



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

DECISION AND ORDER

EB-2017-0015

Amending Ag Energy Co-operative Ltd.'s Electricity Retailer Licence (ER-2014-0129) and Gas Marketer Licence (GM-2014-0254)

BEFORE: Rosemarie T. Leclair
Chair

Ken Quesnelle
Vice-Chair

Christine Long
Vice-Chair

June 1, 2017

BACKGROUND

Ag Energy Co-operative Ltd. (Ag Energy) is a co-operative incorporated under the *Co-operative Corporations Act* (Ontario) and is licensed by the Ontario Energy Board (OEB) as an electricity retailer and natural gas marketer. It provides energy services to agricultural producers and processors, including selling natural gas and electricity.

Ontario Regulation 389/10 (General) under the *Energy Consumer Protection Act, 2010* (ECPA) was amended effective January 1, 2017 to exempt Ag Energy from the ECPA in respect of contracts that it enters into, amends, renews or extends with its members.

Ag Energy's electricity retailer and natural gas marketer licences currently require Ag Energy to comply with the OEB's retailer and marketer Codes of Conduct. A number of the provisions of the Codes of Conduct are directly tied to the ECPA, and requiring Ag Energy to comply with those provisions is incompatible with its exemption from the ECPA.

The OEB therefore commenced this proceeding, on its own motion, pursuant to section 19(4) of the *Ontario Energy Board Act, 1998*, to amend Ag Energy's licences.

The purposes of the amendments are:

- i. to exempt Ag Energy from compliance with the Codes of Conduct, to the extent necessary to align with Ag Energy's exemption from the ECPA
- ii. to ensure consumer awareness of Ag Energy's exempt status
- iii. to enable the OEB to monitor Ag Energy's exemption

In addition, a housekeeping amendment will be made to Ag Energy's electricity retailer licence: the reference to the "FireFly Energy" trade name, which is no longer used by Ag Energy, will be removed.

Pursuant to section 21(4) of the *Ontario Energy Board Act, 1998*, no hearing was held in this matter. Given that Ag Energy has the benefit of the statutory exemption from the ECPA, the OEB is satisfied that no one will be adversely affected in a material way by the licence amendments. Ag Energy consented to having the matter disposed of without a hearing.

DECISION

The OEB finds that it is in the public interest to amend Ag Energy's electricity retailer licence and gas marketer licence. The amended licences are attached to this Decision and Order. Below is a summary of the amendments.

A. Amendments to Align with Ag Energy's Exemption from the ECPA

These amendments are in section 5.1 and the new Schedule 2 of the attached licences, and set out the provisions of the Codes of Conduct from which Ag Energy will be exempt. In keeping with the scope of Ag Energy's exemption from the ECPA, the Code of Conduct exemptions apply only to the extent that Ag Energy is transacting with a member of the co-operative. Any contracting activity that Ag Energy might undertake with persons that are not members remains fully subject to the Codes of Conduct (and the ECPA).

B. Amendments to Ensure Consumer Awareness of Ag Energy's Exempt Status

The OEB is of the view that low-volume consumers should be made aware of Ag Energy's exempt status, so that they understand that they will not have the benefit of protections that would apply if they were transacting with any other energy retailer. Ag Energy will therefore be required to give notice of its exempt status on its membership application forms and before amending, renewing or extending a contract with a member. The new section 5A of the attached licences addresses this issue.

C. Amendments to Enable the OEB to Monitor Ag Energy's Exemption

The amended licences introduce one new reporting requirement and one new record-keeping requirement. The reporting requirement is set out in section 7.2(b) of the attached gas marketer licence and section 8.2(b) of the attached electricity retailer licence, and requires Ag Energy to provide notice of any changes to its constituting documents. Of particular interest will be whether Ag Energy expands its criteria for membership, which could have the effect of considerably expanding the reach of Ag Energy's ECPA exemption. The new record-keeping requirement is set out in section 7.2(e) of the gas marketer licence and section 8.2(e) of the electricity retailer licence. It is intended to enable the OEB to readily assess compliance with the requirement discussed above regarding notification of Ag Energy's exempt status being included in member application forms. Ag Energy's reporting requirements under the *Electricity Reporting and Record Keeping Requirements* and the *Natural Gas Reporting and*

Record Keeping Requirements: Gas Marketer Licence Requirements will also be enhanced to provide a breakdown of Ag Energy's low-volume contracting activities by members of the co-operative versus non-members. These provisions are set out in sections 7.2(c) and (d) of the gas marketer licence and sections 8.2(c) and (d) of the electricity retailer licence.

D. Removal of the Reference to the FireFly Energy Trade Name

Ag Energy is currently authorized under its electricity retailer licence to use the FireFly Energy trade name. Ag Energy has advised that it no longer uses that trade name. Accordingly, the OEB will remove the reference to FireFly Energy in Schedule 1 of the licence.

THE ONTARIO ENERGY BOARD THEREFORE ORDERS THAT:

1. Ag Energy's electricity retailer licence (ER-2014-0129) is amended. The amended licence is attached to this Decision and Order.
2. Ag Energy's gas marketer licence (GM-2014-0254) is amended. The amended licence is attached to this Decision and Order.

DATED at Toronto June 1, 2017

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary