



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

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## **DECISION AND ORDER**

**EB-2019-0136**

## **AG ENERGY CO-OPERATIVE LTD.**

**Application for an Electricity Retailer Licence**

**BY DELEGATION,**

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

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**June 13, 2019**

## DECISION AND ORDER

Ag Energy Co-operative Ltd. (Ag Energy) filed an application on April 11, 2019 with the Ontario Energy Board (OEB), under section 60 of the *Ontario Energy Board Act, 1998* (OEB Act) for an electricity retailer licence renewal.

Ag Energy is an independent, member owned co-operative incorporated under the Co-operative Corporations Act (Ontario) and is licensed by the OEB as an electricity retailer and natural gas marketer. It provides energy services to agricultural producers and processors, including selling electricity and natural gas. Pursuant to section 27(1) 3 of the Ontario Regulation 389/10 (General) under the *Energy Consumer Protection Act, 2010* (ECPA), effective January 1, 2017, Ag Energy is exempted from the ECPA in respect of contracts that it enters into, amends, renews or extends with its members. Ag Energy is also exempted from compliance with certain provisions of the Electricity Retailer Code of Conduct as they relate to Ag Energy's exemption from the ECPA<sup>1</sup>. The Code of Conduct exemptions apply only to the extent that Ag Energy is transacting with the members of the co-operative. AG Energy is required to provide its members with notice of the exemptions in accordance with its existing licence conditions as well as certain reporting requirements relating to its contracting with, and supply to its members.

This Decision and Order is being issued by Delegated Authority without a hearing, pursuant to Section 6 of the OEB Act.

After considering the application and assessing the conduct, technical capability and financial viability of the applicant, the OEB finds that it is in the public interest to grant the application and issue an electricity retailer licence to Ag Energy Co-operative Ltd. The OEB also finds that the exemptions to the Code of Conduct and the licence conditions requiring AG Energy to give notice to its members of the exemptions and provide the OEB with additional reporting are in the public interest and should be continued with the renewal of its licence.

### IT IS ORDERED THAT:

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

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<sup>1</sup> EB-2017-0015

**DATED** at Toronto, June 13, 2019

**ONTARIO ENERGY BOARD**

*Original Signed By*

Brian Hewson  
Vice President, Consumer Protection & Industry Performance



# Electricity Retailer Licence

**ER-2019-0136**

**Ag Energy Co-operative Ltd.**

**Valid Until**

**June 12, 2024**

*Original signed by*

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**Brian Hewson**  
**Vice President, Consumer Protection & Industry Performance**  
**Ontario Energy Board**  
**Date of Issuance: June 13, 2019**

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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;

“**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 Ag Energy Co-operative Ltd.;

“**low-volume consumer**” means a person who annually uses less than 150,000 kWh of electricity;

“**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 to a consumer;
  - b) to act as the agent or broker for a retailer with respect to the sale or offering for sale of electricity; and
  - c) to act or offer to act as the agent or broker for a consumer with respect to the sale or offering for sale of electricity.

- 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 Except as otherwise provided in Schedule 2, 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 Electricity Retailer Code of Conduct;
  - b) the Retail Settlement Code; and
  - c) 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.

#### **5A Notification to Consumers of ECPA Exemption**

- 5A.1 The Licensee shall include the following notice on its membership form for low-volume consumers:

**"Notice of ECPA Exemption:** Ag Energy Co-operative Ltd. has been exempted from the Energy Consumer Protection Act, 2010 for any contract for the sale of electricity or natural gas that Ag Energy Co-operative Ltd. enters into, amends, renews or extends with one of its members. The Energy Consumer Protection Act, 2010 and Ontario Regulation 389/10 (General) made under it give consumers a number of rights in relation to contracts for electricity and natural gas. If, as a member of Ag Energy Co-operative Ltd., you enter into, amend, renew or extend a contract to buy electricity or natural gas from Ag Energy Co-operative Ltd., the consumer protection provisions of the Energy Consumer Protection Act, 2010 and Ontario Regulation 389/10 (General) will not apply to you."

- 5A.2 Before entering into, amending, renewing or extending a contract with a low-volume consumer that is a member of the Licensee, the Licensee shall notify the member of the Licensee's exemption from Part II of the ECPA in writing as follows:

**“Notice of ECPA Exemption:** Ag Energy Co-operative Ltd. has been exempted from the Energy Consumer Protection Act, 2010 for any contract for the sale of electricity or natural gas that Ag Energy Co-operative Ltd. enters into, amends, renews or extends with one of its members on and after January 1, 2017. The Energy Consumer Protection Act, 2010 and Ontario Regulation 389/10 (General) made under it give consumers a number of rights in relation to contracts for electricity and natural gas. If, as a member of Ag Energy Co-operative Ltd., you enter into, amend, renew or extend a contract to buy electricity or natural gas from Ag Energy Co-operative Ltd., the consumer protection provisions of the Energy Consumer Protection Act, 2010 and Ontario Regulation 389/10 (General) will not apply to you.

- 5A.3 The notice referred to in paragraph 5A.1 and the notification referred to in paragraph 5A.2 shall be presented with no less prominence than any other information contained in the applicable document.

## **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 Market Power Mitigation Rebates**

- 7.1 The Licensee shall comply with the pass through of Ontario Power Generation rebate conditions set out in Appendix A of this Licence.

## **8 Provision of Information to the Board**

- 8.1 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.
- 8.2 Without limiting the generality of paragraph 8.1, the Licensee shall:
- a) 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;
  - b) provide the Board with notice of any changes to the Licensee’s Articles of Incorporation or any of its By-laws, including the repeal of any of them, no more than twenty (20) days after the date on which such change is approved;
  - c) further break down the information required by section 4.1.1 of the Board’s *Electricity Reporting and Record Keeping Requirements* by low-volume consumers that are members of the Licensee and low-volume consumers that are not members of the Licensee;
  - d) include with its quarterly reports to the Board under the *Electricity Reporting and Record Keeping Requirements* information on the number of contracts that were amended, renewed or extended with low-volume consumers during the quarter, broken down by



type of consumers as follows: (i) members of the Licensee; and (ii) consumers that are not members of the Licensee; and

- e) maintain, under section 4.2.4 of the *Electricity Reporting and Record Keeping Requirements*, a copy of all application forms received by prospective members of the Licensee that are low-volume consumers.

## **9 Customer Complaint and Dispute Resolution**

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

## **10 Term of Licence**

- 10.1 This Licence shall take effect on June 13, 2019 and expire on June 12, 2024. The term of this Licence may be extended by the Board.

## **11 Fees and Assessments**

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

## **12 Communication**

- 12.1 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.
- 12.2 All official communication relating to this Licence shall be in writing.
- 12.3 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.

