



EB-2013-0419

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

AND IN THE MATTER OF an appeal under section 7 of the
Ontario Energy Board Act, 1998 of a Decision and Order of
the Board in EB-2013-0299, regarding an application by
Carma Industries Inc. to renew its Unit Sub-metering Licence.

BEFORE: Paula Conboy
Presiding Member

Cathy Spoel
Member

DECISION AND ORDER ON APPEAL

December 23, 2013

Background

On November 7, 2013, the Board issued a decision and order in proceeding EB-2013-0299 granting Carma Industries Inc. ("Carma") a renewal of its licence to engage in unit sub-metering (the "Order"). The Order was made by an employee of the Board with delegated authority, pursuant to section 6(1) of the *Ontario Energy Board Act, 1998* (the "Act").

On November 28, 2013, Mr. G. Langematz, an interested party in the EB-2013-0299 proceeding, appealed the Order pursuant to section 7 of the Act.

The Appeal

Carma is a unit sub-metering provider regulated by the Board under unit sub-metering licence ES-2007-0965. In the EB-2013-0299 proceeding, Carma applied for, and was awarded, a renewal of its licence by the Board.

Mr. Langematz was the sole intervener in the EB-2013-0299 proceeding. His participation was generally focused upon his request that the Board investigate Carma's actions with respect to its enrolment of condo owners in unit sub-metering contracts without first obtaining their individual consent. Mr. Langematz specifically alleged that Carma breached applicable laws and ethical business practices in entering into a sub-metering contract with the board of directors of the condominium corporation where he resides. Carma denied Mr. Langematz allegations and submitted that, in any event, they were irrelevant to the licensing application before the Board.

The Order succinctly frames the submissions of the parties as follows:

In his submissions, Mr. Langematz generally alleged that Carma has not acted in accordance with the *Energy Consumer Protection Act, 2010*, namely, that Carma has unlawfully imposed service contracts on condo owners without obtaining their proper authorization or individual consent. Mr. Langematz requested that the Board investigate Carma's actions. In its response, Carma generally denied Mr. Langematz's allegations and stated that issues brought forward by Mr. Langematz had already been addressed and resolved between the applicant and the Board in 2011 and 2012. Moreover, Carma submitted the concerns of Mr. Langematz are not relevant to the licence renewal application currently before the Board.

In granting the Order, the delegated authority made the following findings:

I have considered the record of this proceeding, including the late-filed submissions of the parties, and I find that it is in the public interest to renew Carma's unit sub-metering licence, under Part V of the Act. The record indicates that Carma has the financial resources and the technical capability to continue engaging in unit sub-metering activities. As well, regarding the conduct of the applicant, I find that it has demonstrated that it is likely to operate its business in conformity with relevant legislation and regulatory requirements.

Board Findings

The appellant brings the appeal pursuant to section 7 of the Act which provides, in part, as follows:

7. (1) A person directly affected by an order made by an employee of the Board pursuant to section 6 may, within 15 days after receiving notice of the order, appeal the order to the Board. 2003, c. 3, s. 13.

Powers of Board

(4) The Board may confirm, vary or cancel the order. 2003, c. 3, s.13.

The Board notes that a motion to review, determined in accordance with Part VII of the Board's *Rules of Practice and Procedure*, must point to some clear grounds to be successful, and cannot be viewed as simply an opportunity to re-argue an issue in the hope of achieving a different result. This issue was addressed in the Board's decision on several review motions in the *Natural Gas Electricity Interface Review*. In that decision, the Board held that:

In demonstrating that there is an error, the applicant must be able to show that the findings are contrary to the evidence that was before the panel, that the panel failed to address a material issue, that the panel made inconsistent findings, or something of a similar nature. It is not enough to argue that conflicting evidence should have been interpreted differently.

*Motions to Review the Natural Gas Electricity Interface Review
Decision, Decision with Reasons
(EB-2006-0322, EB-2006-0338, EB-2006-0340), May 22, 2007.*

Although these comments were made in a decision relating to the Rule 45 “threshold” issue that must be determined on a Motion to Review, the Board finds that they apply equally on an appeal made under section 7 of the Act, of an order made by an employee of the Board pursuant to section 6 of the Act. Under the “threshold” rule, the Board may determine, with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits, specifically if the

appeal raises a question as to the correctness of the order or decision, which grounds may include:

- i. error in fact;
- ii. change in circumstances;
- iii. new facts that have arisen;
- iv. facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time; and...

The submission filed by Mr. Langematz on appeal does not allege any specific error in fact or change in circumstances. As well, it does not raise any facts that have arisen, or facts that were not previously placed in evidence in the EB-2013-0299 proceeding and could have been discovered by reasonable diligence. Moreover, the Board finds that Mr. Langematz has not raised any grounds that properly challenge the correctness of the Order. The appellant's submission on this appeal mirrors his original submissions in the EB-2013-0299 proceeding and they both essentially reiterate the issues brought to the Board's attention previously in 2011 and 2012 in Mr. Langematz's dealings with the Board's compliance department (wherein it had been determined that Carma was not in contravention of any of the obligations under its unit sub-metering licence). Mr. Langematz may disagree with the decision of the board of his condo corporation (to have entered into a business relationship with Carma), but that is a matter outside of this Board's jurisdiction.

For these reasons, the Board finds that the grounds submitted on the appeal do not raise a question as to the correctness of the Order such that a review of the Order would result in it being varied or cancelled.

THE BOARD ORDERS THAT:

1. The appeal is dismissed.

DATED at Toronto, December 23, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary