



**INFRASTRUCTURE SERVICES DEPARTMENT
KITCHENER UTILITIES**

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BY E-MAIL & COURIER

11 March 2014

Ontario Energy Board
Attn: Ms. Kirsten Walli, Board Secretary
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, Ontario, M4P 1E4

Dear Ms. Walli:

Re: EB-2014-0018 – Application for a Gas Marketer License (“Application”) to the Ontario Energy Board (“Board”) – The Corporation of the City of Kitchener – Utilities Division (“Kitchener”) – Response to Written Submissions of Summitt Energy Management Inc. (“Summitt Energy”) and Planet Energy (Ontario) Corp. (“Planet Energy”)

This submission is made by Kitchener pursuant to the Board’s Notice of Application and Written Hearing dated February 11, 2014 in response to the written submissions of Planet Energy dated February 28, 2014 and Summitt Energy dated March 3, 2014. Kitchener respectfully submits that these submissions are misinformed, speculative, and reflect a fundamental misunderstanding of Kitchener’s Application. They should be rejected by the Board in its determination of the Application.

Kitchener is a municipally owned non-rate regulated gas distributor that provides default system gas supply at cost to its ratepayers that do not choose competitive supply from an energy marketer. The Application is for the renewal of an existing Gas Marketer License GM-2009-0048 (“GM License”) issued by the Board, as amended, on March 14, 2011. Kitchener has continuously held a gas marketer license in good standing since 2000, with exemptions to applicable Codes that would otherwise conflict with its role as a municipally owned distributor providing default natural gas supply.

From its outset in the wake of fundamental changes to energy regulation under the *Ontario Energy Board Act, 1998*, Kitchener’s intent in seeking its gas marketer license has been to subject itself to the regulation and oversight of the Board for the sale of gas to small volume consumers in its service territory and to fully comply with the conditions as granted by the Board. Although Kitchener, as a municipally owned gas distributor, is not rate-regulated by the Board, it is subject to regulation by the Board under its GM License and the Gas Distribution Access Rule (“GDAR”).

To the best of its knowledge, Kitchener is not aware of any formal complaints brought against it under its GM License or GDAR – or of any concerns raised by the Board on its own initiative – which required or requires any remedial action by Kitchener to comply with the applicable rules or regulations. In their submissions, Planet Energy and Summitt Energy have provided no evidence of non-compliance by Kitchener with the terms of its GM License or GDAR. In the absence of evidence, they instead rely on unsubstantiated presumptions and conjecture that “...the applicant may not abide by the OEB Act, the Affiliate Code and the Code of Conduct for Gas Marketers...”¹ and “...it can be reasonably extrapolated that Kitchener Utilities is of the view and belief that the Code of Conduct for Gas Marketers...would also not apply to them.”² These presumptions are false and should be rejected by the Board in its determination of the Application.

In its delegated EB-2010-0407 Decision and Order dated March 14, 2011, the Board noted as follows:

“I find that it is in the public interest to continue to exempt the applicant from compliance with certain sections of the Code [Code of Conduct for Gas Marketers as restated on November 17, 2010 to implement the provisions of the *Energy Consumer Protection Act, 2010*]. The applicant is a gas distributor that supplies gas to its customers in accordance with conditions of service approved by the City of Kitchener. The Corporation does not enter into gas supply contracts with its customers, nor does it employ salespersons who are marketing natural gas on its behalf. The Corporation is appropriately exempt from sections of the Code that impose requirements related to activities that the Corporation does not undertake.”

This finding from the Board sets out very clearly Kitchener’s role as a gas distributor and distinguishes its activities from those carried out by energy marketers such as Planet Energy and Summitt Energy. Kitchener respectfully submits that this clear distinction by the Board has either been lost upon or ignored by Planet Energy and Summitt Energy in their respective submissions.

