



No. EB-2013-0318

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, SO
1998, c 15, Sch B;

AND IN THE MATTER OF a Notice of Intention to Make an
Order for Revocation of a Licence against Energhx Green Energy
Corporation, Licence Numbers ER-2010-0236 and GM-2010-0237

WRITTEN SUBMISSIONS OF ENERGHX GREEN ENERGY CORPORATION



Emmanuel O.B Ogedengbe, Ph.D., P.Eng.

Consultant & CEO

Energhx Green Energy Corporation

73 Compata Way, Ottawa, ON

Tel.: +1-613-912-3648

Fax: +1(613) 841-2146

Skype: eob_ogedengbe

E-mail: ogedengbe@energhx.com

TABLE OF CONTENTS

PART A – PREAMBLE OF THE CASE.....	3
I. Provision of the OEB Act.....	3
II. What are the “activities” or business conducts?.....	3
 PART B – PRESENTATION OF THE FACTS.....	4
I. Energhx accepts Board’s administrative penalty with other market participants who are fully engaged in the business of electricity retailing and gas marketing.....	4
II. Energhx has suspended all electricity retailing and gas marketing activities since September 2011.....	5
III. Energhx pleads for exemption for the licence fee obligation for 2013-2014.....	6
 PART C – ARGUMENTS ON ISSUES OF THE LAW.....	8
I. Energhx’s business activities is in support of, and not in violation of, the Board’s mandate for performance-based operation of its licences.....	8
II. Development of performance-based electricity retailing and gas marketing represents a significant use of Energhx’s licences.....	10
III. In this specific circumstance, neither suspension or revocation of Energhx’s licences is appropriate.....	11
 PART D – ENERGHX’S PRAYER.....	12

PART A – PREAMBLE OF THE CASE

I. Provision of the OEB Act

1. In s. 2 of *Licence Requirements – Electricity Retailers and Gas Marketers*, the provision for the issuance and renewal of licences clearly contemplate, and without prejudice to other possible activities, that “An applicant for the issuance or renewal of a licence that allows for the retailing of electricity or the marketing of gas to low-volume consumers must meet all of the following requirements.” (emphasis added) It implies that if a licenced entity who is:
 - a. engaged in other activities within the mandate of the Ontario Energy Board (“Board”), and
 - b. not engaged in the contemplated retailing of electricity or marketing of gas to low-volume consumers,

it would be appropriate to accept reasonable exemption of these conditions.

2. An entity who deliberately refuse to engage in the retailing of electricity or the marketing of gas, even when it holds the licence, can be deem to have regards for the requirements set out in s. 2, which includes:
 - a. The demonstration of financially responsibility by abstinence until it is ready to conduct the contemplated business activities;
 - b. Continuous investment in incorporating its compliance monitoring and quality assurance program into the demand side monitoring model;
 - c. Suspension of the training and engagement of its marketing associates; and
 - d. The description of its strategy toward the completion of its online marketing of the demand side monitoring services.

II. What are the “activities” or business conducts?

3. Since August 2011, and prior to the Date of Issuance of the current licences, Energhx or any of its associates has suspended all activities involving the retailing of electricity and the marketing of gas. This due diligence action has been formally communicated to the Board, as stated in P. 1 under section subtitled “Energhx’s constraints with the December 31 Payment Order” as¹:

“Prior to April 30, 2012, and precisely in September, 2011, Energhx have voluntarily suspended all its marketing activities, including the training of its sales associates in order to ensure full compliance with all the allegations issued by the Board in its notice of September 9, 2011².”

4. In the same correspondence of December 20, 2012, Energhx submitted a promise not engage in marketing activity until its development activity is completed, as stated in P. 6 as:

¹ **Letter of Energhx**, Dated December 20, 2012, *Notice of Appeal on Decision and Order*, Enforcement Document, tab 3.

² **Transcript**, Energhx Green Energy Corp Oral Hearing Vol. 1, EB-2011-0311

“Energhx promise not to resume all marketing activities and the use of its electricity retailing and gas marketing licences until these development activities are completed.”

