



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