



EB-2006-0341

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

AND IN THE MATTER OF an application by Planet
Energy (Ontario) Corp. for an electricity retailer
licence.

By delegation, before: Jennifer Lea

DECISION AND ORDER

Planet Energy (Ontario) Corp. ("Planet") filed an application dated December 21, 2006 with the Ontario Energy Board under section 60 of the *Ontario Energy Board Act*, 1998 (the "Act") for an electricity retailer licence.

The Board's Notice of Application and Written Hearing for an electricity retailer licence was published on January 19, 2007.

On February 2, 2007, Ontario Energy Savings LP ("OESLP") objected to Planet's application stating that certain principals of Planet Energy Corporation are contractually bound not to compete with OESLP and its affiliates in the Ontario retail market, and that to grant Planet the licence requested would be prejudicial to OESLP.

Planet responded to OESLP's submission on February 8, 2007. Planet stated that it intends to market electricity to medium to large commercial and industrial consumers in Ontario, and that neither Planet nor any of its principals has any contractual obligation not to compete with OESLP in this market segment. Planet further clarified, in its letter dated March 20, 2007, that it intends to market to customers whose consumption exceeds 50,000 kWh/year.

Because Planet will be retailing electricity to consumers whose consumption is under 150,000 kWh/year, the Board must consider the licensing requirements for electricity

retailers set out in Ontario Regulation 90/99—*Electricity Retailers—Licence Requirements* (made under the Act) (the “Regulation”). Section 2(1) of the Regulation states that:

2. (1) An applicant for the issuance or renewal of a licence that allows for the retailing of electricity to residential or small business consumers must meet all of the following requirements:

...

2. The past conduct of the applicant affords reasonable grounds for belief that the applicant will carry on business in accordance with law and with integrity and honesty.

3. If the applicant is a corporation, the past conduct of its officers and directors affords reasonable grounds for belief that its business will be carried on in accordance with law and with integrity and honesty.

I have considered whether the allegation made by OESLP regarding a possible lack of compliance with a non-competition contract is sufficient to raise doubts as to the good conduct of Planet or Planet’s officers and directors. The allegation does not relate to “past conduct” but rather to a possible future action by Planet. Taking into account Planet’s response to the allegation and its clarifying letter of March 20, 2007, I am persuaded that Planet has satisfied the requirements of the Regulation as well as the other Board requirements for issuing a licence.

Furthermore, I agree with the submission of Planet, included in its response of February 8, 2007, that the denial of an electricity retailer licence is not the proper remedy for any future breach of contract that may result from Planet’s activity under its licence. It is not part of the Board’s licensing function to review and enforce non-competition agreements.

I therefore find it to be in the public interest to grant Planet’s application for an electricity retailer licence.

IT IS THEREFORE ORDERED THAT:

The application for an electricity retailer licence is granted, on such conditions as are contained in the attached licence.

DATED at Toronto, March 30, 2007.

ONTARIO ENERGY BOARD

Original signed by

Jennifer Lea
Special Advisor, Market Operations



Electricity Retailer Licence

ER-2006-0341

Planet Energy (Ontario) Corp.

Valid Until

March 29, 2012

Original signed by

Jennifer Lea
Special Advisor, Market Operations
Ontario Energy Board
Date of Issuance: March 30, 2007

Ontario Energy Board
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27th. Floor
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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;

"Licensee" means Planet Energy (Ontario) Corp.;

"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;

"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 or the Electricity Act. 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;
 - b) the Retail Settlement Code; and
 - c) the Retail Metering 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 March 30, 2007 and expire on March 29, 2012. 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. Planet Energy

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.