. However, it is obvious that the ongoing project must be completed; and the marketing of services resumed before reasonable attention to our application can be considered.

Therefore, Energhx appeal for Board's reconsideration of the initial extension request up till December 31, 2013 to pay the administrative penalty.

¹ The statutory and other references noted in this excerpt from the Notice are as follows: Ontario Regulation 90/99 (Licence Requirements – Electricity Retailers and Gas Marketers) made under the Act, as most recently amended by Ontario Regulation 390/10 filed on October 13, 2010 and effective January 1, 2011; Ontario Regulation 389/10 (General) made under the *Energy Consumer Protection Act, 2010*, also filed on October 13, 2010 and effective January 1, 2011; the *Energy Consumer Protection Act, 2010*, S.O. 2010, c. 8, in force on January 1, 2011; Ontario Energy Board *Electricity Retailer Code of Conduct*, as restated November 17, 2010 and in force January 1, 2011; and Ontario Energy Board *Code of Conduct for Gas Marketers*, as restated November 17, 2010 and in force effective January 1, 2011.

Submission

In response to Energhx's request for an extension of time to pay the administrative penalty, Compliance Counsel on behalf of Compliance staff filed a letter requesting an opportunity to file a submission. The Board granted the request and a submission was filed on July 11, 2013. The submission stated the following:

1. Having already received one six-month extension of time, Energhx Green Energy Corporation ("Energhx") now requests a further six-month extension to pay a \$10,000 administrative penalty that was imposed by the Ontario Energy Board (the "Board") more than 15 months ago. Compliance Counsel submits that Energhx's request should be denied, and that it should be ordered to pay the administrative penalty within 48 hours, failing which its electricity retailer and gas marketer licences (collectively, the "Licences") shall be revoked.

2. Energhx has not provided any compelling reason why a further extension is necessary; at best, its submissions suggest that payment right now would be inconvenient from a business and/or financial perspective. If such a low threshold qualified for an extension, then the specific and general deterrence capacity of administrative penalties, along with their positive impact in promoting compliance and protecting consumers, would be seriously undermined. Moreover, Energhx's conduct in this case — waiting nine months until the eve of the first deadline to request an extension, and then breaching the Board-ordered deadline before asking for the current extension — provides compelling reasons not to grant the relief sought.

Board Decision on Extension Request

The Board has considered Energhx's request for an extension of time to pay the administrative penalty and will grant a brief extension until August 29, 2013.

The Board is very mindful that an extension in this proceeding has already been granted and Energhx has had 15 months to pay the administrative penalty.

The Board does not intend to grant any further extensions. If payment is not received by August 29, 2013, the Board intends to initiate steps to suspend or revoke Energhx's electricity retailer and gas marketer licences.

THE BOARD ORDERS THAT:

Energhx shall, by August 29, 2013 pay to the Ontario Energy Board an administrative penalty in the amount of \$10,000.

ISSUED at Toronto, July 18, 2013

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary