



EB-2013-0076
EB-2013-0077

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

AND IN THE MATTER OF applications by Onit Energy Ltd. to renew Electricity Retailer Licence ER-2008-0008 and Gas Marketer Licence GM-2008-0007.

By delegation, before: Jennifer Lea

DECISION AND ORDER
November 21, 2013

Onit Energy Ltd. ("Onit") filed an application with the Ontario Energy Board dated March 20, 2013 under section 60 of the *Ontario Energy Board Act, 1998* (the "OEB Act") to renew its electricity retailer licence ER-2008-0008. Onit also filed an application with the Board dated March 20, 2013 under section 50 of the OEB Act to renew its gas marketer licence GM-2008-0007. The Board assigned the applications file numbers EB-2013-0076 and EB-2013-0077, respectively. On July 10, 2013, Onit filed additional information to complete the applications.

The Board issued a Notice of Applications and Hearing on August 2, 2013 for the two applications, setting out the dates for the filing of interrogatories and submissions. Board staff filed interrogatories on August 23, 2013. Interrogatory responses from the applicant were due on September 13, 2013, and submissions from interested parties were due on October 4, 2013. Onit responded to Board Staff interrogatories on September 24, 2013. On September 26, 2013, Board Staff filed a letter requesting an extension of time until October 16, 2013 to make submissions to the Board and also requested that Onit's reply submission be filed within two weeks of Board Staff's submission being filed.

On September 27, 2013, the Board issued Procedural Order No. 1 granting Board Staff's request. Board Staff filed a submission on October 16, 2013. Onit did not file a reply submission.

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 concern was raised with respect to the applicant's technical capability. Board staff, however, raised concerns with respect to the applicant's financial position and its past conduct.

In its submission, Board Staff noted that the financial statements provided by Onit in support of its applications indicate that the company has been incurring losses since 2009. Board Staff submitted that the financial information presented by Onit does not provide significant confidence in the long term viability of the business. The evidence does show, however, that the owners appear to be committed to growing the business and supplementing the finances of the company when needed.

When considering conduct, the Board recognizes that electricity retailers 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. Onit must ensure that it has a comprehensive and accurate understanding of all applicable legal and regulatory requirements for gas marketing and electricity retailing to low-volume consumers in Ontario.

Onit was ordered to pay an administrative penalty in July 2012 after the Board found that Onit had contravened certain sections of the ECPA. Board Staff submitted that in spite of Onit's stated improved effort to ensure compliance with all rules and regulations, it continues to demonstrate a lack of knowledge of those rules. For example, Onit's response to Board Staff Interrogatory No. 1(b) which queried what sales channels Onit

intends to use to retail electricity and to market gas, listed telephone sales as a possible marketing tool. As Board Staff noted, the ECPA does not allow telephone sales.

As a result of the financial and past conduct concerns identified, Board Staff submitted that Onit's licences be renewed for a shorter term than is the norm, i.e. two years instead of five. Staff submitted that this shorter term would provide the company with an opportunity to demonstrate its commitment to develop and establish a profitable business and to demonstrate compliance with legal and regulatory requirements.

I find that despite the problems in its financial and compliance history, Onit should be granted both gas marketer and electricity retailer licences to allow the business owners to pursue their goals for the company. However, I further find that the concerns expressed by Board staff are justified, given the evidence on the record of these applications. Both the electricity retailer licence and the gas marketer licence will be renewed for a term of two years.

IT IS THEREFORE ORDERED THAT:

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

DATED at Toronto, November 21, 2013

ONTARIO ENERGY BOARD

Original signed by

Jennifer Lea
Counsel, Special Projects



Electricity Retailer Licence

ER-2013-0076

Onit Energy Ltd.

Valid Until

November 20, 2015

Original signed by

Jennifer Lea
Counsel, Special Projects
Ontario Energy Board
Date of Issuance: November 21, 2013

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
27th. Floor
Toronto, ON M4P 1E4

Commission de l'énergie de l'Ontario
C.P. 2319
2300, rue Yonge
27e étage
Toronto ON M4P 1E4

	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 Onit Energy Ltd.;

“**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 November 21, 2013 and expire on November 20, 2015. 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. None

SCHEDULE 2 SPECIAL CONDITIONS

1. 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.