5. Energhx has been involved in the development of a unique service system, called demand side monitoring (“DSM”), which will operate under the combination of electricity retailing, gas marketing, and engineering service licences³.
6. Energhx’s investment activities in the development of a preformance-based supply system pose no financial risk to its 5 low-volume consumers, who were enrolled into DSM study before the Date of Issuance of the current licences, since their consumption represents an insignificant magnitude of exposure based on s. 8 Security Arrangement of the Retail Settlement Code⁴.
7. The communication of this engagement to Board, as early as December 20, 2012, is considered a sufficient application for reasonable exemptions according to s. 4.1 of Energhx’s licences⁵.

PART B – PRESENTATION OF THE FACTS

I. Energhx accepts Board’s administrative penalty with other market participants who are fully engaged in the business of electricity retailing and gas marketing

8. In one of Energhx’s submissions in response to Board’s decision on Notice of Appeal on Decision and Order, the decision to pay the administrative penalty of \$10,000 is accepted and appreciated, especially with statements such as in the second paragraph as¹:

“Energhx appreciates the Board’s decisions, including the considerations of the contravention against Energhx as minor in its potential to adversely affect consumers, and the significant reduction of the amount of the administrative penalty.”

9. Board’s order for Energhx to pay administrative penalty was more general to all market participants who participated in the compliance audit of 2011, and less specific to Energhx’s consideration as an entity who, unlike other participants, is not yet engaged in the business of electricity retailing and gas marketing.
10. The online marketing strategy, referred to be under development in the correspondence of Energhx to Board on December 20, 2012, is otherwise known as demand side monitoring⁶.

³ **Publication of Energhx**, *Smart Grid and Renewable Energy*, 2013, 4, 16-26, Enforcement Document, tab. 18

⁴ **Retail Service Code**, Rev. October 01, 2011

⁵ **Energhx Licences**, ER-2010-0236 and GM-2010-0237, Enforcement Documents, tabs 11, 12

⁶ **Energhx Website**, first tab under Residential and Commercial Services, <http://energhx.com/our-services/residential/demand-side-monitoring.php>

Evidence of research activities has been published in public domain since 2011⁷. Energhx was clearly sincere when it sought Board's understanding that this engagement in demand side monitoring (DSM) study restrained its readiness for marketing and ability to pay the administrative penalty, as stated in P.3¹:

"Since the development and the review of all of its marketing channels have not been completed, Energhx has not entered into a new contract, renew, amend, or extend any contract since the commencement of the stated self-suspension."

11. Energhx's 24-hour hesitation before submitting a request for additional time to pay its administrative penalty prior to the deadline of August 29, 2013 is clearly not a display of negligence to Board's Order, but actually borne out of fear imposed by Board's statement under Board Decision on Extension Request that⁸:

"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".

12. Although Energhx clearly understands Board's intention to suspend or revoke licences, it believes that this intention is based on either a misconception of Energhx's activities or a mistreatment of an ongoing consideration of a reasonable exemption based on the understanding of these activities.

II. Energhx has suspended all electricity retailing and gas marketing activities since September 2011

13. The Board's oversight on the financial viability of its regulated entities is expected to be based on the monitoring of financial data from the performance of regulated activities. When regulated activities are suspended, and until the resumption of regulated activities, any test of financial viability should be futile and an absolute zero cause of concern.
14. In order to complete the development and testing of its unique demand side monitoring service platform, Energhx voluntarily suspended all electricity retailing and gas marketing activities since September 2011. This decision was communicated with Board at the hearing of February 7, 2012 and by correspondence on December 20, 2012¹.

⁷ **Refs. 1 and 22 of Energhx Publication**, *Smart Grid and Renewable Energy*, 2013, 4, 16-26, Enforcement Document, tab. 18

⁸ **Decision and Order of the Board**, July 18, 2013, Enforcement Documents, tab 7, pp. 3

15. Without prejudice to the obligation to file certain financial information with Board, the correspondence of December 20, 2012 that provide the self-imposed decision to suspend all electricity retailing and gas marketing appears to Energhx as sufficient information of a void of any financial-generating marketing activity.
16. Energhx understands that the four categories of financial information required by the Board are not based on monitoring of the level of its investment activities on the development of performance-based incentive model, but on the actual retailing of electricity and marketing of gas.
17. The position of Energhx, regarding the suspension of electricity retailing and gas marketing, is communicated in almost all correspondence with the Board since December 20, 2012^{1,9,10}. At the instance of the compliance staff's notification to take steps to seek a suspension or revocation of licences, Energhx was actually confused as to the possible interest in financial information that will not be based on regulated activities.
18. Since the communication of the suspension of electricity retailing and gas marketing, which started on December 20, 2012¹, was repeated on July 2, 2013⁹, Energhx assumed to have indirectly fulfil the obligations contemplated in item 1 through 4 of the requested financial information.
19. The correspondence of Energhx on August 30, 2013¹⁰, after the letter of the Board on July 22, 2013, also retains the existing position regarding the suspension of electricity retailing and gas marketing.

III. Energhx pleads for exemption from the licence fee obligation for 2013-2014

20. Energhx's licences for electricity retailing and gas marketing were first issued on October 22, 2012. The year 2013-2014 is the fifth year in a row since Energhx has been licensed by the Board. It has paid all fees invoiced by the Board within the prescribed time in the last four(4) years.
21. After four(4) years of dedicated investment by the principal of Energhx on the development of its DSM model, and consistent payment of all invoiced fees to support its operating licences, Energhx understands the necessity of protection its investment by filing a patent¹¹ – one of the

⁹ **Letter of Energhx**, Dated July 2, 2013, Enforcement Documents, tab 6

¹⁰ **Letter of Energhx**, Dated August 30, 2013, Enforcement Documents, tab 10

¹¹ **Letter from Energhx's Patent Agent**, Enforcement Documents, tab 19

reasonable concerns of prospective investors that listened to Energhx's call for investors in 2010.

22. Energhx believes the only reasonable arrangement, as requested by the reminder email of August 12, 2013¹²:

"Please arrange payment of this account a.s.a.p....."

is the intensifying of efforts toward ensuring the source of fund. Various sources of investment have intensified interest in reviewing recent improvement in Energhx business model, including the Invest Ottawa¹³.

but on receiving the formal letter from the Board on September 9, 2013 requesting payment for licence fees, it became expedient to seek reasonable exemption from payment of annual fee for licences for 2013-2014, in accordance to s. 4.1 of Energhx's licences⁵.

23. A formal letter requesting exemption from payment of annual fee for Energhx's licences was sent via courier on September 12, 2013¹⁴. Since the Board's Compliance counsel appears in doubt of the transmission of this letter at the time of the hearing:

MR. SCHUMANN: So you sent a letter to the OEB?

DR. OGEDENGBE: Yes.

MR. SCHUMANN: Requesting an exemption for the licence fee?

DR. OGEDENGBE: Yes.

MR. SCHUMANN: Did the letter say anything else?

DR. OGEDENGBE: Still the same thing as I am talking about. I don't have the document with me here, so I don't have the detail of what was said. It's just a response and request for exemption, you know, from the Board based on the circumstances, you know, of Energhx.

MR. SCHUMANN: Do you remember round about when you sent that letter?

DR. OGEDENGBE: I can't give the date, you know, with me here. But I should -- I should believe it should be nearly after the final notice, you know, that was sent to Energhx.¹⁵

¹² E-mail from R.Gjinali, Dated August 12, 2013, Enforcement Documents, tab 15

¹³ Correspondence with Invest Ottawa, Enforcement Documents, tab 20

¹⁴ Letter from Energhx, Dated September 12, 2013, Sent to Assistant Board Secretary by Courier on September 12, 2013

¹⁵ Transcript, 58/26 – 59/14

...

