



Ontario Energy Board Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2016-0116

3500 STEELES AVENUE EAST INC.

**Application for an Electricity Retailer Licence and Request for
Exemption from the Electricity Retailer Code of Conduct**

BY DELEGATION,

BEFORE: Peter Fraser
Vice President, Industry Operations & Performance

June 30, 2016

INTRODUCTION AND SUMMARY

3500 Steeles Avenue East Inc. (3500 Steeles) filed an application on March 4, 2016 under section 60 of the *Ontario Energy Board Act*, 1998 (the OEB Act) for an electricity retailer licence and, if the licence is granted, an exemption from the Electricity Retailer Code of Conduct (the Code).

The Ontario Energy Board (OEB) approves the application, with conditions, for the reasons set out below.

PROCESS

This Decision and Order is being issued by Delegated Authority, pursuant to Section 6 of the OEB Act.

THE APPLICATION

Background

A Notice of Application and Written Hearing was posted on the OEB's website on March 30, 2016. The Notice provided time for interrogatories and submissions on the application evidence, as well responses from the 3500 Steeles. On April 20, 2016, OEB staff filed interrogatories on the application. 3500 Steeles replied on April 29, 2016. OEB staff filed a submission on May 12, 2016 and 3500 Steeles replied to OEB staff's submission on May 27, 2016.

On May 12, 2016, in a separate proceeding, 3500 Steeles was issued Electricity Wholesaler Licence EW-2016-0117, to allow it to purchase electricity from the Independent Electricity System Operator (IESO).

Request for Exemption

3500 Steeles recently purchased the commercial property located at 3500 Steeles Avenue East in Toronto. 3500 Steeles stated that the property is served by an already existing transformer station which is connected directly to the IESO-controlled grid. IBM Canada Ltd. currently serves the commercial property at 3600 Steeles Avenue East and is acting on behalf of 3500 Steeles prior to 3500 Steeles obtaining an electricity retailer licence.

In its application, 3500 Steeles noted that it otherwise meets all of the criteria set out in s. 4.1(1) of the OEB Act's exemption regulation, O. Reg. 161/991 (the "Exemption Regulation") , except for the fact that 3500 Steeles will purchase power from the IESO-controlled grid as opposed to from a licensed distributor or licensed retailer. The Exemption Regulation provides as follows at section 4.1(1):

4.1 (1) Clause 57 (d) of the Act does not apply to a retailer if the only electricity retailed by the retailer was purchased by the retailer from another person that holds a licence authorizing the other person to own or operate a distribution system or to retail electricity, the retailer that purchased the electricity retails it at a price that is no greater than the price the retailer purchased it for, and,

(a) the retailer that purchased the electricity retails it only on land on which one or more of the types of buildings or facilities described in subsection 4.0.1 (1) is located;

(b) the principal activity of the retailer that purchased the electricity is the management of property and the retailer retails the electricity only to occupants of the property; [...]

3500 Steeles also stated that it meets the criteria set out in s. 4.1(3)(a) and s. 4.1(3)(b) of the Exemption Regulation; however, it noted that it does not meet the requirement in s. 4.1(3)(c) that states that it must have owned the distribution system on the 3500 Steeles property as of January 1, 2002. IBM Canada Ltd. does meet this requirement and therefore benefits from the exemption set out in section 4.1(3) of the Exemption Regulation.

3500 Steeles' stated that its intended market activity is to serve two low volume consumers and three high volume consumers, all five of whom will be its commercial tenants. 3500 Steeles indicated that it does not intend to serve any consumers aside from tenants of its property at 3500 Steeles Avenue East.

3500 Steeles also stated that given that it will pass through the cost of electricity to its tenants without a profit and that most provisions of the Code would not apply to it or its tenants it requests an exemption from the Code.

OEB staff submitted that it had no issues with licensing 3500 Steeles as an electricity retailer in the Ontario market based on its financial viability, technical capability and past conduct. However, OEB staff stated that it had concerns with 3500 Steeles' request for an exemption from the Code and was of the view that the exemption should be denied. OEB staff reasoned that if the exemption to the Code was approved, it would limit the OEB's ability to regulate 3500 Steeles as an electricity retailer that holds a licence to market to low volume and large volume consumers. OEB staff also submitted that,

given the fact that many of the provisions of the Code do not apply to 3500 Steeles, a blanket exemption to the Code was unnecessary.

In its reply, 3500 Steeles reiterated its request for an exemption from the Code. It stated that it nevertheless needs the certainty of knowing that it does not need to fulfill the obligations under the Code. 3500 Steeles indicated that it will be undertaking the activities normally undertaken by an exempt retailer who is a commercial landlord, i.e., its electricity retailing activities will consist of providing electricity at cost to its tenants. 3500 Steeles also advised that it would be agreeable to a condition of licence that stipulates that the licence permits 3500 Steeles to retail electricity only to commercial tenants at the 3500 Steeles commercial property. 3500 Steeles submitted that it is also agreeable to a condition of licence that requires it to provide power to its tenants at cost.

FINDINGS

After considering the evidence and the submissions of the parties, I find that electricity retailer licence should be granted, with certain restrictions. The licence will be granted for a term of five years during which period 3500 Steeles shall be exempted from the requirements of the Code on the condition that:

- i) 3500 Steeles' retail customers shall be restricted to only the commercial tenants at 3500 Steeles Avenue East, Toronto, Ontario, and
- ii) 3500 Steeles shall only retail electricity at a price that is no greater than the price it purchased the electricity for.

As a licensed electricity retailer, 3500 Steeles will have to conduct itself in accordance with all other applicable licensing obligations, codes and regulations.

IT IS ORDERED THAT:

1. The application for an electricity retailer licence is granted, on such conditions as are contained in the attached licence and, in particular, on the basis that the sole activity for which 3500 Steeles Avenue East Inc. shall use the electricity retailer licence will be to retail electricity to only the commercial tenants located at 3500 Steeles Avenue East, Toronto, Ontario for a price no greater than the price it purchased the electricity for.

2. The licence shall be for a term of five years, during which period the applicant will be exempted from the obligation to comply with the Electricity Retailer Code of Conduct.

DATED at Toronto, June 30, 2016

ONTARIO ENERGY BOARD

Original Signed By

Peter Fraser
Vice President, Industry Operations & Performance



Electricity Retailer Licence

ER-2016-0116

3500 Steeles Avenue East Inc.

Valid Until

June 29, 2021

Original signed by

Peter Fraser
Vice President, Industry Operations & Performance
Ontario Energy Board
Date of Issuance: June 30, 2016

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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 3500 Steeles Avenue East Inc.;

“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 at a price that is no greater than the price the retailer purchased the electricity for to the commercial tenants located at the commercial property 3500 Steeles Avenue East, Toronto, ON L3R 0X1;
- 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 Retail Settlement Code; and
 - b) 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 Provision of Information to the Board

- 7.1 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.
- 7.2 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.

8 Customer Complaint and Dispute Resolution

- 8.1 The Licensee shall participate in a consumer complaints resolution process selected by the Board.

9 Term of Licence

- 9.1 This Licence shall take effect on June 30, 2016 and expire on June 29, 2021. The term of this Licence may be extended by the Board.

10 Fees and Assessments

- 10.1 The Licensee shall pay all fees charged and amounts assessed by the Board.

11 Communication

- 11.1 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.
- 11.2 All official communication relating to this Licence shall be in writing.
- 11.3 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.

12 Copies of the Licence

- 12.1 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.