## **13 Copies of the Licence**

- 13.1 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**

None

**SCHEDULE 2 EXEMPTIONS FROM THE ELECTRICITY RETAILER CODE OF CONDUCT**

1. The Licensee is exempt from the following provisions of Part B of the Electricity Retailer Code of Conduct in respect of contracts that the Licensee enters into, amends, renews or extends with a low-volume consumer that is a member of the Licensee:
  - i. paragraphs (f.1) and (f.2) of section 1.1 (fair marketing practices);
  - ii. section 2 (business cards and identification badges, provided that nothing in this exemption shall be construed as affecting the Licensee's requirement to comply with sections 5 and 6 of Ontario Regulation 90/99 (Licence Requirements – Electricity Retailers and Gas Marketers) in relation to business cards and identification badges;
  - iii. sections 3.2A to 3.2D (contract terms and conditions);
  - iv. section 3.3 (transfer requests and supply – low-volume consumers), provided however that:
    - a. the Licensee shall not submit a request to a distributor for a change of electricity supply for a consumer to the Licensee or supply electricity to a consumer unless the Licensee has the permission in writing of the consumer to do so; and
    - b. if the Licensee discovers that a transfer request that it has submitted to a gas distributor for a consumer is supported by a contract that does not comply with the Act, the regulations made under the Act, this Licence or the Electricity Retailer Code of Conduct, or does not contain the signature of the consumer, the Licensee shall contact the affected consumer, clearly explain the non-compliance, and offer that consumer a compliant contract; and
      - A. if the consumer accepts the compliant contract, provide a copy of the compliant contract to the consumer within 14 days of acceptance by that consumer; or
      - B. if the consumer does not accept the compliant contract, immediately reverse the transfer request.
  - v. the last paragraph of section 3.7 (transfer requests where consumer enters into contract with another retailer);
  - vi. section 4 (disclosure statements, price comparisons, verification and renewals or extensions);
  - vii. section 5 (training), but only to the extent the training requirements set out therein relate to regulatory requirements from which the Licensee is exempt under this Licence or Ontario Regulation 389/10 (General);
  - viii. section 6 (certification), provided that, commencing in 2018, the Licensee shall provide in the form and manner required by the Board, annually by April 30, a self-certification statement on compliance with the Act, the regulations and the Electricity Retailer Code of Conduct;
  - ix. sections 7.4 to 7.6 (compliance monitoring), but only to the extent of references to compliance with the ECPA; and
  - x. sections 7.7 to 7.9 (retailer complaint and compliance information).

2. For greater certainty, where a term is defined in section 1.2 of the Electricity Retailer Code of Conduct by reference to the ECPA or to Ontario Regulation 389/10 (General) made under the ECPA, that definition continues to apply notwithstanding that the Licensee is exempt from the ECPA in respect of contracts that it enters into, amends, renews or extends with a low-volume consumer that is a member of the Licensee.
3. The Licensee is exempt from any amendment to the Electricity Retailer Code of Conduct that the Board makes on or after June 1, 2017 as of the date on which the Board notifies the Licensee in writing that the amendment does not apply to the Licensee.
4. Any exemption referred to in section 3 of this Schedule only applies in respect of contracts that the Licensee enters into, amends, renews or extends with a low-volume consumer that is a member of the Licensee.

## **APPENDIX A MARKET POWER MITIGATION REBATES**

“OPGI” means Ontario Power Generation Inc.

A retailer shall promptly pass through a portion of the rebate received from a distributor to those consumers who are not receiving the fixed price under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* and who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer.

If requested in writing by OPGI, the retailer shall ensure that all rebates paid to consumers are identified as coming from OPGI in the following form on or with each bill or cheque.

“ONTARIO POWER GENERATION INC. rebate”

A retailer shall promptly return to a distributor any portion of the rebate received from the distributor which relates to low-volume or designated consumers receiving the fixed commodity price for electricity under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998*, who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer or another party.

The amounts paid out to consumers or returned to the distributor shall be based on energy consumed and calculated in accordance with the rules set out in the Retail Settlement Code.

Amounts payable by the retailer may be made by way of set off at the discretion of the retailer.

### **ONTARIO POWER GENERATION INC. REBATES**

For the payments that relate to the period from May 1, 2006 to April 30, 2009, the rules set out below shall apply.

A retailer shall promptly pass through a portion of the rebate received from a distributor to those consumers who are not receiving the fixed price under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* and who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer.

If requested in writing by OPGI, the retailer shall ensure that all rebates paid to consumers are identified as coming from OPGI in the following form on or with each bill or cheque.

“ONTARIO POWER GENERATION INC. rebate”

The amounts paid out to consumers or returned to the distributor shall be based on energy consumed and calculated in accordance with the rules set out in the Retail Settlement Code.

Amounts payable by the retailer may be made by way of set off at the discretion of the retailer.