MR. SCHUMANN: But you did not pay the licence fees by that date, right?

DR. OGEDENGBE: Yes, that is exactly what you have already addressed earlier on, that the response was sent after this letter.

MR. SCHUMANN: So the response was sent after that letter of September 9, 2013?

DR. OGEDENGBE: Yes.

MR. SCHUMANN: So if we look in the OEB's files we will find a letter from Energhx, one letter talking about the required information, items 1 through 4, right?

DR. OGEDENGBE: Yes.

MR. SCHUMANN: We will also find a letter asking for an exemption from the licence fee payment dated after September 9, 2013, right?

DR. OGEDENGBE: Yes, please.¹⁶

it is logical to doubt any claim of an implicit refusal of the request for exemption by the Board.

PART C – ARGUMENTS ON ISSUES OF THE LAW

I. Energhx's business activities is in support of, and not in violation of, the Board's mandate for performance-based operation of its licences

24. The right to seek exemption to the conditions on Energhx's licences, including payment of one-term annual licence fees, administrative penalty and filling of financial information, especially when there are no performance of regulated activities upon which these conditions are based, is part of the provisions contemplated by s. 4.1 of Energhx's licences¹⁷.
25. The mandate of the Board is clear about the need to monitor the financial viability of its regulated entities, which should be based on the combination of financial and service quality results, as quoted in a section on Monitoring Financial Viability:

¹⁶ **Transcript**, 61/9-16

¹⁷ **Energhx Licences**, ER-2010-0236 and GM-2010-0237, Enforcement Documents, tabs 11, 12

*“The OEB maintains the ongoing oversight of the financial viability of regulated utilities. To assist in that activity, electricity and natural gas distributors are required to file **financial data** with the OEB. Annually, the OEB publishes a statistically Yearbook on its website that provides the **financial and service quality results** for each regulated distributor for the preceeding year, to provide transparency on each **distributor’s performance**.” (emphasis added)¹⁸*

It is evident that financial viability is the measurement of the performance of the regulated entity (including Energhx), which is based on the financial data composed of the combination of financial and service quality results.

26. Prior to the issuance of the current version of Energhx’s licences, there has been no single low-volume customer account enrolled, because all channels for electricity retailing and gas marketing are voluntarily suspended, and remained suspended to date.
27. Energhx’s engagement into the development of grid-enhancing advanced service and performance-based system consumes significant financial resource, but depletion of financial resources is not a violation of Board’s regulatory order when regulated activities are suspended.
28. The argument of Energhx’s engagement in the development of performance-based system was rejected on February 7, 2012 because of the evidence of non-compliance to regulatory procedures in its activities on training of associates and enrollment of some of low-volume consumers, prior to September 2011 when these activities are voluntarily suspended.
29. Electricity retailing and gas marketing represent significant service component of energy distribution and retailers are loosely referred to as distributors by consumers. Besides, if the Board’s policy direction on assessing the parameters that will enable consumers to better control their consumption and providing consumers the opportunities to participate in small-scale renewable generation with the renewed regulatory framework is considered, it would be difficult to deny Board’s extension of the “among possible others” in this statement to retailers¹⁹:

*“On November 23, 2010, the Minister of Energy issued a Directive to the Board requiring it to provide guidance to licensed electricity distributors and transmitters (**among possible others**) regarding the Board’s expectations in relation to smart grid activities. In developing that guidance,*

¹⁸ Board Document, Backgrounder: Energy Sector Regulation – A Brief Overview, pp. 3,

http://www.ontarioenergyboard.ca/OEB/ Documents/Documents/Energy_Sector_Regulation-Overview.pdf

¹⁹ Board Document, Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach, pp. 47,

http://www.ontarioenergyboard.ca/OEB/ Documents/Documents/Report_Renewed_Regulatory_Framework_RRFE_20121018.pdf

the Board is to be guided by certain parameters for three objectives for the smart grid, namely, customer control objectives, power system flexibility objectives and adaptive infrastructure objective.(emphasis added)”

