

ONTARIO ENERGY BOARD

OEB STAFF SUBMISSION

Active Energy Inc.

Gas Marketer Licence Renewal Application

EB-2017-0178

Electricity Retailer Licence Renewal Application

EB-2017-0179

July 11, 2017

THE PROCEEDING

On May 1, 2017 Active Energy Inc. (Active Energy) filed an application with the Ontario Energy Board under section 60 of the *Ontario Energy Board Act, 1998* (the OEB Act) to renew its electricity retailer licence. Active Energy also filed an application under section 50 of the OEB Act to renew its gas marketer licence.

On May 16, 2017, the OEB issued a combined Notice of Application and Written Hearing (Notice) which included dates for filing of interrogatories and submissions. No parties responded to the Notice. In accordance with the timelines set out in the Notice, on June 15, 2017, OEB staff filed interrogatories in order to gather additional information required for the OEB's final determination of the renewal applications. On June 28, 2017, Active Energy filed responses to OEB staff interrogatories.

THE APPLICANT

Active Energy markets natural gas and retails electricity in Ontario low-volume consumers, as well as persons consuming annually greater than 150,000 kilowatt hours of electricity (i.e. large-volume consumers). In addition to the Ontario energy retail market, Active Energy retails commodities in Quebec and British Columbia. Active Energy also operates under trade name Active Business Services and provides its commercial and industrial customers with natural gas and electricity supply and risk management solutions.

STAFF SUBMISSION

In accessing gas marketer and electricity retailer licence applications OEB staff considers the entire applications and in particular financial viability, technical capability and past conduct of the applicant.

Financial Viability

OEB staff's interrogatories to Active Energy sought to further the record with respect to financial health of Active Energy [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Based on the information provided, staff submits that Active Energy can reasonably be expected to be financially responsible in the conduct of its business.

Technical Capability

OEB staff submits that according to the application, Active Energy employs technical personnel with adequate experience and qualifications in the retail energy industry. All key individuals listed in the application are reported to have extensive experience in the energy sector. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Conduct

Gas marketers and electricity retailers in Ontario are required to comply with the OEB Act, *Energy Consumer Protection Act, 2010* (ECPA), regulations under these Acts, and the Codes of Conduct for Gas Marketers and Electricity Retailers (collectively the Codes).

OEB staff's interrogatories to Active Energy sought to further the record with respect to Active Energy's plans to ensure compliance with its legal and regulatory obligations if the applicant were granted renewal of its licences, including Active Energy's approach to customer acquisition, sales channels and details on products Active Energy intends to offer to its low-volume consumers.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

An important factor in the OEB's review of a licence application is the applicant's past conduct. In 2014, the OEB conducted a review of Active Energy's operations, which revealed a number of cases of non-compliance with enforceable provisions of the ECPA, Ontario Regulation 389/10 made under the ECPA and the Codes, with respect to customer enrollment, contract verification, disclosure statements and price comparison, marketing and promotional materials and in-person sales. In May 2014, Active Energy provided the OEB with an Assurance of Voluntary Compliance and paid an administrative penalty in the amount of \$380K.

OEB staff reviewed Active Energy's interrogatory responses respecting its compliance and customer service practices. OEB staff notes that due to the fact that Active Energy does not actively sell natural gas and electricity to low-volume consumers, activities related to enrolment of new customers such as marketing and promotions, contract enrollments and verification are no longer conducted by the applicant. In its response to OEB staff interrogatory #6.b, which queried how Active Energy intends to ensure compliance with its legal and regulatory obligations, the applicant stated that its employees are provided necessary training to remain current with the company's obligations and to have sufficient industry knowledge.

On May 25, 2017 and on June 1, 2017, the OEB issued Notices of Intention to Make an Order for Compliance to Active Energy. The Compliance Notices allege that Active Energy has engaged in an unfair practice and breached multiple sections of the ECPA, regulations under the ECPA, and the Electricity Retailer Code of Conduct. In its interrogatory #7, OEB staff sought an explanation from Active Energy on how it plans to ensure continued compliance with its legal and regulatory obligations in relation to the deficiencies set out in the Notices. Active Energy did not provide a full response to this interrogatory, stating that it contests the OEB's allegations and has requested a hearing. In addition, Active Energy states that it believes to be compliant with its licence obligations.

The Term of the Licences

In response to OEB staff interrogatories #1, 4, 5 and 6, the applicant states that it is not currently acquiring new low-volume consumers and has no plans to acquire low-

volume consumers in the future. All current contracts with low-volume natural gas and electricity consumers are due to expire in the near future.

Gas Marketer Licence

Considering that Active Energy does not intend to continue its business activities for which a gas marketer licence is sought after existing low-volume contracts' expiry, OEB staff submits that the gas marketer licence should not be renewed for the standard five-year term. In its reply submission, Active Energy should provide the date upon which its final low-volume natural gas contract will expire. In OEB staff's submission, this date should become Active Energy's gas marketer licence expiry date.

Electricity Retailer Licence

With respect to Active Energy's electricity retailer licence, once all low-volume electricity contracts expire, Active Energy should apply to the OEB for an amendment to its electricity retailer licence to remove authorization to retail electricity to low-volume consumers. The licence would continue to authorize Active Energy to serve large volume consumers.

All of which is respectfully submitted.