In their submissions, Planet Energy and Summitt Energy raise concerns with the granting of a GM License to Kitchener, as applicant, in the name of “Kitchener Utilities”. They suggest that doing so would violate the spirit and intent of the Affiliate Relationships Code for Gas Utilities (“ARC”) to not permit a utility to directly benefit from the use of its name while marketing to consumers. Neither the municipal Corporation of the City of Kitchener nor its wholly owned enterprise, Kitchener Utilities, derives any financial benefit from providing default system gas supply at cost to its ratepayers that do not choose competitive supply from an energy marketer. Under its current GM License and previous licenses, the Board has authorized the use of “Kitchener Utilities” as a trade name. Kitchener respectfully submits the Board would not have authorized its trade name use in providing default system gas supply if the Board had any concern with adherence to the spirit and intent of the ARC.

In related submissions, Planet Energy and Summitt Energy raise presumptive concerns with the sharing of confidential information and resources by Kitchener as a distributor and as a Gas Marketer “...to obtain a competitive advantage in the marketplace”³ or to “...use rate payer and/or tax payer revenues to fund and support its private enterprise and endeavors”⁴. These presumptions are false

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¹ Submission of Summitt Energy dated March 3, 2014 at page 2, paragraph 2.

² Submission of Planet Energy dated February 28, 2014 at page 2, paragraph 2.

³ Submission of Summitt Energy dated March 3, 2014 at page 2, paragraph 1.

⁴ Submission of Planet Energy dated February 28, 2014 at page 1, paragraph 3.

and should be rejected by the Board in its determination of the Application. Again, Kitchener derives no financial benefit from providing default system gas supply at cost to its ratepayers that do not choose competitive supply from an energy marketer. There are no cross-subsidies between default system supply and distribution service. This is achieved and maintained by appropriate pricing and rate-making of Kitchener's system supply to add administration costs that are equivalent to administration costs borne by direct purchase customers.

In addition, the revenues and costs of Kitchener's default system gas supply and distribution service are separated for accounting purposes and are subject to independent annual financial audit to accord with Canadian public sector accounting standards and to ensure there are no cross-subsidies between default system supply and distribution services for the Kitchener gas utility. Kitchener's most recent audited financial statements for 2011 and 2012 were filed with the Application.

In their submissions, Planet Energy and Summitt Energy cite "industry experience" that the historical practices followed by Kitchener for the enrollment of customers in alternative natural gas supply arrangements do not adhere to GDAR and impair competition for the supply of gas in the Kitchener service territory. No specific information or facts are provided in support of these submissions.

Kitchener has been an active participant in the development and amendment of the GDAR by the Board over time. As noted above, Kitchener is subject to the GDAR and fully complies with its provisions, including provisions which differ from other gas utilities to provide grandfathering of existing processes. As a municipal entity, Kitchener is also subject to the Municipal Freedom of Information and Protection of Privacy Act ("MFIPPA"). To the extent there is a conflict between the GDAR and MFIPPA in relation to the enrollment of customers, it only arises infrequently to ensure consistency in the customer information provided by the energy marketer with the customer information in Kitchener's billing system. Kitchener respectfully submits that the submissions of Planet Energy and Summitt Energy related to GDAR and MFIPPA are unsupported by fact or evidence and should be rejected by the Board in its determination of the Application.

Kitchener respectfully submits that the submissions of Planet Energy with respect to hedging of system gas supply and its impact on competition for the supply of gas in the Kitchener service territory also have no basis in fact or evidence. These submissions should be rejected by the Board in its determination of the Application. Subject to Council approved purchase criteria, Kitchener engages in hedging of its system gas supply to meet customer preference for rate stability. Kitchener has not and will not solicit its customers for a fixed rate agreement in competition with offerings of energy marketers. A significant independent customer survey and engagement process is currently underway to determine the preference of Kitchener consumers for stable or variable gas supply rates.

In conclusion, Kitchener respectfully submits that its Application is in the public interest and should be approved by the Board, as filed by Kitchener and with no additional conditions or restrictions as submitted by Planet Energy and Summitt Energy.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Gruenbauer", is written over a light blue horizontal line.

James A. Gruenbauer, CMA
Manager, Regulatory Affairs and Supply

Cc: I. Kuznetsova (OEB)
J. Donnelly (Summitt Energy)
J. Small (Planet Energy)
J. Willmer (Kitchener)
D. Chapman (Kitchener)
P. Houston (Kitchener)
W. Malcolm (Kitchener)
L. MacDonald (Kitchener)
J. Chatterjee (Kitchener)