30. Board’s policy encourages investment in grid-enhancing and performance-based monitoring system, like Energhx’s demand side monitoring, as clearly quoted in one of its documents:

“Under the integrated approach to planning described in this Report, grid-enhancing advanced information and exchange systems and equipment (which are commonly referred to as smart grid) are considered integral to all utility investment.”²⁰

II. Development of performance-based electricity retailing and gas marketing represents a significant use Energhx’s licences

31. Energhx’s demand side monitoring involves the modelling of low-volume customers’ historical consumption pattern, in order to develop customer-specific model based on facility and behavioural characteristics.²¹
32. By virtue of its licences, Energhx is able to retain its service agreement with customers’ distributors, where historical consumption data and periodic usage data are transmitted via the Ontario’s Electronic Business Transaction (EBT) protocol.
33. Although the activity of obtaining of customers’ authorization for existing accounts was performed under the previous versions of Energhx’s licences, the current version of the licences are relevant for the ongoing monitoring and model development activities.
34. Energhx licences provide regulatory framework for pursuing the approval and operation of its pending Canadian patent.¹¹ A significant hardship will be suffered, if Energhx cannot protect the innovation that can guarantee return of investment as a consequence of suspension or revocation.
35. The offering of life insurance or any other insurance product, in the case of Superintendent and an insurance broker, is not relevant to the *modi operandi* of Energhx. The appellant does not

²⁰ **Board Document**, Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach, pp. 48,
http://www.ontarioenergyboard.ca/OEB/ Documents/Documents/Report_Renewed_Regulatory_Framework_RRFE_20121018.pdf

²¹ **Publication of Energhx**, “[Demand Side Monitoring of Energy Systems in Ontario’s Residential and Commercial Sectors](#)”, 9th International Energy Conversion Engineering Conference (IECEC), 2-5 Aug 2011, San Diego, AIAA 2011-5871 <http://arc.aiaa.org/doi/abs/10.2514/6.2011-5871>

demonstrate the need of a licence for development of any service method, beside the fact that the licence was not used to provide services to consumers.

III. In this specific circumstance, neither suspension nor revocation of Energhx's licences is appropriate

36. By considering the fact that Energhx voluntarily suspended all regulated activities, including training and engagement of sales associates, electricity retailing and gas marketing since September, 2011 and has upheld the suspension since the issuance of the current version of its licences, suspension or revocation of Energhx's licences by the Board will be counter-productive.
37. The evidence of Energhx's commitment to developing a performance-based supply of energy services to low-volume consumers without engaging in electricity retailing and gas marketing demonstrates a strong character of regulatory compliance and ability to abide by Board's orders and conditions of its licences.
38. In the referred case of *Lewis v Canadian Society of Immigration Consultants*, there was a clear evidence that member's failure to complete continuing professional development courses represents significant risk to his service delivery. And there was no evidence that the member applied for exemption to pay licence fee based on voluntary suspension of his regulated activities.
39. Application for exemption from annual licence fee is part of the Board's policy, and the procedure is even a standard practice with one of its regulated entities –generators with nameplate capacity of 10 MW or less²².
40. Likewise, the case of *Gardiner v Ontario Financial Services Tribunal* is not the same with Energhx. Gardiner would not have preferred suspension to revocation, if it has not been offering insurance products to consumers without carrying an E&O insurance itself. Energhx restrained itself from electricity retailing and gas marketing before of it's respect for regulatory compliance to the conditions of its licences.

²² **Board Document**, Annual Registration Fee Exemption Form,
http://www.ontarioenergyboard.ca/documents/licences/annual_registration_exemption_form_311006.pdf

PART D – ENERGHX’S PRAYER

41. Based on the submissions above, Energhx earnestly and respectfully plead that its licences be not suspended nor revoked.

Sincerely submitted on December 13, 2013.

Emmanuel O.B. Ogedengbe
Consultant & CEO
Energhx Green Energy Corporation

