



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

DECISION AND ORDER

EB-2017-0178 & EB-2017-0179

ACTIVE ENERGY INC.

Applications for a Gas Marketer Licence and an Electricity Retailer Licence

BY DELEGATION,

BEFORE: Brian Hewson
Vice President, Consumer Protection & Industry Performance

August 17, 2017

INTRODUCTION AND SUMMARY

Active Energy Inc. applied for a renewal of its gas marketer licence (GM-2012-0044) and electricity retailer licence (ER-2012-0045), each of which are set to expire on September 19, 2017. For the reasons set out below, the applications are approved.

THE PROCESS

Active Energy Inc. (Active Energy) filed a gas marketer licence application under section 50 of the *Ontario Energy Board Act, 1998* (OEB Act) and an electricity retailer licence application under section 60 of the OEB Act on May 1, 2017. The Ontario Energy Board (OEB) combined the applications into one proceeding, pursuant to section 21(5) of the OEB Act.

The OEB issued a combined Notice of Applications and Written Hearing (Notice) on May 16, 2017, inviting persons to intervene in the hearing or to comment on the applications. No one responded to the Notice. OEB staff participated in the hearing and filed written interrogatories on June 16, 2017. Active Energy responded to OEB staff's interrogatories on June 28, 2017. OEB staff filed a submission on the application on July 11, 2017. Active Energy responded to the submission on July 25, 2017.

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

FINDINGS

An applicant for the issuance or renewal of a licence that allows for the retailing of electricity (an electricity retailer licence) or the marketing of gas (a gas marketer licence) to residential or small business consumers must meet the minimum requirements set out in Ontario Regulation 90/99 "Licence Requirements – Electricity Retailers and Gas Marketers", made under the OEB Act:

1. Having regard to the financial position of the applicant, the applicant can reasonably be expected to be financially responsible in the conduct of business;
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;

4. The applicant is not carrying on activities that are, or will be, if the applicant is licensed, in contravention of the Act or the regulations or the rules made under Part III of the Act;

5. If the applicant is an individual, the applicant is at least 18 years old.

Ontario Regulation 90/99 also specifies that if any of the foregoing requirements are not met by the applicant, the licence shall not be issued or renewed.

In its submission on the applications, OEB staff states that Active Energy meets the requirements for the renewal of its gas marketer licence and electricity retailer licence. In OEB staff's view, the applicant can reasonably be expected to be financially responsible in the conduct of its business and has adequate technical capabilities to operate in the Ontario market. With respect to the applicant's conduct, OEB staff notes that Active Energy was subject to sanctions by the OEB in 2014 for contraventions of the *Energy Consumer Protection Act, 2010* (ECPA) and the Codes of Conduct for Gas Marketers and Electricity Retailers related to customer enrollment and marketing practices. However, OEB staff concludes that based on Active Energy's current energy retailing activities that are limited to maintaining existing contracts with low volume consumers until their expiry in 2021, Active Energy's systems, policies, procedures and controls are appropriate to comply with its statutory and regulatory obligations.

In its submission, OEB staff also notes that on May 25, 2017 and on June 1, 2017, the OEB issued Notices of Intention to Make an Order for Compliance to Active Energy (EB-2017-0022/0223). 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 response to OEB staff interrogatory # 7 as well as in its reply to OEB staff submission, Active Energy states that it contests the OEB's allegations and believes that it has been and remains compliant with its regulatory obligations. Active Energy has requested, and has since been granted, an oral hearing in the EB-2017-0022/0223 compliance proceeding.

Active Energy's applications for renewal of its gas marketer and electricity retailer licences are granted. When evaluating an application for an electricity retailer licence or a gas marketer licence, the OEB focuses its consideration on the requirements set out in Ontario Regulation 90/99; in particular, the applicant's financial position, technical capability to operate in the market, and conduct. The record in this case indicates that Active Energy has met these requirements.

IT IS ORDERED THAT:

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

DATED at Toronto, August 17, 2017

ONTARIO ENERGY BOARD

Original signed by

Brian Hewson
Vice President, Consumer Protection & Industry Performance



Gas Marketer Licence

GM-2017-0178

Active Energy Inc.

Valid Until

August 16, 2022

Original signed by

Brian Hewson
Vice President, Consumer Protection & Industry Performance
Ontario Energy Board
Date of Issuance: August 17, 2017

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
27th. Floor
Toronto, ON M4P 1E4

Commission de l'énergie de l'Ontario
C.P. 2319
2300, rue Yonge
27e étage
Toronto ON M4P 1E4

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1 Definitions

In this Licence:

“**Act**” means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

“**ECPA**” means the *Energy Consumer Protection Act, 2010*, S.O. 2010, c. 8;

“**low-volume consumer**” means a person who annually uses less than 50,000 cubic meters of gas;

“**Licensee**” means Active Energy Inc.;

“**Regulation**” means regulations made under the Act or the ECPA.

2 Interpretation

- 2.1 In this Licence, words and phrases shall have the meaning ascribed to them in the Act or the ECPA. 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 IV of the Act, and subject to the terms and conditions set out in this Licence:
- a) to sell or offer to sell gas to a low-volume consumer;
 - b) to act as the agent or broker for seller of gas to a low-volume consumer; and
 - c) to act or offer to act as the agent or broker of a low-volume consumer in the purchase of gas.
- 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 and Regulations

- 4.1 The Licensee shall comply with all applicable provisions of the Act, the ECPA and the Regulations except where the Licensee has been exempted from such compliance by regulation.

5 Obligation to Comply with Codes

- 5.1 The Licensee shall at all times comply with all applicable provisions of the Code of Conduct for Gas Marketers, as issued and amended by the Board from time to time under Part III of the Act.
- 5.2 This Licensee shall:
- a) make a copy of the Code 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 Code 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 7.1, 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 August 17, 2017 and expire on August 16, 2022. 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

Active Business Services